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## HOUSE BILL NO. 1212

Offered January 17, 2014

A *BILL to amend and reenact §§ 2.2-115 and 2.2-3104.01 of the Code of Virginia, relating to the Governor's Development Opportunity Fund; certain forms of prohibited conduct; penalties.*

Patrons—LeMunyon, Ramadan, Surovell and Fowler

Referred to Committee for Courts of Justice

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

**1. That §§ 2.2-115 and 2.2-3104.01 of the Code of Virginia are amended and reenacted as follows:**

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

A. 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.

B. 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.

C. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. The criteria for making such grants or loans shall include (i) job creation, (ii) private capital investment, and (iii) anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created. Loans shall be approved by the Governor and made in accordance with guidelines established by the Virginia Economic Development Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the Fund. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

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

D. Funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding

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59 capability of existing programs; site acquisition; grading, drainage, paving, and any other activity  
60 required to prepare a site for construction; construction or build-out of publicly or privately owned  
61 buildings; training; or grants or loans to an industrial development authority, housing and redevelopment  
62 authority, or other political subdivision for purposes directly relating to any of the foregoing. However,  
63 in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for  
64 any rental, lease, license, or other contractual right to the use of any property.

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

72 E. 1. a. Except as provided in this subdivision, no grant or loan shall be awarded from the Fund  
73 unless the project involves a minimum private investment of \$5 million and creates at least 50 new jobs  
74 for which the average wage, excluding fringe benefits, is no less than the prevailing average wage. For  
75 projects, including but not limited to projects involving emerging technologies, for which the average  
76 wage of the new jobs created, excluding fringe benefits, is at least twice the prevailing average wage for  
77 that locality or region, the Governor shall have the discretion to require no less than one-half the  
78 number of new jobs as set forth for that locality in this subdivision.

79 b. Notwithstanding the provisions of subdivision a, a grant or loan may be awarded from the Fund if  
80 the project involves a minimum private investment of \$100 million and creates at least 25 new jobs for  
81 which the average wage, excluding fringe benefits, is no less than the prevailing average wage.

82 2. Notwithstanding the provisions of subdivision 1 a, in localities (i) with an annual unemployment  
83 rate for the most recent calendar year for which such data is available that is greater than the final  
84 statewide average unemployment rate for that calendar year or (ii) with a poverty rate for the most  
85 recent calendar year for which such data is available that exceeds the statewide average poverty rate for  
86 that year, a grant or loan may be awarded from the Fund pursuant to subdivision 1 a if the project  
87 involves a minimum private investment of \$2.5 million and creates at least 25 new jobs for which the  
88 average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

89 3. Notwithstanding the provisions of subdivisions 1 a and 2, in localities (i) with an annual  
90 unemployment rate for the most recent calendar year for which such data is available that is greater than  
91 the final statewide average unemployment rate for that calendar year and (ii) with a poverty rate for the  
92 most recent calendar year for which such data is available that exceeds the statewide average poverty  
93 rate for that year, a grant or loan may be awarded from the Fund pursuant to such subdivisions if the  
94 project involves a minimum private investment of \$1.5 million and creates at least 15 new jobs for  
95 which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average  
96 wage.

97 4. For projects that are eligible under subdivision 2 or 3, the average wage of the new jobs,  
98 excluding fringe benefits, shall be no less than 85 percent of the prevailing average wage. In addition,  
99 for projects in such localities, the Governor may award a grant or loan for a project paying less than 85  
100 percent of the prevailing average wage but still providing customary employee benefits, only after the  
101 Secretary of Commerce and Trade has made a written finding that the economic circumstances in the  
102 area are sufficiently distressed (i.e., high unemployment or underemployment and negative economic  
103 forecasts) that assistance to the locality to attract the project is nonetheless justified. However, the  
104 minimum private investment and number of new jobs required to be created as set forth in this  
105 subsection shall still be a condition of eligibility for an award from the Fund. Such written finding shall  
106 promptly be provided to the chairs of the Senate Committee on Finance and the House Committee on  
107 Appropriations.

