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HOUSE BILL NO. 768

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 2.2-435.8, 2.2-900, 2.2-902, 2.2-904, and 2.2-904.1 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 9 of Title 2.2 an article numbered 2, consisting of sections numbered 2.2-903.1, 2.2-903.2, and 2.2-904.01; and to repeal § 2.2-904.2 of the Code of Virginia, relating to the Department of Business Assistance; Virginia Jobs Investment Plan.

Patrons—Landes, Morris, Albo, Byron, Crockett-Stark, Garrett, Helsel, Knight, Merricks and Rust

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-435.8, 2.2-900, 2.2-902, 2.2-904, and 2.2-904.1 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 an article numbered 2, consisting of sections numbered 2.2-903.1, 2.2-903.2, and 2.2-904.01, as follows:

§ 2.2-435.8. Workforce program evaluations; sharing of certain data.

A. Notwithstanding any provision of law to the contrary, the agencies specified in subsection D may share data from within their respective databases solely to (i) provide the workforce program evaluation and policy analysis required by subdivision A 8 of § 2.2-435.7 and clause (i) of subdivision A 10 of § 2.2-435.7 and (ii) conduct education program evaluations that require employment outcomes data to meet state and federal reporting requirements.

B. Data shared pursuant to subsection A shall not include any personal identifying information, shall be encrypted, and shall be transmitted to the Governor or his designee. Upon receipt of such data, the Governor or his designee shall re-encrypt the data to prevent any participating agency from connecting shared data sets with existing agency files. For the purposes of this section:

1. "Identifying information" means the same as that term is defined in § 18.2-186.3, and

2. "Encrypted" means the same as that term is defined in § 18.2-186.6.

C. The Governor or his designee and all agencies authorized under this section shall destroy or erase all shared data upon completion of all required evaluations and analyses. The Governor or his designee may retain a third-party entity to assist with the evaluation and analysis.

D. The databases from the following agencies relating to the specific programs identified in this subsection may be shared solely to achieve the purposes specified in subsection A:

1. Virginia Employment Commission: Unemployment Insurance, Job Service, Trade Act, and Veterans Employment Training Programs;

2. Virginia Community College System: Postsecondary Career and Technical Education, Workforce Investment Act Adult, Youth and Dislocated Worker Programs;

3. Department of Rehabilitative Services: Vocational Rehabilitation;

4. Department for the Blind and Vision Impaired: Vocational Rehabilitation;

5. Department of Education: Adult Education and Family Literacy, Special Education, and Career and Technical Education;

6. Department for the Aging: Senior Community Services Employment Program;

7. Department of Labor and Industry: Apprenticeship;

8. Department of Social Services: Supplemental Nutrition Assistance Program and Virginia Initiative for Employment Not Welfare;

9. Department of Business Assistance: Virginia Jobs Investment ~~Program~~ Plan;

10. Department of Correctional Education: Career and Technical Education Programs;

11. Department of Juvenile Justice: Youth Industries and Institutional Work Programs; and

12. The State Council of Higher Education for Virginia.

Article I.**General Provisions.**

§ 2.2-900. Creation of Department; appointment of Director; powers and duties.

A. There is *hereby* created a Department of Business Assistance (the "Department") that shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

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

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

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

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

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

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

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

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

75 7. *Administer any programs established under the Virginia Jobs Investment Plan described in*
76 *§ 2.2-903.1.*

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

79 *Article 2.*

80 *Virginia Jobs Investment Plan.*

81 *§ 2.2-903.1. Virginia Jobs Investment Plan; composition; general qualifications.*

82 A. *There is hereby created the Virginia Jobs Investment Plan (the Plan) to support private sector job*
83 *creation by encouraging the expansion of existing Virginia businesses and the start-up of new business*
84 *operations in Virginia. The Plan shall support existing businesses and economic development prospects*
85 *by offering direct funding to offset recruiting and training costs incurred by companies that are either*
86 *creating new jobs or implementing technological upgrades and providing assistance with*
87 *workforce-related challenges and organizational development workshops.*

88 B. *The Plan shall be comprised of the following component programs:*

89 1. *The Virginia New Jobs Program;*

90 2. *The Workforce Retraining Program; and*

91 3. *The Small Business New Jobs Program.*

92 C. *To be eligible for assistance under any of the component programs of the Plan, a company must:*

93 1. *Be operated for profit;*

94 2. *Create basic employment for the Commonwealth in one of the following business sectors or*
95 *functions:*

96 a. *Manufacturing;*

97 b. *Distribution centers;*

98 c. *Corporate headquarters for a company consisting of multiple facilities;*

99 d. *Research and development;*

100 e. *Information technology services exclusively for businesses; and*

101 f. *Inbound call centers; and*

102 3. *Pay a minimum entry-level wage rate of \$10 per hour. In areas that have an unemployment rate*
103 *of two times or more the state average, the wage rate minimum may be waived. However, only full-time*
104 *positions that qualify for benefits shall be eligible for assistance.*

