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SENATE BILL NO. 667

Offered January 16, 2024

A *BILL to amend and reenact § 59.1-284.42 of the Code of Virginia, relating to Cloud Computing Cluster Infrastructure Grant Fund; performance agreement.*

Patron—Stuart

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That § 59.1-284.42 of the Code of Virginia is amended and reenacted as follows:****§ 59.1-284.42. Cloud Computing Cluster Infrastructure Grant Fund.**

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

"Affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a qualified company.

"Capital investment" means an investment by or on behalf of a qualified company on or after January 1, 2023, but prior to July 1, 2040, in real property, tangible personal property, or both, at a facility that is properly chargeable to a capital account or would be so chargeable with a proper election.

"Construction cost" means any capital investment, except for the purchase of land, by a qualified company on or after January 1, 2023, in real or tangible personal property to develop or support a data center in a locality identified in a memorandum of understanding. "Construction cost" includes infrastructure costs.

"Facility" means the one or more buildings, group of buildings, and ancillary facilities and equipment that are located in a locality or localities identified in a memorandum of understanding and that are owned, occupied, or otherwise operated by or for the qualified company for data center and cloud computing cluster operations.

"Fund" means the Cloud Computing Cluster Infrastructure Grant Fund.

"Grant" means a grant from the Fund awarded to a qualified company that is intended to pay or reimburse the qualified company for (i) infrastructure costs related to the construction and support of facilities and (ii) costs for workforce development, recruiting, and training.

"Infrastructure costs" includes the costs related to fiber, water, wastewater, and stormwater facilities; gas pipelines; electrical transmission and distribution lines; and site clearing, grading, and other improvements to support the construction and development of a facility.

"Locality" means a county or city in the Commonwealth in which a company makes an eligible investment in a facility and creates new full-time jobs, that is identified in a memorandum of understanding, and that has entered into a performance agreement.

"Local match" means the funds committed by a locality identified in a memorandum of understanding to a qualified company related to the construction and operation of a facility. The local match shall be at least twice the amount provided from the Fund to the qualified company related to the construction of, and creation of new full-time jobs at, the facility in such locality, as set forth in a performance agreement. Expenditures by a locality that the Secretary has certified as infrastructure costs incurred by the locality at the request of the qualified company may be counted toward the local match obligation.

"MEI Commission" means the MEI Project Approval Commission established pursuant to Chapter 47 (§ 30-309 et seq.) of Title 30.

"Memorandum of understanding" means a memorandum of understanding entered into on or after January 1, 2023, between a qualified company, the Commonwealth, and VEDP that sets forth (i) the grant amount that the qualified company shall be eligible to receive for each new full-time job created and each \$1 million of capital investment in construction costs made; (ii) the total aggregate amount of grants that the qualified company shall be eligible to receive; (iii) the performance date; (iv) the requirements and timing for capital investment and new full-time job creation by the qualified company; (v) the identification of the locality or localities in which such investment and job creation shall take place; and (vi) any other terms and conditions deemed necessary or appropriate to be eligible for grant payments from the Fund.

"New full-time jobs" means job positions created on or after January 1, 2023, but prior to July 1, 2040, in which the employee of a qualified company works at a facility, for which the average annual wage is at least one and one-half times the prevailing wage of the locality where the job is located, and for which the qualified company provides standard fringe benefits. Such position shall require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the

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59 employer's operations, which normal year shall consist of at least 48 weeks, or (ii) 1,680 hours per year.
60 Seasonal or temporary positions shall not qualify as new full-time jobs. Positions created after January 1,
61 2023, by contractors that are dedicated full-time to providing operational services after the opening of a
62 facility may constitute new full-time jobs of the qualified company but shall not exceed 20 percent of
63 the number used to meet any performance criteria for the creation of new full-time jobs. A position
64 created when a job function is shifted from an existing location in the Commonwealth to a new facility
65 shall qualify as a new full-time job if the qualified company certifies that it has hired a new employee
66 or contractor to fill substantially the same job at the existing location as that performed by the
67 transferred position. Such jobs shall be in addition to any full-time jobs that a qualified company had in
68 the Commonwealth as of January 1, 2023.

69 "Performance agreement" means an agreement entered into on or after January 1, 2023, between a
70 qualified company, a locality identified in a memorandum of understanding, and VEDP that commits the
71 locality to provide local funds, either as annual cash grants or via the expenditure of local funds, for
72 infrastructure costs related to the qualified company. The local commitment shall equal at least twice the
73 amount of grants from the Fund committed by the Commonwealth for capital investment and the
74 creation of new full-time jobs in such locality. Such performance agreement may also include
75 commitments related to accelerated permitting, property tax classifications, and other such issues to
76 which the parties agree.

77 "Performance date" means the date set forth in a memorandum of understanding by which capital
78 investment and new full-time job creation targets shall be met in order to qualify for grants from the
79 Fund.

