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SENATE BILL NO. 109

Offered January 11, 2006

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A *BILL to amend and reenact § 2.2-115 of the Code of Virginia, relating to the Governor's Development Opportunity Fund.*

Patrons—Stosch; Delegate: Rapp

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-115 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-115. Governor's Development Opportunity Fund.

As used in this section, unless the context requires otherwise:

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time a 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 location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

"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 economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.

"Private investment" means the private investment required under this section.

A. There is created the Governor's Development Opportunity Fund (the Fund) to be used by the Governor to attract economic development prospects and secure the expansion of existing industry in the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Governor shall report to the chairmen of the House Committees on Appropriations and Finance, and the Senate Committee on Finance as funds are awarded in accordance with this section.

B. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. Loans shall be approved by the Governor and made in accordance with ~~procedures~~ *guidelines* established by the Virginia Economic Development Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the ~~general fund of the state treasury~~ *Fund*. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

C. Funds may be used for public and private utility extension or capacity development on and off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; ~~site acquisition~~ *the purchase of title to property*; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly owned buildings; ~~training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision pursuant to its duties or powers; training; or anything else permitted by law~~ *for purposes directly relating to any of the foregoing. However, in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to use of any property. Moneys in the Fund shall also not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality.*

D. Except as provided in this subsection, no grant or loan shall be awarded from the Fund unless the project involves a minimum private investment of \$10,000,000 and creates 100 new jobs for which the

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59 *average wage, excluding fringe benefits, is no less than the prevailing average wage.* In localities with a
60 *population between 50,000 and 100,000, the minimum private investment shall be \$5,000,000, creating*
61 *50 new jobs for which the average wage, excluding fringe benefits, is no less than the prevailing*
62 *average wage.* In localities with a population of 50,000 or less, the minimum private investment shall be
63 \$2,500,000, creating 25 new jobs for which the average wage, excluding fringe benefits, is no less than
64 the prevailing average wage. Central cities or urban cores shall be treated for eligibility purposes the
65 same as communities with a population between 50,000 and 100,000 population. For projects for
66 which the average wage of the new jobs created, excluding fringe benefits, is at least twice the
67 prevailing average wage, excluding benefits, for that locality or region, the Governor shall have the
68 discretion to require no less than one-half the number of new jobs as set forth for that locality in this
69 subsection.

70 *If (i) a project is to be located in a county or city whose annual average unemployment rate for the*
71 *most recent calendar year is at least twice the final statewide average unemployment rate for the most*
72 *recent calendar year, and (ii) the average wage of the new jobs, excluding fringe benefits, will be less*
73 *than the prevailing average wage, the Governor shall have the discretion to make an award from the*
74 *Fund. However, the minimum private investment and number of new jobs required to be created as set*
75 *forth in this subsection shall still be a condition of eligibility for an award from the Fund.*

76 E. 1. The Virginia Economic Development Partnership shall assist the Governor in developing
77 objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund.
78 No grant or loan shall be awarded until the Governor has provided copies of the guidelines and criteria
79 to the chairmen of the House Committees on Appropriations and Finance and the Senate Committee on
80 Finance. The guidelines and criteria shall include provisions for geographic diversity and a cap on the
81 amount of funds to be provided to any individual project. In developing the guidelines and criteria, the
82 Virginia Economic Development Partnership shall use the measure for Fiscal Stress cited in the Index
83 published by the Commission on Local Government of the Department of Housing and Community
84 Development for the locality in which the project is located or will be located as one method of
85 determining the amount of assistance a locality shall receive from the Fund.

86 2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision
87 that receives a grant or loan from the Fund shall enter into a contract with each prospective recipient
88 of funds from the Fund. A person or entity shall be a prospective recipient of funds from the Fund if
89 grant or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and
90 (i) subsequently distributed by the political subdivision to the person or entity or (ii) used by the
91 political subdivision for the benefit of the person or entity but never distributed to the person or entity.

