

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act for the relief of the Flory Small Business Development Center, Inc.*

3 [H 1157]

4 Approved

5 Whereas, the Flory Small Business Development Center, Inc. (Flory, Inc.) is a Virginia business that  
6 provides small business counseling, training and other services; and7 Whereas, Flory, Inc. entered into a relationship with the Virginia Department of Business Assistance  
8 (VBA) in June 1991; and9 Whereas, Flory, Inc. performed its commitment in good faith, by providing small business  
10 counseling, training and other services through the Virginia Small Business Development Center  
11 (VSBDC) program located within the VBA for a period of eight and one-half years from June 1991  
12 through December 1999; and13 Whereas, over the course of this relationship, Flory, Inc. has been an integral and productive program  
14 participant with Flory, Inc. clients in (i) generating \$21,688,481 in federal tax revenues and \$12,801,962  
15 in state tax revenues, (ii) creating 2,020 new jobs, saving 908 jobs and stabilizing 8,498 jobs, and (iii)  
16 achieving \$137,063,372 in capital investment monies and \$194,538,729 in increased sales; and17 Whereas, Flory, Inc.'s economic development program has also received numerous awards including  
18 the 1995 President's Award, given by the Association of Small Business Development Centers (ASBDC)  
19 and the 1996 Employee of the Year Award given by Virginia's Small Business Development Centers;  
20 and21 Whereas, the VSBDC included Flory, Inc. under the program as a provider within its 1999 contract  
22 with the United States Small Business Administration (SBA) and provided a line item in the amount of  
23 \$200,000; and24 Whereas, in September 1998, the VSBDC received \$200,000 as reimbursement for the line item  
25 through the SBA under the contract provisions (31% of this amount was provided by the General  
26 Assembly); and27 Whereas, the entire amount of the reimbursement was committed to Flory, Inc. for calendar year  
28 1999; and29 Whereas, the VSBDC has, as a practice, issued verbal and written instructions at the beginning of the  
30 calendar year to all small business development centers, including Flory, Inc., instructing them to  
31 continue operations at current budget levels until a new Memorandum of Agreement (MOA) was issued;  
32 and33 Whereas, the VSBDC also, as a practice, provided the MOA for the calendar year in March or April  
34 of a given year and would expect each small business development center to provide continuous service;  
35 and36 Whereas, this practice had the practical effect of placing small development centers like Flory, Inc. in  
37 the difficult situation of continuing to perform services which would then be paid only if the center later  
38 signed a yet-to-be negotiated MOA; and39 Whereas, Flory, Inc. had several concerns regarding the MOA for 1999 and indicated those concerns  
40 to VSBDC in writing on several occasions in late 1998 and early 1999; and41 Whereas, in previous years, Flory, Inc. was allowed to simply "line through" items of concern and  
42 initial the change or added wording, however, this practice was not accepted for the 1999 MOA; and43 Whereas, despite receiving assurances that its concerns would be addressed, when the MOA was  
44 received by Flory, Inc. in April 1999, nearly one month after other small business development centers  
45 had received the MOA, it did not address any of Flory, Inc.'s concerns; and46 Whereas, despite not having the MOA, the Flory Center continued its excellent performance of small  
47 business development services to the regional business community as part of the VSBDC program; and48 Whereas, on June 3, 1999, representatives of Flory, Inc., including the Chairman of the Board of  
49 Directors, another board member and the President met with the Director and Deputy Director of the  
50 DBA, and another state representative in an attempt to resolve Flory, Inc.'s concerns with the 1999  
51 MOA; and52 Whereas, the Flory Center's local funding sources, including Prince William County, the Prince  
53 William County Industrial Development Authority and the Cities of Manassas Park and Manassas who  
54 provided matching funds to the Center in 1999, did so based on the commitment of the VSBDC  
55 program; and

56 Whereas, in July, 1999, the Flory Small Business Development Center was still listed on the state

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57 website for the Virginia Small Business Development Center program and their personnel continued to  
58 make referrals to Flory, Inc. in July 1999; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 *1. § 1. That the Virginia Department of Business Assistance is directed to allocate the sum of \$33,333*  
112 *from Virginia Small Business Development Center program funds to the Flory Small Business*  
113 *Development Center, Inc. Such allocation shall be made upon execution of a release of all claims the*  
114 *Flory Small Business Development Center, Inc., may have against the Commonwealth or any agency,*  
115 *instrumentality, office, employee or political subdivision in connection with the aforesaid occurrence.*