

18108193D

HOUSE BILL NO. 222**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Joint Conference Committee
on March 9, 2018)

(Patron Prior to Substitute—Delegate Morefield)

A BILL to amend and reenact §§ 2.2-115, 58.1-405, 58.1-408, 58.1-417 through 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-958.2:01 and 58.1-405.1, relating to income tax; modification for certain companies; grants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-115, 58.1-405, 58.1-408, 58.1-417 through 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-958.2:01 and 58.1-405.1 as follows:

§ 2.2-115. Commonwealth'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 Commonwealth'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

60 site; public and private installation, extension, or capacity development of high-speed or broadband
61 Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding
62 capability of existing programs; site acquisition; grading, drainage, paving, and any other activity
63 required to prepare a site for construction; construction or build-out of publicly or privately owned
64 buildings; training; or grants or loans to an industrial development authority, housing and redevelopment
65 authority, or other political subdivision for purposes directly relating to any of the foregoing. However,
66 in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for
67 any rental, lease, license, or other contractual right to the use of any property.

68 It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any
69 economic development project in which a business relocates or expands its operations in one or more
70 Virginia localities and simultaneously closes its operations or substantially reduces the number of its
71 employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The
72 Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant
73 to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to
74 § 30-309.

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

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

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

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

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

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

122 published by the Commission on Local Government of the Department of Housing and Community
123 Development for the locality in which the project is located or will be located as one method of
124 determining the amount of assistance a locality shall receive from the Fund.

125 2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision that
126 receives a grant or loan from the Fund shall enter into a contract with each business beneficiary of
127 funds from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant
128 or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i)
129 subsequently distributed by the political subdivision to the person or entity or (ii) used by the political
130 subdivision for the benefit of the person or entity but never distributed to the person or entity.

131 b. The contract between the political subdivision and the business beneficiary shall provide in detail
132 (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair
133 market value of all matching funds (or in-kind match) that the political subdivision has agreed to
134 provide, (iii) how funds committed by the Commonwealth (including but not limited to funds from the
135 Fund committed by the Governor) and funds that the political subdivision has agreed to provide are to
136 be spent, (iv) the minimum private investment to be made and the number of new jobs to be created
137 agreed to by the business beneficiary, (v) the average wage (excluding fringe benefits) agreed to be paid
138 in the new jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes agreed to
139 be used for measuring compliance with the minimum private investment and new jobs requirements,
140 including consideration of any layoffs instituted by the business beneficiary over the course of the
141 period covered by the contract.

142 The contract shall state the date by which the agreed upon private investment and new job
143 requirements shall be met by the business beneficiary of funds from the Fund and may provide for the
144 political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the
145 political subdivision subsequent to the execution of the contract. Any extension of such date granted by
146 the political subdivision shall be in writing and promptly delivered to the business beneficiary, and the
147 political subdivision shall simultaneously provide a copy of the extension to the Virginia Economic
148 Development Partnership.

149 The contract shall provide that if the private investment and new job contractual requirements are not
150 met by the expiration of the date stipulated in the contract, including any extension granted by the
151 political subdivision, the business beneficiary shall be liable to the political subdivision for repayment of
152 a portion of the funds provided under the contract. The contract shall include a formula for purposes of
153 determining the portion of such funds to be repaid. The formula shall, in part, be based upon the fair
154 market value of all funds that have been provided by the Commonwealth and the political subdivision
155 and the extent to which the business beneficiary has met the private investment and new job contractual
156 requirements. Any such funds repaid to the political subdivision that relate to the award from the
157 Commonwealth's Development Opportunity Fund shall promptly be paid over by the political
158 subdivision to the Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State
159 Treasurer of such payment, the Comptroller shall deposit such repaid funds into the Commonwealth's
160 Development Opportunity Fund.

161 c. The contract shall be amended to reflect changes in the funds committed by the Commonwealth or
162 agreed to be provided by the political subdivision.

