

HOUSE BILL NO. 2479

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on February 14, 2023)

(Patron Prior to Substitute--Delegate Knight)

A BILL to amend and reenact § 58.1-609.3 of the Code of Virginia and to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 22.20, consisting of a section numbered 59.1-284.41, relating to data centers and cloud computing; sales tax exemption; grant fund.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-609.3 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 22.20, consisting of a section numbered 59.1-284.41, as follows:

§ 58.1-609.3. Commercial and industrial exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

- 1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.
- 2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to

27 produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or
28 for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or
29 replacements thereof, shall be exempt if the preponderance of their use is directly in processing,
30 manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection
31 do not apply to the drilling or extraction of oil, gas, natural gas and coalbed methane gas. In addition, the
32 exemption provided herein shall not be applicable to any machinery, tools, and equipment, or any other
33 tangible personal property used by a public service corporation in the generation of electric power, except
34 for raw materials that are inputs to production of electricity, including fuel, or for machinery, tools, and
35 equipment used to generate energy derived from sunlight or wind. The exemption for machinery, tools,
36 and equipment used to generate energy derived from sunlight or wind shall expire June 30, 2027.

37 3. Tangible personal property sold or leased to a public service corporation engaged in business as
38 a common carrier of property or passengers by railway, for use or consumption by such common carrier
39 directly in the rendition of its public service.

40 4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally
41 in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying
42 the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of
43 the United States or its territories or possessions, or in foreign commerce between ports in the
44 Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible
45 personal property used directly in the building, conversion or repair of the ships or vessels covered by this
46 subdivision. This exemption shall include dredges, their supporting equipment, attendant vessels, and fuel
47 and supplies for use or consumption aboard such vessels, provided the dredges are used exclusively or
48 principally in interstate or foreign commerce.

49 5. Tangible personal property purchased for use or consumption directly and exclusively in basic
50 research or research and development in the experimental or laboratory sense.

51 6. Notwithstanding the provisions of subdivision 20 of § 58.1-609.10, all tangible personal
52 property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common

53 carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one
54 day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

55 7. Meals furnished by restaurants or food service operators to employees as a part of wages.

56 8. Tangible personal property including machinery and tools, repair parts or replacements thereof,
57 and supplies and materials used directly in maintaining and preparing textile products for rental or leasing
58 by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

59 9. Certified pollution control equipment and facilities as defined in § 58.1-3660, except for any
60 equipment that has not been certified to the Department of Taxation by a state certifying authority or
61 subdivision certifying authority pursuant to such section.

62 10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or
63 consumption directly in the rendition of their services.

64 11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of
65 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or
66 photocopying of products for sale or resale.

67 12. From July 1, 1994, and ending July 1, 2022, raw materials, fuel, power, energy, supplies,
68 machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction,
69 or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section,
70 the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.2-
71 1600. For the purposes of this section, "drilling," "extraction," and "processing" shall include production,
72 inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition
73 consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility
74 wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts
75 therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling,
76 extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation
77 activities required by state or federal law.

78 13. Beginning July 1, 1997, (i) the sale, lease, use, storage, consumption, or distribution of an
79 orbital or suborbital space facility, space propulsion system, space vehicle, satellite, or space station of

80 any kind possessing space flight capability, including the components thereof, irrespective of whether
81 such facility, system, vehicle, satellite, or station is returned to this Commonwealth for subsequent use,
82 storage or consumption in any manner when used to conduct spaceport activities; (ii) the sale, lease, use,
83 storage, consumption or distribution of tangible personal property placed on or used aboard any orbital or
84 suborbital space facility, space propulsion system, space vehicle, satellite or space station of any kind,
85 irrespective of whether such tangible personal property is returned to this Commonwealth for subsequent
86 use, storage or consumption in any manner when used to conduct spaceport activities; (iii) fuels of such
87 quality not adapted for use in ordinary vehicles, being produced for, sold and exclusively used for space
88 flight when used to conduct spaceport activities; (iv) the sale, lease, use, storage, consumption or
89 distribution of machinery and equipment purchased, sold, leased, rented or used exclusively for spaceport
90 activities and the sale of goods and services provided to operate and maintain launch facilities, launch
91 equipment, payload processing facilities and payload processing equipment used to conduct spaceport
92 activities.