105 D. *Each application for assistance from any component program of the Plan shall contain the*
106 *following certification: "I certify that I am an authorized representative of the company and the*
107 *information provided in this application is correct. All reimbursements submitted to the Virginia Jobs*
108 *Investment Plan shall only be for the jobs listed in this application. I understand that I will be liable*
109 *under the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq.) and any other applicable law for*
110 *willfully and knowingly providing false information on this application or in any requests for*
111 *reimbursement submitted to the Virginia Jobs Investment Plan. I understand that an audit may be*
112 *performed at the end of the project that is the subject of this application to verify the employment and*
113 *salary of any employee submitted for reimbursement and that I will provide any and all records*
114 *necessary in the performance of such audit."*

115 *"I understand that any funding for this project is contingent upon appropriations to the Virginia Jobs*
116 *Investment Plan by the Virginia General Assembly and the Governor. I also understand that from time*
117 *to time I may be required to produce additional documentation or other information related to the*
118 *subject project that is deemed necessary by the Department of Business Assistance to verify the*
119 *information I have provided in this application to obtain funding. I further understand that I will be*
120 *required to reimburse any investment funds received from the Virginia Jobs Investment Plan if the*

facility closes within one year of receiving the investment funds or prior to the Commonwealth of Virginia recovering its investment in the subject project or if fraud has been discovered by an audit."

§ 2.2-903.2. Virginia New Jobs Program; qualifications.

A. The Department shall develop as a component of the Virginia Jobs Investment Plan the Virginia New Jobs Program to support the expansion of existing Virginia companies and new facility locations involving competition with other states or countries.

B. In addition to the requirements of subsection C of § 2.2-903.1 regarding company eligibility, to be eligible for assistance, an expansion of an existing company or a new company location must (i) create a minimum of 25 new jobs, (ii) make a capital investment of at least \$1 million, and (iii) include Virginia in a current competition for the location of the project with at least one other state or country.

§ 2.2-904. Workforce Retraining Program and Fund.

A. The Department shall develop a ~~program~~ as a component of the Virginia Jobs Investment Plan the Workforce Retraining Program to provide consulting services and funding to assist companies and businesses with retraining their existing workforces to increase productivity.

B. There is hereby established in the state treasury a special nonreverting fund to be known as the Workforce Retraining Fund. The Fund shall consist of any moneys appropriated thereto by the General Assembly from time to time and designated for the Fund. 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 article in ensuing fiscal years.

C. To be eligible for moneys from the Fund, a company shall:

1. Demonstrate that it is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of new skills and technological capabilities by the firm's existing labor force;

2. Demonstrate that, for each such integration of new technology into its production process, change of product line in keeping with marketplace demands, or substantial change to its service delivery process:

a. No less than 10 and no more than 200 full-time employees are involved; and

b. A minimum capital investment of \$500,000 is committed within a 12-month period;

3. Certify that:

a. The company has not received moneys from the Fund in the previous 24 36 months;

b. The company counted only full-time employees to qualify for the program; and

c. Such full-time employees carry a minimum pay rate of \$8 per hour; and

d. Such full-time employees have been employed for at least 90 days prior to being submitted for reimbursement; and

4. Meet such additional criteria as may be promulgated by the Department.

D. As used in this section:

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology 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.

"Full-time employee" means a natural person employed for indefinite duration, requiring a minimum of either (i) 35 hours of the employee's time per week for the entire normal year, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary employees shall not qualify as new full-time employees under this section.

"Retraining" means the process of upgrading the skills of existing employees who are essential to the production or distribution of a product.

E. Moneys in the Fund shall be used solely for grants to eligible businesses as provided in this section. The total amount of funds provided to eligible businesses under this section for any year shall not exceed the amount appropriated by the General Assembly to the Fund for such year. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his designee. The Fund shall be administered by the Director.

§ 2.2-904.01. Small Business New Jobs Program.

A. The Department shall develop as a component of the Virginia Jobs Investment Plan the Small Business New Jobs Program to assist Virginia small businesses job creation.

B. In addition to the requirements of subsection C of § 2.2-903.1 regarding company eligibility, to be eligible for assistance under the Program, a company must (i) create a minimum of five net new jobs

182 and (ii) make a new capital investment of at least \$100,000.

183 C. There is hereby created in the state treasury a permanent nonreverting fund to be known as the
184 Small Business Jobs Grant Fund (the Fund). The Fund shall be comprised of (i) transfers from the
185 Virginia Jobs Investment Program funded in Item 98 of the 2010-2012 Appropriation Act and (ii) any
186 other moneys designated for deposit to the Fund from any source, public or private. Interest earned on
187 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
188 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
189 remain in the Fund. The Fund shall be managed and administered as a part of the Virginia Jobs
190 Investment Plan established within the Department.

