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HOUSE BILL NO. 1157

House Amendments in [] — February 11, 2002

A BILL for the relief of the Flory Small Business Development Center, Inc.

Patron Prior to Engrossment—Delegate Marshall, R.G.

Referred to Committee on Appropriations

Whereas, the Flory Small Business Development Center, Inc. (Flory, Inc.) is a Virginia business that provides small business counseling, training and other services; and

Whereas, Flory, Inc. entered into a relationship with the Virginia Department of Business Assistance (VBA) in June 1991; and

Whereas, Flory, Inc. performed its commitment in good faith, by providing small business counseling, training and other services through the Virginia Small Business Development Center (VSBDC) program located within the VBA for a period of eight and one-half years from June 1991 through December 1999; and

Whereas, over the course of this relationship, Flory, Inc. has been an integral and productive program participant with Flory, Inc. clients in (i) generating \$21,688,481 in federal tax revenues and \$12,801,962 in state tax revenues, (ii) creating 2,020 new jobs, saving 908 jobs and stabilizing 8,498 jobs, and (iii) achieving \$137,063,372 in capital investment monies and \$194,538,729 in increased sales; and

Whereas, Flory, Inc.'s economic development program has also received numerous awards including the 1995 President's Award, given by the Association of Small Business Development Centers (ASBDC) and the 1996 Employee of the Year Award given by Virginia's Small Business Development Centers; and

Whereas, the VSBDC included Flory, Inc. under the program as a provider within its 1999 contract with the United States Small Business Administration (SBA) and provided a line item in the amount of \$200,000; and

Whereas, in September 1998, the VSBDC received \$200,000 as reimbursement for the line item through the SBA under the contract provisions (31% of this amount was provided by the General Assembly); and

Whereas, the entire amount of the reimbursement was committed to Flory, Inc. for calendar year 1999; and

Whereas, the VSBDC has, as a practice, issued verbal and written instructions at the beginning of the calendar year to all small business development centers, including the Flory, Inc., instructing them to continue operations at current budget levels until a new Memorandum of Agreement (MOA) was issued; and

Whereas, the VSBDC also, as a practice, provided the MOA for the calendar year in March or April of a given year and would expect each small business development center to provide continuous service; and

Whereas, this practice had the practical effect of placing small development centers like Flory, Inc. in the difficult situation of continuing to perform services which would then be paid only if the center later signed a yet-to-be negotiated MOA; and

Whereas, Flory, Inc. had several concerns regarding the MOA for 1999 and indicated those concerns to VSBDC in writing on several occasions in late 1998 and early 1999; and

Whereas, in previous years, Flory, Inc. was allowed to simply "line through" items of concern and initial the change or added wording, however, this practice was not accepted for the 1999 MOA; and

Whereas, despite receiving assurances that its concerns would be addressed, when the MOA was received by Flory, Inc. in April 1999, nearly one month after other small business development centers had received the MOA, it did not address any of Flory, Inc.'s concerns; and

Whereas, despite not having the MOA the Flory Center continued its excellent performance of small business development services to the regional business community as part of the VSBDC program; and

Whereas, on June 3, 1999, representatives of Flory, Inc. including the Chairman of the Board of Directors, another board member and the President met with the Director and Deputy Director of the DBA, and another state representative in an attempt to resolve Flory, Inc.'s concerns with the 1999 MOA; and

Whereas, the Flory Center's local funding sources including Prince William County, the Prince William County Industrial Development Authority and the Cities of Manassas Park and Manassas who provided matching funds to the Center in 1999, did so based on the commitment of the VSBDC program; and

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59 Whereas, in July 1999 the Flory Small Business Development Center was still listed on the State
60 website for the Virginia Small Business Development Center program and their personnel continued to
61 make referrals to Flory, Inc. in July 1999; and

62 Whereas, the VSBDC program refused to pay Flory, Inc. the \$200,000 that had been received by the
63 program for the services rendered by the Flory Small Business Development Center in 1999; and

64 Whereas, Flory, Inc. filed a legal suit on August 17, 1999, seeking to recover the 1999 funding
65 committed to the Center; and

