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HOUSE BILL NO. 1568**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 28, 2018)

(Patron Prior to Substitute—Delegate Landes)

A BILL to amend and reenact § 2.2-1605 of the Code of Virginia, to amend the Code of Virginia by adding a sections numbered 2.2-2240.7 and 2.2-2240.8, and to repeal Article 2 (§§ 2.2-1611 through 2.2-1616) of Chapter 16.1 of Title 2.2 of the Code of Virginia, relating to the Virginia Economic Development Partnership Authority; small business development programs.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-1605 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2240.7 and 2.2-2240.8 as follows:

§ 2.2-1605. Powers and duties of Department.

A. The Department shall have the following powers and duties:

1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, women-owned, and minority-owned businesses;

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, baccalaureate institutions of higher education, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;

3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, women-owned, and minority-owned businesses;

4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, women-owned, and minority-owned businesses and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, women-owned, and minority-owned businesses;

5. Advise the Small Business Financing Authority on the management and administration of the Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law; and

7. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a business certified pursuant to this chapter has failed to comply with its subcontracting plan under subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this chapter has failed to comply with the subcontracting plan, the business shall provide a written explanation.

B. In addition, the Department shall serve as the liaison between the Commonwealth's existing businesses and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Encourage the training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses; *and*

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth; *and*

6. ~~Administer the Small Business Jobs Grant Fund Program described in Article 2 (§ 2.2-1611 et seq.).~~

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such

60 information and assistance as the Department may require in the discharge of its duties.

61 **§ 2.2-2240.7. Small Business Jobs Grant Fund Program; composition; general qualifications.**

62 A. As used in this section:

63 "Base year" means the calendar year immediately preceding the 24-month period in which a small
64 business creates new full-time positions making it eligible for grants under this section.

65 "Capital investment" means an investment in real property, personal property, or both, at a
66 manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be
67 capitalized by the company and that establishes or increases the productivity of the manufacturing
68 facility, results in the utilization of a more advanced technology than is in use immediately prior to such
69 investment, or both.

70 "Fund" means the Small Business Jobs Grant Fund established in subsection E.

71 "New full-time position" means employment of a resident of the Commonwealth for an indefinite
72 duration in the Commonwealth at a small business requiring (i) a minimum of 35 hours of an
73 employee's time per week for the entire normal year of the small business's operation, which "normal
74 year" shall consist of at least 48 weeks, or (ii) a minimum of 1,680 hours per year. Seasonal,
75 temporary, or contract positions or positions created when a job function is shifted from an existing
76 location in the Commonwealth shall not qualify as a new full-time position.

77 "Program" means the Small Business Jobs Grant Fund Program established in subsection B.

78 "Small business" means an independently owned and operated business that has been organized
79 pursuant to Virginia law or maintains a principal place of business in Virginia and has 50 or fewer
80 employees in its base year and average annual gross receipts of \$3 million or less averaged over the
81 previous 24-month period.

82 B. There is hereby created the Small Business Jobs Grant Fund Program to support private sector
83 job creation by encouraging the expansion of existing Virginia businesses and the start-up of new
84 business operations in Virginia. The Authority shall develop the Program to assist Virginia small
85 businesses with job creation.

86 C. To be eligible for assistance under the Program, a company shall:

87 1. Create or sustain employment for the Commonwealth in a basic sector industry or function, which
88 would include businesses or functions that directly or indirectly derive more than 35 percent of their
89 revenues from out-of-state sources, as determined by the Authority;

90 2. Pay a minimum entry-level wage rate per hour of at least 1.35 times the federal minimum wage.
91 In areas that have an unemployment rate of one and one-half times the statewide average unemployment
92 rate, the wage rate minimum may be waived by the Authority. Only full-time positions that qualify for
93 benefits shall be eligible for assistance;

94 3. Submit copies of employer quarterly payroll reports provided by the company to the Virginia
95 Employment Commission to verify the employment status of each position that has been included in a
96 grant awarded under a component program; and

97 4. Meet such additional criteria as may be set forth by the Authority.

98 D. In addition to the requirements of subsection C regarding company eligibility, to be eligible for
99 assistance under the Program a company shall (i) create a minimum of five net new full-time positions
100 and (ii) make a new capital investment of at least \$50,000.

101 The Secretary of Commerce and Trade may waive these requirements but shall promptly provide
102 written notice of any such waiver to the Chairmen of the Senate Committee on Finance and House
103 Committee on Appropriations, which notice shall include a justification for any waiver of these
104 requirements.

105 E. There is hereby created in the state treasury a permanent nonreverting fund to be known as the
106 Small Business Jobs Grant Fund. The Fund shall consist of (i) transfers from the Virginia Jobs
107 Investment Program funded in the general appropriation act currently in effect and (ii) any other
108 moneys designated for deposit into the Fund from any source, public or private. Interest earned on
109 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
110 including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
111 remain in the Fund. The Fund shall be managed and administered within the Authority.

112 F. Moneys in the Fund shall be used solely for the purpose of providing grants to small businesses
113 that create at least five new full-time positions within any 24-month period. A small business meeting
114 the conditions of this section shall be eligible to receive a grant from the Fund ranging from \$500 to
115 \$2,000 per each new full-time position that has been created based on criteria established by the
116 Authority pursuant to subsection G.

