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SENATE BILL NO. 13**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 5, 2002)

(Patron Prior to Substitute—Senator Norment)

A *BILL* to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5110 through 2.2-5114, relating to providing grants to ship repair companies for making capital investments.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5110 through 2.2-5114 as follows:

*CHAPTER 51.1.**VIRGINIA MARITIME INVESTMENT ACT.*

§ 2.2-5110. Short title.

This chapter shall be known and may be cited as the "Virginia Maritime Investment Act."

§ 2.2-5111. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Average shipyard worker wage" means that amount determined by the Virginia Employment Commission to be the average wage paid shipyard workers in a locality or region of the Commonwealth.

"Capital investment" means an investment transaction of at least \$50 million in real property, personal property, or both, at a ship repair facility, located within the Commonwealth and owned by or used by an existing ship repair company, that is capitalized by such company and that increases the productivity of such company, or results in the utilization of a more advanced technology by such company than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. In general, expenditures for maintenance or replacement or repair of existing machinery, tools or real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

"Eligible ship repair company" means an existing ship repair company that makes a capital investment on or after July 1, 2002, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any ship repair company participating in any other production grant program in the Commonwealth shall not be an eligible ship repair company.

"Existing ship repair company" means a ship repair company that (i) has a legal presence and actually repairs ships continuously within the Commonwealth for at least five years prior to completion and verification of the capital investment that makes it an eligible ship repair company; and (ii) owns or operates a ship repair establishment as defined in the Standard Industrial Classification Manual and any supplements or replacements issued thereto, or which derives at least sixty percent of its gross revenues from either repair work on ships or from subcontracts with ship repair companies. For purposes of this definition, the acquisition, merger, or change in legal form of an existing ship repair company into a different entity shall not invalidate eligibility to receive a grant under this chapter.

"Flawed product" means an irregular unit of goods that cannot be sold to an end user.

"Fund" means the Virginia Maritime Investment Partnership Grant Fund.

"Grant" means an investment performance grant.

"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and new jobs created, over a period following the completion of the capital investment not to exceed twenty years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under this chapter, for such capital investment during that period.

"New job" means employment of an indefinite duration at the eligible ship repair company, created as the direct result of the eligible ship repair company's capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) thirty-five hours of an employee's time per week for the entire normal year of the firm's operations, which "normal year" must consist of at least forty-eight weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in this Commonwealth to the location of the eligible ship repair company, and positions with contractors, suppliers, and similar

60 multiplier or spin-off jobs shall not qualify as new jobs under this chapter.

61 "Partnership" means the Virginia Economic Development Partnership.

62 "Productivity" means the number of hours of labor required to produce a unit of goods.

63 "Secretary" means the Secretary of Commerce and Trade or his designee.

64 § 2.2-5112. Virginia Investment Performance Grants.

65 A. Subject to the appropriation by the General Assembly of sufficient moneys to the Fund, any
66 eligible ship repair company shall be eligible for a grant as provided in this section for making or
67 undertaking capital investments.

68 B. The Secretary shall establish an application process by which eligible ship repair companies may
69 apply for a grant under this section. Application for such grant shall not be approved until the
70 Partnership has verified that the capital investment has been completed. Upon verifying that the capital
71 investment has been completed, the Partnership shall provide written notice of the same to the
72 Secretary.

73 C. The Secretary, based on recommendations of the Partnership, shall determine whether or not an
74 eligible ship repair company shall receive a grant under this section. This determination shall be based
75 on the application of guidelines that establish criteria for the awarding of a grant. Subject to the
76 limitations on the amount of grants that may be paid as provided in this chapter, when a grant is
77 awarded by the Secretary the grant shall be in an amount equal to ten percent of the cost of the capital
78 investment.

79 D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in
80 awarding grants. No grant shall be awarded until the Secretary has provided copies of such guidelines
81 for review to the chairmen of the House Committee on Appropriations and Senate Committee on
82 Finance. The preparation of the guidelines shall be exempt from the provisions of the Administrative
83 Process Act (§ 2.2-4000 et seq.). The guidelines shall define a "measurable increase in capacity or
84 productivity" and a "measurable decrease in the production of flawed product" as such phrases apply to
85 or define a capital investment in technology. Additionally, the guidelines shall require the Secretary to
86 consider the following criteria in determining whether or not to award a grant:

87 1. The number of new jobs created by the capital investment;

88 2. The wages paid for the new jobs and the amount by which wages exceed the average shipyard
89 worker wage for the locality or region;

90 3. The extent to which the capital investment produces (a) measurable increases in capacity,
91 productivity, or both, or (b) measurable decreases in the production of flawed product;

92 4. The amount of the capital investment;

93 5. The net present value of benefits to Virginia;

94 6. The amount of other incentives offered by the Commonwealth and the locality; and

95 7. The importance of the eligible ship repair company and industry to the economy of the locality or
96 region.

