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SENATE BILL NO. 1134

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact §§ 2.2-435.8, 2.2-902, 2.2-2237, and 59.1-284.22 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 2.2-2240.3 through 2.2-2240.7; and to repeal sections 2.2-903.1 through 2.2-904.02 of the Code of Virginia, relating to administration of the Virginia Jobs Investment Program.

Patron—McWaters

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-435.8, 2.2-902, 2.2-2237, and 59.1-284.22 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2240.3 through 2.2-2240.7 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 for Aging and Rehabilitative Services: Vocational Rehabilitation and Senior Community Services Employment Program;

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 of Labor and Industry: Apprenticeship;

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

8. ~~Department of Business Assistance~~ *Virginia Economic Development Partnership*: Virginia Jobs Investment Program;

9. Department of Juvenile Justice: Youth Industries and Institutional Work Programs and Career and Technical Education Programs;

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

11. The State Council of Higher Education for Virginia.

§ 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;

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

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

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

67 6. ~~Administer any programs established under the Virginia Jobs Investment Program described in~~
68 ~~§ 2.2-903.1.~~

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

71 Article 2.

72 ~~Virginia Jobs Investment Programs~~ *Small Business Investment Grant Fund.*

73 **§ 2.2-2237. Powers of Authority.**

74 The Authority is granted all powers necessary or convenient for the carrying out of its statutory
75 purposes, including, but not limited to, the power to:

76 1. Sue and be sued, implead and be impleaded, complain and defend in all courts;

77 2. Adopt, use, and alter at will a common seal;

78 3. Acquire, purchase, hold, use, lease or otherwise dispose of any property, real, personal or mixed,
79 tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the
80 Authority, and to lease as lessee, any property, real, personal or mixed, tangible or intangible, or any
81 interest therein, at such annual rental and on such terms and conditions as may be determined by the
82 Board and to lease as lessor to any person, any property, real, personal or mixed, tangible or intangible,
83 or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at
84 such annual rental and on such terms and conditions as may be determined by the Board and to sell,
85 transfer or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at
86 any time acquired or held by the Authority on such terms and conditions as may be determined by the
87 Board, provided that the terms of any conveyance or lease of real property shall be subject to the prior
88 written approval of the Governor;

89 4. Fix, alter, charge and collect rates, rentals, fees, and other charges for the use of property of, the
90 sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose
91 of providing for the payment of the expenses of the Authority;

92 5. Make and enter into all contracts and agreements necessary or incidental to the performance of its
93 duties, the furtherance of its purposes, and the execution of its powers under this article, including
94 agreements with any person or federal agency;

95 6. Employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial
96 experts, investment bankers, superintendents, managers and such other employees and agents as may be
97 necessary, and to fix their compensation to be payable from funds made available to the Authority. The
98 Authority may hire employees within and without the Commonwealth and the United States without
99 regard to whether such employees are citizens of the Commonwealth. Legal services for the Authority
100 shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.) of this title;

101 7. Receive and accept from any federal or private agency, foundation, corporation, association or
102 person, grants or other aid to be expended in accomplishing the objectives of the Authority, and receive
103 and accept from the Commonwealth or any state, and any municipality, county or other political
104 subdivision thereof or from any other source, aid or contributions of either money, property, or other
105 things of value, to be held, used, and applied only for the purposes for which such grants and
106 contributions may be made. All federal moneys accepted under this section shall be accepted and
107 expended by the Authority upon such terms and conditions as are prescribed by the United States and as
108 are consistent with state law; and all state moneys accepted under this section shall be expended by the
109 Authority upon such terms and conditions as are prescribed by the Commonwealth;

110 8. Render advice and assistance and to provide services to state agencies, local and regional
111 economic development entities, private firms, and other persons providing services or facilities for
112 economic development in Virginia;

113 9. Develop, undertake, and provide programs, alone or in conjunction with any person, for economic
114 research, industrial development research, and all other research that might lead to improvements in
115 economic development in Virginia;

116 10. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its
117 business shall be transacted and the manner in which the powers of the Authority shall be exercised and
118 its duties performed; *and*

119 11. Do all acts and things necessary or convenient to carry out the powers granted to it by law, and
120 perform any act or carry out any function not inconsistent with state law that may be useful in carrying

out the provisions of this article; and

12. Administer any program established under the Virginia Jobs Investment Program described in § 2.2-2240.3.

§ 2.2-2240.3. Virginia Jobs Investment Program; composition; general qualifications.