92 b. The contract between the political subdivision and the prospective recipient shall provide in detail
93 (i) the fair market value of all funds and services that the Commonwealth has committed to provide, (ii)
94 the fair market value of all matching funds (or in-kind match) and the fair market value of all services
95 that the political subdivision has agreed to provide, (iii) how funds committed by the Commonwealth
96 (including but not limited to funds from the Fund committed by the Governor) and funds that the
97 political subdivision has agreed to provide are to be spent, (iv) a description of all services that the
98 Commonwealth has committed to provide to the economic development project and the time frame
99 within which such services are to be provided, (v) a description of all services that the political
100 subdivision has agreed to provide to the economic development project and the time frame within which
101 such services are to be provided, (vi) the minimum private investment to be made and the number of
102 new jobs to be created agreed to by the prospective recipient, (vii) the average wage (excluding fringe
103 benefits) agreed to be paid in the new jobs, (viii) the prevailing average wage, and (ix) the formula,
104 means, or processes agreed to be used for measuring compliance with the minimum private investment
105 and new jobs requirements.

106 The contract shall state the date by which the agreed upon private investment and new job
107 requirements shall be met by the prospective recipient of funds from the Fund and may provide for the
108 political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the
109 political subdivision subsequent to the execution of the contract. Any extension of such date granted by
110 the political subdivision shall be in writing and promptly delivered to the prospective recipient, and the
111 political subdivision shall simultaneously provide a copy of the extension to the Virginia Economic
112 Development Partnership.

113 The contract shall provide that if the private investment and new job contractual requirements are
114 not met by the expiration of the date stipulated in the contract, including any extension granted by the
115 political subdivision, the prospective recipient shall be liable to the Commonwealth for damages. The
116 contract shall include a formula for purposes of determining such damages. The formula shall, in part,
117 be based upon the fair market value of all funds and services that have been provided by the
118 Commonwealth and the political subdivision and the extent to which the prospective recipient has met
119 the private investment and new job contractual requirements.

120 c. The contract shall be amended to reflect changes in the funds or services committed by the

Commonwealth or agreed to be provided by the political subdivision.

3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such contract with a prospective recipient, the political subdivision shall provide a copy of the proposed contract to the Attorney General. The Attorney General shall review the proposed contract (i) for enforceability as to its provisions and (ii) to ensure that it is in appropriate, legal form. The Attorney General shall provide any written objections to the political subdivision within seven days of his receipt of the copy of the contract. The Attorney General's objections shall be limited to the enforceability of the contract's provisions and the legal form of the contract.

4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until such contract as described herein is executed with the prospective recipient.

F. Within the ~~thirty~~ ^{thirty} days of each ~~six-month period ending~~ immediately following June 30 and December 30 of each year, the Governor shall provide a report to the chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance which shall include, but is not limited to, the following information regarding grants and loans awarded from the Fund during the immediately preceding six-month period for economic development projects: the name of the company that is the beneficiary of the grant or loan and the type of business in which it engages; the location (county, city, or town) of the project; the amount of the grant or loan made or committed from the Fund and the amount of all other funds committed by the Commonwealth from other sources and the purpose for which ~~such~~ grants, loans, or other funds will be used; a description and the fair market value of all services that the Commonwealth has committed to provide; the amount of all moneys or funds agreed to be provided by political subdivisions and the purposes for which they will be used; a description and the fair market value of all services agreed to be provided by political subdivisions; the number of new jobs created or projected agreed to be created by the economic development prospect; the amount of the company's investment in the project agreed to be made by the economic development prospect; and the timetable for the completion of the project and new jobs created; the prevailing average wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

2. That the Virginia Economic Development Partnership shall assist the Governor in updating the current guidelines for the Governor's Development Opportunity Fund to incorporate the provisions of this act. The Governor shall provide a copy of the updated guidelines to the House Committees on Appropriations and Finance and the Senate Committee on Finance by November 1, 2006.

3. That, by August 1, 2006, the Virginia Economic Development Partnership shall develop the legal form of the contract described under this act, which shall include standard provisions. A copy of the contract form shall be provided to the Attorney General by such date. The Attorney General shall review the contract form and shall make any written recommendations to the Partnership by August 15, 2006.

The Partnership shall develop the final legal form by August 31, 2006, and shall provide a copy of the same to the House Committees on Appropriations and Finance and the Senate Committee on Finance by such date. The final legal form, including standard provisions, shall be used in economic development contracts between political subdivisions and prospective recipients of funds from the Governor's Development Opportunity Fund.

4. That the provisions of this act shall be applicable to economic development projects initially receiving funds from the Governor's Development Opportunity Fund on or after July 1, 2006.