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SENATE BILL NO. 128

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 27, 2012)

(Patron Prior to Substitute—Senator Stanley)

A BILL to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 3.1, consisting of sections numbered 3.2-303 through 3.2-309, relating to creation of the Governor's Agriculture and Forestry Industries Development Fund.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.2 a chapter numbered 3.1, consisting of sections numbered 3.2-303 through 3.2-309, as follows:

CHAPTER 3.1.

GOVERNOR'S AGRICULTURE AND FORESTRY INDUSTRIES DEVELOPMENT FUND.

§ 3.2-303. Definitions.

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

"Agricultural products" means crops, livestock, and livestock products, including field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs, aquaculture, and furs.

"Agriculture and forestry processing/value-added facilities" means any for-profit or nonprofit business that creates value-added agricultural or forestal products.

"Forestal products" means saw timber, pulpwood, posts, firewood, Christmas trees, and other tree and wood products for sale or for farm use.

"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" shall 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 chapter.

"Value-added agricultural or forestal products" means any agricultural or forestal product that (i) has undergone a change in physical state; (ii) was produced in a manner that enhances the value of the agricultural commodity or product; (iii) is physically segregated in a manner that results in the enhancement of the value of the agricultural or forestal product; (iv) is a source of renewable energy; or (v) is aggregated and marketed as a locally produced agricultural or forestal product.

§ 3.2-304. Governor's Agriculture and Forestry Industries Development Fund established; purpose; use of funds.

A. There is hereby created in the state treasury a nonreverting fund to be known as the Governor's Agriculture and Forestry Industries Development Fund (the Fund) to be used by the Governor to attract new and expanding agriculture and forestry processing/value-added facilities using Virginia-grown products. 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. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller. 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 chapter.

B. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. The criteria for making such grants or loans shall include (i) amount of jobs expected to be created, (ii) anticipated amount of private capital investment, (iii) anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created, (iv) anticipated amount of Virginia-grown agricultural and forestal products used by the

60 project, (v) projected impact on agricultural and forestal producers, (vi) a return on investment analysis
61 to determine the appropriate size of any grant or loan, and (vii) an analysis of the impact on competing
62 businesses already located in the area.

63 C. Funds may be used for public and private utility extension or capacity development on and off
64 site; public and private installation, extension, or capacity development of high-speed or broadband
65 Internet access, whether on or off site; road, rail, or other transportation access costs beyond the
66 funding capability of existing programs; site acquisition; grading, drainage, paving, and any other
67 activity required to prepare a site for construction; construction or build-out of publicly or privately
68 owned buildings; training; or grants or loans to an industrial development authority, housing and
69 redevelopment authority, or other political subdivision for purposes directly relating to any of the
70 foregoing. However, in no case shall funds from the Fund be used, directly or indirectly, to pay or
71 guarantee the payment for any rental, lease, license, or other contractual right to the use of any
72 property.

73 D. Moneys in the Fund shall not be used for any economic development project in which a business
74 relocates or expands its operations in one or more Virginia localities and simultaneously closes its
75 operations or substantially reduces the number of its employees in another Virginia locality. The
76 Secretary of Agriculture and Forestry shall enforce this policy and for any exception thereto shall
77 promptly provide written notice to the Chairmen of the Senate Finance and House Appropriations
78 Committees, which notice shall include a justification for any exception to such policy.

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

85 § 3.2-305. Guidelines and criteria for awarding grants from Fund.

86 The Secretary of Agriculture and Forestry, in consultation with the Virginia Economic Development
87 Partnership, Virginia Department of Agriculture and Consumer Services, and the Virginia Department of
88 Forestry, shall assist the Governor in developing objective guidelines and criteria that shall be used in
89 awarding grants from the Fund. The guidelines may include a requirement for the affected localities to
90 provide matching funds, which may be cash or in-kind, at the discretion of the Governor. The guidelines
91 and criteria shall include provisions for geographic diversity, a requirement that a project purchase a
92 minimum percentage of Virginia-grown or Virginia-produced agricultural or forestal products to which
93 its processes are adding value, and a cap on the amount of funds to be provided to any individual
94 project.

95 § 3.2-306. Contractual obligations of entities receiving grants or loans from the Fund.