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

B. The Program shall consist of the following component programs:

1. The Virginia New Jobs Program;
2. The Workforce Retraining Program;
3. The Small Business New Jobs and Retraining Programs; and
4. The Small Business Jobs Grant Fund Program.

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

1. Create or sustain employment for the Commonwealth in a basic sector industry or function, which would include businesses or functions that directly or indirectly derive more than 50 percent of their revenues from out-of-state sources, as determined by the Authority;

2. Pay a minimum entry-level wage rate per hour of at least 1.35 times the federal minimum wage. In areas that have an unemployment rate of one and one-half times the statewide average unemployment rate, the wage rate minimum may be waived by the Authority. Only full-time positions that qualify for benefits shall be eligible for assistance; and

3. Meet such additional criteria as may be set forth by the Authority.

D. There is hereby established in the state treasury a special nonreverting fund to be known as the Virginia Jobs Investment Program 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. Moneys in the Fund shall be used solely for grants to eligible businesses as provided in this article, except for assistance under the Small Business Jobs Grant Fund Program. The total amount of funds provided to eligible businesses under this article for any year, except for assistance under the Small Business Jobs Grant Fund Program, shall not exceed the amount appropriated by the General Assembly to the Fund for such year, plus any carryover from previous years. 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 President and Chief Executive Officer or his designee. The Fund shall be administered by the President and Chief Executive Officer.

E. As used in this article:

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be capitalized by the company and that establishes or 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.

"Full-time employee" means a natural person employed for indefinite duration in a position 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 article.

§ 2.2-2240.4. Virginia New Jobs Program.

A. The Authority shall develop as a component of the Virginia Jobs Investment Program 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 § 2.2-2240.3 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 net new jobs for full-time employees, (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.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

§ 2.2-2240.5. Workforce Retraining Program.

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

185 B. In addition to the requirements of subsection C of § 2.2-2240.3 regarding company eligibility, to
186 be eligible for assistance, a company must demonstrate (i) that it is undergoing integration of new
187 technology into its production process, a change of product line in keeping with marketplace demands,
188 or substantial change to its service delivery process that would require assimilation of new skills and
189 technological capabilities by the firm's existing labor force and (ii) that, for each such integration of
190 new technology, change of product, or substantial change to its service delivery process, (a) no less
191 than 10 full-time employees are involved and (b) a minimum capital investment of \$500,000 will be
192 made within a 12-month period.

193 The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide
194 written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations
195 Committees, which notice shall include a justification for any waiver of these requirements.

196 **§ 2.2-2240.6. Small Business New Jobs and Retraining Programs.**

197 A. The Authority shall develop as a component of the Virginia Jobs Investment Program the Small
198 Business New Jobs and Retraining Programs to support the establishment or expansion of Virginia's
199 small businesses or to improve their efficiency through retraining.

200 B. In addition to the requirements of subsection C of § 2.2-2240.3 regarding company eligibility, to
201 be eligible for assistance for new job creation, a company must create a minimum of five net new jobs
202 for full-time employees and make a capital investment of at least \$100,000. In addition to the
203 requirements of subsection C of § 2.2-2240.3 regarding company eligibility, to be eligible for assistance
204 for retraining, a company must demonstrate (i) that it is undergoing integration of new technology into
205 its production process, a change of product line in keeping with marketplace demands, or substantial
206 change to its service delivery process that would require assimilation of new skills and technological
207 capabilities by the firm's existing labor force and (ii) that, for each such integration of new technology,
208 change of product, or substantial change to its service delivery process, (a) no less than five full-time
209 employees are involved and (b) a minimum capital investment of \$50,000 will be made within a
210 12-month period.

211 The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide
212 written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations
213 Committees, which notice shall include a justification for any waiver of these requirements.

214 **§ 2.2-2240.7. Small Business Jobs Grant Fund Program.**

215 A. The Authority shall develop as a component of the Virginia Jobs Investment Program the Small
216 Business Jobs Grant Fund Program to assist Virginia small businesses job creation.

