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HOUSE BILL NO. 804

Offered January 10, 2018

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A *BILL to amend and reenact §§ 2.2-115, 2.2-2240.2, 2.2-2240.3, and 2.2-5103 of the Code of Virginia, relating to grants and other economic incentive programs administered by the Virginia Economic Development Partnership Authority.*

Patron—Davis

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-115, 2.2-2240.2, 2.2-2240.3, and 2.2-5103 of the Code of Virginia are amended and reenacted 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.

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59 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 5. *Notwithstanding any provision in this section or in the guidelines, a political subdivision may*
178 *request a waiver that permits it to use no more than one-quarter of the grant or loan from the Fund for*
179 *a purpose indirectly related to the economic development project for which the grant or loan was*
180 *awarded. Any request for a waiver under this subsection shall be submitted to the Virginia Economic*
181 *Development Partnership for approval. No such waiver shall be granted unless also approved by the*

182 *Governor.*

183 G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor
 184 shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the
 185 Senate Committee on Finance which shall include, but is not limited to, the following information
 186 regarding grants and loans awarded from the Fund during the immediately preceding six-month period
 187 for economic development projects: the name of the company that is the business beneficiary of the
 188 grant or loan and the type of business in which it engages; the location (county, city, or town) of the
 189 project; the amount of the grant or loan committed from the Fund and the amount of all other funds
 190 committed by the Commonwealth from other sources and the purpose for which such grants, loans, or
 191 other funds will be used; the amount of all moneys or funds agreed to be provided by political
 192 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created
 193 by the business beneficiary; the amount of investment in the project agreed to be made by the business
 194 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average
 195 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

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

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

211 **§ 2.2-2240.2. Major Employment and Investment Project Site Planning Grant Fund established.**

212 A. *For the purposes of this section:*

213 "*Local government*" means the same as that term is defined in § 62.1-199.

214 "*Major Employment and Investment project*" or "*MEI project*" means the same as that term is
 215 defined in § 2.2-2260.

216 B. There is hereby created in the state treasury a special nonreverting fund to be known as the MEI
 217 Site Planning Grant Fund, hereafter referred to as "the Fund," to be administered by the Authority. The
 218 Fund shall consist of such funds as may be appropriated by the General Assembly and any gifts, grants,
 219 or donations from public or private sources. The Fund shall be established on the books of the
 220 Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
 221 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
 222 to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be
 223 made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the
 224 Executive Director of the Authority.

225 ~~B.~~ C. Moneys in the Fund shall be used for the sole purpose of awarding grants on a competitive
 226 basis to political subdivisions to assist in the performance of site and site development work for
 227 prospective MEI projects, subject to the approval by the Governor. The Authority shall establish
 228 guidelines for awarding site planning grants that give consideration in order to (i) ensure geographical
 229 representation of awards, (ii) limit the amount of annual recipients, (iii) identify strategic targets and
 230 select sites that are compatible with the strategic targets, and (iv) promote regional revenue sharing.

231 *For the purposes of this section:*

232 "*Local government*" means the same as that term is defined in § 62.1-199.

233 "*Major Employment and Investment project*" or "*MEI project*" means the same as that term is
 234 defined in § 2.2-2260.

235 D. *Notwithstanding any provision in this section or in the guidelines, a political subdivision may*
 236 *request a waiver that permits it to use no more than one-quarter of the grant from the Fund for a*
 237 *purpose indirectly related to the prospective MEI project for which the grant was awarded. Any request*
 238 *for a waiver under this subsection shall be submitted to the Authority for approval. No such waiver*
 239 *shall be granted unless also approved by the Governor.*

240 **§ 2.2-2240.3. Definitions; Virginia Jobs Investment Program and Fund; composition; general**
 241 **qualifications.**

242 A. As used in this section and §§ 2.2-2240.4, 2.2-2240.5, and 2.2-2240.6, unless the context requires
 243 a different meaning:

244 "Capital investment" means an investment in real property, personal property, or both, at a
 245 manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be
 246 capitalized by the company and that establishes or increases the productivity of the manufacturing
 247 facility, results in the utilization of a more advanced technology than is in use immediately prior to such
 248 investment, or both.

249 "Full-time employee" means a natural person employed for indefinite duration in a position requiring
 250 a minimum of either (i) 35 hours of the employee's time per week for the entire normal year, which
 251 "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary
 252 employees shall not qualify as new full-time employees under the Program.

253 "Fund" means the Virginia Jobs Investment Program Fund created in this section.

254 "Program" means the Virginia Jobs Investment Program created in this section.

