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HOUSE BILL NO. 2732**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 16, 2004)

(Patron Prior to Substitute—Delegate O'Bannon)

A *BILL to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5105 through 2.2-5108, relating to the Virginia Economic Development Incentive Fund Act.*

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.2 a chapter numbered 51.1, consisting of sections numbered 2.2-5105 through 2.2-5108, as follows:

CHAPTER 51.1.**VIRGINIA ECONOMIC DEVELOPMENT INCENTIVE ACT.**

§ 2.2-5105. *Short title; definitions.*

A. *This chapter shall be known and may be cited as the "Virginia Economic Development Incentive Act."*

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

"Act" means the Virginia Economic Development Incentive Act.

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

"Capital investment" means investment in real property, personal property, or both, at a facility within the Commonwealth that is capitalized by the company. Expenditures for maintenance, replacement, or repair of existing machinery, tools, and personal or 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. Beginning in 2006, the capital investment requirement shall be indexed annually on January 1 of each year by an amount equivalent to the percentage increase in the Consumer Price Index for all items, all urban consumers (CPI-U) from October 1 through September 30 of the immediately preceding calendar year.

"Eligible company" means, for companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the 2000 census, a Virginia employer that creates or causes to be created at least 400 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage, and 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 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, and makes a capital investment of at least \$6,500 per job.

"Fund" means the Virginia Economic Development Incentive Fund, created pursuant to § 2.2-5106.

"Net present value of benefits to Virginia" means the present value of the amount by which the anticipated additional state tax revenue is 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 the value of all incentives provided by the Commonwealth, including any grant under this chapter, 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 present project, 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 per 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 suppliers and similar multiplier or spin-off jobs shall not qualify as new jobs under this chapter.

"Partnership" means the Virginia Economic Development Partnership.

"Prevailing 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.

"Secretary" means the Secretary of Commerce and Trade.

§ 2.2-5106. *Virginia Economic Development Incentive Fund.*

A. *There is established a special fund in the state treasury to be known as the Virginia Economic Development Incentive Fund (the Fund). The Fund shall consist of such moneys as may be appropriated by the General Assembly and designated for the Fund, constituting a "sinking fund" that includes some proportion of the marginal revenues derived by the Commonwealth and attributable to the projects for*

60 which eligible companies received grants under this Act. The Fund shall be used solely for the payment
61 of economic development incentive grants to eligible Virginia companies pursuant to this chapter. The
62 Partnership shall administer the Virginia Economic Development Incentive Fund.

63 B. The Partnership shall allocate from the Fund moneys in the following order of priority: (i) unpaid
64 grant amounts carried forward from prior years because eligible companies did not receive the full
65 amount of any grant to which they were eligible in a prior year and (ii) other approved applicants. If
66 the moneys in the Fund are less than the amount of grants to which approved applicants in any class of
67 priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in
68 such class, based upon the amount of the grant to which an approved applicant is eligible and the
69 amount of money in the Fund available for allocation to such class.

70 C. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any
71 year, it shall not be eligible for the deficiency in that year, but the unpaid portion of the grant for
72 which it was eligible shall be carried forward by the Partnership to the following year, during which it
73 shall be in the first class of priority as provided in clause (i) of subsection B.

74 D. The Partnership shall determine the amount of the grants to be allocated to eligible applicants by
75 June 30 of each year. The Partnership shall then certify to the Comptroller the amount of grant an
76 eligible company shall receive. Payments shall be made by check issued by the State Treasurer on
77 warrant of the Comptroller.

78 E. All excess funds remaining in any given year shall be carried forward on the books of the Fund
79 for use in subsequent years.

80 F. Actions of the Partnership relating to the allocation and awarding of grants shall be exempt from
81 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of
82 § 2.2-4002.

83 § 2.2-5107. Virginia Economic Development Incentive Fund Grants.

84 A. Subject to the appropriation by the General Assembly of sufficient moneys to the Fund, any
85 eligible company that meets the requirements of this section and is not awarded a Virginia Investment
86 Partnership grant under § 2.2-5101 or 2.2-5102 for the same project shall be eligible to apply for an
87 economic development incentive grant as provided in this section.

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

92 C. The amount of the economic development incentive grant that an eligible company may receive
93 under this section shall be determined at the sole discretion of the Governor based on the
94 recommendation of the Secretary, and in accordance with subsection E. The determination of the
95 appropriate amount for an economic development incentive grant shall be based on the application of
96 guidelines that establish criteria for correlating the amount of a grant to the relative value to the
97 Commonwealth of the new investment and employment.

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

- 105 1. The number of new jobs created by the capital investment;
- 106 2. The wages paid for the new jobs and the amount by which wages exceed the average wage for the
107 locality or region;
- 108 3. The amount of the capital investment;
- 109 4. The net present value of benefits to Virginia;
- 110 5. The amount of other incentives offered by the Commonwealth and the locality;
- 111 6. The importance of the facility to the economy of the locality or region; and
- 112 7. The allocation of moneys in the Virginia Economic Development Incentive Fund to allow for
113 payment of grants in installments as provided under this section and to comply with maximum grant
114 awards, approvals, and payments.

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

118 E. The aggregate amount of an economic development incentive grant to any eligible company under
119 this section shall not exceed \$10 million total.

120 F. The aggregate amount of economic development incentive grants payable under this section in any
121 fiscal year shall not exceed \$10 million. No more than three economic development incentive grants may

be awarded under this section in any one biennium.

G. Any eligible company shall be eligible to receive a grant from the Fund in no fewer than five installments beginning in the third 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.

H. 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. The Secretary shall consult with the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, or their designees, prior to entering into any memorandum of agreement. The Chairmen, or their designees, shall have the opportunity to review any memorandum of agreement prior to its execution by the Commonwealth.

§ 2.2-5108. Requirements for grants generally.

A. Any company eligible to apply for a grant under this chapter shall provide evidence, satisfactory to the Secretary, of the amount of the capital investment, the number of new jobs created as a result of the capital investment, and such other evidence that requirements of this chapter have been satisfied. An eligible company whose application has been approved shall continue to comply with the requirements for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for approval of any grant have been satisfied.

B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the Fund, payment of such grant shall be made from the Fund by check issued by the State Treasurer on warrant of the Comptroller within 60 days of certification.

C. As a condition of receipt of a grant, an eligible company shall make available to the Partnership for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the eligible company shall be considered confidential and proprietary.

D. Within 30 days of the end of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance that shall include, but not be limited to, the following information: the name of the eligible company determined to be eligible for a grant, the products it produces or services it provides, the locality of the facility, the amount of the grant made or committed from the Fund, the number of new jobs created or projected to be created, the amount of the company's capital investment, the prevailing average wage in the locality or region where the capital investment has been made, and the timetable for the completion of the capital investment and employment creation.