191 D. Moneys in the Fund shall be used solely for the purpose of providing grants to small businesses
192 that create at least five new full-time positions within any 12-month period. A small business meeting
193 the conditions of this section shall be eligible to receive a grant from the Fund ranging from \$500 to
194 \$2,000 per each new full-time position that has been created based on criteria established by the
195 Department pursuant to subsection F. However, in no case shall a small business be eligible for grants
196 for more than 50 new full-time positions created within the 12-month period.

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

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

204 No grant shall be awarded or paid for any new full-time position created prior to July 1, 2010. No
205 grant shall be awarded or paid for any new full-time position created solely as a result of a merger,
206 acquisition, similar business combination, or a change in business form.

207 F. The Department shall establish criteria for determining the amount of the grant to be awarded for
208 each eligible new job created by a small business that will be based on the level of education, training,
209 and experience required for the job. Such criteria shall also (i) prohibit a small business from receiving
210 more than one grant for the same position, (ii) require the employee to be employed in the new full-time
211 position for at least 90 days prior to the award of the grant, and (iii) require the small business to
212 submit a taxpayer identification number and certification Form W-9 with the grant application.

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

218 H. As used in this section:

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

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

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

231 "Small business" means an independently owned and operated business that has been organized
232 pursuant to Virginia law or maintains a principle place of business in Virginia and, together with
233 affiliates, has 250 or fewer employees in its base year.

234 Article 3.

235 Small Business Permitting Program.

236 § 2.2-904.1. One-stop small business permitting program.

237 A. As used in this ~~section~~ article, unless the context requires a different meaning:

238 "Business Permitting Center" or "Center" means the business registration and permitting center
239 established by this section and located in and under the administrative control of the Department.

240 "Comprehensive application" means a document incorporating pertinent data from existing
241 applications for permits covered under this section.

242 "Comprehensive permit" means the single document designed for public display issued by the
243 Business Permitting Center that certifies state agency permit approval and that incorporates the

endorsements for individual permits included in the comprehensive permitting program.

"Comprehensive permitting program" or "Program" means the mechanism by which comprehensive permits are issued and renewed, permit and regulatory information is disseminated, and account data are exchanged by state agencies.

"Department" means the Department of Business Assistance or any division of the Department to which the Director has delegated or assigned the duties and responsibilities of administering the comprehensive permitting program.

"Permit" means the whole or part of any state agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, to engage in activity associated with or involving the establishment of a small business in the Commonwealth.

"Permit information packet" means a collection of information about permitting requirements and application procedures custom assembled for each request.

"Regulatory" means all permitting and other governmental or statutory requirements establishing a small business or professional activities associated with establishing a small business.

"Regulatory agency" means any state agency, board, commission, or division that regulates one or more professions, occupations, industries, businesses, or activities.

"Renewal application" means a document used to collect pertinent data for renewal of permits covered under this section.

"Small business" means an independently owned and operated business that, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

"Veteran" means an individual who has served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.

B. There is created within the Department the comprehensive permitting program (the Program). The Program is established to serve as a single access point to aid entrepreneurs in filling out the various permit applications associated with establishing a small business in Virginia. The Program in no way supersedes or supplants any regulatory authority granted to any state agency with permits covered by this section. As part of the Program, the Department shall coordinate with the regulatory agency, and the regulatory agency shall determine consistent with applicable law, what types of permits are appropriate for inclusion in the Program as well as the rules governing the submission of and payment for those permits. The website of the Department shall provide access to information regarding the Program. The Department shall have the power and duty to:

1. Create a comprehensive application that will allow an entrepreneur, or an agent thereof, seeking to establish a small business, to create accounts that will allow them to acquire the appropriate permits required in the Commonwealth. The comprehensive application shall:

a. Allow the business owner to choose a business type and to provide common information, such as name, address, and telephone number, on the front page, eliminating the need to repeatedly provide common information on each permit application;

b. Allow the business owner to preview and answer questions related to the operation of the business;

c. Provide business owners with a customized to-do agency checklist, which checklist shall provide the permit applications pertinent to each business type and provide the rules, regulations, and general laws applicable to each business type as well as local licensing information;

d. Allow the business owner to submit permit applications by electronic means as authorized by § 59.1-496 and to affix thereto his electronic signature as defined in § 59.1-480;

e. Allow the business owner to check on the status of applications online and to receive information from the permitting agencies electronically; and

f. Allow a business owner to submit electronic payment for application or permitting fees for applications that have been accepted by the permitting agency.

