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**SENATE BILL NO. 496**

Offered January 10, 2024

Prefiled January 9, 2024

*A BILL to amend and reenact §§ 2.2-2489, 2.2-5100, 2.2-5101, and 2.2-5102.1 of the Code of Virginia, relating to Virginia Growth and Opportunity Act; Virginia investment performance grants; Virginia economic development incentive grants.*

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Patron—Carroll Foy

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Referred to Committee on General Laws and Technology

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

**1. That §§ 2.2-2489, 2.2-5100, 2.2-5101, and 2.2-5102.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-2489. Award of grants to regional councils.**

A. The Board shall establish guidelines, procedures, and objective criteria for the award and distribution of grants from the Fund to regional councils.

B. In order to qualify to receive grants from the Fund, a regional council shall develop an economic growth and diversification plan to (i) promote private-sector growth and opportunity in the region; (ii) identify issues of economic competitiveness for the region, including gaps in education and skills required to meet existing and prospective employer needs within the region; and (iii) outline steps that the collaborating business, education, and government entities in the region will pursue to expand economic opportunity, diversify the economy, and align workforce development activities with the education and skills needed by employers in the region. A regional council shall review such plan not less than biennially while the regional council is receiving grants from the Fund.

C. The Board shall only consider those regional activities endorsed by a regional council in its application for grants from the Fund. For any regional activity included in a regional council's application, the regional council shall identify (i) the amount of grants requested and the number of years for which grants are sought; (ii) the participating business, education, and government entities and their respective roles and contributions; (iii) the private, local, and other sources of nonstate funding that the grant from the Fund will assist in generating, including specific amounts pledged by such sources as of the application date; (iv) how the regional activity addresses the skills gaps identified in the council's economic growth and diversification plan; and (v) the economic impact or other outcomes that are reasonably expected to result from the proposed regional activity, including timetables and means of measurement.

D. Regional activities eligible for grants from the Fund shall be focused on high-impact, collaborative projects in a region that promote new job creation, entrepreneurship, and new capital investment; leverage nonstate resources to enhance collaboration; foster research, development, and commercialization activities; encourage cooperation among public bodies to reduce costs and duplication of government services; and promote other economic or workforce development activities consistent with this article that are authorized by the Board. The Board shall give initial priority to grant proposals that promote workforce development and other activities focused on eliminating skills gaps identified in a region's economic growth and diversification plan.

E. In determining a regional council's eligibility to receive grants from the Fund, and the amount of such grants, the Board shall review and score the proposed regional activities. Scores shall be assigned on the basis of predetermined criteria established by the Board in its guidelines and procedures based on the following factors:

1. The expected economic impact or outcome of the activity, with particular emphasis on goals identified in the regional council's plan for economic growth and diversification;

2. The fiscal resources from non-Fund sources that will be committed to the activity, including local or federal funds, private contributions, and cost savings expected to be achieved through regional collaboration;

3. The number and percentage of localities, including political subdivisions and bodies corporate and politic, within the region that are participating in the activity, the portion of the region's population represented by the participating localities, and the participation of localities that are outside of the applicant region;

4. The compatibility with other projects, programs, or existing infrastructure in a region to maximize the leverage of grants from the Fund to encourage new collaborative activities;

5. The expected economic impact and outcomes of the project and the complexity of the project

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59 relative to the size of the economy of the region or to the population of the participating localities;

60 6. The projected cost savings and other efficiencies generated by the proposed activity, and the local  
61 resources generated by collaboration that have been or will be repurposed to support the activity;

62 7. The character of the regional collaboration, including the nature and extent of the regional effort  
63 involved in developing and implementing the proposed activity, the complexity of the activity, the  
64 prospective impact on relations between and among the affected localities, and the prospective impact on  
65 collaboration between and among business, education, and government entities in the region;

66 8. Interstate, inter-regional, and other beneficial forms of collaboration, if any, that will accompany,  
67 result from, or be encouraged by the activity;

68 9. Efficiency in the administration and oversight of regional activities; and

69 10. Other factors deemed to be appropriate by the Board.

70 F. Each regional council awarded a grant from the Fund shall issue an annual report that shall  
71 include, at a minimum, an assessment of the impact and outcomes from regional activities supported by  
72 grants from the Fund and the region's overall progress in addressing the goals and strategies identified in  
73 the region's plan for economic growth and diversification. Such assessment shall address performance  
74 criteria prescribed in the program guidelines and procedures.

