

SENATE BILL NO. 28

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

on February 25, 2022)

(Patron Prior to Substitute--Senator Marsden)

A BILL 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.

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.

26 "Industrial employment" means total Virginia employment for the most recent calendar year for
27 which data is available, in the manufacturing (NAICS 31-33) or warehousing and storage (NAICS
28 493110) industries, as published by the U.S. Bureau of Labor Statistics' Quarterly Census of Employment
29 and Wages.

30 "Region" means a region designated by the Virginia Growth and Opportunity Board under § 2.2-
31 2484.

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

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

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

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

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

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

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

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

59 E. The Authority shall report annually by November 1 on grant awards and expenditures from the
60 Fund. The report shall include total appropriations made or transferred to the Fund, total grants awarded,
61 total expenditures from the Fund, cash balances, and balances available for future commitments. The
62 Authority shall prepare the report required by this subsection in conjunction with the reports required
63 under § 2.2-2237.1.

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

67 **§ 10.1-1237. Virginia Brownfields Restoration and Economic Redevelopment Assistance**
68 **Fund established; uses.**

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

77 B. 1. The Authority shall administer and manage the Fund and establish the interest rates and
78 repayment terms of such loans in accordance with a memorandum of agreement with the Partnership. The

79 Partnership shall direct the distribution of loans or grants from the Fund to particular recipients based upon
80 guidelines developed for this purpose. With approval from the Partnership, the Authority may ~~disperse~~
81 ~~monies~~ disburse moneys from the Fund for the payment of reasonable and necessary costs and expenses
82 incurred in the administration and management of the Fund. The Authority may establish and collect a
83 reasonable fee on outstanding loans for its management services.

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

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

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

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

119 F. The Authority may make loans to local governments, public authorities, corporations and
120 partnerships to finance or refinance the cost of any brownfield restoration or remediation project for the
121 purposes of promoting the restoration and redevelopment of brownfield sites and to address real
122 environmental problems or obstacles to reuse so that these sites can be effectively marketed to economic
123 development prospects. The loans shall be used to pay the reasonable and necessary costs related to the
124 restoration and redevelopment of a brownfield site for (i) environmental and cultural resource site
125 assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous
126 wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave
127 sites, and the appropriate and necessary treatment of significant archaeological resources, or the
128 stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register,
129 (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain
130 real property usable for new economic development, and (v) development of a remediation and reuse plan.

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

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

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

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

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

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

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

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

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

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

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

171 e. The procurement of casualty and liability insurance.

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

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

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

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

183 J. The Partnership, through its Chief Executive Officer, shall have the authority to access and
184 release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the
185 balance of the Fund. If the Partnership, through its Chief Executive Officer, requests a disbursement in an
186 amount exceeding the current Fund balance, the disbursement shall require the written approval of the
187 Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including,
188 but not limited to, personnel, administrative and equipment costs and expenses directly incurred by the
189 Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the
190 Partnership.

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

207 K. The Authority is empowered at any time and from time to time to sell, upon such terms and
208 conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this

209 chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall
210 be designated for deposit to, and become part of, the Fund.

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

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

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

236 3. That any funds remaining in the Major Employment and Investment Project Site Planning Grant
237 Fund pursuant to § 2.2-2240.2 of the Code of Virginia, as repealed by this act, at the end of fiscal
238 year 2022 shall be allocated to the Virginia Business Ready Sites Program Fund established under
239 § 2.2-2240.2:1 of the Code of Virginia, as created by this act.

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