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

167 3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such
168 contract with a business beneficiary, the political subdivision shall provide a copy of the proposed
169 contract to the Attorney General. The Attorney General shall review the proposed contract (i) for
170 enforceability as to its provisions and (ii) to ensure that it is in appropriate legal form. The Attorney
171 General shall provide any written suggestions to the political subdivision within seven days of his
172 receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the
173 enforceability of the contract's provisions and the legal form of the contract.

174 4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not
175 expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until
176 such contract as described herein is executed with the business beneficiary.

177 G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor
178 shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the
179 Senate Committee on Finance which shall include, but is not limited to, the following information
180 regarding grants and loans awarded from the Fund during the immediately preceding six-month period
181 for economic development projects: the name of the company that is the business beneficiary of the
182 grant or loan and the type of business in which it engages; the location (county, city, or town) of the

183 project; the amount of the grant or loan committed from the Fund and the amount of all other funds
 184 committed by the Commonwealth from other sources and the purpose for which such grants, loans, or
 185 other funds will be used; the amount of all moneys or funds agreed to be provided by political
 186 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created
 187 by the business beneficiary; the amount of investment in the project agreed to be made by the business
 188 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average
 189 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

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

196 I. On a quarterly basis, the Virginia Economic Development Partnership shall notify the Governor,
 197 his campaign committee, and his political action committee of awards from the Fund made in the prior
 198 quarter. Within 18 months of the date of each award from the Fund, the Governor, his campaign
 199 committee, and his political action committee shall submit to the Virginia Conflict of Interest and Ethics
 200 Advisory Council established in § 30-355 a report listing any contribution, gift, or other item with a
 201 value greater than \$100 provided by the business beneficiary of such award to the Governor, his
 202 campaign committee, or his political action committee, respectively, during (i) the period in which the
 203 business beneficiary's application for such award was pending and (ii) the one-year period immediately
 204 after any such award was made.

205 *J. 1. Notwithstanding any provision of this section, the Governor may give grants or loans to any*
 206 *eligible company, as defined in § 58.1-405.1, provided that such company shall be required to distribute*
 207 *at least half of such grant or loan to its employees in jobs located in a qualified locality, as defined in*
 208 *§ 58.1-405.1. If the Governor gives a grant or loan pursuant to this subsection, it shall not be required*
 209 *to meet other provisions in this section, including provisions, restrictions, and procedural requirements*
 210 *related to job creation, investment, local matching funds, or contracts with business beneficiaries.*

211 *2. The grant or loan shall not exceed \$2,000 per new job, as defined in § 58.1-405.1; however, the*
 212 *Governor may give a new grant or loan each year to the same eligible company.*

213 *3. An eligible company's eligibility for or receipt of a grant or loan pursuant to this subsection shall*
 214 *not prevent it from receiving any other grant or loan for which it may be qualified pursuant to this*
 215 *section.*

216 **§ 15.2-958.2:01. Grants for certain corporations and pass-through entities.**

217 *A. The counties and cities listed in subsection B may give grants or loans to any eligible company,*
 218 *as defined in § 58.1-405.1.*

219 *B. The counties and cities that may give grants pursuant to subsection A are:*

220 *1. The Counties of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee,*
 221 *Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe and the Cities of Bristol, Galax, and*
 222 *Norton;*

223 *2. The Counties of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry,*
 224 *Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, and Prince Edward and the Cities of Danville*
 225 *and Martinsville;*

226 *3. The Counties of Accomack, Caroline, Essex, Gloucester, King and Queen, King William,*
 227 *Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland; and*

228 *4. The Counties of Brunswick and Dinwiddie and the City of Petersburg.*

229 **§ 58.1-405. Corporations transacting or conducting entire business within this Commonwealth.**