75 G. Subject to the provisions of § 2.2-2488 and this section, once a regional council becomes eligible  
76 for grants from the Fund, the regional council may continue to apply for and receive grants from the  
77 Fund to support economic activities consistent with the regional council's economic growth and  
78 diversification plan in such amounts and for such duration as the Board may determine in accordance  
79 with its guidelines and procedures. The Board may terminate any payments to regional councils that fail  
80 to perform in accordance with this article, the Board's guidelines or procedures, or any conditions  
81 expressly agreed upon as part of a grant award, or for malfeasance. The Board may require the refund  
82 of moneys from the Fund upon such termination. Grants that are terminated shall revert to the Fund for  
83 distribution on an unallocated competitive basis.

84 H. In making Fund recommendations and awards, the Board may consider regional activities that  
85 commenced prior to the enactment of this article, provided that the grant-funded program or project will  
86 expand the scope of, or increase the number of localities participating in, such preexisting activity.

87 I. No regional council may have outstanding grant commitments of more than 25 percent of the total  
88 amount appropriated to the Fund.

89 J. The year for grant payments shall be the Commonwealth's fiscal year following the calendar year  
90 in which the region qualifies, with payments made annually by the Comptroller upon certification by the  
91 Board. Grant amounts shall be made at the sole discretion of the Board.

92 K. (Effective until July 1, 2025) Any grant awarded from the Fund to a regional council shall require  
93 matching funds at least equal to *half of the grant*; ~~provided, however, that the Board shall have the~~  
94 ~~authority to reduce the match requirement to no less than half of the grant upon a finding by the Board~~  
95 ~~of fiscal distress or an exceptional economic opportunity in a region.~~ Such matching funds may be from  
96 local, regional, federal, or private funds. Matching funds may also be from grants awarded to a locality  
97 by the Tobacco Region Revitalization Commission but shall not include any other state general or  
98 nongeneral funds, from whatever source.

99 K. (Effective July 1, 2025) Any grant awarded from the Fund to a regional council shall require  
100 matching funds at least equal to *half of the grant*; ~~provided, however, that the Board shall have the~~  
101 ~~authority to reduce the match requirement to no less than half of the grant upon a finding by the Board~~  
102 ~~of fiscal distress or an exceptional economic opportunity in a region.~~ Such matching funds may be from  
103 local, regional, federal, or private funds, but shall not include any state general or nongeneral funds,  
104 from whatever source.

105 L. Decisions of the Board shall be final and not subject to review or appeal.

106 **§ 2.2-5100. Short title; definitions.**

107 A. This chapter shall be known and may be cited as the "Virginia Investment Partnership Act."

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

109 "Average manufacturing wage" means that amount determined by the Virginia Employment  
110 Commission to be the average wage paid manufacturing workers in a locality or region of the  
111 Commonwealth.

112 "Average nonmanufacturing wage" means that amount determined by the Virginia Employment  
113 Commission to be the average wage paid nonmanufacturing workers in basic employment in a locality  
114 or region of the Commonwealth.

115 "Basic employment" means employment that brings new or additional income into Virginia and adds  
116 to the gross state product.

117 "Capital investment" means an investment in real property, personal property, or both, at a  
118 manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the  
119 company and that increases the productivity of the manufacturing facility, results in the creation,  
120 development or utilization of a more advanced technology than is in use immediately prior to such

investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

"Eligible company" means, for companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the most recently preceding decennial census, a Virginia employer that:

a. 1. (i) ~~creates~~ *Creates* or causes to be created at least 400 jobs with average salaries at least 50 percent greater than the ~~Prevailing Average Wage~~ *prevailing average wage* or (ii) creates or causes to be created at least 300 jobs with average salaries at least 100 percent greater than the ~~Prevailing Average Wage~~ *prevailing average wage*; and

b. ~~makes~~ *Makes* a capital investment of at least \$5 million or \$6,500 per job, whichever is greater.

For all companies located elsewhere in Virginia, "eligible company" ~~shall mean~~ *means* a Virginia employer that creates or causes to be created at least 200 jobs with average salaries at least 50 percent greater than the ~~Prevailing Average Wage~~ *prevailing average wage* and ~~making~~ *makes* a capital investment of at least \$6,500 per job.