217 B. In addition to the requirements of subsection C of § 2.2-2240.3 regarding company eligibility, to
218 be eligible for assistance under the Small Business Jobs Grant Fund Program, a company must (i)
219 create a minimum of five net new full-time positions and (ii) make a new capital investment of at least
220 \$100,000.

221 The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide
222 written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations
223 Committees, which notice shall include a justification for any waiver of these requirements.

224 C. There is hereby created in the state treasury a permanent nonreverting fund to be known as the
225 Small Business Jobs Grant Fund (the Fund). The Fund shall consist of (i) transfers from the Virginia
226 Jobs Investment Program funded in the general appropriation act currently in effect and (ii) any other
227 moneys designated for deposit to the Fund from any source, public or private. Interest earned on
228 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
229 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
230 remain in the Fund. The Fund shall be managed and administered as a part of the Virginia Jobs
231 Investment Program established within the Authority.

232 D. Moneys in the Fund shall be used solely for the purpose of providing grants to small businesses
233 that create at least five new full-time positions within any 24-month period. A small business meeting
234 the conditions of this section shall be eligible to receive a grant from the Fund ranging from \$500 to
235 \$2,000 per each new full-time position that has been created based on criteria established by the
236 Authority pursuant to subsection F.

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

240 E. Grant payments under this section shall be conditional upon the small business substantially
241 retaining (i) the number of full-time positions in its base year plus (ii) the number of new full-time
242 positions for which grants are to be paid. In no case shall the retention period, as determined by the
243 Authority, 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, or similar business combination or a change in business form unless such new full-time position is moved into the Commonwealth from outside of the Commonwealth.

F. The Authority shall establish criteria for determining the amount of the grant to be awarded for each eligible new full-time position created by a small business that will be based on the level of education, training, and experience required for the job. Such criteria shall also (i) prohibit a small business from receiving more than one grant under this section for the same position and (ii) require the employee to be employed in the new full-time position for at least 90 days prior to the award of the grant.

G. The Authority 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 Authority may require the production of any document, instrument, certificate, or legal opinion or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Authority.

H. As used in 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 a resident of the Commonwealth for an indefinite duration in the Commonwealth at a small business requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the small business's 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 new full-time positions.

"Small business" means an independently owned and operated business that has been organized pursuant to Virginia law or maintains a principal place of business in Virginia and has 250 or fewer employees in its base year.

§ 59.1-284.22. Aerospace Engine Manufacturer Workforce Training Grant Fund; eligible county.

A. As used in this section:

"Affiliate" means the same as that term is defined in § 59.1-284.20.

"Capital investment" means the same as that term is defined in § 59.1-284.20.

"Eligible county" means Prince George County.

"Full-time" means employment of an indefinite duration for which the standard fringe benefits are paid, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the employer's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. The term "full-time" shall not include seasonal or temporary positions or positions created when a job function is shifted from an existing location in the Commonwealth.

"Grant" means the special training grant or supplemental training grant as described in this section.

"Qualified employee" means an individual hired in the Commonwealth on or after November 20, 2007, by an entity that is a qualified manufacturer or by an affiliate thereof, who (i) is employed by the qualified manufacturer or by an affiliate for at least 90 days, and (ii) works on a full-time basis for the qualified manufacturer or for an affiliate for at least such 90-day period.

"Qualified manufacturer" means the same as such term is defined in § 59.1-284.20.

"Secretary" means the Secretary of Commerce and Trade or his designee.

"Special training grant" means a \$9,000 allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund per new qualified employee, as described in this section. The aggregate amount of special training grants under this section shall not exceed \$5,778,000.

"Supplemental training grant" means a one-time \$3 million allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund, as described in this section.

B. Grants paid to the qualified manufacturer pursuant to this section are intended to be used for workforce development, instructional, or training purposes so as to enhance the skill sets of qualified employees.

C. Any qualified manufacturer that is eligible to receive a special training grant shall (i) report to the Secretary quarterly the number of new qualified employees hired and trained who have been employed for at least 90 days and for whom a special training grant has not been previously paid pursuant to this section, and (ii) provide evidence of the hiring and training of the new qualified employees described in clause (i). The application and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark cancellation shall govern the date of the filing determination. Within 30 days after such evidence has been provided by the qualified manufacturer, the Secretary shall certify to (a) the Comptroller and (b) each qualified manufacturer the amount of the special training grant to

305 which such qualified manufacturer is entitled under this section for payment within 60 days after such
306 certification. Payment of such grant shall be made by check issued by the Treasurer of Virginia on
307 warrant of the Comptroller.

