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HOUSE BILL NO. 1244

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations on February 12, 2010)

(Patrons Prior to Substitute—Delegates Marshall, D. W., III; O'Bannon [HB 602]; and Lewis [HB 1371])

A BILL to amend and reenact § 2.2-115 of the Code of Virginia, relating to the Governor's Development Opportunity Fund.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-115 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-115. Governor's Development Opportunity Fund.

As used in this section, unless the context requires otherwise:

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm 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 firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year.

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, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

"Prevailing average wage" means that 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.

"Private investment" means the private investment required under this section.

A. There is created the Governor's Development Opportunity Fund (the Fund) to be used by the Governor to attract economic development prospects and secure the expansion of existing industry in the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Governor shall report to the chairmen of the House Committees on Appropriations and Finance, and the Senate Committee on Finance as funds are awarded in accordance with this section.

B. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. Loans shall be approved by the Governor and made in accordance with guidelines established by the Virginia Economic Development Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the Fund. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the Fund in every such five-year period shall be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate for the calendar year that immediately precedes the calendar year of the award. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable minimum private investment and new jobs requirements set forth in this section, then any funds remaining in the Fund at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period.

C. Funds may be used for public and private utility extension or capacity development on and off site; 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 prepare a site for construction; construction or build-out of publicly owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. However, in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental,

HOUSE SUBSTITUTE

HB1244H1

60 lease, license, or other contractual right to the use of any property.

61 It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any
62 economic development project in which a business relocates or expands its operations in one or more
63 Virginia localities and simultaneously closes its operations or substantially reduces the number of its
64 employees in another Virginia locality. The Secretary of Commerce and Trade shall enforce this policy
65 and for any exception thereto shall promptly provide written notice to the Chairmen of the Senate
66 Finance and House Appropriations Committees, which notice shall include a justification for any
67 exception to such policy.

68 D. 1. Except as provided in this subsection, no grant or loan shall be awarded from the Fund unless
69 the project involves a minimum private investment of \$10,000,000 and creates 100 new jobs for which
70 the average wage, excluding fringe benefits, is no less than the prevailing average wage. In localities
71 with a population between 50,000 and 100,000, the minimum private investment shall be \$5,000,000,
72 creating 50 new jobs for which the average wage, excluding fringe benefits, is no less than the
73 prevailing average wage. In localities with a population of 50,000 or less, the minimum private
74 investment shall be \$2,500,000, creating 25 new jobs for which the average wage, excluding fringe
75 benefits, is no less than the prevailing average wage. Central cities or urban cores shall be treated for
76 eligibility purposes the same as communities with a population between 50,000 and 100,000. For
77 projects for which the average wage of the new jobs created, excluding fringe benefits, is at least twice
78 the prevailing average wage for that locality or region, the Governor shall have the discretion to require
79 no less than one-half the number of new jobs as set forth for that locality in this subsection.

80 2. Notwithstanding the provisions of subdivision D 1, if a project is to be located in a county or city
81 whose annual average unemployment rate for the most recent calendar year is greater than the final
82 statewide average unemployment rate for the most recent calendar year, a grant or loan may be awarded
83 from the Fund if the average wage of the new jobs, excluding fringe benefits, will be no less than 85%
84 of the prevailing average wage. In addition, for projects in such counties and cities, the Governor may
85 award a grant or loan for a project paying less than 85% of the prevailing average wage but still
86 providing customary employee benefits, only after the Secretary of Commerce and Trade has made a
87 written finding that the economic circumstances in the area are sufficiently distressed (i.e., high
88 unemployment or underemployment and negative economic forecasts) that assistance to the locality to
89 attract the project is nonetheless justified. However, the minimum private investment and number of new
90 jobs required to be created as set forth in this subsection shall still be a condition of eligibility for an
91 award from the Fund. Such written finding shall promptly be provided to the Chairmen of the Senate
92 Finance and House Appropriations Committees.