117 In awarding grants, priority shall be given to small businesses creating new full-time positions in
118 areas with an annual average unemployment rate of more than 125 percent of the statewide average
119 unemployment rate.

120 G. Grant payments under this section shall be conditional upon the small business substantially
121 retaining (i) the number of full-time positions in its base year plus (ii) the number of new full-time

positions for which grants are to be paid. In no case shall the retention period, as determined by the Authority, be less than 12 months for any new full-time position for which a grant is to be paid.

No grant shall be awarded or paid for any new full-time position created prior to July 1, 2010. No grant shall be awarded or paid for any new full-time position created solely as a result of a merger, acquisition, or similar business combination or a change in business form unless such new full-time position is moved into the Commonwealth from outside of the Commonwealth.

H. The Authority shall establish criteria for determining the amount of the grant to be awarded for each eligible new full-time position created by a small business that will be based on the level of education, training, and experience required for the job. Such criteria shall also (i) prohibit a small business from receiving more than one grant under this section for the same position and (ii) require the employee to be employed in the new full-time position for at least 90 days prior to the award of the grant.

I. The Authority shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Authority may require the production of any document, instrument, certificate, or legal opinion or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Authority.

§ 2.2-2240.8. Creation, administration, and management of the Small Business Investment Grant Fund.

A. As used in this section:

"Eligible investor" means an individual subject to the tax imposed by § 58.1-320 or a special purpose entity established for the purpose of making investments for an individual. "Eligible investor" does not include an individual who engages in the business of making debt or equity investments in private businesses, or any person that would be allocated a portion of the grant under this section as a partner, shareholder, member, or owner of an entity that engages in such business.

"Financing Authority" means the Virginia Small Business Financing Authority established in Article 7 (§ 2.2-2279 et seq.) of Chapter 22 of Title 2.2.

"Fund" means the Small Business Investment Grant Fund established in subsection B.

"Pass-through entity" means the same as that term is defined in § 58.1-390.1.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt.

"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross revenues of no more than \$5 million in its most recent fiscal year; (ii) has its principal office or facility in the Commonwealth; (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth; (iv) has not obtained during its existence more than \$5 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from national or state-chartered banking or savings and loan institutions; (v) has no more than 50 employees who are employed within the Commonwealth; and (vi) has been designated as such by the Financing Authority pursuant to the provisions of this section.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance, (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person, and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Small Business Investment Grant Fund, to be administered by the Authority. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants pursuant to this section, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the Chief Executive Officer. Grants from the Fund shall only be made to applications pursuant to this section.

C. An eligible investor that makes a qualified investment in a small business on or after July 1, 2016, but prior to January 1, 2019, that has been certified by the Authority pursuant to subsection D shall be eligible for a grant in an amount equal to the lesser of 50 percent of the qualified investment or \$50,000. An eligible investor may apply for a grant for each qualified investment that is made to one or more small businesses not to exceed a total grant allocation from the Fund of \$250,000 per eligible investor.

D. A small business shall apply with the Financing Authority to receive qualified investments eligible

183 *for the grant pursuant to this section and shall provide to the Financing Authority such information as*
184 *the Authority deems necessary to demonstrate that it meets the qualifications set forth in subsection A.*

185 *E. Any eligible investor applying for a grant pursuant to this section shall submit an application to*
186 *the Financing Authority. The Financing Authority shall determine the amount of the grant allowable to*
187 *the eligible investor for the year.*

188 *F. Unless the eligible investor transfers the equity received in connection with a qualified investment*
189 *as a result of (i) the liquidation of the small business issuing such equity; (ii) the merger, consolidation,*
190 *or other acquisition of such business with or by a party not affiliated with such business; or (iii) the*
191 *death of the eligible investor, any eligible investor that fails to hold such equity for at least two years*
192 *shall forfeit the grant and shall pay the Financing Authority interest on the total allowed grant at the*
193 *rate of one percent per month, compounded monthly, from the date the grant was awarded to the*
194 *taxpayer. The Financing Authority shall deposit any amounts received under this subsection into the*
195 *general fund of the Commonwealth.*

196 *G. Grants shall be issued in the order that each completed eligible application is received by the*
197 *Financing Authority. In the event that the amount of eligible grants requested in a fiscal year exceeds*
198 *the funds available in the Fund, such grants shall be paid in the next fiscal year in which funds are*
199 *available.*

200 *H. An eligible investor shall not be awarded a grant pursuant to this section for any investment in a*
201 *small business for which the eligible investor has been allowed a tax credit pursuant to § 58.1-339.4.*

202 *I. The Financing Authority shall establish policies and procedures relating to (i) the certification of*
203 *small businesses, (ii) the application for grants, and (iii) the recapture of grant awards claimed with*
204 *interest in the event that the qualified investment is not held for the requisite period set forth in*
205 *subsection F. Such policies and procedures shall be exempt from the Administrative Process Act*
206 *(§ 2.2-4000 et seq.).*

207 **2. That Article 2 (§§ 2.2-1611 through 2.2-1616) of Chapter 16.1 of Title 2.2 of the Code of**
208 **Virginia is repealed.**