308 The special training grants under this section (1) shall be paid, subject to appropriation by the
309 General Assembly, from a fund entitled the Aerospace Engine Manufacturer Workforce Training Grant
310 Fund, which Fund is hereby established on the books of the Comptroller, (2) shall not exceed
311 \$5,778,000 in the aggregate, and (3) shall be paid to or for the benefit of the qualified manufacturer on
312 a quarterly basis.

313 D. A supplemental training grant shall be paid to any qualified manufacturer that has made an
314 aggregate capital investment of at least \$153.9 million in the eligible county and has hired at least 176
315 new qualified employees, excluding any qualified employee who has been rehired by the qualified
316 manufacturer or an affiliate thereof or who is employed in a different position with the qualified
317 manufacturer or an affiliate thereof. On or before June 30, 2010, and on or before each June 30
318 thereafter until the supplemental training grant has been paid, the qualified manufacturer shall provide
319 written notification to the Secretary whether it has met or expects to meet the aggregate capital
320 investment and employee requirements by the end of the current calendar year. If it has met or expects
321 to meet such requirements by the end of the calendar year, the qualified manufacturer shall provide
322 evidence of the same, satisfactory to the Secretary, with the written notification. The written notification
323 and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark
324 cancellation shall govern the date of the filing determination. Within 10 days after such notification and
325 evidence have been provided by the qualified manufacturer, the Secretary shall certify to (i) the
326 Comptroller and (ii) each qualified manufacturer the amount of the supplemental training grant to which
327 such qualified manufacturer is entitled under this section for payment in the current fiscal year. Payment
328 of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

329 The supplemental training grant shall not be paid prior to July 1, 2010. The supplemental training
330 grant (a) shall be paid, subject to appropriation by the General Assembly, from the Aerospace Engine
331 Manufacturer Workforce Training Grant Fund, (b) shall be equal to \$3 million, and (c) shall, subject to
332 appropriation by the General Assembly, be paid to the qualified manufacturer by the end of the
333 applicable fiscal year, as described herein. No more than \$3 million in supplemental training grants shall
334 be paid pursuant to this section.

335 E. If grants to be paid to qualified manufacturers under this section in a fiscal year exceed the
336 aggregate amount available in the Aerospace Engine Manufacturer Workforce Training Grant Fund for
337 that year, each qualified manufacturer's grants for the year shall equal the amount of grants to which the
338 qualified manufacturer would otherwise be eligible multiplied by a fraction. The numerator of the
339 fraction shall equal the aggregate amount available for payment from the Aerospace Engine
340 Manufacturer Workforce Training Grant Fund for that fiscal year, and the denominator shall equal the
341 aggregate dollar amount of grants to which all qualified manufacturers otherwise would be eligible for
342 such fiscal year.

343 F. Notwithstanding any other provision of this section, in lieu of payment of special training grants
344 by check to qualified manufacturers, the Secretary may determine that such special training grants shall
345 be administered in a manner similar to existing training grant programs such as those permitted by
346 § 2.2-902 § 2.2-2237.

347 G. As a condition of receipt of a grant, a qualified manufacturer shall make available to the
348 Secretary or his designee for inspection upon his request all relevant and applicable documents to
349 determine the aggregate number of new qualified employees hired and the aggregate amount of capital
350 investment. The Comptroller shall not draw any warrants to issue checks for a special training grant or a
351 supplemental training grant under this section without a specific appropriation for the same. All such
352 documents appropriately identified by the qualified manufacturer shall be considered confidential and
353 proprietary.

354 **2. That §§ 2.2-903.1 through 2.2-904.02 of the Code of Virginia are repealed.**

355 **3. That the regulations of the Department of Business Assistance promulgated pursuant to**
356 **§ 2.2-901 of the Code of Virginia and guidelines established by the Department of Business**
357 **Assistance that pertain to the Virginia Jobs Investment Program shall be administered by the**
358 **Virginia Economic Development Partnership Authority and shall remain in full force and effect**
359 **until the Virginia Economic Development Partnership promulgates regulations pursuant to this**
360 **act.**