230 *¶ Except as provided in § 58.1-405.1, if the entire business of the corporation is transacted or*
 231 *conducted within the Commonwealth, the tax imposed by this chapter shall be upon the entire Virginia*
 232 *taxable income of such corporation for each taxable year; however, if such corporation is certified by*
 233 *the Virginia Economic Development Partnership Authority as an eligible company pursuant to*
 234 *§ 58.1-405.1, it may elect to (i) apportion its income between qualified localities, as defined in*
 235 *§ 58.1-405.1, and other localities in the Commonwealth, provided that it shall not apportion any of its*
 236 *income to a state other than Virginia and (ii) utilize any modification for which it may be eligible*
 237 *pursuant to the provisions of § 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1,*
 238 *or 58.1-422.2, as applicable. The entire business of the corporation shall be deemed to have been*
 239 *transacted or conducted within the Commonwealth if such corporation is not subject in any other state to*
 240 *a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing*
 241 *business.*

242 **§ 58.1-405.1. Eligibility of companies for apportionment modification; certification by the Virginia**
 243 **Economic Development Partnership Authority.**

244 *A. For purposes of this section:*

245 "Authority" means the Virginia Economic Development Partnership Authority.

246 "Eligible company" means a corporation or pass-through entity, as defined in § 58.1-390.1, that does
 247 not have any existing property or payroll in Virginia as of January 1, 2018, and on or after January 1,
 248 2018, but before January 1, 2025, (i) either (a) spends at least \$5 million on new capital investment in
 249 a qualified locality or qualified localities and creates at least 10 new jobs in a qualified locality or
 250 qualified localities or (b) creates at least 50 new jobs in a qualified locality or qualified localities; (ii)
 251 is a traded-sector company; and (iii) is certified by the Authority as generating a positive fiscal impact
 252 pursuant to subsection B.

253 "New capital investment" means real property acquired in a qualified locality or qualified localities
 254 on or after January 1, 2018, but before January 1, 2025, and any improvements to real property in a
 255 qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2025.

256 "New job" means a permanent, full-time position of indefinite duration that pays at least 150 percent
 257 of the minimum wage, as defined in the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), and that
 258 requires a minimum of (i) 35 hours of an employee's time a week for the entire normal year of the
 259 eligible company's operations, which normal year shall consist of at least 48 weeks, or (ii) 1,680 hours
 260 per year.

261 "Qualified development site" means real property that is in a locality adjacent to a qualified locality
 262 and, before January 1, 2018, either (i) was owned or partly owned by a qualified locality or an
 263 industrial development authority of which a qualified locality is a member or (ii) was owned or partly
 264 owned by a locality or industrial development authority, was leased to a private party, and was subject
 265 to a revenue-sharing agreement providing that a portion of the revenues from the lease would be
 266 distributed to a qualified locality. "Qualified development site" does not include real property that is not
 267 owned by the Commonwealth or a political subdivision thereof.

268 "Qualified locality" means (i) the County of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson,
 269 Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, or Wythe or the City of Bristol,
 270 Galax, or Norton; (ii) the County of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax,
 271 Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, or Prince Edward or the City of
 272 Danville or Martinsville; (iii) the County of Accomack, Caroline, Essex, Gloucester, King and Queen,
 273 King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, or
 274 Westmoreland; or (iv) the County of Brunswick or Dinwiddie or the City of Petersburg. "Qualified
 275 locality" includes a qualified development site.

276 "Traded-sector company" means a company that directly or indirectly derives more than 50 percent
 277 of its revenue from out-of-state sources.

278 B. 1. The Authority shall determine whether a company will generate a positive fiscal impact based
 279 on the following factors: (i) job creation; (ii) private capital investment; and (iii) anticipated additional
 280 state and local tax revenue. The Authority also shall consider the additional revenue the Commonwealth
 281 likely would expend in and for the localities if the economy in the localities continues to erode. In
 282 making its determination, the Authority shall consult with the Department regarding the revenue impact
 283 of certifying such company. The Authority shall certify a company only if it determines such company
 284 will generate a positive fiscal impact.

285 2. The Authority shall deny certification to any company if it determines such taxpayer has engaged
 286 in a merger, acquisition, similar business combination, name change, change in business form, or other
 287 transaction the primary purpose of which is to obtain status as an eligible company.

288 3. The Authority shall make an annual re-certification according to subdivision B 1, and no company
 289 shall remain an eligible company for any taxable year that the Authority does not grant re-certification.

