

# VIRGINIA ACTS OF ASSEMBLY -- 2023 RECONVENED SESSION

## CHAPTER 779

*An Act to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 27.2, consisting of sections numbered 2.2-2760 through 2.2-2764, relating to economic development; Virginia Business Ready Sites Acquisition Fund and Program.*

[H 1842]

Approved April 12, 2023

**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 27.2, consisting of sections numbered 2.2-2760 through 2.2-2764, as follows:**

### **CHAPTER 27.2.**

#### **VIRGINIA BUSINESS READY SITES ACQUISITION FUND AND PROGRAM.**

##### **§ 2.2-2760. Definitions.**

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

*"Authority" means the Virginia Economic Development Partnership Authority.*

*"Commission" means the MEI Project Approval Commission established by § 30-309.*

*"Department" means the Department of General Services.*

*"Development" means improvements designed to prepare a site for construction or higher use than was possible in the site's natural state or its state at the time of acquisition.*

*"Due diligence" means undertaking (i) necessary land title, valuation, environmental, engineering, or technical studies; (ii) professional or consulting services related to a site or site selection; or (iii) any other similar activities.*

*"Eligible acquisition site" means a site suitable to be marketed for economic development purposes. An eligible acquisition site shall meet, or be expected to meet, each of the following criteria: (i) the site is at least 500 contiguous acres and (ii) the site presents a significant opportunity for the Commonwealth to attract a large-scale economic development project. An eligible acquisition site need not be zoned for an economic development use to be considered an eligible acquisition site.*

*"Fund" means the Virginia Business Ready Sites Acquisition Fund established by § 2.2-2762.*

*"Large-scale economic development project" means an economic development project that involves a capital investment of at least \$250 million and that creates at least 250 new jobs.*

*"Program" means the Virginia Business Ready Sites Acquisition Program established by § 2.2-2761.*

*"Project development agreement" means an agreement by which the Authority sells, leases, transfers, or otherwise disposes of an eligible acquisition site to a private employer for a large-scale economic development project. A project development agreement shall require that the new jobs created by the large-scale economic development project pay at least 100 percent of the prevailing wage for the locality in which the project is located.*

*"Region" means the same as that term is defined in § 2.2-2484.*

*"Site acquisition activities" means the completion of due diligence activities, as well as the purchasing or optioning of an eligible acquisition site for purposes of the Program.*

*"Site development activities" means development of a site. Site development activities include clearing, grading, improving drainage, constructing pads, mitigating environmental concerns, providing road or rail access to the site, securing rights-of-way and easements, extending utilities to the site, and undertaking other similar activities.*

##### **§ 2.2-2761. Virginia Business Ready Sites Acquisition Program.**

*A. There is hereby established the Virginia Business Ready Sites Acquisition Program for the purpose of disbursing moneys from the Fund to (i) acquire or option eligible acquisition sites for the purpose of creating and maintaining a portfolio of project-ready sites to promote economic development in all regions of the Commonwealth, (ii) conduct site development activities to improve such sites in order to increase their marketability for large-scale economic development projects, or (iii) enter into project development agreements with private employers for large-scale economic development projects. Eligible acquisition sites may be acquired from public or private owners, provided that any such acquisition shall be a bona fide arm's length transaction freely entered into by the parties and that such acquisition shall not involve any property or interests owned by a member of the General Assembly or by local government officials in the proposed site locality. Site acquisition activities, site development activities, and project development agreements shall be conducted in accordance with the guidelines, procedures, and objective criteria established pursuant to subsection C and the objective of the Program established in § 2.2-2763.*

*B. Administration of the Program shall be conducted by the Authority in cooperation with the Department in the manner provided by this subsection and subject to review by the Commission*

pursuant to § 2.2-2764.

1. The Authority, in cooperation with the Department, shall be responsible for identifying potential eligible acquisition sites and initiating, on behalf of the Commonwealth and in a manner that protects the Commonwealth's economic interests, the process of negotiating the purchase or option of a site. Any proposal for the purchase or option of a site shall be reviewed by the Department and approved by the Governor pursuant to § 2.2-1149 prior to review of such proposal by the Commission pursuant to § 2.2-2764 and prior to completing any such purchase or option of a site.

2. The Department shall be responsible for completing the purchase or option of a site and holding the property or option on behalf of the Commonwealth. The Department shall be responsible for conducting all site development activities, in cooperation with the Authority.

3. The Authority shall be responsible for marketing sites to private employers to enter into project development agreements for large-scale economic development projects.

C. The Authority, in consultation with the Department and the Office of the Attorney General, shall establish guidelines, procedures, and objective criteria for conducting the activities described in clauses (i), (ii), and (iii) of subsection A and the division of responsibilities described in subsection B. Such guidelines, procedures, and objective criteria shall be designed to meet the objective of the Program described in § 2.2-2763, shall include an overview of eligible expenses and payment schedules, including a detailed listing of administrative expenses eligible for reimbursement from the Fund, and shall be submitted to the Senate Committee on Finance and Appropriations and the House Committee on Appropriations, which may provide feedback on such guidelines, procedures, and objective criteria before they are established. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

D. Any funds received from the sale or long-term lease of properties purchased pursuant to this chapter shall be deposited to the general fund.

