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**HOUSE BILL NO. 2479****FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Senator Barker  
on February 15, 2023)

(Patron Prior to Substitute—Delegate Knight)

*A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 22.20, consisting of a section numbered 59.1-284.41, relating to data centers and cloud computing; sales tax exemption; grant fund.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-609.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 22.20, consisting of a section numbered 59.1-284.41, as follows:**

**§ 58.1-609.3. Commercial and industrial exemptions.**

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other tangible personal property used by a public service corporation in the generation of electric power, except for raw materials that are inputs to production of electricity, including fuel, or for machinery, tools, and equipment used to generate energy derived from sunlight or wind. The exemption for machinery, tools, and equipment used to generate energy derived from sunlight or wind shall expire June 30, 2027.

3. Tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or principally in interstate or foreign commerce.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental or

60 leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile  
61 products.

62 9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any  
63 equipment that has not been certified to the Department of Taxation by a state certifying authority or  
64 subdivision certifying authority pursuant to such section.

65 10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption  
66 directly in the rendition of their services.

67 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of  
68 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or  
69 photocopying of products for sale or resale.

70 12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies,  
71 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling,  
72 extraction, or processing of natural gas or oil and the reclamation of the well area. For the purposes of  
73 this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as  
74 defined in § 45.2-1600. For the purposes of this section, "drilling," "extraction," and "processing" shall  
75 include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a  
76 usable condition consistent with commercial practices, and the gathering and transportation of raw  
77 natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and  
78 equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their  
79 use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or  
80 in well area reclamation activities required by state or federal law.

81 13. Beginning July 1, 1997, (i) the sale, lease, use, storage, consumption, or distribution of an orbital  
82 or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of any kind  
83 possessing space flight capability, including the components thereof, irrespective of whether such  
84 facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use,  
85 storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use,  
86 storage, consumption or distribution of tangible personal property placed on or used aboard any orbital  
87 or suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind,  
88 irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent  
89 use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such  
90 quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space  
91 flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or  
92 distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for  
93 spaceport activities and the sale of goods and services provided to operate and maintain launch facilities,  
94 launch equipment, payload processing facilities and payload processing equipment used to conduct  
95 spaceport activities.

96 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a  
97 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

98 The exemptions provided by this subdivision shall not be denied by reason of a failure,  
99 postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion  
100 system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or  
101 any components thereof.

102 14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible personal  
103 property used primarily in the integrated process of designing, developing, manufacturing, or testing a  
104 semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor  
105 equipment without regard to whether the property is actually contained in or used in a cleanroom  
106 environment, touches the product, is used before or after production, or is affixed to or incorporated into  
107 real estate.

108 15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

109 16. Railroad rolling stock when sold or leased by the manufacturer thereof.

110 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers  
111 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter  
112 ending November 2007, for the processing, storage, retrieval, or communication of data, including but  
113 not limited to servers, routers, connections, and other enabling hardware when part of a new investment  
114 of at least \$75 million in such exempt property, when such investment results in the creation of at least  
115 100 new jobs paying at least twice the prevailing average wage in that locality, so long as such  
116 investment was made in accordance with a memorandum of understanding with the Virginia Economic  
117 Development Partnership Authority entered into or amended between January 1, 2008, and December  
118 31, 2008. The exemption shall also apply to any such computer equipment purchased or leased to  
119 upgrade, add to, or replace computer equipment purchased or leased in the initial investment. The  
120 exemption shall not apply to any computer software sold separately from the computer equipment, nor  
121 shall it apply to general building improvements or fixtures.