290 C. Any eligible company may elect to apportion its income pursuant to the provisions of § 58.1-408,
 291 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, as applicable. However, if
 292 the entire business of an eligible company is transacted or conducted within the Commonwealth, it shall
 293 not apportion its income pursuant to this subsection but may elect to apportion its income pursuant to
 294 the provisions of § 58.1-405.

295 **§ 58.1-408. What income apportioned and how.**

296 A. The Virginia taxable income of any corporation, except those subject to the provisions of
 297 § 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, excluding income
 298 allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a
 299 fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor,
 300 and the denominator of which is four; however, where the sales factor does not exist, the denominator
 301 of the fraction shall be the number of existing factors and where the sales factor exists but the payroll
 302 factor or the property factor does not exist, the denominator of the fraction shall be the number of
 303 existing factors plus one.

304 B. Any eligible company, as defined in § 58.1-405.1, may subtract from the numerator of the
 305 corresponding factor the value of its (i) property acquired in any qualified locality or qualified

306 *localities, as defined in § 58.1-405.1, on or after January 1, 2018, but before January 1, 2025; (ii)*
 307 *payroll attributable to jobs created on or after January 1, 2018, but before January 1, 2025, in any*
 308 *qualified locality or qualified localities; and (iii) sales in the Commonwealth during the taxable year.*
 309 *Such eligible company may make such modification for the taxable year in which it first becomes*
 310 *eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible*
 311 *company's (a) total, cumulative new capital investment falls below the applicable initial threshold or (b)*
 312 *number of new jobs falls below the applicable initial threshold.*

313 **§ 58.1-417. Motor carriers; apportionment.**

314 A. Motor carriers of property or passengers shall apportion their net apportionable income to this
 315 Commonwealth by the use of the ratio of vehicle miles in this Commonwealth to total vehicle miles of
 316 the corporation everywhere. For the purposes of this section the words "vehicle miles" in the case of
 317 motor carriers of property shall mean miles traveled by vehicles (whether owned or operated by the
 318 corporation) hauling property for a charge or traveling on a scheduled route. In the case of motor
 319 carriers of passengers the same shall mean miles traveled by vehicles (whether owned or operated by the
 320 corporation) carrying passengers for a fare or traveling on a scheduled route.

321 B. The provisions of subsection A shall not be applicable to a carrier:

322 1. Which neither owns nor rents real or tangible personal property within this Commonwealth, except
 323 vehicles, which has made no pick-ups or deliveries within this Commonwealth, and which has traveled
 324 less than 50,000 vehicle miles in this Commonwealth in the taxable year; or

325 2. Which neither owns nor rents any real or tangible personal property within this Commonwealth,
 326 except vehicles, and which makes no more than twelve round trips into this Commonwealth during a
 327 taxable year.

328 The mileage traveled under 50,000 miles or the mileage traveled in such round trips, however, may
 329 not represent more than 5 percent of the total miles annually traveled in all states by such carrier.

330 C. *Any eligible company, as defined in § 58.1-405.1, may subtract its vehicle miles traveled in any*
 331 *qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the*
 332 *numerator of the ratio in subsection A. Such eligible company may make such modification for the*
 333 *taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years,*
 334 *except for any year in which the eligible company's (i) total, cumulative new capital investment falls*
 335 *below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial*
 336 *threshold.*

337 **§ 58.1-418. Financial corporations; apportionment.**

338 A. The Virginia taxable income of a financial corporation, as defined herein, excluding income
 339 allocable under § 58.1-407, shall be apportioned within and without this Commonwealth in the ratio that
 340 the business within this Commonwealth is to the total business of the corporation. Business within this
 341 Commonwealth shall be based on cost of performance in the Commonwealth over cost of performance
 342 everywhere.

