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HOUSE BILL NO. 1317

Offered January 22, 2010

A *BILL to amend and reenact § 2.2-115 of the Code of Virginia, relating to the Governor's Development Opportunity Fund.*

Patron—Marshall, R.G.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §2.2-115 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-115. Governor's Development Opportunity Fund.

As used in this section, unless the context requires otherwise:

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the 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 location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

"Prevailing average wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.

"Private investment" means the private investment required under this section.

A. There is created the Governor's Development Opportunity Fund (the Fund) to be used by the Governor to attract economic development prospects and secure the expansion of existing industry in the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Governor shall report to the chairmen of the House Committees on Appropriations and Finance, and the Senate Committee on Finance as funds are awarded in accordance with this section.

B. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. Loans shall be approved by the Governor and made in accordance with guidelines established by the Virginia Economic Development Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the Fund. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the Fund in every such five-year period shall be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate for the calendar year that immediately precedes the calendar year of the award. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable minimum private investment and new jobs requirements set forth in this section, then any funds remaining in the Fund at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period.

C. Funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority,

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HB1317

59 or other political subdivision for purposes directly relating to any of the foregoing. However, in no case
60 shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental,
61 lease, license, or other contractual right to the use of any property.

62 It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any
63 economic development project in which a business relocates or expands its operations in one or more
64 Virginia localities and simultaneously closes its operations or substantially reduces the number of its
65 employees in another Virginia locality. The Secretary of Commerce and Trade shall enforce this policy
66 and for any exception thereto shall promptly provide written notice to the Chairmen of the Senate
67 Finance and House Appropriations Committees, which notice shall include a justification for any
68 exception to such policy.

69 D. 1. Except as provided in this subsection, no grant or loan shall be awarded from the Fund unless
70 the project involves a minimum private investment of \$10,000,000 and creates 100 new jobs for which
71 the average wage, excluding fringe benefits, is no less than the prevailing average wage. In localities
72 with a population between 50,000 and 100,000, the minimum private investment shall be \$5,000,000,
73 creating 50 new jobs for which the average wage, excluding fringe benefits, is no less than the
74 prevailing average wage. In localities with a population of 50,000 or less, the minimum private
75 investment shall be \$2,500,000, creating 25 new jobs for which the average wage, excluding fringe
76 benefits, is no less than the prevailing average wage. Central cities or urban cores shall be treated for
77 eligibility purposes the same as communities with a population between 50,000 and 100,000. For
78 projects for which the average wage of the new jobs created, excluding fringe benefits, is at least twice
79 the prevailing average wage for that locality or region, the Governor shall have the discretion to require
80 no less than one-half the number of new jobs as set forth for that locality in this subsection.

81 2. Notwithstanding the provisions of subdivision D 1, if a project is to be located in a county or city
82 whose annual average unemployment rate for the most recent calendar year is greater than the final
83 statewide average unemployment rate for the most recent calendar year, a grant or loan may be awarded
84 from the Fund if the average wage of the new jobs, excluding fringe benefits, will be no less than 85%
85 of the prevailing average wage. In addition, for projects in such counties and cities, the Governor may
86 award a grant or loan for a project paying less than 85% of the prevailing average wage but still
87 providing customary employee benefits, only after the Secretary of Commerce and Trade has made a
88 written finding that the economic circumstances in the area are sufficiently distressed (i.e., high
89 unemployment or underemployment and negative economic forecasts) that assistance to the locality to
90 attract the project is nonetheless justified. However, the minimum private investment and number of new
91 jobs required to be created as set forth in this subsection shall still be a condition of eligibility for an
92 award from the Fund. Such written finding shall promptly be provided to the Chairmen of the Senate
93 Finance and House Appropriations Committees.

94 3. Notwithstanding the provisions of subdivision 1, if a project is to be located in a locality whose
95 unemployment rate is one and one half times or more the state average, the minimum private investment
96 shall be adjusted to \$7,500,000 and the minimum number of new jobs created shall be adjusted to 75
97 jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage.
98 In localities with a population between 50,000 and 100,000, the minimum private investment shall be
99 \$3,500,000, creating 35 new jobs for which the average wage, excluding fringe benefits, is no less than
100 the prevailing average wage. In localities with a population of 50,000 or less, the minimum private
101 investment shall be \$1,500,000, creating 15 new jobs for which the average wage, excluding fringe
102 benefits, is no less than the prevailing average wage. Localities qualifying under this subdivision that
103 have created Regional Industrial Facilities Authorities pursuant to § 15.2-6402, shall be eligible at the
104 lowest investment and job creation threshold of any locality in that Authority.