18. a. Beginning July 1, 2010, and ending June 30, 2035, *except as provided in subdivision 19*, computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or communication of data, including but not limited to servers, routers, connections, and other enabling hardware, including chillers and backup generators used or to be used in the operation of the equipment exempted in this paragraph, provided that such computer equipment or enabling software is purchased or leased for use in a data center, which includes any data center facilities located in the same locality as the data center that are under common ownership or affiliation of the data center operator, that (i) is located in a Virginia locality; (ii) results in a new capital investment on or after January 1, 2009, of at least \$150 million; and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center operator and the tenants of the data center, collectively, associated with the operation or maintenance of the data center provided that such jobs pay at least one and one-half times the prevailing average wage in that locality. The requirement of at least 50 new jobs is reduced to 10 new jobs if the data center is located in a distressed locality at the time of the execution of a memorandum of understanding with the Virginia Economic Development Partnership Authority. Additionally, the requirement of a \$150 million capital investment shall be reduced to \$70 million for data centers that qualify for the reduced jobs requirement.

This exemption applies to the data center operator and the tenants of the data center if they collectively meet the requirements listed in this section. Prior to claiming such exemption, any qualifying person claiming the exemption, including a data center operator on behalf of itself and its tenants, must enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created, the timeline for achieving the capital investment and new job goals, the repayment obligations should those goals not be achieved, and any conditions under which repayment by the qualifying data center or data center tenant claiming the exemption may be required. In addition, the exemption shall apply to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The exemption shall not apply to any other computer software otherwise taxable under Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to general building improvements or other fixtures.

b. For purposes of this subdivision 18, "distressed locality" means:

1. (1) From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for that year; and

2. (2) From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year.

c. For so long as a data center operator is claiming an exemption pursuant to this subdivision 18, such operator shall be required to submit an annual report to the Virginia Economic Development Partnership Authority on behalf of itself and, if applicable, its participating tenants that includes their employment levels, capital investments, average annual wages, qualifying expenses, and tax benefit, and such other information as the Virginia Economic Development Partnership Authority determines is relevant, pursuant to procedures developed by the Virginia Economic Development Partnership Authority. The annual report shall be submitted by the data center operator in a format prescribed by the Virginia Economic Development Partnership Authority. The Virginia Economic Development Partnership Authority shall share all information collected with the Department.

The Department, in collaboration with the Virginia Economic Development Partnership Authority, shall publish a biennial report on the exemption that shall include aggregate information on qualifying expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis that includes direct and indirect jobs created by data center investment, state and local tax revenues generated, and any other information the Department and the Virginia Economic Development Partnership Authority deem appropriate to demonstrate the costs and benefits of the exemption. The report shall not include, and the Department and the Virginia Economic Development Partnership Authority shall not publish or disclose, any such information if it is unaggregated or if such report or publication could be used to identify a business or individual. The Department shall submit the report to the Chairmen of the Senate Committee on Finance and Appropriations and the House Committees on Appropriations and Finance. The Virginia Economic Development Partnership Authority may publish on its website and distribute annual information indicating the job creation and ranges of capital investments made by a data center operator and, if applicable, its participating tenants, in a format to be developed in consultation with data center operators.

19. a. Notwithstanding any provision of subdivision 18 to the contrary, the exemption set forth in subdivision 18 may be extended for the purchase or lease of computer equipment or enabling software by or on behalf of data center operators for use in data centers in the Commonwealth that are under common ownership or affiliation with the data center operator as set forth in this subdivision 19. For purposes of this subdivision 19, a data center operator shall be considered to own a data center if it is operated on behalf of the data center operator pursuant to a long-term lease of at least 15 years.

b. To qualify for an extension pursuant to this subdivision 19, a data center operator shall enter into a memorandum of understanding with the Virginia Economic Development Partnership Authority on or after January 1, 2023, that at a minimum provides the details for determining the amount of capital investment made and the number of new jobs created; the locality or localities in which the capital investment shall be made and new jobs shall be created in order to qualify for the extension; and the timeline for making the capital investment and creating the new jobs in each specified locality. A data center operator shall only be required to enter into one memorandum of understanding pursuant to this subdivision 19 in order to qualify for the extension pursuant to both subdivisions c and d.