*For purposes of any grant award determination that includes job creation, an "eligible company" shall pay an average salary at least equal to the prevailing average wage for each job it creates or causes to be created.*

"Eligible manufacturer or research and development service" means an existing Virginia manufacturer or research and development service that makes a capital investment of at least \$25 million that is announced on or after June 1, 1998, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be an eligible manufacturer or research and development service.

"Eligible research and development service" means an existing Virginia research and development service that supports manufacturing and that makes a capital investment of at least \$25 million, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be eligible.

"Existing Virginia manufacturer" means a manufacturer that has a legal presence within the Commonwealth for at least three years prior to making the announcement of the capital investment that makes it an eligible manufacturer.

"Flawed product" means an irregular unit of goods that cannot be sold to an end user.

"Fund" means the Virginia Investment Partnership Grant Fund created pursuant to § 2.2-5104, ~~comprised~~ *composed* of (i) the Major Eligible Employer Grant subfund, (ii) the Investment Performance Grant subfund, and (iii) the Economic Development Incentive Grant subfund.

"Major eligible employer" means an existing Virginia manufacturer or any other nonmanufacturing basic employer that makes a capital investment of at least \$100 million and creates at least 1,000 jobs, or corporate headquarters and other basic employers that make a capital investment of at least \$100 million and create at least 400 jobs paying at least twice the prevailing average wage for the area.

"Manufacturer" means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget or the North American Industry Classification System Manual issued by the United States Census Bureau.

"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under this article, for such capital investment during that period.

"New job" means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee's time a week for the entire normal year of the firm's operations, which "normal year" 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 facility, and positions with contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this article.

"Partnership" means the Virginia Economic Development Partnership.

"Prevailing Average Wage *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 eligible company is located.

"Productivity" means the number of hours of labor required to produce a unit of goods.

"Research and development service" means a business firm owning or operating an establishment engaged in conducting research and experimental development that supports manufacturing in the physical, engineering and life sciences as defined in the North American Industry Classification System Manual issued by the United States Census Bureau.

"Secretary" means the Secretary of Commerce and Trade.

**§ 2.2-5101. Virginia investment performance grants.**

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant subfund, any eligible manufacturer or research and development service that is not eligible for a major eligible employer grant under § 2.2-5102 shall be eligible for an investment performance grant as provided in this section.

B. The Partnership shall establish an application process by which eligible manufacturers and research and development services may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

C. The amount of the investment performance grant that an eligible manufacturer or research and development service shall be eligible to receive under this section shall be determined by the Secretary, based on the recommendation of the Partnership, and contingent upon approval by the Governor. The determination of the appropriate amount of an investment performance grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the eligible investment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding investment performance grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;
2. The wages paid for the new jobs and the amount by which wages exceed the *prevailing average wage and the average manufacturing wage* for the locality or region;
3. The extent to which the capital investment produces (i) measurable increases in capacity, productivity, or both; (ii) measurable decreases in the production of flawed product; or (iii) measurable advances in knowledge, research, or the application of research findings for the creation of new or significantly improved products or processes that support manufacturing;
4. The amount of the capital investment;
5. The net present value of benefits to Virginia;
6. The amount of other incentives offered by the Commonwealth and the locality; and
7. The importance of the manufacturing or research and development facility to the economy of the locality or region.

The guidelines shall also address the eligibility of manufacturers or research and development services that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same manufacturer or research and development service within stated periods of time.

E. The amount of an investment performance grant to any eligible manufacturer under this section shall not exceed \$3 million or 10 percent of the amount appropriated by the General Assembly to the Investment Performance Grant subfund in the year that the terms of a grant are determined. For all eligible projects awarded grants on or after July 1, 2005, and before July 1, 2009, the amount of an investment performance grant to any recipient under this section shall not exceed \$1.5 million. For eligible projects awarded grants on or after July 1, 2009, the amount of an investment performance grant to any recipient under this section shall not exceed \$3 million, except for eligible projects that demonstrate extraordinary characteristics described in guidelines implementing this chapter the amount of an investment performance grant to any such recipient under this section shall not exceed \$5 million.