105 E. 1. The Virginia Economic Development Partnership shall assist the Governor in developing
106 objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund.
107 The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of
108 funds to be provided to any individual project. In developing the guidelines and criteria, the Virginia
109 Economic Development Partnership shall use the measure for Fiscal Stress published by the Commission
110 on Local Government of the Department of Housing and Community Development for the locality in
111 which the project is located or will be located as one method of determining the amount of assistance a
112 locality shall receive from the Fund.

113 2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision that
114 receives a grant or loan from the Fund shall enter into a contract with each business beneficiary of
115 funds from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant
116 or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i)
117 subsequently distributed by the political subdivision to the person or entity or (ii) used by the political
118 subdivision for the benefit of the person or entity but never distributed to the person or entity.

119 b. The contract between the political subdivision and the business beneficiary shall provide in detail
120 (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair

market value of all matching funds (or in-kind match) that the political subdivision has agreed to provide, (iii) how funds committed by the Commonwealth (including but not limited to funds from the Fund committed by the Governor) and funds that the political subdivision has agreed to provide are to be spent, (iv) the minimum private investment to be made and the number of new jobs to be created agreed to by the business beneficiary, (v) the average wage (excluding fringe benefits) agreed to be paid in the new jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes agreed to be used for measuring compliance with the minimum private investment and new jobs requirements.

The contract shall state the date by which the agreed upon private investment and new job requirements shall be met by the business beneficiary of funds from the Fund and may provide for the political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the political subdivision subsequent to the execution of the contract. Any extension of such date granted by the political subdivision shall be in writing and promptly delivered to the business beneficiary, and the political subdivision shall simultaneously provide a copy of the extension to the Virginia Economic Development Partnership.

The contract shall provide that if the private investment and new job contractual requirements are not met by the expiration of the date stipulated in the contract, including any extension granted by the political subdivision, the business beneficiary shall be liable to the political subdivision for repayment of a portion of the funds provided under the contract. The contract shall include a formula for purposes of determining the portion of such funds to be repaid. The formula shall, in part, be based upon the fair market value of all funds that have been provided by the Commonwealth and the political subdivision and the extent to which the business beneficiary has met the private investment and new job contractual requirements. Any such funds repaid to the political subdivision that relate to the award from the Governor's Development Opportunity Fund shall promptly be paid over by the political subdivision to the Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State Treasurer of such payment, the Comptroller shall deposit such repaid funds into the Governor's Development Opportunity Fund.

c. The contract shall be amended to reflect changes in the funds committed by the Commonwealth or agreed to be provided by the political subdivision.

3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such contract with a business beneficiary, the political subdivision shall provide a copy of the proposed contract to the Attorney General. The Attorney General shall review the proposed contract (i) for enforceability as to its provisions and (ii) to ensure that it is in appropriate, legal form. The Attorney General shall provide any written suggestions to the political subdivision within seven days of his receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the enforceability of the contract's provisions and the legal form of the contract.

4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until such contract as described herein is executed with the business beneficiary.

F. Within the 30 days immediately following June 30 and December 30 of each year, the Governor shall provide a report to the chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance which shall include, but is not limited to, the following information regarding grants and loans awarded from the Fund during the immediately preceding six-month period for economic development projects: the name of the company that is the business beneficiary of the grant or loan and the type of business in which it engages; the location (county, city, or town) of the project; the amount of the grant or loan committed from the Fund and the amount of all other funds committed by the Commonwealth from other sources and the purpose for which such grants, loans, or other funds will be used; the amount of all moneys or funds agreed to be provided by political subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created by the business beneficiary; the amount of investment in the project agreed to be made by the business beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

H. Notwithstanding any provision in this section, when the balance in the Fund exceeds \$12 million, all moneys in excess of \$12 million but not to exceed \$2 million shall be transferred by the Comptroller to the general fund of the state treasury within 50 days of the close of each fiscal year and distributed within 10 days following such transfer to any eligible qualifying community development financial

182 *institution authorized by the Secretary of Commerce and Trade pursuant to Chapter 624 of the 2005*
183 *Acts of Assembly for the purpose of making commercial loans and investments to start or expand small*
184 *businesses.*