c. If on or after January 1, 2023, but before July 1, 2035, a data center operator that has entered into a memorandum of understanding pursuant to subdivision b (i) makes or causes to be made a capital investment of at least \$35 billion in data centers in localities identified in a memorandum of understanding and (ii) creates at least 1,000 new full-time jobs, as defined in § 59.1-284.41, at such data centers, of which at least 100 of such jobs shall pay at least one and one-half times the prevailing average wage in the Commonwealth, the data center operator shall be eligible to continue to utilize the exemption set forth in subdivision 18 through June 30, 2040.

d. If on or after January 1, 2023, but before July 1, 2040, a data center operator that has entered into a memorandum of understanding pursuant to subdivision b (i) makes a total capital investment of at least \$100 billion, inclusive of any investment made pursuant to subdivision c, in data centers in the localities identified in such memorandum of understanding and (ii) creates a total of at least 2,500 new full-time jobs, as defined in § 59.1-284.41, at such data centers, of which at least 100 of such jobs shall pay at least one and one-half times the prevailing average wage in the Commonwealth, inclusive of any new full-time jobs created pursuant to subdivision c, the data center operator shall be eligible to utilize the exemption set forth in subdivision 18 through June 30, 2050.

e. The extension provided in this subdivision 19 shall apply to the computer equipment or enabling software purchased or leased for use in the data centers subject to the capital investment and job requirements set forth herein, as well as to any such computer equipment or enabling software purchased or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the initial investment. The extension shall also apply to any computer equipment or software purchased or leased in data centers under common ownership or affiliation with the data center operator for which the data center operator entered into a memorandum of understanding with the Virginia Economic Development Partnership Authority to qualify for the exemption set forth in subdivision 18.

f. The reporting requirements set forth in subdivision 18 shall continue to apply to a data center operator for the duration of any extension granted pursuant to this subdivision 19.

20. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant to subdivision 3 or 4 of § 4.1-206.1, (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing, or conversion into beer where such materials either enter into the production of or become a component part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums, or bags for future use, for packaging the beer for shipment or sale.

20- 21. If the preponderance of their use is in advanced recycling, as defined in § 58.1-439.7, (i) machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or supplies; (ii) materials for processing, manufacturing, or conversion for resale where such materials either are recycled or recovered; and (iii) materials, including containers, labels, sacks, cans, boxes, drums, or bags used for packaging recycled or recovered material for shipment or resale.

#### CHAPTER 22.20.

#### CLOUD COMPUTING CLUSTER INFRASTRUCTURE GRANT FUND.

##### § 59.1-284.41. Cloud Computing Cluster Infrastructure Grant Fund.

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

"Affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a qualified company.

"Capital investment" means an investment by or on behalf of a qualified company on or after January 1, 2023, but prior to July 1, 2040, in real property, tangible personal property, or both, at a facility that is properly chargeable to a capital account or would be so chargeable with a proper election.

"Construction cost" means any capital investment, except for the purchase of land, by a qualified

company on or after January 1, 2023, in real or tangible personal property to develop or support a data center in a locality identified in a memorandum of understanding. "Construction cost" includes infrastructure costs.

"Facility" means the one or more buildings, group of buildings, and ancillary facilities and equipment that are located in a locality or localities identified in a memorandum of understanding and that are owned, occupied, or otherwise operated by or for the qualified company for data center and cloud computing cluster operations.

"Fund" means the Cloud Computing Cluster Infrastructure Grant Fund.

"Grant" means a grant from the Fund awarded to a qualified company that is intended to pay or reimburse the qualified company for (i) infrastructure costs related to the construction and support of facilities and (ii) costs for workforce development, recruiting, and training.

"Infrastructure costs" includes the costs related to fiber, water, wastewater, and stormwater facilities; gas pipelines; electrical transmission and distribution lines; and site clearing, grading, and other improvements to support the construction and development of a facility.

"Locality" means a county or city in the Commonwealth in which a company makes an eligible investment in a facility and creates new full-time jobs, that is identified in a memorandum of understanding, and that has entered into a performance agreement.

"Local match" means the funds committed by a locality identified in a memorandum of understanding to a qualified company related to the construction and operation of a facility. The local match shall be at least twice the amount provided from the Fund to the qualified company related to the construction of, and creation of new full-time jobs at, the facility in such locality, as set forth in a performance agreement. Expenditures by a locality that the Secretary has certified as infrastructure costs incurred by the locality at the request of the qualified company may be counted toward the local match obligation.