E. Prior to the acquisition or optioning of any site pursuant to subsection B, the Authority and the Department shall notify the locality in which the site is located of the Commonwealth's interest in purchasing or optioning the site. Upon receipt of such notice, the locality or its economic development authority may elect, within 14 days of receipt of such notice, to attempt to purchase or option such site in lieu of the Department. If the locality or its economic development authority elects to attempt to purchase or option such site, but does not within 90 days of such election either (i) purchase or option such site or (ii) have a contract in place indicating an intent to purchase or option such site, the Department may purchase the site pursuant to subsection B.

F. The Authority shall report annually by November 1 on site acquisition activities, site development activities, and project development agreements. The report shall include total appropriations made or transferred to the Fund, an itemized list of administrative costs incurred by the Program, total acquisitions made, number and performance of project development agreements, 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.

G. 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.

#### **§ 2.2-2762. Virginia Business Ready Sites Acquisition Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Business Ready Sites Acquisition Fund, referred to in this section as "the 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. Moneys in the Fund shall be used solely for the purposes of this chapter, which may include administrative costs for due diligence, site acquisition activities, or site development activities, as those terms are defined in § 2.2-2760. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department, pursuant to subdivision B 2 of § 2.2-2761, or the Authority, pursuant to subdivision B 1 or 3 of § 2.2-2761.

#### **§ 2.2-2763. Objective of the Program.**

The objective of the Program shall be to identify and fill gaps in the Commonwealth's current portfolio of industrial properties available for large-scale economic development projects in order to accelerate economic growth in all regions of the Commonwealth. In evaluating sites to acquire, option, develop, or market for purposes of the Program, the Authority shall consider (i) the potential of the site to fill a gap in the inventory of needed project-ready sites in the Commonwealth, (ii) the scope and cost of the work required to make the site project ready, (iii) the potential return on investment for the Commonwealth for the cost of acquiring and developing the site, and (iv) the type of industry or business for which the site would be suitable.

#### **§ 2.2-2764. Review by MEI Commission.**

A. 1. Before entering into an agreement to acquire, option, or develop any site, the Authority and the Department shall jointly submit a proposal detailing their plans for acquisition and development to the Commission. The Commission shall review such proposal and determine whether the plan is consistent with the objective described in § 2.2-2763, addresses a demonstrated need of the Commonwealth, and was approved by the Governor after a recommendation from the Department pursuant to § 2.2-1149. If the Commission finds that the proposal meets such objective, addresses such need, and was approved pursuant to § 2.2-1149, the Commission shall certify the proposal. If the Commission finds that such proposal does not meet the objective of the Program, does not address such need, or was not approved pursuant to § 2.2-1149, (i) the Commission shall communicate its findings to the Governor and to the General Assembly and (ii) the Authority shall not implement the proposal unless the proposal, either in its original or revised form, is authorized by the General Assembly at its next session and enacted into law.

2. Before entering into any project development agreement, the Authority shall submit a proposal detailing such agreement to the Commission. The Commission shall review such proposal and determine whether the proposal is consistent with the objective described in § 2.2-2763. If the Commission finds that the proposal meets such objective, the Commission shall certify the proposal. If the Commission finds that such proposal does not meet the objective of the Program, (i) the Commission shall communicate its findings to the Governor and to the General Assembly and (ii) the Authority shall not implement the proposal unless either (a) the Authority resubmits a revised proposal to the Commission and receives a favorable recommendation or (b) the proposal, either in its original or revised form, is authorized by the General Assembly at its next session and enacted into law.

B. The Authority shall submit the guidelines, procedures, and objective criteria required by subsection C of § 2.2-2761, and any subsequent changes to such policies, to the Commission. The Commission may provide feedback on such guidelines, procedures, and objective criteria and recommend proposed changes to the Authority.

C. Notwithstanding the provisions of subsection B of § 30-310, an affirmative vote by a simple majority of the legislative members of the Commission shall be sufficient to render a decision of the Commission for purposes of subsection A or B.

D. A project development agreement subject to review pursuant to this section shall also be subject to review pursuant to Chapter 47 (§ 30-309 et seq.) of Title 30 if the project development agreement provides incentives that exceed the review thresholds prescribed by that chapter. The value of any property sold, leased, transferred, or otherwise provided to a private employer at below fair market value as part of a project development agreement shall be included in calculating the amount of incentives for purposes of review under Chapter 47 (§ 30-309 et seq.) of Title 30.

E. The chairman of the Commission shall report annually by the first day of each regular session of the General Assembly on all decisions made by the Commission in the previous year.