66 Whereas, initially, the Office of the Attorney General argued that the case should be dismissed
67 because Flory, Inc. had not signed the MOA for 1999; and

68 Whereas, when this position was rejected by the court, the Office of the Attorney General argued
69 that the transaction between Flory, Inc. and the VSBDC was covered by the Virginia Public
70 Procurement Act and that the Act had not been followed in the transaction; and

71 Whereas, this position had never been taken regarding any other small business development
72 providers and in fact, the VSBDC never informed program participants that the Virginia Public
73 Procurement Act was applicable; and

74 Whereas, on December 13, 1999, the court ruled against Flory, Inc. by finding that the Virginia
75 Public Procurement Act did apply and that all requirements of the Act had not been followed; and

76 Whereas, it was also admitted by the Commonwealth in the record of the proceedings that employees
77 of the Virginia Department of Business Assistance were negligent by virtue of being unaware that the
78 program came under the Procurement Act; and

79 Whereas, despite the court's ruling, Flory, Inc.'s volunteer Board of Directors continued to maintain
80 the Commonwealth's commitment to the local funding sources by borrowing funds, which included the
81 signing of promissory notes by members of the Board, to replace the 1999 funding refused by the
82 Virginia SBDC program and to keep the program operating at full service levels; and

83 Whereas, Flory, Inc. incurred substantial interest and fees associated with borrowing the funds; and

84 Whereas, Flory, Inc. appealed the December 1999 ruling and the Virginia Supreme Court agreed to
85 hear its appeal but limited the appeal to the issue of applicability of the Virginia Public Procurement
86 Act; and

87 Whereas, the Virginia Supreme Court subsequently ruled against Flory, Inc. on the issue of the
88 applicability of the Virginia Public Procurement Act and never heard the merits of the case as to the
89 VSBDC's refusal to pay the \$200,000 in 1999 funding to Flory, Inc.; and

90 Whereas, Flory, Inc. has now exhausted all legal means for obtaining the \$200,000 it was to receive
91 for 1999; and

92 Whereas, Flory, Inc. continues to enjoy the support of the localities to whom it provides quality
93 business services and continues to operate as a locally-funded center today; and

94 Whereas, the importance of Flory, Inc.'s work to the success of the VSBDC program was evidenced
95 within the October 9, 2001, study report by the Joint Legislative Audit and Review Committee
96 (JLARC); and

97 Whereas, in the report JLARC notes that "the State's return on its investment in recent years has
98 been inconsistent and even declining on some measures " and that "a portion of the declining economic
99 impact of the program appears to be attributable to the withdrawal of the Dr. William E .S. Flory Center
100 from the SBDC network in 1999. Prior to its withdrawal from the network, this center was a major
101 contributor to the overall economic impact reported for the program. For example, in 1998 the number
102 of jobs created and retained based on the Flory Center's assistance accounted for almost 22 percent of
103 all jobs reported created and retained as a result of Virginia SBDC assistance"; and

104 Whereas, in the face of Flory, Inc.'s record of effectiveness and productivity in supporting the small
105 business development efforts of the entire Commonwealth, its consistent local support and funding, and
106 the lack of any dispute from Flory, Inc., VSBDC continues to deny payment of the \$200,000
107 reimbursement to Flory, Inc. for services provided in 1999; and

108 Whereas, directing the VSBDC to pay the reimbursement would not require a new appropriation, it
109 would only require VSBDC to pay money that has already been appropriated to the VSBDC program
110 and intended for Flory, Inc. for 1999; and

111 Whereas, the Flory Small Business Development Center, Inc. has no other means of relief except by
112 action of this body; now, therefore,

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

114 **1. § 1. That the Virginia Department of Business Assistance is directed to allocate the sum of [**
115 **\$200,000 \$33,333] from Virginia Small Business Development Center program funds to the Flory Small**
116 **Business Development Center, Inc. Such allocation shall be made upon execution of a release of all**
117 **claims the Flory Small Business Development Center, Inc. may have against the Commonwealth or any**
118 **agency, instrumentality, office, employee or political subdivision in connection with the aforesaid**
119 **occurrence.**