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**HOUSE BILL NO. 943**

Offered January 13, 2010

Prefiled January 13, 2010

*A BILL to amend and reenact §§ 2.2-115 and 2.2-902 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 2.2 a section numbered 2.2-904.2, relating to the creation, administration and management of the Small Business Jobs Grant Fund; grants to small businesses for creating new full-time positions.*

Patrons—Landes, Bell, Richard P., Gilbert, Keam, Lohr and Villanueva

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-115 and 2.2-902 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 2.2 a section numbered 2.2-904.2 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.

Beginning with the Commonwealth's fiscal year starting on July 1, 2010, and for each fiscal year thereafter, the Comptroller shall by September 1 of each year transfer \$2 million from the Fund to the Small Business Jobs Grant Fund established under § 2.2-904.2 with such moneys transferred to be used for the purposes provided in such 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

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59 forth in this section, then any funds remaining in the Fund at the end of the five-year period that would  
60 have otherwise been awarded to such counties and cities shall be made available for awards in the next  
61 five fiscal years' period.

62 C. Funds may be used for public and private utility extension or capacity development on and off  
63 site; public and private installation, extension, or capacity development of high-speed or broadband  
64 Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding  
65 capability of existing programs; site acquisition; grading, drainage, paving, and any other activity  
66 required to prepare a site for construction; construction or build-out of publicly owned buildings;  
67 training; or grants or loans to an industrial development authority, housing and redevelopment authority,  
68 or other political subdivision for purposes directly relating to any of the foregoing. However, in no case  
69 shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental,  
70 lease, license, or other contractual right to the use of any property.

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

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

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

103 3. Notwithstanding the provisions of subdivision 1, if a project is to be located in a locality whose  
104 unemployment rate is one and one half times or more the state average, the minimum private investment  
105 shall be adjusted to \$7,500,000 and the minimum number of new jobs created shall be adjusted to 75  
106 jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage.  
107 In localities with a population between 50,000 and 100,000, the minimum private investment shall be  
108 \$3,500,000, creating 35 new jobs for which the average wage, excluding fringe benefits, is no less than  
109 the prevailing average wage. In localities with a population of 50,000 or less, the minimum private  
110 investment shall be \$1,500,000, creating 15 new jobs for which the average wage, excluding fringe  
111 benefits, is no less than the prevailing average wage. Localities qualifying under this subdivision that  
112 have created Regional Industrial Facilities Authorities pursuant to § 15.2-6402, shall be eligible at the  
113 lowest investment and job creation threshold of any locality in that Authority.

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

locality shall receive from the Fund.

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

b. The contract between the political subdivision and the business beneficiary shall provide in detail (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.

§ 2.2-902. Duties of the Department; state agencies to furnish information.

A. The Department shall serve as the liaison between the Commonwealth's existing business and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Provide for training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses; and

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth; and

6. *Manage the Small Business Jobs Grant Fund created pursuant to § 2.2-904.2.*

B. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

§ 2.2-904.2. *Creation, administration, and management of the Small Business Jobs Grant Fund.*

A. *For the purposes of this section:*

*"Base year" means the calendar year immediately preceding the 24-month period in which a small business creates new full-time positions making it eligible for grants under this section.*

*"New full-time position" means employment of an indefinite duration in the Commonwealth at a small business, for which the average annual wage is at least equal to the prevailing average annual wage in the county or city in which the position is located, requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the small business' operation, which "normal year" must consist of at least 48 weeks, or (ii) a minimum of 1,680 hours per year. Seasonal, temporary, or contract positions or positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as a new full-time position.*

*"Prevailing average annual wage" means that amount determined by the Virginia Employment Commission to be the average annual wage paid workers in the county or city. The prevailing average annual wage shall be determined without regard to any fringe benefits.*

*"Small business" means an independently owned and operated business that, together with affiliates, has 250 or fewer employees in its base year.*

B. *There is created in the state treasury a permanent nonreverting fund to be known as the Small Business Jobs Grant Fund (the Fund). The Fund shall be comprised of (i) transfers from the Governor's Development Opportunity Fund pursuant to subsection A of § 2.2-115 and (ii) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be managed and administered as a part of the Virginia Jobs Investment Program established within the Department.*

C. *Moneys in the Fund shall be used solely for the purpose of providing grants to small businesses that create at least five new full-time positions within any 12-month period. A small business meeting the conditions of this section shall be eligible to receive a grant from the Fund ranging from \$500 to \$2,000 per each new full-time position that has been created based on criteria established by the Department pursuant to subsection E. However, in no case shall a small business be eligible for grants for more than 50 new full-time positions created within the 12-month period.*

*In awarding grants, priority shall be given to small businesses creating new full-time positions in areas with an annual average unemployment rate of more than 125% of the statewide average unemployment rate.*

D. *Grant payments under this section shall be conditioned upon the small business substantially retaining (i) the number of full-time positions in its base year plus (ii) the number of new full-time positions for which grants are to be paid. In no case shall the retention period (as determined by the Department) for any new full-time position for which a grant is to be paid be less than 12 months.*

*No grant shall be awarded or paid for any new full-time position created prior to July 1, 2010. No*

grant shall be awarded or paid for any new full-time position created solely as a result of a merger, acquisition, similar business combination, or a change in business form.

E. The Department shall establish criteria for determining the amount of the grant to be awarded for each eligible new job created by a small business. Such criteria shall be based on the level of education, training, and experience required for the job.

F. The Department shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department may require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department.

2. That the Department of Business Assistance shall develop guidelines implementing the provisions of this act. The guidelines shall be made publicly available no later than September 1, 2010. The development of the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).