VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5105 through 2.2-5108, relating to the Virginia Collaborative Economic Development Act.

[H 846]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5105 through 2.2-5108, as follows:

CHAPTER 51.1.

VIRGINIA COLLABORATIVE ECONOMIC DEVELOPMENT ACT.

§ 2.2-5105. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Basic employment" means employment in an industry sector or function that directly or indirectly derives more than 50 percent of its revenue from out-of-state sources.

"Board" means a policy board in the executive branch of government that (i) was created by the 2016 Session of the General Assembly, (ii) has a legislatively stated purpose of promoting collaborative regional economic and workforce development opportunities and activities, and (iii) has membership consisting of members of the House of Delegates, members of the Senate, members of the Governor's cabinet, and nonlegislative citizen appointees.

"Capital investment" means an investment in real property or tangible personal property, or both, by an eligible company within the Commonwealth. Expenditures for the maintenance or repair of existing machinery, tools, and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

"Certified company" means a Virginia employer that has been certified by the Partnership to have (i) created or caused to be created at least 200 net new basic employment jobs in the Commonwealth that are located in the participating localities with average salaries at least equal to the average wage in the participating localities and (ii) made a capital investment of at least $25 million in the participating localities. However, if the Board exists and makes a written finding of significant fiscal distress in or extraordinary economic opportunity for the participating localities, the Board may modify the job creation and capital investment requirements for a certified company to not fewer than 25 net new basic employment jobs and not less than $1 million of capital investment. If the Board does not exist, the Partnership may make such written finding and modify the job creation and capital investment requirements as set forth in this definition.

"Collaborative economic development plan" means an agreement among two or more localities that identifies commitments made by each locality to implement a collaborative approach to economic development, whether the collaboration relates to general economic development and diversification efforts by the participating localities or relates to specific economic development needs, including infrastructure and workforce training, of a company. Such plan shall address the commitments made by the participating localities, which shall include the sharing of costs and local tax revenues by the participating localities and timing thereof, and how, if awarded, moneys from the Fund will be distributed among and used by the participating localities. If the plan relates to general economic development and diversification efforts, the plan shall be updated at the time of application for a grant from the Fund to indicate which company or companies, as a result of the efforts, are eligible to be certified companies. Parties to the plan may include political subdivisions and bodies corporate and politic, in addition to the participating localities. Such plan shall be subject to approval by the Partnership.

"Fund" means the Virginia Collaborative Economic Development Performance Grant Fund created pursuant to § 2.2-5108.

"New job" means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are provided by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee's time a week for the entire normal year of the firm's operations, which "normal year" shall 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 such facility, retail positions, and positions with

construction, contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this chapter. Up to 100 full-time employees whose positions existed at a company prior to its certification as a certified company may be used to determine the number of new jobs created if the wages of the existing employees increase by more than 10 percent because of the new capital investment to be made by the company.

"Participating localities" means two or more localities that participate in a collaborative economic development plan.

"Partnership" means the Virginia Economic Development Partnership Authority.

"Secretary" means the Secretary of Commerce and Trade.

§ 2.2-5106. Virginia Collaborative Economic Development Performance Grants.

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Virginia Collaborative Economic Development Performance Grant Fund, participating localities may be eligible for grants as provided in this section, subject to the conditions set forth in this section and in the guidelines developed pursuant to subsection E. In order to be eligible to apply for a grant, the participating localities shall have contributed to a project or effort described in a collaborative economic development plan an amount as determined pursuant to subsection C, and the participating localities shall demonstrate that the projects or efforts undertaken pursuant to the collaborative economic development plan induced or resulted in the location or expansion of a certified company in the participating localities.

B. Grants shall be paid to the participating localities in the year following certification by the Partnership of a certified company. Grants may be paid annually for up to six years so long as the certified company substantially maintains the new jobs and capital investment, and the participating localities continue to implement any relevant provisions of the collaborative economic development plan.