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

261 C. The Program shall consist of the following component programs:

- 262 1. The Virginia New Jobs Program;
- 263 2. The Workforce Retraining Program; and
- 264 3. The Small Business New Jobs and Retraining Programs.

265 D. To be eligible for assistance under any of the component programs of the Program, a company
 266 shall:

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

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

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

275 E. There is hereby established in the state treasury a special nonreverting fund to be known as the
 276 Virginia Jobs Investment Program Fund (the Fund). The Fund shall consist of any moneys appropriated
 277 thereto by the General Assembly from time to time and designated for the Fund. Any moneys deposited
 278 to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest
 279 thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation
 280 under this article in ensuing fiscal years. Moneys in the Fund shall be used solely for grants to eligible
 281 businesses as permitted by the Program. The total amount of funds provided to eligible businesses under
 282 the Program for any year, shall not exceed the amount appropriated by the General Assembly to the
 283 Fund for such year, plus any carryover from previous years. Expenditures and disbursements from the
 284 Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request
 285 signed by the President and Chief Executive Officer or his designee. The Fund shall be administered by
 286 the President and Chief Executive Officer.

287 *F. Notwithstanding any provision in this section, an eligible business may request a waiver that*
 288 *permits it to use no more than one-quarter of the grant from the Fund for a purpose indirectly related*
 289 *to the purpose for which the grant was awarded. Any request for a waiver under this subsection shall*
 290 *be submitted to the Authority for approval. No such waiver shall be granted unless also approved by the*
 291 *Governor.*

292 **§ 2.2-5103. Requirements for grants generally.**

293 A. Any eligible manufacturer, eligible company, or research and development service eligible to
 294 apply for a grant under this chapter shall provide evidence, satisfactory to the Secretary, of the amount
 295 of the capital investment, the number of new jobs created as a result of the capital investment and such
 296 other evidence that requirements of this chapter have been satisfied. An eligible manufacturer, eligible
 297 company, or research and development service whose application has been approved shall continue to
 298 comply with the requirements for grant eligibility during the grant payment period. The Partnership shall
 299 verify that the conditions for approval of any grant have been satisfied. The Partnership may require that
 300 as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient
 301 manufacturer, company, or research and development service must submit copies of employer quarterly
 302 payroll reports provided to the Virginia Employment Commission to verify the employment status of
 303 any position included in the employment goal.

304 B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each

305 applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the
306 General Assembly of sufficient moneys to the appropriate subfund, payment of such grant shall be made
307 from the subfund by check issued by the State Treasurer on warrant of the Comptroller within 60 days
308 of certification.

309 C. As a condition of receipt of a grant, a major eligible employer or eligible company shall make
310 available to the Partnership for inspection upon request all relevant and applicable documents to
311 determine whether the requirements for the receipt of grants as set forth in this chapter have been
312 satisfied. All such documents appropriately identified by the major eligible employer or eligible
313 company shall be considered confidential and proprietary.

314 D. Within 30 days of each calendar quarter, the Secretary shall provide a report to the chairmen of
315 the House Committee on Appropriations and the Senate Committee on Finance that shall include, but is
316 not limited to, the following information: the name of the eligible manufacturer, eligible company, or
317 research and development service determined to be eligible for a grant; the product it manufactures, the
318 nature of the research, or the products it produces or services it provides, as applicable; the locality of
319 the manufacturing, research and development, or other facility; the amount of the grant made or
320 committed from the Fund; the number of new jobs created or projected to be created; the amount of the
321 manufacturer's, eligible company's, or research and development service's capital investment; and the
322 timetable for the completion of the capital investment and new jobs created or employment creation, as
323 applicable.

324 E. The Secretary shall provide grants and commitments from the Fund in an amount not to exceed
325 the dollar amount contained in the Fund. If funds are committed for years beyond the fiscal years
326 covered under the existing appropriation act, the State Treasurer shall set aside and reserve such funds
327 as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant
328 shall be payable in the years beyond the existing appropriation act unless such funds are currently
329 available in the Fund.

330 *F. Notwithstanding any provision in this section, an eligible manufacturer, eligible company, or*
331 *research and development service eligible to apply for a grant or loan under this chapter may request a*
332 *waiver from the Secretary that permits it to use no more than one-quarter of the grant or loan from the*
333 *Fund for a purpose indirectly related to the requirements for which the grant or loan was awarded. Any*
334 *request for a waiver under this subsection shall be submitted to the Secretary for approval. No such*
335 *waiver shall be granted unless also approved by the Governor.*