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SENATE BILL NO. 897

Offered January 11, 2023

Prefiled January 5, 2023

A *BILL to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 3.2, consisting of sections numbered 3.2-312 through 3.2-319, relating to Governor's Blue Catfish Industries Development Fund established.*

 Patron—Stuart

Referred to Committee on Agriculture, Conservation and Natural Resources

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 3.2, consisting of sections numbered 3.2-312 through 3.2-319, as follows:

CHAPTER 3.2.**GOVERNOR'S BLUE CATFISH INDUSTRIES DEVELOPMENT FUND.****§ 3.2-312. Definitions.**

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

"Fund" means the Governor's Blue Catfish Industries Development Fund established pursuant to § 3.2-313.

"New job" means employment of an indefinite duration, created as the direct result of a private investment, for which a business beneficiary of moneys from the Fund 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 business's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. The term "new job" includes positions with contractors provided that all requirements included within the definition of the term are met. The term new job does not include 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, or positions with suppliers, and multiplier or spin-off jobs

"Planning Grant Program" means the Blue Catfish Industries Development Planning Grant Program established pursuant to § 3.2-315.

"Prevailing average wage" means the 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.

"Secretary" means the Secretary of Agriculture and Forestry.

§ 3.2-313. Governor's Blue Catfish Industries Development Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Governor's Blue Catfish Industries Development Fund. The Fund shall be established on the books of the Comptroller. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. 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 a biennium shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely by the Governor to attract new and expanding blue catfish processing, flash freeze, or value-added facilities. 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 and Appropriations 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) the number of new jobs expected to be created, (ii) the anticipated amount of private capital investment, (iii) additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and new jobs created, (iv) the anticipated amount of blue catfish used by the project, (v) a return on investment analysis to determine the appropriate size of any grant or loan, and (vi) an analysis of the impact on competing businesses already located in the area.

C. Funds may be used for public and private utility extension or capacity development and public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to

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59 prepare a site for construction; construction or build-out of publicly or privately owned buildings;
60 training; or grants or loans to an industrial development authority, housing and redevelopment
61 authority, or other political subdivision for purposes directly relating to any of the foregoing. However,
62 in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment
63 for any rental, lease, license, or other contractual right to the use of any property.

64 D. Moneys in the Fund shall not be used for any economic development project in which a business
65 relocates or expands its operations in one or more Virginia localities and simultaneously closes its
66 operations or substantially reduces the number of its employees in another Virginia locality. The
67 Secretary shall enforce this policy and for any exception thereto shall promptly provide written notice to
68 the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and
69 Appropriations, and such notice shall include a justification for any exception to such policy.

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

76 **§ 3.2-314. Guidelines and criteria for awarding grants from Fund.**

77 The Secretary, in consultation with the Virginia Economic Development Partnership, the Department,
78 and the Virginia Marine Sciences Commission, as well as the Department of Corrections for the purpose
79 of reentry incentives, shall assist the Governor in developing objective guidelines and criteria that shall
80 be used in awarding grants from the Fund. The guidelines may require that as a condition of receiving
81 any grant incentive that is based on employment goals, a recipient company must provide copies of
82 employer quarterly payroll reports provided to the Virginia Employment Commission to verify the
83 employment status of any position included in the employment goal. The guidelines and criteria may
84 include a requirement that a project purchase a minimum percentage of blue catfish used and a cap on
85 the amount of funds to be provided to any individual project.

86 **§ 3.2-315. Blue Catfish Industries Development Planning Grant Program.**

87 A. The Governor may award grants from the Fund for the Blue Catfish Industries Development
88 Planning Grant Program to encourage efforts by political subdivisions to support the blue catfish
89 industry.

90 B. Any funds awarded by the Governor pursuant to this section shall be awarded as reimbursable
91 grants to political subdivisions.

92 C. The Secretary shall develop guidelines for the Planning Grant Program and administer the
93 Program on behalf of the Governor. Such guidelines shall state the criteria the Governor will use in
94 evaluating any grant application submitted pursuant to this section. Such guidelines may allow
95 contributions to a project by certain specified entities, such as a nonprofit organization or charitable
96 foundation.

97 **§ 3.2-316. Blue Catfish Flash Freeze Grant Program.**

98 A. The Governor may award grants from the Fund for the Blue Catfish Flash Freeze Grant Program
99 to encourage efforts by political subdivisions to support the flash freezing of blue catfish.

