

24109093D

SENATE BILL NO. 496

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 8, 2024)

(Patron Prior to Substitute—Senator Carroll Foy)

A BILL to amend and reenact §§ 2.2-2485, 2.2-2489, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2485, 2.2-2489, 2.2-5101, and 2.2-5102.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2485. Virginia Growth and Opportunity Board; membership; terms; compensation.

A. The Virginia Growth and Opportunity Board is established as a policy board in the executive branch of state government. The purpose of the Board is to promote collaborative regional economic and workforce development opportunities and activities.

B. The Board shall have a total membership of 24 25 members that shall consist of seven legislative members, 14 nonlegislative citizen members, and ~~three~~ four ex officio members. Members shall be appointed as follows: four members of the House of Delegates, consisting of the Chairman of the House Committee on Appropriations and three members appointed by the Speaker of the House of Delegates; three members of the Senate, consisting of the Chairman of the Senate Committee on Finance and Appropriations and two members appointed by the Senate Committee on Rules; two nonlegislative citizen members to be appointed by the Speaker of the House of Delegates, who shall be from different regions of the Commonwealth and have significant private-sector business experience; two nonlegislative citizen members to be appointed by the Senate Committee on Rules, who shall be from different regions of the Commonwealth and have significant private-sector business experience; two nonlegislative citizen members to be appointed by the Governor, who shall be from different regions of the Commonwealth and have significant private-sector business experience; and eight nonlegislative citizen members to be appointed by the Governor, subject to the confirmation of the General Assembly, who shall have significant private-sector business experience. Of the Governor's nonlegislative citizen appointments subject to General Assembly confirmation, no more than two appointees may be from any one region of the Commonwealth. The Speaker of the House of Delegates and the Senate Committee on Rules shall submit a list of recommended nonlegislative citizens with significant private-sector business experience for the Governor to consider in making his nonlegislative citizen appointments. The Governor shall also appoint ~~three~~ four Secretaries from the following, who shall serve ex officio with voting privileges: the Secretary of Agriculture and Forestry, the Secretary of Commerce and Trade, the Secretary of Education, *the Secretary of Labor*, and the Secretary of Finance. Nonlegislative citizen members shall be citizens of the Commonwealth.

C. Legislative members and ex officio members of the Board shall serve terms coincident with their terms of office. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. No House member appointed by the Speaker of the House shall serve more than four consecutive two-year terms, no Senate member appointed by the Senate Committee on Rules shall serve more than two consecutive four-year terms, and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

D. The Board shall elect a chairman and vice-chairman from among its membership. The chairman shall be a nonlegislative citizen member. A majority of the members shall constitute a quorum.

E. Any decision by the Board shall require an affirmative vote of a majority of the members of the Board.

F. Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

G. Staff support and technical assistance to the Board and the Governor in carrying out the provisions of this article shall be provided by the agencies of the Secretariats of Commerce and Trade, Education, and Finance.

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

A. The Board shall establish guidelines, procedures, and objective criteria for the award and

60 distribution of grants from the Fund to regional councils.

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

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

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

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

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

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

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

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

102 5. The expected economic impact and outcomes of the project and the complexity of the project
103 relative to the size of the economy of the region or to the population of the participating localities;

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

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

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

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

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

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

119 G. Subject to the provisions of § 2.2-2488 and this section, once a regional council becomes eligible
120 for grants from the Fund, the regional council may continue to apply for and receive grants from the
121 Fund to support economic activities consistent with the regional council's economic growth and

diversification plan in such amounts and for such duration as the Board may determine in accordance with its guidelines and procedures. The Board may terminate any payments to regional councils that fail to perform in accordance with this article, the Board's guidelines or procedures, or any conditions expressly agreed upon as part of a grant award, or for malfeasance. The Board may require the refund of moneys from the Fund upon such termination. Grants that are terminated shall revert to the Fund for distribution on an unallocated competitive basis.

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

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

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

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

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

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

§ 2.2-5101. Virginia investment performance grants.

A. *For purposes of this section, "Grant" means a Virginia Investment Performance Grant awarded pursuant to this section and paid from the Investment Performance Grant subfund of the Fund.*

B. 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 to apply for an investment performance grant as provided in this section a Grant.

~~B.~~ C. The Partnership shall establish an application process by which eligible manufacturers and research and development services may apply for a grant under this section Grant. An application for a grant under this section Grant payment shall not be approved until the Partnership has verified that the required capital investment, and if applicable, job creation, has been completed.

~~C.~~ D. The amount of the investment performance grant 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 a Grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant Grant to the relative value to the Commonwealth of the eligible investment. For the purpose of any Grant award determination that includes a job creation requirement, the eligible manufacturer or research and development service shall pay an average wage, excluding fringe benefits, that is no less than the prevailing average wage for such new jobs.

