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SENATE BILL NO. 991

Senate Amendments in [] — January 29, 2015

A *BILL to amend the Code of Virginia by adding a section numbered 2.2-2320.1, relating to the Virginia Tourism Growth Incentive Fund.*

Patron Prior to Engrossment—Senator Dance

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 2.2-2320.1 as follows:****§ 2.2-2320.1. Virginia Tourism Growth Incentive Fund.**

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

*"Authority" means the Virginia Tourism Authority established in § 2.2-2315.**"Expansion" means the addition of equipment, facilities, or real estate to an existing tourism and hospitality project for the purpose of increasing the size, scope, or visitor capacity of such project.**"FTE positions" means full-time equivalent positions determined by dividing the aggregate number of total hours worked in a year divided by 1,680 hours (48 weeks at 35 hours per week). Work that is created when a job function is shifted from an existing location in the Commonwealth to the location of the tourism and hospitality project, and positions with construction contractors, suppliers, vendors, and multiplier or spin-off jobs, shall not be counted in the total hours worked. The hours that are worked by contractors at the tourism and hospitality project, such as security or maintenance personnel, may be counted toward the hours worked for FTEs, provided they are included in the contract required by this section.**"Fund" means the Virginia Tourism Growth Incentive Fund established in this section.**"Renovate" means to restore or rehabilitate an existing structure to create a tourism and hospitality project.**"Tourism and hospitality project" means a cultural or historical site; a recreation or entertainment facility; a convention hotel and conference center; an automobile or horse racetrack with other tourism amenities; a golf course facility with other tourism amenities; marinas and theme parks; a Virginia crafts and products center; or a facility primarily devoted to lodging facilities, restaurants, movie theaters, or the retail sale of goods designed to attract travelers to the Commonwealth.**B. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Tourism Growth Incentive Fund. The Fund shall be established on the books of the Comptroller. All funds appropriated to it by the general appropriation act and revenue from any other source, public or private, shall be credited to the Fund. 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. Moneys in the Fund shall be used by the Authority solely for the purposes of attracting new tourism and hospitality projects and the expansion of existing tourism and hospitality projects in the Commonwealth. 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 Executive Director of the Authority.**C. Funds shall be awarded from the Fund by the Authority as grants or loans to political subdivisions or business entities authorized to transact business in the Commonwealth. The criteria for making such grants or loans shall include (i) the development or expansion of a tourism and hospitality project; (ii) a capital investment in the Commonwealth in an amount equal to or greater than \$500,000; (iii) the creation of at least five new FTE positions; and (iv) a memorandum of understanding entered into by the recipient of funds setting forth, at a minimum, the requirements for capital investment and the creation of new FTE positions. Notwithstanding clauses (ii) and (iii), the Secretary of Commerce and Trade may reduce the capital investment to an amount equal to or greater than \$250,000 and new FTE positions to at least three new FTE positions if 50 percent or more of the eligible entity's investment and 50 percent or more of the eligible entity's new FTE positions are located in a locality with an unemployment rate or a poverty rate for the latest year prior to the execution of the memorandum of understanding for which such data is available that is greater than the final statewide average rate for that year.**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 capability of existing programs; site acquisition; grading, drainage, paving, and any other*

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

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

71 F. The Authority shall provide grants and commitments from the Fund in an amount not to exceed
72 the dollar amount contained in the Fund. If the Authority commits funds for years beyond the fiscal
73 years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the
74 funds the Authority has committed, and the funds shall remain in the Fund for those future fiscal years.
75 No grant shall be payable in the years beyond the existing appropriation act unless the funds are
76 currently available in the Fund.