80 "Qualification" means the process by which a company becomes a qualified company eligible to
81 enter into a memorandum of understanding and receive grants from the Fund. Qualification shall require:

82 1. An endorsement by the MEI Commission that the company be approved by the General Assembly
83 to receive grants from the Fund. Such endorsement shall include a recommendation by the MEI
84 Commission as to the grant amount that the company shall receive for each new full-time job created
85 and each \$1 million of capital investment in construction costs made, as well as a recommendation as to
86 the total, aggregate amount of grants from the Fund that the company shall be eligible to receive. The
87 recommendation regarding the amount of the grants shall be based upon information provided by VEDP
88 to the MEI Commission based upon a return-on-investment analysis; and

89 2. Approval by the General Assembly in a general appropriation act, including approval of the
90 specific grant amount that the company shall receive for each new full-time job created and each \$1
91 million of capital investment in construction costs made, as well as the total, aggregate amount of grants
92 from the Fund that the company shall be eligible to receive and the date of endorsement by the MEI
93 Commission.

94 If the MEI Commission endorses a company to receive grants from the Fund, and legislation to
95 implement the MEI Commission's recommendation is introduced in a subsequent session of the General
96 Assembly, the specific grant amount recommended and any other recommended legislative changes shall
97 become public at such time as the company publicly declares its intention to make or cause to be made
98 a capital investment at facilities of at least \$50 billion and to create at least 1,500 new full-time jobs
99 that pay an average annual wage of at least one and one-half times the prevailing wage of the locality
100 where the job is located, but in no case later than the first day of the session of the General Assembly
101 in which approval is sought.

102 "Qualified company" means a company, including its affiliates, that, after qualification, enters into a
103 memorandum of understanding and is expected by the performance date to (i) make or cause to be made
104 a capital investment at facilities in localities identified in the memorandum of understanding of at least
105 \$50 billion and (ii) create at least 1,500 new full-time jobs that pay an average annual wage of at least
106 one and one-half times the prevailing wage of the locality where the job is located.

107 "Secretary" means the Secretary of Commerce and Trade or his designee.

108 "VEDP" means the Virginia Economic Development Partnership Authority.

109 B. There is hereby created in the state treasury a special nonreverting fund to be known as the Cloud
110 Computing Cluster Infrastructure Grant Fund. The Fund shall be established on the books of the
111 Comptroller. All funds appropriated for the Fund shall be paid into the state treasury and credited to the
112 Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
113 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert
114 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the
115 purpose of making grant payments pursuant to this chapter. Expenditures and disbursements from the
116 Fund shall be made by the State Treasurer on warrants issued by the Comptroller pursuant to subsection
117 F.

118 C. A qualified company shall be eligible to receive grant payments for each fiscal year beginning
119 with the Commonwealth's fiscal year starting on July 1, 2025, and ending no later than the
120 Commonwealth's fiscal year starting on July 1, 2044, based upon its actual investments and the number

of new full-time jobs created prior to the performance date in localities that have entered into a performance agreement. The grant payments under this section shall be paid to the qualified company from the Fund, subject to appropriation by the General Assembly, during each such fiscal year, contingent upon the qualified company meeting the requirements for receiving grant payments set forth in this section and in the memorandum of understanding. The amount of the grant payment in each fiscal year shall be calculated based upon the grant amount approved for the qualified company for each new full-time job created by the qualified company in the prior calendar year and each \$1 million of capital investment in construction costs by the qualified company in the prior calendar year, as approved by the General Assembly and included in the memorandum of understanding. The total aggregate amount of all grants paid to a qualified company shall not exceed the amount approved by the General Assembly and included in the memorandum of understanding.

D. Capital investments made by a qualified company and new full-time jobs created in a locality that (i) was not identified in the memorandum of understanding and (ii) did not enter into a performance agreement shall not qualify for grant payments pursuant to this chapter.

E. A qualified company applying for a grant payment pursuant to this chapter shall provide evidence, satisfactory to the Secretary, of (i) the capital investment in construction costs as of the last day of the calendar year that immediately precedes the application date; (ii) the aggregate number of new full-time jobs created and maintained as of the last day of the calendar year that immediately precedes the date of the application; and (iii) an average annual wage of the new full-time jobs of at least one and one-half times the prevailing wage of the locality where the job is located. The application and evidence shall be filed with the Secretary in person, by mail, or as otherwise agreed upon in the memorandum of understanding, by no later than April 1 of each year following the end of the calendar year upon which the evidence set forth is based. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

F. Within 60 days of receiving the application and evidence pursuant to subsection E, the Secretary shall certify to the Comptroller and the qualified company the verification of the information contained in the application and the resulting amount of the grant payments to which the grant-eligible company may be entitled for payment. Such grant payments shall be made annually by check or electronic payment issued by the State Treasurer on warrant of the Comptroller in each fiscal year following the submission of such application, as provided in the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks or electronic payments for grant payments under this chapter without a specific appropriation for the same.

G. As a condition for the receipt of a grant payment, a qualified company shall make available for inspection to the Secretary, upon request, documents relevant and applicable to determining whether the qualified company has met the requirements for the receipt of a grant payment as set forth in this chapter and subject to the memorandum of understanding. Copies of the performance agreement and a certification by each locality subject to a performance agreement and the qualified company that the provisions of such agreement have been fulfilled shall also be provided to the Secretary.