~~D.~~ E. The Partnership shall assist the Secretary in developing objective guidelines that shall to be used in awarding investment performance grants Grants. No grant 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 Grants to address:

1. The number of new jobs, if any, created by the capital investment;
2. The average wages paid for the new jobs and the amount by which such wages exceed the average manufacturing wage for prevailing average wage of 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

183 significantly improved products or processes that support manufacturing;

184 4. The amount of the capital investment;

185 5. The net present value of benefits to Virginia;

186 6. The amount of other incentives offered by the Commonwealth and the locality; and

187 7. The importance of the manufacturing or research and development facility to the economy of the
188 locality or region.

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

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

202 F. For all eligible projects awarded grants before July 1, 2005, the aggregate amount of investment
203 performance grants approved under this section in any year shall not exceed \$6 million, and the
204 aggregate amount of grants outstanding to all eligible manufacturers under this section for all years shall
205 at no time exceed \$30 million. For all such grants awarded prior to that date, the annual obligations of
206 the Commonwealth to make grant payments to individual eligible manufacturers under this section shall
207 not exceed \$600,000. For all eligible projects awarded grants on or after July 1, 2005, and before July
208 1, 2009, the aggregate amount of investment performance grants approved under this section in any year
209 shall not exceed \$3 million, and the aggregate amount of such grants awarded after that date and
210 outstanding at any time shall not exceed \$15 million. For all such grants awarded on or after that date,
211 the annual obligations of the Commonwealth to make grant payments to individual recipients under this
212 section shall not exceed \$300,000. For all eligible projects awarded grants on or after July 1, 2009, and
213 before July 1, 2015, the aggregate amount of investment performance grants approved under this section
214 in any year shall not exceed \$6 million, and the aggregate amount of such grants awarded on or after
215 July 1, 2009, and before July 1, 2015, and outstanding at any time shall not exceed \$30 million. For all
216 such grants awarded on or after July 1, 2009, and before July 1, 2015, the annual obligations of the
217 Commonwealth to make grant payments to individual recipients under this section shall not exceed \$1
218 million. For all eligible projects awarded grants on or after July 1, 2015, but before July 1, 2019, the
219 aggregate amount of investment performance grants approved under this section in any year shall not
220 exceed \$6 million, and the aggregate amount of such grants awarded on or after July 1, 2015, but before
221 July 1, 2019, and outstanding at any time shall not exceed \$20 million. For all such grants awarded on
222 or after July 1, 2015, but before July 1, 2019, the annual obligations of the Commonwealth to make
223 grant payments to individual recipients under this section shall not exceed \$1 million. For all eligible
224 projects awarded grants on or after July 1, 2019, the aggregate amount of investment performance grants
225 approved under this section in any year shall not exceed \$4 million, and the aggregate amount of such
226 grants awarded on or after July 1, 2019, and outstanding at any time shall not exceed \$20 million. For
227 all such grants awarded on or after July 1, 2019, the annual obligations of the Commonwealth to make
228 grant payments to individual recipients under this section shall not exceed \$1 million. *At no time shall*
229 *the aggregate amount of Grants payable in any fiscal year exceed \$7 million.*

230 G. Any eligible manufacturer or research and development service shall be eligible to receive a grant
231 from the Fund Grant in five equal, annual installments beginning in the third first year after completion
232 and verification of the capital investment is completed and the Partnership has verified that the
233 requirements applicable to such grant have been satisfied. Any eligible manufacturer or research and
234 development service located in a fiscally distressed area of the State, as defined in the guidelines
235 implementing this chapter, shall be eligible to begin receiving grants in the second year after the capital
236 investment is completed and verified and any pledged employment. No Grant awarded pursuant to this
237 section to an eligible manufacturer or research and development service shall exceed \$5 million in total,
238 and no annual payment to any eligible manufacturer or research and development service shall exceed
239 \$1 million.

240 **§ 2.2-5102.1. Virginia economic development incentive grants.**

241 A. Subject to the appropriation by the General Assembly of sufficient moneys to the Economic
242 Development Incentive Grant subfund, any eligible company that meets the requirements of this section
243 and is not awarded a grant under § 2.2-5101 or 2.2-5102 for the same project shall be eligible to apply
244 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 July 1, 2010, but before July 1, 2019, shall not exceed \$30 million. For eligible projects awarded grants on or after 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 July 1, 2019, shall not exceed \$30 million.

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

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

2. That no provision of this act shall impact the obligations of the Commonwealth under any existing agreements for the payments of grants issued pursuant to § 2.2-5101 of the Code of Virginia entered into prior to the effective date of this act.

3. That the provisions of § 2.2-2489 of the Code of Virginia, as amended by this act, that provide matching requirements for regional Virginia Growth and Opportunity grants, shall expire on July 1, 2028.

4. That the aggregate amount of grants payable in a fiscal year pursuant to subsection F of § 2.2-5101 of the Code of Virginia, as amended by this act, shall include all grants payable in such fiscal year, regardless of whether such grants were awarded prior to July 1, 2024, or on or after July 1, 2024.