343 B. "Financial corporation" means any corporation not exempted from the imposition of tax under the
 344 provisions of § 58.1-401, which derives more than seventy percent of its gross income from the classes
 345 of income enumerated in subdivisions 1 through 4 below, without reference to the state wherein such
 346 income is earned, including but not limited to small loan companies, sales finance companies, brokerage
 347 companies and investment companies:

348 1. Fees, commissions, other compensation for financial services rendered;

349 2. Gross profits from trading in stocks, bonds, or other securities;

350 3. Interest; and

351 4. Dividends received to the extent included in Virginia taxable income.

352 C. In computing the amounts referred to in subdivisions 1 through 4 of subsection B of this section,
 353 any amount received by a member of an affiliated group, determined under § 1504(a) of the Internal
 354 Revenue Code but without reference to whether any such corporation is an includable corporation under
 355 § 1504(b) of the Internal Revenue Code, from another member of such group shall be included only to
 356 the extent such amount exceeds expenses of the recipient directly related thereto.

357 D. *Any eligible company, as defined in § 58.1-405.1, may subtract the value of its business within*
 358 *any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the*
 359 *numerator of the ratio in subsection A. Such eligible company may make such modification for the*
 360 *taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years,*
 361 *except for any year in which the eligible company's (i) total, cumulative new capital investment falls*
 362 *below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial*
 363 *threshold.*

364 **§ 58.1-419. Construction corporations; apportionment.**

365 A. Construction companies which have elected to report income on the completed contract basis shall
 366 apportion income within and without this Commonwealth in the ratio that the business within the
 367 Commonwealth is to the total business of the corporation.

368 B. All other construction corporations not reporting under the completed contract method shall
369 determine Virginia taxable income by reference to §§ 58.1-406 through 58.1-416.

370 C. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its business within
371 any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the
372 numerator of the ratio in subsection A. Such eligible company may make such modification for the
373 taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years,
374 except for any year in which the eligible company's (i) total, cumulative new capital investment falls
375 below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial
376 threshold.

377 **§ 58.1-420. Railway companies; apportionment.**

378 A. Notwithstanding the provisions of § 58.1-408, railway companies shall determine their net
379 apportionable income to the Commonwealth by multiplying the Virginia taxable income of such
380 company, excluding the classes of income allocable under § 58.1-407, by the use of the ratio of revenue
381 car miles in the Commonwealth to total revenue car miles of the company everywhere. For the purposes
382 of this section, "revenue car mile" in the case of railway carriers of property or passengers means the
383 movement of a unit of loaded car equipment a distance of one mile. The loaded car miles shall be
384 determined in accordance with the Uniform System of Accounts for Railroad Companies of the
385 Interstate Commerce Commission.

386 B. Any eligible company, as defined in § 58.1-405.1, may subtract its revenue car miles traveled in
387 any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the
388 numerator of the ratio in subsection A. Such eligible company may make such modification for the
389 taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years,
390 except for any year in which the eligible company's (i) total, cumulative new capital investment falls
391 below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial
392 threshold.

393 **§ 58.1-422. Manufacturing companies; apportionment.**

394 A. For taxable years beginning on or after July 1, 2011, the Virginia taxable income of a
395 manufacturing company, excluding income allocable under § 58.1-407, may be apportioned within and
396 without the Commonwealth as provided in § 58.1-408 or as follows:

397 1. From July 1, 2011, until July 1, 2013, by multiplying such income by a fraction, the numerator of
398 which is the property factor plus the payroll factor plus triple the sales factor and the denominator of
399 which is five, except when the sales factor does not exist, the denominator of the fraction shall be the
400 number of existing factors, and when the sales factor exists but the payroll factor or property factor does
401 not exist, the denominator of the fraction shall be the number of existing factors plus two;

402 2. From July 1, 2013, until July 1, 2014, by multiplying such income by a fraction, the numerator of
403 which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator
404 of which is six, except when the sales factor does not exist, the denominator of the fraction shall be the
405 number of existing factors, and when the sales factor exists but the payroll factor or property factor does
406 not exist, the denominator of the fraction shall be the number of existing factors plus three; and

407 3. From July 1, 2014, and thereafter, by multiplying such income by the sales factor.