96 A. Notwithstanding any provision in this chapter or in the guidelines established pursuant to
97 § 3.2-305, each political subdivision that receives a grant or loan from the Fund shall enter into a
98 contract with each business beneficiary of moneys from the Fund. A person or entity shall be a business
99 beneficiary of funds from the Fund if grant or loan moneys awarded from the Fund by the Governor are
100 paid to a political subdivision and (i) subsequently distributed by the political subdivision to the person
101 or entity or (ii) used by the political subdivision for the benefit of the person or entity but never
102 distributed to the person or entity.

103 B. The contract between the political subdivision and the business beneficiary shall provide in detail
104 (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair
105 market value of all matching funds (or in-kind match) that the political subdivision has agreed to
106 provide, (iii) how funds committed by the Commonwealth, including funds from the Fund committed by
107 the Governor, and funds that the political subdivision has agreed to provide are to be spent, (iv) the
108 minimum private investment to be made and the number of new jobs projected to be created by the
109 business beneficiary, (v) the minimum percentage of Virginia-grown or produced agricultural or forestal
110 products to be purchased by the business beneficiary (vi) the average wage (excluding fringe benefits)
111 projected to be paid in the new jobs, (vii) the prevailing average wage, and (viii) the formula, means, or
112 processes agreed to be used for measuring compliance with the minimum private investment and new
113 jobs projections, including consideration of any layoffs instituted by the business beneficiary over the
114 course of the period covered by the contract.

115 C. The contract shall state the date by which the agreed-upon private investment and minimum
116 purchases of Virginia-grown agricultural and forestal products shall be met by the business beneficiary
117 of moneys from the Fund and may provide for the political subdivision to grant up to a 15-month
118 extension of such date if deemed appropriate by the political subdivision subsequent to the execution of
119 the contract. Any extension of such date granted by the political subdivision shall be in writing and
120 promptly delivered to the business beneficiary, and the political subdivision shall simultaneously provide
121 a copy of the extension to the Secretary of Agriculture and Forestry.

D. The contract shall provide that if the private investment and minimum purchase requirements are not met by the expiration of the date stipulated in the contract, including any extension granted by the political subdivision, the business beneficiary shall be liable to the political subdivision for repayment of a portion of the funds provided under the contract. The contract shall include a formula for purposes of determining the portion of such funds to be repaid. The formula shall, in part, be based upon the fair market value of all funds that have been provided by the Commonwealth and the political subdivision and the extent to which the business beneficiary has met the private investment and minimum purchase requirements. Any such funds repaid to the political subdivision that relate to the award from the Fund shall promptly be paid by the political subdivision to the Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State Treasurer of such payment, the Comptroller shall deposit the repaid funds into the Fund.

The contract shall be amended to reflect changes in the funds committed by the Commonwealth or agreed to be provided by the political subdivision.

§ 3.2-307. Copy of proposed contract to be submitted to the Attorney General.

Notwithstanding any provision in this chapter or in the guidelines established pursuant to § 3.2-305, prior to executing any such contract with a business beneficiary, 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 suggestions to the political subdivision within seven days of his receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the enforceability of the contract's provisions and the legal form of the contract.

§ 3.2-308. Disposition of award by locality.

Notwithstanding any provision in this chapter or in the guidelines established pursuant to § 3.2-305, a political subdivision shall not expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until such contract is executed with the business beneficiary.

§ 3.2-309. Report submitted to chairmen of legislative committees.

Within the 30 days 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 the following information regarding each grant or loan awarded from the Fund during the immediately preceding six-month period for economic development projects: the name of the company that is the business beneficiary of the grant and the type of business in which it engages; the location (county, city, or town) of the project; the amount of the grant 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 or other funds will be used; the amount of all moneys or funds agreed to be provided by political subdivisions and the purposes for which they will be used; the number of new jobs projected to be created by the business beneficiary; the amount of investment in the project agreed to be made by the business beneficiary; the minimum purchase agreed to be made of Virginia-grown agricultural and forestal products; projected impact on agricultural and forestal producers; the timetable for the completion of the project and new jobs created; the prevailing average wage; and the average wage (excluding fringe benefits) projected to be paid in the new jobs.