2. Develop and administer a computerized system program capable of storing, retrieving, and exchanging permit information, while protecting the confidentiality of information submitted to the Department to the extent allowable by law. Information submitted to the Department shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) as the same would apply were the information submitted directly to the Department or to any permitting agency.

3. Issue and renew comprehensive permits in an efficient manner.

4. Identify the types of permits appropriate for inclusion in the Program. The Department shall coordinate with the regulatory agency, and the regulatory agency shall determine consistent with applicable law, what types of permits are appropriate for inclusion in the Program.

5. Incorporate permits into the Program.

6. Do all acts necessary or convenient to carry out the purposes of this chapter.

C. The Business Permitting Center shall compile information regarding the regulatory programs

305 associated with each of the permits obtainable under the Program. This information shall include, at a
306 minimum, a listing of the statutes and administrative rules requiring the permits and pertaining to the
307 regulatory programs that are directly related to the permit. The Center shall provide information
308 governed by this section to any person requesting it. Materials used by the Center to describe the
309 services provided by the Center shall indicate that this information is available upon request.

310 D. Each state agency shall cooperate and provide reasonable assistance to the Department in the
311 implementation of this section.

312 E. Any person requiring permits that have been incorporated into the Program may submit a
313 comprehensive application to the Department requesting the issuance of the permits. The comprehensive
314 application form shall contain in consolidated form information necessary for the issuance of the
315 permits.

316 F. The applicant, if not a veteran, shall include with the application the handling fee established by
317 the Department. An applicant who is a veteran shall be exempt from payment of the handling fee
318 prescribed by this subsection. The amount of the handling fee assessed against the applicant shall be set
319 by the Department at a level necessary to cover the costs of administering the comprehensive permitting
320 program.

321 G. The authority for approving the issuance and renewal of any requested permit that requires an
322 investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally
323 authorized to issue the permit shall remain with that agency. The Center may issue those permits for
324 which proper fee payment and a completed application form have been received and for which no
325 approval action is required by the regulatory agency.

326 H. Upon receipt of the application, and proper fee payment for any permit for which issuance is
327 subject to regulatory agency action under subsection G, the Department shall immediately notify the
328 regulatory agency with authority to approve the permit issuance or renewal requested by the applicant.
329 Each regulatory agency shall advise the Department within a reasonable time after receiving the notice
330 of one of the following:

331 1. That the regulatory agency approves the issuance of the requested permit and will advise the
332 applicant of any specific conditions required for issuing the permit;

333 2. That the regulatory agency denies the issuance of the permit and gives the applicant reasons for
334 the denial;

335 3. That the application is pending; or

336 4. That the application is incomplete and further information from or action by the applicant is
337 necessary.

338 I. The Department shall issue a comprehensive permit endorsed for all the approved permits to the
339 applicant and advise the applicant of the status of other requested permits. The applicant shall be
340 responsible for contesting any decision regarding conditions imposed or permits denied through the
341 normal process established by statute or by the regulatory agency with the authority for approving the
342 issuance of the permit.

343 J. Regulatory agencies shall be provided information from the comprehensive application for their
344 permitting and regulatory functions.

345 K. The Department shall be responsible for directing the applicant to make all payments for
346 applicable fees established by the regulatory agency directly to the proper agency.

347 L. There is hereby created in the state treasury a special nonreverting fund to be known as the
348 Comprehensive Permitting Fund, hereafter referred to as "the Fund." The Fund shall be established on
349 the books of the Comptroller. The Fund shall consist of all moneys collected from the handling fee
350 established by the Department pursuant to subsection F and such other funds as may be appropriated by
351 the General Assembly. Interest earned on moneys in the Fund shall remain in the Fund and be credited
352 to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall
353 not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to
354 administer the Program. Expenditures and disbursements from the Fund shall be made by the State
355 Treasurer on warrants issued by the Comptroller upon written request signed by Director of the
356 Department.

357 M. Unless otherwise directed by the regulatory agency, the Department shall not issue or renew a
358 comprehensive permit to any person under any of the following circumstances:

359 1. The person does not have a valid tax registration, if required.

360 2. The person is a corporation, limited liability company, business trust, limited partnership or
361 registered limited liability partnership that (i) is delinquent in the payment of fees or penalties collected
362 by the State Corporation Commission pursuant to the business entity statutes it administers; (ii) does not
363 exist; or (iii) is not authorized to transact business in the Commonwealth pursuant to one of the business
364 entity statutes administered by the State Corporation Commission.

365 3. The person has not submitted the sum of all fees and deposits required for the requested
366 individual permit endorsements, any outstanding comprehensive permit delinquency fee, or other fees

367 and penalties to be collected through the comprehensive permitting program.
368 N. The Department may adopt regulations in accordance with § 2.2-901 as may be necessary to carry
369 out the purposes of this section.
370 2. That § 2.2-904.2 of the Code of Virginia is repealed.

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