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SENATE BILL NO. 344

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 5, 2012)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend the Code of Virginia by adding in Chapter 9 of Title 2.2 a section numbered 2.2-904.3, relating to small business investments; grants.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 9 of Title 2.2 a section numbered 2.2-904.3 as follows:

§ 2.2-904.3. *Creation, administration, and management of the Small Business Investment Grant Fund.*

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

"Eligible investor" means an individual subject to the tax imposed by § 58.1-320. The term shall not include an individual who engages in the business of making debt or equity investments in private businesses, or to any person that would be allocated a portion of the grant under this section as a partner, shareholder, member, or owner of an entity that engages in such business.

"Fund" means the Small Business Investment Grant Fund.

"Pass-through entity" means the same as that term is defined in § 58.1-390.1.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt. However, an investment shall not be qualified if the taxpayer who holds such investment, or any of the taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor, or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross revenues of no more than \$3 million in its most recent fiscal year, (ii) has its principal office or facility in the Commonwealth, (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth, (iv) has not obtained during its existence more than \$3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from national or state-chartered banking or savings and loan institutions, (v) has no more than 50 employees who are employed within the Commonwealth, and (vi) has been designated as such by the Department pursuant to the provisions of this section.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance, (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person, and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Small Business Investment Grant Fund, to be administered by the Department. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants pursuant to this section, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the Director. Grants from the Fund shall only be made to applications pursuant to this section.

C. An eligible investor that makes a qualified investment in a small business on or after July 1, 2012, but prior to January 1, 2015, that has been certified by the Department pursuant to subsection D shall be eligible for a grant in an amount equal to 10 percent of the qualified investment. An eligible investor may apply for a grant for each qualified investment that is made to one or more small businesses.

D. A small business shall apply with the Department to be certified as a small business in order to receive qualified investments eligible for the grant pursuant to this section and shall provide to the Department such information as the Department deems necessary to demonstrate that it meets the qualifications set forth in subsection A. A small business shall apply each year in order to be certified as a small business. No grant application shall be approved for an otherwise qualified investment in a small business not first certified by the Department.

60 E. Any eligible investor applying for a grant pursuant to this section shall submit an application to
61 the Department. Alternatively, a small business may apply to the Department on behalf of an eligible
62 investor. The Department shall determine the amount of the grant allowable to the eligible investor for
63 the year.

64 F. Unless the eligible investor transfers the equity received in connection with a qualified investment
65 as a result of (i) the liquidation of the small business issuing such equity, (ii) the merger, consolidation,
66 or other acquisition of such business with or by a party not affiliated with such business, or (iii) the
67 death of the eligible investor, any eligible investor that fails to hold such equity for at least two years
68 shall forfeit the grant and shall pay the Department interest on the total allowed grant at the rate of
69 one percent per month, compounded monthly, from the date the grant was awarded to the taxpayer. The
70 Department shall deposit any amounts received under this subsection into the general fund of the
71 Commonwealth.

72 G. Grants shall be issued in the order that each completed eligible application is received by the
73 Department. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds
74 available in the Fund, such grants shall be paid in the next fiscal year in which funds are available.

75 H. An eligible investor shall not be awarded a grant pursuant to this section for any investment in a
76 small business for which the eligible investor has been allowed a tax credit pursuant to § 58.1-339.4.

77 I. The Department shall establish policies and procedures relating to (i) the certification of small
78 businesses, (ii) the application for grants, and (iii) the recapture of grant awards claimed with interest
79 in the event that the qualified investment is not held for the requisite period set forth in subsection F.
80 Such policies and procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).