

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 83

An Act to amend and reenact § 10.1-1237 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 2.2-2240.2:1, and to repeal § 2.2-2240.2 of the Code of Virginia, relating to economic development; Virginia Business Ready Sites Program Fund created.

[S 28]

Approved April 5, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1237 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2240.2:1 as follows:

§ 2.2-2240.2:1. Virginia Business Ready Sites Program Fund.

A. As used in this section:

"Eligible site" means a site suitable to be marketed for industrial or commercial economic development purposes, as determined by the Authority. For a site development grant, an "eligible site" shall meet, or be determined by the Authority to be expected to meet, each of the following criteria: (i) the site is at least 100 contiguous acres, or it is a brownfield, as defined in § 10.1-1230; (ii) the site has parcels zoned for industrial or commercial uses; and (iii) the site is publicly owned, or if the site is under private ownership, there is an option agreement or other documentation of a commitment by the private owner to a competitive sales price, to permit access to the site for site assessment, and to market the site for industrial or commercial economic development purposes. If a site is located in Region 1 or 2, and it meets the criteria in clauses (ii) and (iii), the Authority may determine it to be an "eligible site" if the site is at least 50 contiguous acres. For a site characterization grant, an "eligible site" means any site of at least 25 acres that is suitable for potential industrial or commercial development.

"Fund" means the Virginia Business Ready Sites Program Fund established under subsection B.

"Industrial employment" means total Virginia employment for the most recent calendar year for which data is available, in the manufacturing (NAICS 31-33) or warehousing and storage (NAICS 493110) industries, as published by the U.S. Bureau of Labor Statistics' Quarterly Census of Employment and Wages.

"Region" means a region designated by the Virginia Growth and Opportunity Board under § 2.2-2484.

"Site characterization grant" means a grant to ascertain and designate a site's level of development as outlined in the Virginia Business Ready Sites Program Fund guidelines.

"Site development grant" means a grant to further develop a site for marketing to economic development projects as outlined in the Virginia Business Ready Sites Program Fund guidelines.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Business Ready Sites Program Fund. The Fund shall be established on the books of the Comptroller. All moneys appropriated by the General Assembly for the Fund, and from any other sources, public or private, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. Moneys in the Fund shall be used to provide site characterization grants and site development grants for eligible sites for the purpose of creating and maintaining a portfolio of project-ready sites to promote economic development in all regions of the Commonwealth. Such grants shall be awarded on a competitive basis in accordance with the procedures of subsection D.

D. 1. The Governor shall award grants from the Fund only to political subdivisions of the Commonwealth.

2. The Authority shall establish guidelines, procedures, and objective criteria for the award and distribution of grants from the Fund. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

3. To qualify to receive a grant from the Fund, a grant recipient shall enter into a performance agreement with the Authority that contains, at a minimum, provisions for disbursement of the grant, use of the proceeds, reporting, and repayment obligations in the event that the recipient fails to meet the terms of the performance agreement. Any repayment of grant funds required by such performance agreement shall be paid into the state treasury and credited to the Fund.

4. Any grant awarded from the Fund shall require matching funds as described in the guidelines established under subdivision 2.

E. The Authority shall report annually by November 1 on grant awards and expenditures from the Fund. The report shall include total appropriations made or transferred to the Fund, total grants

awarded, total expenditures from the Fund, cash balances, and balances available for future commitments. The Authority shall prepare the report required by this subsection in conjunction with the reports required under § 2.2-2237.1.

F. The Auditor of Public Accounts or his authorized representative shall audit the accounts of the Fund in accordance with generally accepted auditing standards as determined necessary by the Auditor of Public Accounts. The cost of such audit services shall be borne by the Fund.

§ 10.1-1237. Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund established; uses.

A. There is hereby created and set apart a special, permanent, perpetual and nonreverting fund to be known as the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund for the purposes of promoting the restoration and redevelopment of brownfield sites and to address environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The Fund shall consist of sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants, awards or other forms of financial assistance received by the Commonwealth.

B. 1. The Authority shall administer and manage the Fund and establish the interest rates and repayment terms of such loans in accordance with a memorandum of agreement with the Partnership. The Partnership shall direct the distribution of loans or grants from the Fund to particular recipients based upon guidelines developed for this purpose. With approval from the Partnership, the Authority may ~~disperse monies~~ disburse moneys from the Fund for the payment of reasonable and necessary costs and expenses incurred in the administration and management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans for its management services.

2. The Partnership shall, working in consultation with the Department, include provisions in its guidelines that authorize grants from the Fund of up to \$500,000 for site remediation. The guidelines shall include a requirement that sites with potential for redevelopment and economic benefits to the surrounding community be considered for such grants.

C. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check and signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be made by the Authority upon written request signed by the Chief Executive Officer of the Virginia Economic Development Partnership.

D. The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

E. The Partnership may approve grants to local governments for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The grants may be used to pay the reasonable and necessary costs associated with the restoration and redevelopment of a brownfield site for (i) environmental and cultural resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan. The Partnership may establish such terms and conditions as it deems appropriate and shall evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority shall disburse grants from the Fund in accordance with a written request from the Partnership.

F. The Authority may make loans to local governments, public authorities, corporations and partnerships to finance or refinance the cost of any brownfield restoration or remediation project for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to economic development prospects. The loans shall be used to pay the reasonable and necessary costs related to the

restoration and redevelopment of a brownfield site for (i) environmental and cultural resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan.

The Partnership shall designate in writing the recipient of each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

G. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant perform any of the following:

1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government, and (iii) any amounts necessary to create and maintain any required reserve.

2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government.

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

4. Create and maintain other special funds as required by the Authority.

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

- a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund;

- b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

- c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, for the purpose of financing, and the pledging of the revenues from such combined projects and undertakings to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

- d. The maintenance, replacement, renewal, and repair of the project; and

- e. The procurement of casualty and liability insurance.

6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time during the term of the loan.

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default.

H. All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

I. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

J. The Partnership, through its Chief Executive Officer, shall have the authority to access and release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the balance

of the Fund. If the Partnership, through its Chief Executive Officer, requests a disbursement in an amount exceeding the current Fund balance, the disbursement shall require the written approval of the Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including, but not limited to, personnel, administrative and equipment costs and expenses directly incurred by the Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the Partnership.

The Authority is empowered at any time and from time to time to pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

K. The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

L. The Authority may, with the approval of the Partnership, pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

M. The Partnership, in consultation with the Department of Environmental Quality, shall develop guidance governing the use of the Fund and including criteria for project eligibility that considers the extent to which a grant or loan will facilitate the use or reuse of existing infrastructure, the extent to which a grant or loan will meet the needs of a community that has limited ability to draw on other funding sources because of the small size or low income of the community, the potential for redevelopment of the site, the economic and environmental benefits to the surrounding community, and the extent of the perceived or real environmental contamination at the site. The guidelines shall include a requirement for a one-to-one match by the recipient of any grant made by or from the Fund.

2. That § 2.2-2240.2 of the Code of Virginia is repealed.

3. That any funds remaining in the Major Employment and Investment Project Site Planning Grant Fund pursuant to § 2.2-2240.2 of the Code of Virginia, as repealed by this act, at the end of fiscal year 2022 shall be allocated to the Virginia Business Ready Sites Program Fund established under § 2.2-2240.2:1 of the Code of Virginia, as created by this act.