93 3. Notwithstanding the provisions of subdivision 1, if a project is to be located in a locality whose
94 unemployment rate is one and one half times or more the state average, the minimum private investment
95 shall be adjusted to \$7,500,000 and the minimum number of new jobs created shall be adjusted to 75
96 jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage.
97 In localities with a population between 50,000 and 100,000, the minimum private investment shall be
98 \$3,500,000, creating 35 new jobs for which the average wage, excluding fringe benefits, is no less than
99 the prevailing average wage. In localities with a population of 50,000 or less, the minimum private
100 investment shall be \$1,500,000, creating 15 new jobs for which the average wage, excluding fringe
101 benefits, is no less than the prevailing average wage. Localities qualifying under this subdivision that
102 have created Regional Industrial Facilities Authorities pursuant to § 15.2-6402, shall be eligible at the
103 lowest investment and job creation threshold of any locality in that Authority.

104 E. 1. The Virginia Economic Development Partnership shall assist the Governor in developing
105 objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund.
106 *The guidelines may include a requirement for the affected locality or localities to provide matching*
107 *funds which may be cash or in-kind, at the discretion of the Governor.* The guidelines and criteria shall
108 include provisions for geographic diversity and a cap on the amount of funds to be provided to any
109 individual project. *At the discretion of the Governor, this cap may be waived for qualifying projects of*
110 *regional or statewide interest.* In developing the guidelines and criteria, the Virginia Economic
111 Development Partnership shall use the measure for Fiscal Stress published by the Commission on Local
112 Government of the Department of Housing and Community Development for the locality in which the
113 project is located or will be located as one method of determining the amount of assistance a locality
114 shall receive from the Fund.

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

121 b. The contract between the political subdivision and the business beneficiary shall provide in detail

122 (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair
 123 market value of all matching funds (or in-kind match) that the political subdivision has agreed to
 124 provide, (iii) how funds committed by the Commonwealth (including but not limited to funds from the
 125 Fund committed by the Governor) and funds that the political subdivision has agreed to provide are to
 126 be spent, (iv) the minimum private investment to be made and the number of new jobs to be created
 127 agreed to by the business beneficiary, (v) the average wage (excluding fringe benefits) agreed to be paid
 128 in the new jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes agreed to
 129 be used for measuring compliance with the minimum private investment and new jobs requirements.

130 The contract shall state the date by which the agreed upon private investment and new job
 131 requirements shall be met by the business beneficiary of funds from the Fund and may provide for the
 132 political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the
 133 political subdivision subsequent to the execution of the contract. Any extension of such date granted by
 134 the political subdivision shall be in writing and promptly delivered to the business beneficiary, and the
 135 political subdivision shall simultaneously provide a copy of the extension to the Virginia Economic
 136 Development Partnership.

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

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

151 3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such
 152 contract with a business beneficiary, the political subdivision shall provide a copy of the proposed
 153 contract to the Attorney General. The Attorney General shall review the proposed contract (i) for
 154 enforceability as to its provisions and (ii) to ensure that it is in appropriate, legal form. The Attorney
 155 General shall provide any written suggestions to the political subdivision within seven days of his
 156 receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the
 157 enforceability of the contract's provisions and the legal form of the contract.

158 4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not
 159 expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until
 160 such contract as described herein is executed with the business beneficiary.

161 F. Within the 30 days immediately following June 30 and December 30 of each year, the Governor
 162 shall provide a report to the chairmen of the House Committees on Appropriations and Finance and the
 163 Senate Committee on Finance which shall include, but is not limited to, the following information
 164 regarding grants and loans awarded from the Fund during the immediately preceding six-month period
 165 for economic development projects: the name of the company that is the business beneficiary of the
 166 grant or loan and the type of business in which it engages; the location (county, city, or town) of the
 167 project; the amount of the grant or loan committed from the Fund and the amount of all other funds
 168 committed by the Commonwealth from other sources and the purpose for which such grants, loans, or
 169 other funds will be used; the amount of all moneys or funds agreed to be provided by political
 170 subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created
 171 by the business beneficiary; the amount of investment in the project agreed to be made by the business
 172 beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average
 173 wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

174 G. The Governor shall provide grants and commitments from the Fund in an amount not to exceed
 175 the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal
 176 years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the
 177 funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years.
 178 No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are
 179 currently available in the Fund.