

2021 SPECIAL SESSION I

SENATE SUBSTITUTE

21104295D

SENATE BILL NO. 1418

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 3, 2021)

(Patron Prior to Substitute—Senator McPike)

A *BILL to amend and reenact § 2.2-115 of the Code of Virginia, relating to grants from the Commonwealth's Development Opportunity Fund; waiver or reduction of capital investment and local match requirements.*

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-115 of the Code of Virginia is 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.

"New teleworking job" means a new job that is held by a Virginia resident, for which the majority of the work is performed remotely, and that pays at least 1.2 times the Virginia minimum wage, as provided by the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.).

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

69 It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any
70 economic development project in which a business relocates or expands its operations in one or more
71 Virginia localities and simultaneously closes its operations or substantially reduces the number of its
72 employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The
73 Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant
74 to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to
75 § 30-309.

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

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

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

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

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

112 5. *A business beneficiary may count new teleworking jobs toward the minimum number of new jobs*
113 *required under subdivision 1, 2, or 3, if so permitted in the contract required by subdivision F 2.*

114 6. *The minimum private investment required under subdivision 1, 2, or 3 may be reduced or waived*
115 *if at least 75 percent, measured against the minimum number of new jobs required, of jobs created by*
116 *the business beneficiary are new teleworking jobs, if so permitted in the contract required by subdivision*
117 *F 2.*

118 F. 1. The Virginia Economic Development Partnership shall assist the Governor in developing
119 objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund.
120 The guidelines may require that as a condition of receiving any grant or loan incentive that is based on
121 employment goals, a recipient company must provide copies of employer quarterly payroll reports that

have been provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. The guidelines may include a requirement for the affected locality or localities to provide matching funds which may be cash or in-kind, at the discretion of the Governor; *however, if the minimum private investment is reduced or waived pursuant to subdivision E 6, the Governor may provide full or partial relief from such matching requirement.* The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. At the discretion of the Governor, this cap may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and criteria, the Virginia Economic Development Partnership shall use the measure for Fiscal Stress published by the Commission on Local Government of the Department of Housing and Community Development for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund.

2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision that receives a grant or loan from the Fund shall enter into a contract with the Commonwealth, through the Virginia Economic Development Partnership Authority as its agent, and each business beneficiary of funds from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i) subsequently distributed by the political subdivision to the person or entity or (ii) used by the political subdivision for the benefit of the person or entity but never distributed to the person or entity.

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

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

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

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

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

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

183 receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the
184 enforceability of the contract's provisions and the legal form of the contract.

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

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

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

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

217 J. 1. Notwithstanding any provision of this section, the Governor may give grants or loans to any
218 eligible company, as defined in § 58.1-405.1, provided that such company shall be required to distribute
219 at least half of such grant or loan to its employees in jobs located in a qualified locality, as defined in
220 § 58.1-405.1. If the Governor gives a grant or loan pursuant to this subsection, it shall not be required to
221 meet other provisions in this section, including provisions, restrictions, and procedural requirements
222 related to job creation, investment, local matching funds, or contracts with business beneficiaries.

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

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