408 B. If the taxpayer makes one or more of the elections described in subdivision A 1, A 2, or A 3, the
409 taxpayer may not revoke the election for a period of three taxable years.

410 In addition, the taxpayer shall certify to the Department that the average weekly wage of its full-time
411 employees is greater than the lower of the state or local average weekly wages for the taxpayer's
412 industry.

413 C. If the average annual number of full-time employees of a manufacturing company for the first
414 three taxable years (in which the manufacturing company used the alternative apportionment set forth in
415 this section) is less than 90 percent of the base year employment, or the average wage of its full-time
416 employees as certified by the taxpayer is not greater than the lower of the state or local average weekly
417 wage, then the Department of Taxation shall assess the manufacturing company with additional taxes
418 pursuant to this article computed as the difference between (i) the taxes that would have been due under
419 the apportionment formula provided under § 58.1-408 for such three taxable years, minus (ii) the taxes
420 due under the alternative apportionment provided under this section for such three taxable years. Interest
421 shall accrue and shall be assessed on such additional taxes at the rate prescribed under § 58.1-15, with
422 such interest accruing from the original due date for filing of the income tax return to the date of
423 payment of such additional taxes.

424 Such additional taxes and interest are hereby imposed on manufacturing companies using the
425 alternative apportionment set forth in this section.

426 D. As used in this section, unless the context requires another meaning:

427 "Base year employment" means the average number of full-time employees employed by the
428 manufacturing company in the Commonwealth in the taxable year that ended immediately prior to the

429 first taxable year in which the manufacturing company used the alternative apportionment set forth in
430 this section.

431 "Full-time employee" means an employee of a manufacturing company who is employed for an
432 indefinite duration in the Commonwealth for which the standard fringe benefits are paid by the
433 manufacturing company, for which employment requires a minimum of either (i) 35 hours of an
434 employee's time per week for the entire normal year of such manufacturing company's operations, which
435 "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year.

436 "Manufacturing company" means a domestic or foreign corporation primarily engaged in activities
437 that, in accordance with the North American Industrial Classification System (NAICS), United States
438 Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector
439 11, 31, 32, or 33.

440 E. The General Assembly of Virginia finds that job creation is essential to the continued fiscal health
441 of the Commonwealth. In this modern economy, states often compete for quality manufacturing jobs.
442 Accordingly, the provisions of this section relating to manufacturing companies that increase their
443 employment in Virginia are integral to the purpose of the election allowed pursuant to this section. If
444 any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a
445 court of competent jurisdiction, that provision shall not be deemed severable.

446 *F. Any eligible company, as defined in § 58.1-405.1, that elects to apportion its income pursuant to*
447 *subsection A may subtract the value of its sales in the Commonwealth during the taxable year from the*
448 *numerator of the ratio in subdivision A 3. Such eligible company may make such modification for the*
449 *taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years,*
450 *except for any year in which the eligible company's (i) total, cumulative new capital investment falls*
451 *below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial*
452 *threshold.*

453 **§ 58.1-422.1. Retail companies; apportionment.**

454 A. For taxable years beginning on or after July 1, 2012, the Virginia taxable income of a retail
455 company, excluding income allocable under § 58.1-407, shall be apportioned within and without the
456 Commonwealth as follows:

457 1. From July 1, 2012, until July 1, 2014, by multiplying such income by a fraction, the numerator of
458 which is the property factor plus the payroll factor plus triple the sales factor and the denominator of
459 which is five, except that when the sales factor does not exist, the denominator of the fraction shall be
460 the number of existing factors, and when the sales factor exists but the payroll factor or property factor
461 does not exist, the denominator of the fraction shall be the number of existing factors plus two;

462 2. From July 1, 2014, until July 1, 2015, by multiplying such income by a fraction, the numerator of
463 which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator
464 of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be
465 the number of existing factors, and when the sales factor exists but the payroll factor or property factor
466 does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

467 3. From July 1, 2015, and thereafter, by multiplying such income by the sales factor.

468 B. As used in this section, "retail company" means a domestic or foreign corporation primarily
469 engaged in activities that, in accordance with the North American Industry Classification System
470 (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would
471 be included in Sectors 44-45.