100 B. Any funds awarded by the Governor pursuant to this section shall be awarded as reimbursable
101 grants of no more than \$50,000 per grant to political subdivisions to support infrastructure development
102 projects that support the flash freezing of catfish.

103 C. The Secretary shall develop guidelines for the Flash Freeze Grant Program and administer the
104 Flash Freeze Grant Program on behalf of the Governor. Such guidelines shall (i) require that grants be
105 awarded on a competitive basis, (ii) state the criteria the Governor will use in evaluating any grant
106 application submitted pursuant to this section, and (iii) favor projects that create infrastructure in
107 proximity to small-scale blue catfish watermen.

108 D. The guidelines developed pursuant to subsection C may allow contributions to a project by
109 certain specified entities, such as a nonprofit organization or charitable foundation.

110 **§ 3.2-317. Contractual obligations of entities receiving grants or loans from the Fund.**

111 A. Notwithstanding any provision in this chapter, each political subdivision that receives a grant or
112 loan from the Fund shall enter into a contract with each business beneficiary of moneys from the Fund.
113 A person or entity shall be a business beneficiary of funds from the Fund if grant or loan moneys
114 awarded from the Fund by the Governor are paid to a political subdivision and (i) subsequently
115 distributed by the political subdivision to the person or entity or (ii) used by the political subdivision for
116 the benefit of the person or entity but never distributed to the person or entity.

117 B. The contract between the political subdivision and the business beneficiary shall provide in detail
118 the following information:

- 119 1. The fair market value of all funds that the Commonwealth has committed to provide;
- 120 2. The fair market value of all matching funds or any in-kind match that the political subdivision has

121 agreed to provide;

122 3. How funds committed by the Commonwealth, including funds from the Fund committed by the
123 Governor are to be spent;

124 4. The minimum private investment to be made and the number of new jobs projected to be created
125 by the business beneficiary;

126 5. The minimum percentage of blue catfish to be used;

127 6. The average wage, excluding fringe benefits, projected to be paid in the new jobs;

128 7. The prevailing average wage; and

129 8. The formula, means, or processes agreed to be used for measuring compliance with the minimum
130 private investment and new jobs projections, including consideration of any layoffs instituted by the
131 business beneficiary over the course of the period covered by the contract.

132 C. Such contract shall state the date by which the agreed-upon private investment shall be met by
133 the business beneficiary of moneys from the Fund and may provide for the political subdivision to grant
134 up to a 15-month extension of such date if deemed appropriate by the political subdivision subsequent to
135 the execution of the contract. Any extension of such date granted by the political subdivision shall be in
136 writing and promptly delivered to the business beneficiary, and the political subdivision shall
137 simultaneously provide a copy of the extension to the Secretary.

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

148 **§ 3.2-318. Copy of proposed contract to be submitted to the Attorney General.**

149 Notwithstanding any provision in this chapter or in the guidelines established pursuant to § 3.2-314,
150 prior to executing any contract pursuant to § 3.2-317 with a business beneficiary, the political
151 subdivision shall provide a copy of the proposed contract to the Attorney General. The Attorney General
152 shall review the proposed contract only (i) for enforceability as to its provisions and (ii) to ensure that
153 it is in appropriate legal form. The Attorney General shall provide any written suggestions to the
154 political subdivision within seven days of his receipt of the copy of the contract.

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

157 No political subdivision shall expend, distribute, pledge, use as security, or otherwise use any award
158 from the Fund unless and until such contract is executed with the business beneficiary.

159 **§ 3.2-319. Report to chairmen of legislative committees.**

160 Within the 30 days immediately following June 30 and December 30 of each year, the Governor
161 shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the
162 Senate Committee on Finance and Appropriations that shall include the following information regarding
163 each grant or loan awarded from the Fund during the immediately preceding six-month period for
164 economic development projects: (i) the name of the company that is the business beneficiary of the grant
165 and the type of business in which it engages; (ii) the locality of the project; (iii) the amount of the grant
166 committed from the Fund and the amount of all other funds committed by the Commonwealth from other
167 sources and the purpose for which such grants or other funds will be used; (iv) the amount of all
168 moneys or funds agreed to be provided by political subdivisions and the purposes for which they will be
169 used; (v) the number of new jobs projected to be created by the business beneficiary; (vi) the amount of
170 investment in the project agreed to be made by the business beneficiary; (vii) the timetable for the
171 completion of the project and new jobs created; and (viii) the prevailing average wage and the average
172 wage, excluding fringe benefits, projected to be paid in the new jobs.