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SENATE BILL NO. 232

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 11, 2004)

(Patron Prior to Substitute—Senator Lambert)

A BILL to amend the Code of Virginia by adding in Part B of Subtitle II of Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5105 through 2.2-5108, relating to the Virginia Economic Development Incentive Act.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Part B of Subtitle II of Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5105 through 2.2-5108, as follows:

CHAPTER 51.1.

VIRGINIA ECONOMIC DEVELOPMENT INCENTIVE ACT.

§ 2.2-5105. Short title; definitions.

This chapter shall be known and may be cited as the "Virginia Economic Development Incentive Act."

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

"Act" means the Virginia Economic Development Incentive Act.

"Basic employment" means employment that brings new or additional income into Virginia and adds to the gross state product.

"Capital investment" means investment in real property, personal property, or both, at a facility within the Commonwealth that is capitalized by the company. Expenditures for maintenance, replacement or repair of existing machinery, tools and personal 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 company" means a Virginia-based employer that, on or after July 1, 2004, (i) creates at least 400 new jobs with average salaries at least 50 percent greater than the prevailing average wage for the area and (ii) makes a capital investment of at least \$5 million or \$6,500 per job, whichever is greater. Beginning in 2005, the capital investment requirement shall be indexed annually on January 1 of each year by an amount equivalent to the percentage increase in the Consumer Price Index for all items, all urban consumers (CPI-U) from October 1 through September 30 of the immediately preceding calendar year.

"Fund" means the Virginia Economic Development Incentive Fund, created pursuant to § 2.2-5106.

"Net present value of benefits to Virginia" means the present value of the amount by which 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 20 years, exceeds 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 facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 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 the Commonwealth to the facility, and positions with contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this chapter.

"Partnership" means the Virginia Economic Development Partnership.

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

"Secretary" means the Secretary of Commerce and Trade.

§ 2.2-5106. Virginia Economic Development Incentive Fund.

A. There is established a special fund in the state treasury to be known as the Virginia Economic Development Incentive Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly and designated for the Fund, including some proportion of the marginal revenues derived from eligible companies receiving grants under this Act. The Fund shall be used solely for the payment of economic development incentive grants to eligible companies pursuant to this chapter. The Partnership shall administer the Virginia Economic Development Incentive Fund.

B. The Partnership shall allocate from the Fund moneys in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible companies did not receive the full amount of any grant to which they were eligible in a prior year and (ii) then to other approved

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60 applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants
61 in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among
62 eligible applicants in such class, based upon the amount of the grant to which an approved applicant is
63 eligible and the amount of money in the Fund available for allocation to such class.

64 C. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any
65 year, it shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which
66 it was eligible shall be carried forward by the Partnership to the following year, during which it shall
67 be in the first class of priority as provided in clause (i) of subsection B.

68 D. The Partnership shall determine the amount of the grants to be allocated to eligible applicants by
69 June 30 of each year. The Partnership shall then certify to the Comptroller the amount of grant an
70 eligible company shall receive. Payments shall be made by check issued by the State Treasurer on
71 warrant of the Comptroller.

72 E. All excess funds remaining in any given year shall be carried forward on the books of the Fund
73 for use in subsequent years.

74 F. Actions of the Partnership relating to the allocation and awarding of grants shall be exempt from
75 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of
76 § 2.2-4006.

77 § 2.2-5107. Virginia Economic Development Incentive Fund Grants.

78 A. Subject to the appropriation by the General Assembly of sufficient moneys to the Fund, any
79 eligible company that meets the requirements of this section shall be eligible for an economic
80 development incentive grant as provided in this section. However, any company receiving a grant under
81 this chapter shall not be eligible for or shall not have received (i) a Virginia Investment Partnership
82 grant under § 2.2-5101 or § 2.2-5102; (ii) a grant pursuant to § 59.1-282.1; or (iii) a tax credit
83 pursuant to § 58.1-439.

84 B. The Partnership shall establish an application process by which eligible companies may apply for
85 a grant under this section. An application for a grant under this section shall not be approved for
86 payment until the Partnership has verified that the applicable requirements of the memorandum of
87 agreement required pursuant to subsection G have been satisfied.