108 F. 1. The Virginia Economic Development Partnership shall assist the Governor in developing  
109 objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund.  
110 The guidelines may require that as a condition of receiving any grant or loan incentive that is based on  
111 employment goals, a recipient company must provide copies of employer quarterly payroll reports that  
112 have been provided to the Virginia Employment Commission to verify the employment status of any  
113 position included in the employment goal. The guidelines may include a requirement for the affected  
114 locality or localities to provide matching funds which may be cash or in-kind, at the discretion of the  
115 Governor. The guidelines and criteria shall include provisions for geographic diversity and a cap on the  
116 amount of funds to be provided to any individual project. At the discretion of the Governor, this cap  
117 may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and  
118 criteria, the Virginia Economic Development Partnership shall use the measure for Fiscal Stress  
119 published by the Commission on Local Government of the Department of Housing and Community  
120 Development for the locality in 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, including consideration of any layoffs instituted by the business beneficiary over the course of the period covered by the contract.

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.

d. Notwithstanding any provision in this section or in the guidelines, whenever layoffs instituted by a business beneficiary over the course of the period covered by a contract cause the net total number of the new jobs created to be fewer than the number agreed to, then the business beneficiary shall return the portion of any funds received pursuant to the repayment formula established by the contract.

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.

G. 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

182 other funds will be used; the amount of all moneys or funds agreed to be provided by political  
183 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created  
184 by the business beneficiary; the amount of investment in the project agreed to be made by the business  
185 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average  
186 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

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

193 *I. No person or entity that is seeking to become a business beneficiary of funds from the Fund and*  
194 *no individual who is an officer or director of such entity shall knowingly provide a contribution, gift, or*  
195 *other item with a value greater than \$50 or make an express or implied promise to make such a*  
196 *contribution or gift to the Governor, or to his campaign committee or a political action committee*  
197 *established on his behalf, while seeking such funds and until the grant or loan sought has been*  
198 *awarded. The provisions of this subsection shall apply only for any grant or loan where the stated or*  
199 *expected value of the grant or loan is \$500,000 or more. Any person who knowingly violates this*  
200 *section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or*  
201 *gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce*  
202 *the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the*  
203 *general fund.*

204 **§ 2.2-3104.01. Prohibited conduct; bids or proposals under the Virginia Public Procurement**  
205 **Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure**  
206 **Act; loans or grants from the Governor's Development Opportunity Fund.**

207 A. Neither the Governor, his political action committee, or the Governor's Secretaries, if the  
208 Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the  
209 matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater  
210 than \$50 from any bidder, offeror, or private entity, or from an officer or director of such bidder,  
211 offeror, or private entity, who has submitted a bid or proposal to an executive branch agency that is  
212 directly responsible to the Governor pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et  
213 seq.), the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), or the Public-Private Education  
214 Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)(i) during the period between the submission  
215 of the bid and the award of the public contract under the Virginia Public Procurement Act or (ii)  
216 following the submission of a proposal under the Public-Private Transportation Act of 1995 or the  
217 Public-Private Education Facilities and Infrastructure Act of 2002 until the execution of a comprehensive  
218 agreement thereunder.

219 *A1. Neither the Governor, his campaign committee, nor a political action committee established on*  
220 *his behalf shall knowingly solicit or accept a contribution, gift, or other item with a value greater than*  
221 *\$50 from any person or entity that is seeking to become a business beneficiary of grants or loans from*  
222 *the Governor's Development Opportunity Fund while the person or entity is seeking such funds and until*  
223 *the grant or loan sought has been awarded.*

224 B. (Effective until July 1, 2014) The provisions of this section shall apply only for public contracts,  
225 proposals, or comprehensive agreements where the stated or expected value of the contract is \$5 million  
226 or more *or for grants or loans from the Governor's Development Opportunity Fund where the value of*  
227 *the grant or loan is \$500,000 or more.* The provisions of this section shall not apply to contracts  
228 awarded as the result of competitive sealed bidding as defined in § 2.2-4301.

229 B. (Effective July 1, 2014) The provisions of this section shall apply only for public contracts,  
230 proposals, or comprehensive agreements where the stated or expected value of the contract is \$5 million  
231 or more *or for grants or loans from the Governor's Development Opportunity Fund where the value of*  
232 *the grant or loan is \$500,000 or more.* The provisions of this section shall not apply to contracts  
233 awarded as the result of competitive sealed bidding as set forth in § 2.2-4302.1.

234 C. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up  
235 to two times the amount of the contribution or gift, whichever is greater. The attorney for the  
236 Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected  
237 shall be payable to the State Treasurer for deposit to the general fund.