C. 1. After taking into consideration other state and local financial commitments made to the certified company, the annual amount of a grant from the Fund shall be not more than an amount equal to 45 percent of the total annual amount of personal income tax withheld for payment to the Virginia Department of Taxation from employees holding new jobs at the applicable certified company. By March 31 of each year, the Partnership and the Virginia Department of Taxation shall determine whether a certified company has met or substantially maintained the new job and capital investment requirements and shall compute, based on the amount of personal income tax withheld from employees holding new jobs, the moneys available to be disbursed as performance grants to the participating localities. If an application for a grant is approved pursuant to subsection D, the aggregate amount of grants awarded for that application over a six-year period shall not exceed 50 percent of the total investment or contributions of the participating localities to the economic development project or effort. Approved grants shall be disbursed annually to or for the benefit of the participating localities in accordance with the terms of the collaborative economic development plan. The aggregate amount of grants payable pursuant to this chapter shall not exceed $20 million in any fiscal year. The Board or the Partnership, as appropriate, may prorate the grants payable in a fiscal year if the amount of grants applied for and awarded exceeds $20 million.

2. Notwithstanding the provisions of subdivision 1, if the Board exists and makes a written finding of significant fiscal distress in or extraordinary economic opportunity for the participating localities, the Board may award an aggregate amount of grants for an application approved pursuant to subsection D that is up to 100 percent of the total investment or contributions of the participating localities. If the Board does not exist, the Partnership may make such written finding and augmented award.

D. 1. If the Board exists, the Partnership shall forward to the Board the economic development project or effort for which it approved a collaborative economic development plan and certified a company. The Board shall review such economic development project or effort, following the criteria included in the guidelines developed pursuant to subsection E, and vote whether to award a grant pursuant to this chapter. A decision to award a grant shall require an affirmative vote of (i) a majority of the members present and voting, (ii) a majority of the legislative members of the Board from the House of Delegates who are present and voting, (iii) a majority of the legislative members of the Board from the Senate who are present and voting, and (iv) a majority of the members of the Board who are gubernatorial Secretaries who are present and voting. The Board shall determine the annual amount and the aggregate amount of the grant to be awarded for each approved economic development project or effort, subject to the provisions of subsection C.

2. If the Board does not exist, the Partnership shall determine, subject to the provisions of subsection C, the annual amount and the aggregate amount of the grant to be awarded for an economic development project or effort for which it approved a collaborative economic development plan and certified a company. The Partnership shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the award of a grant pursuant to this subdivision.

E. The Board shall develop guidelines implementing the provisions of this chapter. If the Board does not exist, the Partnership shall assist the Secretary in developing guidelines implementing the provisions of this chapter, including provisions relating to the application for and the awarding of grants to participating localities. No grant shall be awarded until the Board or the Secretary, as appropriate, provides copies of such guidelines for review to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The preparation of the guidelines shall be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.).

F. The Fund shall be audited annually by the Auditor of Public Accounts or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

§ 2.2-5107. Grant payments.

The Comptroller shall not draw any warrants to issue checks for grants or disburse funds under this chapter without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act and following receipt of a certification from the Partnership and the Virginia Department of Taxation of the amount of personal income taxes paid by the eligible company on account of the new jobs.

§ 2.2-5108. Virginia Collaborative Economic Development Performance Grant Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Collaborative Economic Development Performance Grant Fund. The Fund shall be established on the books of the Comptroller and administered by the Board. If the Board does not exist, the Fund shall be administered by the Partnership. All funds appropriated for such purpose shall be paid into the state treasury and 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 solely for the purposes of providing grants to participating localities and the Partnership pursuant to this chapter. 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 of the Partnership, or the chairman of the Board described herein, as appropriate.

2. That the provisions of this act shall expire on July 1, 2026. However, the expiration of this act shall not affect the validity of any grant awarded prior to July 1, 2026, and such grant shall continue to be paid in accordance with the provisions of this act as it was in effect when such grant was awarded and subject to the provisions of the award of the grant.