F. For all eligible projects awarded grants before July 1, 2005, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of grants outstanding to all eligible manufacturers under this section for all years shall at no time exceed \$30 million. For all such grants awarded prior to that date, the annual obligations of the Commonwealth to make grant payments to individual eligible manufacturers under this section shall not exceed \$600,000. For all eligible projects awarded grants on or after July 1, 2005, and before July 1, 2009, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$3 million, and the aggregate amount of such grants awarded after that date and outstanding at any time shall not exceed \$15 million. For all such grants awarded on or after that date, the annual obligations of the Commonwealth to make grant payments to individual recipients under this

section shall not exceed \$300,000. For all eligible projects awarded grants on or after July 1, 2009, and before July 1, 2015, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of such grants awarded on or after July 1, 2009, and before July 1, 2015, and outstanding at any time shall not exceed \$30 million. For all such grants awarded on or after July 1, 2009, and before July 1, 2015, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed \$1 million. For all eligible projects awarded grants on or after July 1, 2015, but before July 1, 2019, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of such grants awarded on or after July 1, 2015, but before July 1, 2019, and outstanding at any time shall not exceed \$20 million. For all such grants awarded on or after July 1, 2015, but before July 1, 2019, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed \$1 million. For all eligible projects awarded grants on or after July 1, 2019, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$4 million, and the aggregate amount of such grants awarded on or after July 1, 2019, and outstanding at any time shall not exceed \$20 million. For all such grants awarded on or after July 1, 2019, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed \$1 million.

G. Any eligible manufacturer or research and development service shall be eligible to receive a grant from the Fund in five equal installments beginning in the ~~third~~ first year after the capital investment is completed and the Partnership has verified that the requirements applicable to such grant have been satisfied. ~~Any eligible manufacturer or research and development service located in a fiscally distressed area of the State, as defined in the guidelines implementing this chapter, shall be eligible to begin receiving grants in the second year after the capital investment is completed and verified.~~

**§ 2.2-5102.1. Virginia economic development incentive grants.**

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Economic Development Incentive Grant subfund, any eligible company that meets the requirements of this section and is not awarded a grant under § 2.2-5101 or 2.2-5102 for the same project shall be eligible to apply for an economic development incentive grant as provided in this section.

B. The Partnership shall establish an application process by which eligible companies may apply for a grant under this section. An application for a grant under this section shall not be approved for payment until the Partnership has verified that the applicable requirements of the memorandum of agreement have been satisfied.

C. The amount of the economic development incentive grant that an eligible company may receive under this section shall be determined at the sole discretion of the Governor based on the recommendation of the Secretary. The determination of the appropriate amount for an economic development incentive grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the new investment and employment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding economic development incentive grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.). The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;
2. The wages paid for the new jobs and the amount by which wages exceed the average wage for the locality or region;
3. The amount of the capital investment;
4. The net present value of benefits to Virginia;
5. The amount of other incentives offered by the Commonwealth and the locality; and
6. The importance of the facility to the economy of the locality or region.

The guidelines shall also address the eligibility of companies that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same company within stated periods of time.

E. For eligible projects awarded grants prior to July 1, 2010, the aggregate amount of economic development incentive grants payable under this section in any fiscal year shall not exceed \$6 million, and the aggregate amount of such grants outstanding that were awarded prior to July 1, 2010, shall not exceed \$30 million. For eligible projects awarded grants on or after July 1, 2010, but before July 1, 2019, the aggregate amount of economic development incentive grants payable under this section in any fiscal year shall not exceed \$6 million and the aggregate amount of such grants outstanding on or after

305 July 1, 2010, but before July 1, 2019, shall not exceed \$30 million. For eligible projects awarded grants  
306 on or after July 1, 2019, the aggregate amount of economic development incentive grants payable under  
307 this section in any fiscal year shall not exceed \$6 million and the aggregate amount of such grants  
308 outstanding on or after July 1, 2019, shall not exceed \$30 million.

309 F. Any eligible company shall be eligible to receive a grant from the Fund in no fewer than five  
310 installments beginning in the ~~third~~ *first* year after the Partnership has verified that the requirements  
311 applicable to such grant have been satisfied. All such terms shall be negotiated and set forth in a  
312 memorandum of agreement.

313 G. The Comptroller shall not draw any warrants to issue checks for grants under this chapter without  
314 a specific legislative appropriation as specified in conditions and restrictions on expenditures in the  
315 appropriation act. The payment of any grant under this section shall be in accordance with the terms and  
316 conditions set forth in a memorandum of agreement between a major eligible employer and the  
317 Commonwealth. These terms and conditions shall supplement the provisions of this chapter and shall  
318 include but not be limited to the terms of the payment of the grant. The payment of the grant shall be  
319 made in full or in proportion to a major eligible employer's fulfillment of the terms of the memorandum  
320 of agreement.