472 *C. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its sales in the*
473 *Commonwealth during the taxable year from the numerator of the ratio in subdivision A 3. Such eligible*
474 *company may make such modification for the taxable year in which it first becomes eligible and for the*
475 *six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total,*
476 *cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs*
477 *falls below the applicable initial threshold.*

478 **§ 58.1-422.2. Apportionment; taxpayers with enterprise data center operations.**

479 A. For taxable years beginning on or after July 1, 2016, the Virginia taxable income of taxpayers
480 with enterprise data center operations, excluding income allocable under § 58.1-407, shall be apportioned
481 within and without the Commonwealth as follows:

482 1. From July 1, 2016, until July 1, 2017, by multiplying such income by a fraction, the numerator of
483 which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator
484 of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be
485 the number of existing factors, and when the sales factor exists but the payroll factor or property factor
486 does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

487 2. From July 1, 2017, and thereafter, by multiplying such income by the sales factor.

488 B. As used in this section:

489 "Enterprise data center operations" means operations that (i) physically house information technology
490 equipment such as servers, switches, routers, data storage devices, or related equipment; (ii) manage and

491 process digital data and information to provide application services or management for data processing,
492 such as web hosting, Internet, intranet, telecommunication, and information technology; (iii) are
493 developed and owned by the taxpayer; and (iv) are operated by the taxpayer or any of its affiliates
494 substantially for their own use.

495 C. The provisions of this section requiring an apportionment formula for taxpayers with enterprise
496 data center operations shall apply only to taxpayers that have entered into a memorandum of
497 understanding with the Virginia Economic Development Partnership Authority on or after July 1, 2015,
498 to make a new capital investment of at least \$150 million in an enterprise data center in the
499 Commonwealth on or after such date. The apportionment formula under this section shall apply to such
500 taxpayers beginning with the taxable year for which the Virginia Economic Development Partnership
501 Authority provides a written certification to the taxpayer that the new capital investment has been
502 completed.

503 D. The General Assembly of Virginia finds that capital investment in data centers is essential to the
504 continued fiscal health of the Commonwealth. In this modern economy, states often compete for quality
505 data centers. Accordingly, the provisions of subsection C relating to capital investment in enterprise data
506 centers are integral to the purpose of this section. If any provision of this section is for any reason held
507 to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall
508 not be deemed severable.

509 E. *Any eligible company, as defined in § 58.1-405.1, that apportions its income pursuant to this*
510 *section may subtract the value of its sales in the Commonwealth during the taxable year from the*
511 *numerator of the ratio in subdivision A 2. Such eligible company may make such modification for the*
512 *taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years,*
513 *except for any year in which the eligible company's (i) total, cumulative new capital investment falls*
514 *below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial*
515 *threshold.*

516 **2. That the Virginia Economic Development Partnership Authority shall promulgate guidelines**
517 **regarding the certification process described in subsection B of § 58.1-405.1 of the Code of**
518 **Virginia, as created by this act, and that the Department of Taxation shall promulgate guidelines**
519 **regarding the modifications to apportionment formulae described in §§ 58.1-405, 58.1-408,**
520 **58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia,**
521 **as amended by this act.**

522 **3. That any eligible company, as defined in § 58.1-405.1 of the Code of Virginia, as created by this**
523 **act, that apportions its income pursuant to the provisions of this act shall include with its income**
524 **tax return information regarding the modification of its apportionment method pursuant to this**
525 **act, including the amounts subtracted from the relevant apportionment factors. The Department of**
526 **Taxation shall use such information to compute the fiscal savings to such companies and shall**
527 **report annually by the first day of each regular session of the General Assembly to the Chairmen**
528 **of the House Committee on Appropriations, the House Committee on Finance, and the Senate**
529 **Committee on Finance the number of returns processed during the prior fiscal year for eligible**
530 **companies that claimed a modified method of apportionment under this act and the estimated**
531 **revenue impact of such modified methods of apportionment.**