"MEI Commission" means the MEI Project Approval Commission established pursuant to Chapter 47 (§ 30-309 et seq.) of Title 30.

"Memorandum of understanding" means a memorandum of understanding entered into on or after January 1, 2023, between a qualified company, the Commonwealth, and VEDP that sets forth (i) the grant amount that the qualified company shall be eligible to receive for each new full-time job created and each \$1 million of capital investment in construction costs made; (ii) the total aggregate amount of grants that the qualified company shall be eligible to receive; (iii) the performance date; (iv) the requirements and timing for capital investment and new full-time job creation by the qualified company; (v) the identification of the locality or localities in which such investment and job creation shall take place; and (vi) any other terms and conditions deemed necessary or appropriate to be eligible for grant payments from the Fund.

"New full-time jobs" means job positions created on or after January 1, 2023, but prior to July 1, 2040, in which the employee of a qualified company works at a facility, for which the average annual wage is at least one and one-half times the prevailing wage of the locality where the job is located, and for which the qualified company provides standard fringe benefits. Such position shall require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the employer's operations, which normal year shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions shall not qualify as new full-time jobs. Positions created after January 1, 2023, by contractors that are dedicated full-time to providing operational services after the opening of a facility may constitute new full-time jobs of the qualified company but shall not exceed 20 percent of the number used to meet any performance criteria for the creation of new full-time jobs. A position created when a job function is shifted from an existing location in the Commonwealth to a new facility shall qualify as a new full-time job if the qualified company certifies that it has hired a new employee or contractor to fill substantially the same job at the existing location as that performed by the transferred position. Such jobs shall be in addition to any full-time jobs that a qualified company had in the Commonwealth as of January 1, 2023.

"Performance agreement" means an agreement entered into on or after January 1, 2023, between a qualified company, a locality identified in a memorandum of understanding, and VEDP that commits the locality to provide local funds, either as annual cash grants or via the expenditure of local funds, for infrastructure costs related to the qualified company. The local commitment shall equal at least twice the amount of grants from the Fund committed by the Commonwealth for capital investment and the creation of new full-time jobs in such locality. Such performance agreement may also include commitments related to accelerated permitting, property tax classifications, and other such issues to which the parties agree.

"Performance date" means the date set forth in a memorandum of understanding by which capital investment and new full-time job creation targets shall be met in order to qualify for grants from the Fund.

"Qualification" means the process by which a company becomes a qualified company eligible to

enter into a memorandum of understanding and receive grants from the Fund. Qualification shall require:

1. An endorsement by the MEI Commission that the company be approved by the General Assembly to receive grants from the Fund. Such endorsement shall include a recommendation by the MEI Commission as to the grant amount that the company shall receive for each new full-time job created and each \$1 million of capital investment in construction costs made, as well as a recommendation as to the total, aggregate amount of grants from the Fund that the company shall be eligible to receive. The recommendation regarding the amount of the grants shall be based upon information provided by VEDP to the MEI Commission based upon a return-on-investment analysis; and

2. Approval by the General Assembly in a general appropriation act, including approval of the specific grant amount that the company shall receive for each new full-time job created and each \$1 million of capital investment in construction costs made, as well as the total, aggregate amount of grants from the Fund that the company shall be eligible to receive and the date of endorsement by the MEI Commission.

If the MEI Commission endorses a company to receive grants from the Fund, and legislation to implement the MEI Commission's recommendation is introduced in a subsequent session of the General Assembly, the specific grant amount recommended and any other recommended legislative changes shall become public at such time as the company publicly declares its intention to make or cause to be made a capital investment at facilities of at least \$50 billion and to create at least 1,500 new full-time jobs that pay an average annual wage of at least one and one-half times the prevailing wage of the locality where the job is located, but in no case later than the first day of the session of the General Assembly in which approval is sought.

