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HOUSE BILL NO. 2506

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 6, 1999)

(Patron Prior to Substitute—Delegate Drake)

A BILL to amend the Code of Virginia by adding a section numbered 2.1-64.34.1, relating to funds for disadvantaged business.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.1-64.34.1 as follows:

§ 2.1-64.34.1. Creation, administration, and management of the Capital Access Fund for Disadvantaged Businesses.

A. Definitions.

For the purposes of this section:

"Disadvantaged business" means a for-profit small business concern that is majority-owned by one or more economically disadvantaged individuals. In the case of a corporation, a majority of the stock shall be owned by one or more such individuals and the management and daily business operations shall be controlled by one or more of the economically disadvantaged individuals who own it.

"Economically disadvantaged individual" means an individual whose ability to compete in the free market has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive market area.

B. There is hereby created in the state treasury a permanent nonreverting fund to be known as the Capital Access Fund for Disadvantaged Businesses (the "Fund"). The Fund shall be comprised of (i) moneys appropriated to the Fund by the General Assembly, (ii) all income from the investment of moneys held by the Fund, and (iii) any other moneys designated for deposit to the Fund from any source, public or private. 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 to provide loan guarantees, loan loss reserves, and interest rate write downs. The Fund shall be managed by the Department of Minority Business Enterprise (the "Department") and administered by the Virginia Small Business Financing Authority (the "Authority").

C. The operation of the Fund shall be as follows:

1. The Fund may be used as a special reserve fund to cover potential future losses from the loan portfolios of participating banks and lending institutions. The Authority shall (i) work with banks and lending institutions to establish a separate account for the Capital Access Fund for Disadvantaged Business Fund in each participating bank or lending institution and (ii) deposit into such accounts, moneys from the Fund in an amount equal to the total of the sum of the bank or lending institution's and the individual borrower's deposits into such account. Such matching sum by the Authority shall not exceed fourteen percent of the principal amount of the loan. The Authority may require up to a one hundred percent match by the individual borrowers pursuant to established guidelines.

2. The Fund may also be used to guarantee up to ninety percent of the principal amount of any loan to cover potential future losses from the loan portfolios of participating banks and lending institutions to cover specific loans on such terms and conditions as set forth in established guidelines. Such guarantees shall not exceed a term of five years and shall not exceed fifty thousand dollars.

3. The Fund may also be used to provide interest rate write downs or other payments to achieve a concessionary rate of interest which shall be limited to five percent of the balance of the Fund that is unencumbered by any special reserves or guarantees or the income earned by the Fund from all sources including fees, interest, or other investment income. No interest rate write down or payment to achieve a concessionary rate shall extend for more than five years and such rates shall include provisions for an increase in such rates to a near market rate but not more than the Prime Rate.

4. Provisions may be made for a borrower to use a combination of subdivisions C.1, C.2. and C3. pursuant to established guidelines.

D. The determination of economic disadvantage shall be made by the Director of the Department of Minority Business Enterprise pursuant to the guidelines developed in accordance with subsections B and C.

E. The Department and the Authority, or its designated agent, shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department is authorized to require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department and the Authority.

60 2. That prior to executing any provisions of subsection C. of this Act, the Department and the
61 Authority shall submit for review the Fund guidelines to the Chairmen of the House
62 Appropriations Committee and the Chairmen of the Senate Finance Committee.