77 G. The Authority shall develop objective guidelines and criteria that shall be used in awarding
78 grants from the Fund. The guidelines may include a requirement for the affected political subdivisions
79 or business entities to provide matching funds, which may be cash or in-kind, at the discretion of the
80 Secretary of Commerce and Trade. The guidelines may require that as a condition of receiving any
81 grant incentive that is based on employment goals, a recipient company must provide copies of employer
82 quarterly payroll reports provided to the Virginia Employment Commission to verify the employment
83 status of any position included in the employment goal. The guidelines and criteria shall include
84 provisions for geographic diversity and a cap on the amount of funds to be provided to any individual
85 project. Actions of the Authority relating to the development of guidelines shall be exempt from the
86 provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of
87 § 2.2-4002.

88 H. Notwithstanding any provision in this section or in the guidelines established pursuant to this
89 section, each business beneficiary recipient of a grant or loan from the Fund shall enter into a contract
90 with the Authority. A person or entity shall be a business beneficiary of funds from the Fund if grant or
91 loan moneys awarded from the Fund by the Authority are paid to a political subdivision and (i)
92 subsequently distributed by the political subdivision to the person or entity or (ii) used by the political
93 subdivision for the benefit of the person or entity but never distributed to the person or entity. The
94 contract between the Authority and the business beneficiary shall:

95 1. Provide in detail (i) the fair market value of all funds that the Commonwealth has committed to
96 provide; (ii) the fair market value of all matching funds (or in-kind matches) that a locality has agreed
97 to provide; (iii) how funds committed by the Commonwealth, including funds from the Fund, and funds
98 that the locality has agreed to provide are to be spent; (iv) the minimum private investment to be made
99 and the number of FTE positions projected to be created by the business beneficiary; (v) the average
100 wage, excluding fringe benefits, projected to be paid for the FTE positions; and (vi) the prevailing
101 average wage in the locality.

102 2. State the date by which the agreed-upon private investment and new FTE positions shall be met
103 by the business beneficiary and may provide for the Authority to grant up to a 15-month extension of
104 such date, if deemed appropriate by the Authority subsequent to the execution of the contract. Any
105 extension of such date granted by the political subdivision shall be in writing and promptly delivered to
106 the business beneficiary.

107 3. Provide that if the private investment and new FTE position requirements are not met by the
108 expiration of the date stipulated in the contract, including any extension granted by the Authority, the
109 business beneficiary shall be liable to the Authority for repayment of a portion of the funds provided
110 under the contract.

111 4. A formula for purposes of determining the portion of such funds to be repaid. The formula shall,
112 in part, be based upon the fair market value of all funds that have been provided by the Commonwealth
113 and the locality and the extent to which the business beneficiary has met the private investment and new
114 FTE position requirements. Any such funds repaid to the Authority shall promptly be paid to the
115 Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State Treasurer of such
116 payment, the Comptroller shall deposit the repaid funds into the Fund.

117 E. Within the 30 days immediately following June 30 and December 30 of each year, the Authority
118 shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the
119 Senate Committee on Finance that shall include the following information regarding each grant or loan
120 awarded from the Fund during the immediately preceding six-month period for tourism and hospitality

121 projects:

122 1. The name of the company that is the business beneficiary of the grant and the type of business in
123 which it engages.

124 2. The location (county, city, or town) of the project; the amount of the grant committed from the
125 Fund and the amount of all other funds committed by the Commonwealth from other sources, and the
126 purpose for which such grants or other funds will be used.

127 3. The amount of all moneys or funds agreed to be provided by localities or local political
128 subdivisions and the purposes for which they will be used.

129 4. The number of new FTEs projected to be created by the business beneficiary; the amount of
130 capital investment in the project agreed to be made by the business beneficiary; the timetable for the
131 completion of the project and new FTEs created; the locality's prevailing average wage; the average
132 wage, excluding fringe benefits, projected to be paid to the new FTEs; and the projected visitation and
133 traveler spending.

134 [2. That the provisions of this act shall not become effective unless an appropriation effectuating
135 the purposes of this act is included in a general appropriation act passed in 2015 by the General
136 Assembly that becomes law.]

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