97 The guidelines shall also address the eligibility of ship repair companies that make a capital
98 investment in phases over a period of years, and limits on eligibility for multiple grants by the same
99 eligible ship repair company within stated periods of time.

100 E. The amount of a grant paid to any eligible ship repair company under this section shall not
101 exceed ten percent of the amount in the Fund in the year that the terms of a grant are determined. The
102 maximum amount of grants that may be paid to an eligible ship repair company pursuant to this section
103 shall not exceed a total of \$50 million. Notwithstanding any other provision in this chapter, no grant
104 shall be paid for any capital investment completed on or after July 1, 2004.

105 F. The aggregate amount of grants approved by the Secretary pursuant to this section in any fiscal
106 year shall not exceed \$20 million, and the aggregate amount of grants outstanding, awarded pursuant to
107 this section, to all eligible ship repair companies for all years shall at no time exceed \$80 million. The
108 annual obligations of the Commonwealth to make grant payments to individual eligible ship repair
109 companies under this section shall not exceed \$750,000.

110 G. Any eligible ship repair company awarded a grant shall receive payment from the Fund in
111 twenty-five equal installments beginning in the second year after the capital investment is completed and
112 the Partnership has verified that the requirements applicable to such grant have been satisfied.
113 Excluding the first installment, each installment shall be paid no less than twelve complete months after
114 the preceding installment.

115 § 2.2-5113. Requirements for grants generally.

116 A. Any eligible ship repair company applying for a grant under this chapter shall provide evidence,
117 satisfactory to the Secretary or the Partnership, of the amount of the capital investment, the number of
118 new jobs created as a result of the capital investment and such other evidence that the requirements of
119 this chapter have been satisfied. As a condition of receipt of a grant, an eligible ship repair company
120 whose application has been approved by the Secretary shall continue to comply with the requirements
121 for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for

approval of any grant have been or are being satisfied.

B. The Secretary shall determine the grants to be awarded to eligible applicants by June 30 of each year. Prior to any grant payment, the Secretary shall certify to the Comptroller and each applicant the amount of the grant to which each applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the Fund, the payment of such grant shall be made from the Fund by check issued by the State Treasurer on warrant of the Comptroller within sixty days of such certification.

C. As a condition of receipt of a grant, an eligible ship repair company shall make available to the Secretary or Partnership for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the eligible ship repair company shall be considered confidential and proprietary.

D. Within thirty days of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Committee on Appropriations and Senate Committee on Finance, which report shall include, but is not limited to, the following information: the name of each eligible ship repair company determined to be eligible for a grant; the locality of each ship repair facility of the eligible ship repair company or the locality in which each eligible ship repair company operates; the amount of each grant made or committed from the Fund; the number of new jobs created or projected to be created; the amount of each eligible ship repair company's capital investment; and each timetable for the completion of the capital investment and new jobs created.

E. The Secretary shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If funds are committed for years beyond the fiscal years covered under the existing appropriation act, the Comptroller shall set aside and reserve such funds as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

§ 2.2-5114. Virginia Maritime Investment Partnership Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Virginia Maritime Investment Partnership Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of grants to eligible ship repair companies pursuant to this chapter. The Secretary shall administer the Fund.

B. The Secretary shall allocate from the Fund moneys in the following order of priority for the payment of grants: (i) first to unpaid grant amounts carried forward from prior years because eligible ship repair companies did not receive the full amount of any grant awarded in a prior year and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible based on a grant award, the moneys in the Fund shall be apportioned pro rata among approved applicants in such class, based upon the amount of the grant awarded to an approved applicant and the amount of money in the Fund available for allocation to such class.

C. If an eligible ship repair company is paid less than the full amount of a grant to which it is eligible in any fiscal year based on a grant award, such eligible ship repair company shall not be eligible for the deficiency in that fiscal year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Secretary to the following fiscal year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

D. Actions of the Secretary relating to the allocations and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B. 4. of § 2.2-4002.

2. That the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in the 2002 Appropriation Act passed during the 2002 Session of the General Assembly and signed into law by the Governor.