"Qualified company" means a company, including its affiliates, that, after qualification, enters into a memorandum of understanding and is expected by the performance date to (i) make or cause to be made a capital investment at facilities in localities identified in the memorandum of understanding of at least \$50 billion and (ii) create at least 1,500 new full-time jobs that pay an average annual wage of at least one and one-half times the prevailing wage of the locality where the job is located.

"Secretary" means the Secretary of Commerce and Trade or his designee.

"VEDP" means the Virginia Economic Development Partnership Authority.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Cloud Computing Cluster Infrastructure Grant Fund. The Fund shall be established on the books of the Comptroller. All funds appropriated for the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of making grant payments pursuant to this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller pursuant to subsection F.

C. A qualified company shall be eligible to receive grant payments for each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2025, and ending no later than the Commonwealth's fiscal year starting on July 1, 2044, based upon its actual investments and the number of new full-time jobs created prior to the performance date in localities that have entered into a performance agreement. The grant payments under this section shall be paid to the qualified company from the Fund, subject to appropriation by the General Assembly, during each such fiscal year, contingent upon the qualified company meeting the requirements for receiving grant payments set forth in this section and in the memorandum of understanding. The amount of the grant payment in each fiscal year shall be calculated based upon the grant amount approved for the qualified company for each new full-time job created by the qualified company in the prior calendar year and each \$1 million of capital investment in construction costs by the qualified company in the prior calendar year, as approved by the General Assembly and included in the memorandum of understanding. The total aggregate amount of all grants paid to a qualified company shall not exceed the amount approved by the General Assembly and included in the memorandum of understanding.

D. Capital investments made by a qualified company and new full-time jobs created in a locality that (i) was not identified in the memorandum of understanding and (ii) did not enter into a performance agreement shall not qualify for grant payments pursuant to this chapter.

E. A qualified company applying for a grant payment pursuant to this chapter shall provide evidence, satisfactory to the Secretary, of (i) the capital investment in construction costs as of the last day of the calendar year that immediately precedes the application date; (ii) the aggregate number of new full-time jobs created and maintained as of the last day of the calendar year that immediately precedes the date of the application; and (iii) an average annual wage of the new full-time jobs of at least one and one-half times the prevailing wage of the locality where the job is located. The application and evidence shall be filed with the Secretary in person, by mail, or as otherwise agreed

upon in the memorandum of understanding, by no later than April 1 of each year following the end of the calendar year upon which the evidence set forth is based. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

F. Within 60 days of receiving the application and evidence pursuant to subsection E, the Secretary shall certify to the Comptroller and the qualified company the verification of the information contained in the application and the resulting amount of the grant payments to which the grant eligible company may be entitled for payment. Such grant payments shall be made annually by check or electronic payment issued by the State Treasurer on warrant of the Comptroller in each fiscal year following the submission of such application, as provided in the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks or electronic payments for grant payments under this chapter without a specific appropriation for the same.

G. As a condition for the receipt of a grant payment, a qualified company shall make available for inspection to the Secretary, upon request, documents relevant and applicable to determining whether the qualified company has met the requirements for the receipt of a grant payment as set forth in this chapter and subject to the memorandum of understanding. Copies of the performance agreement and a certification by each locality subject to a performance agreement and the qualified company that the provisions of such agreement have been fulfilled shall also be provided to the Secretary.

**2. That upon the signing of a memorandum of understanding, as defined in § 59.1-284.41 of the Code of Virginia, as created by this act, the Virginia Economic Development Partnership Authority (VEDP) shall hire a full-time project coordinator to assist each qualified company, as defined in § 59.1-284.41 of the Code of Virginia, as created by this act, with managing projects with the Commonwealth and its agencies and local government entities. Prior to the payment of any grants from the Cloud Computing Cluster Infrastructure Grant Fund, established pursuant to § 59.1-284.41 of the Code of Virginia, as created by this act, to a qualified company, VEDP shall be credited \$200,000 annually to reimburse VEDP for the cost of such coordinator. The costs for the coordinator shall count toward the aggregate cap of grants that may be paid to the qualified company.**