88 C. The amount of the economic development incentive grant that an eligible company may receive
89 under this section shall be determined by the Secretary, based on the recommendation of the
90 Partnership, and contingent upon approval of the Governor. The determination of the appropriate
91 amount for an economic development incentive grant shall be based on the application of guidelines
92 that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth
93 of the capital investment and new jobs.

94 D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in
95 awarding economic development incentive grants. No grant shall be awarded until the Secretary has
96 provided copies of such guidelines for review to the chairmen of the House Committee on
97 Appropriations and the Senate Committee on Finance. The preparation of the guidelines shall be exempt
98 from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et
99 seq.). The guidelines shall require determinations regarding the amount of economic development
100 incentive grants to address:

- 101 1. The number of new jobs created by the capital investment;
- 102 2. The wages paid for the new jobs and the amount by which wages exceed the prevailing average
103 wage for the locality or region;
- 104 3. The amount of the capital investment;
- 105 4. The net present value of benefits to Virginia;
- 106 5. The amount of other incentives offered by the Commonwealth and the locality;
- 107 6. The importance of the facility to the economy of the locality or region;
- 108 7. Criteria for correlating the amount of a grant to the relative value to the Commonwealth of the
109 capital investment and new jobs;

110 8. The allocation of moneys in the Virginia Economic Development Incentive Fund to allow for
111 payment of grants in installments as provided under subsection G and to comply with maximum grant
112 awards, approvals, and payments; and

113 9. Conditions under which or when a grant will be paid in proportion to an eligible employer's
114 fulfillment of the terms of the memorandum of agreement and the methods, formulas, applications, and
115 processes to be used in computing such proportional payment.

116 The guidelines shall also address the eligibility of companies that make a capital investment in
117 phases over a period of years, and limits on eligibility for multiple grants by the same company within
118 stated periods of time.

119 E. The amount of an economic development incentive grant to any eligible company under this
120 section shall not exceed \$20 million total.

121 F. The aggregate amount of economic development incentive grants approved under this section in

any fiscal year shall not exceed \$30 million, and the total annual grant payments to all grant recipients under this section for any year shall at no time exceed \$15 million.

G. Any eligible company shall be eligible to receive a grant from the Fund in installments beginning in the third to fifth year after the Partnership has verified that the requirements applicable to such grant have been satisfied. All such terms shall be negotiated and set forth in a memorandum of agreement.

H. The Comptroller shall not draw any warrants to issue checks for grants under this chapter without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act. The payment of any grant under this section shall be in accordance with the terms and conditions set forth in a memorandum of agreement between an eligible company and the Commonwealth. These terms and conditions shall supplement the provisions of this chapter and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to an eligible company's fulfillment of the terms of the memorandum of agreement. The Secretary shall consult with the chairmen of the House Committee on Appropriations and the Senate Committee on Finance, or their designees, prior to entering into any memorandum of agreement. The Chairmen, or their designees, shall have the opportunity to review any memorandum of agreement prior to its execution by the Commonwealth.

§ 2.2-5108. Requirements for grants generally.

A. Any company eligible to apply for a grant under this chapter shall provide evidence, satisfactory to the Secretary, of the amount of the capital investment, the number of new jobs created as a result of the capital investment and such other evidence that requirements of this chapter have been satisfied. An eligible company whose application has been approved shall continue to comply with the requirements for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for approval of any grant have been satisfied.

B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the Fund, payment of such grant shall be made from the Fund by check issued by the State Treasurer on warrant of the Comptroller within 60 days of certification.

C. As a condition of receipt of a grant, an eligible company shall make available to the 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 company shall be considered confidential and proprietary.

D. Within 30 days of the end of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance that shall include, but not be limited to, the following information: the name of the eligible company determined to be eligible for a grant; the products it produces or services it provides; the locality of the facility; the amount of the grant made or committed from the Fund; the number of new jobs created or projected to be created; the amount of the company's capital investment; the prevailing average wage in the locality or region where the capital investment has been made; the average salaries for the new jobs created by the eligible company; and the timetable for the completion of the capital investment and employment creation.