93 For purposes of this subdivision, "spaceport activities" means activities directed or sponsored at a
94 facility owned, leased, or operated by or on behalf of the Virginia Commercial Space Flight Authority.

95 The exemptions provided by this subdivision shall not be denied by reason of a failure,
96 postponement or cancellation of a launch of any orbital or suborbital space facility, space propulsion
97 system, space vehicle, satellite or space station of any kind or the destruction of any launch vehicle or any
98 components thereof.

99 14. Semiconductor cleanrooms or equipment, fuel, power, energy, supplies, or other tangible
100 personal property used primarily in the integrated process of designing, developing, manufacturing, or
101 testing a semiconductor product, a semiconductor manufacturing process or subprocess, or semiconductor
102 equipment without regard to whether the property is actually contained in or used in a cleanroom
103 environment, touches the product, is used before or after production, or is affixed to or incorporated into
104 real estate.

105 15. Semiconductor wafers for use or consumption by a semiconductor manufacturer.

106 16. Railroad rolling stock when sold or leased by the manufacturer thereof.

107 17. Computer equipment purchased or leased on or before June 30, 2011, used in data centers
108 located in a Virginia locality having an unemployment rate above 4.9 percent for the calendar quarter
109 ending November 2007, for the processing, storage, retrieval, or communication of data, including but not
110 limited to servers, routers, connections, and other enabling hardware when part of a new investment of at
111 least \$75 million in such exempt property, when such investment results in the creation of at least 100
112 new jobs paying at least twice the prevailing average wage in that locality, so long as such investment was
113 made in accordance with a memorandum of understanding with the Virginia Economic Development
114 Partnership Authority entered into or amended between January 1, 2008, and December 31, 2008. The
115 exemption shall also apply to any such computer equipment purchased or leased to upgrade, add to, or
116 replace computer equipment purchased or leased in the initial investment. The exemption shall not apply
117 to any computer software sold separately from the computer equipment, nor shall it apply to general
118 building improvements or fixtures.

119 18. a. Beginning July 1, 2010, and ending June 30, 2035, except as provided in subdivision 19,
120 computer equipment or enabling software purchased or leased for the processing, storage, retrieval, or
121 communication of data, including but not limited to servers, routers, connections, and other enabling
122 hardware, including chillers and backup generators used or to be used in the operation of the equipment
123 exempted in this paragraph, provided that such computer equipment or enabling software is purchased or
124 leased for use in a data center, which includes any data center facilities located in the same locality as the
125 data center that are under common ownership or affiliation of the data center operator, that (i) is located
126 in a Virginia locality; (ii) results in a new capital investment on or after January 1, 2009, of at least \$150
127 million; and (iii) results in the creation on or after July 1, 2009, of at least 50 new jobs by the data center
128 operator and the tenants of the data center, collectively, associated with the operation or maintenance of
129 the data center provided that such jobs pay at least one and one-half times the prevailing average wage in
130 that locality. The requirement of at least 50 new jobs is reduced to 10 new jobs if the data center is located
131 in a distressed locality at the time of the execution of a memorandum of understanding with the Virginia
132 Economic Development Partnership Authority. Additionally, the requirement of a \$150 million capital
133 investment shall be reduced to \$70 million for data centers that qualify for the reduced jobs requirement.

134 This exemption applies to the data center operator and the tenants of the data center if they
135 collectively meet the requirements listed in this section. Prior to claiming such exemption, any qualifying
136 person claiming the exemption, including a data center operator on behalf of itself and its tenants, must
137 enter into a memorandum of understanding with the Virginia Economic Development Partnership
138 Authority that at a minimum provides the details for determining the amount of capital investment made
139 and the number of new jobs created, the timeline for achieving the capital investment and new job goals,
140 the repayment obligations should those goals not be achieved, and any conditions under which repayment
141 by the qualifying data center or data center tenant claiming the exemption may be required. In addition,
142 the exemption shall apply to any such computer equipment or enabling software purchased or leased to
143 upgrade, supplement, or replace computer equipment or enabling software purchased or leased in the
144 initial investment. The exemption shall not apply to any other computer software otherwise taxable under
145 Chapter 6 of Title 58.1 that is sold or leased separately from the computer equipment, nor shall it apply to
146 general building improvements or other fixtures.

147 b. For purposes of this subdivision 18, "distressed locality" means:

148 1. From July 1, 2021, until July 1, 2023, any locality that had (i) an annual unemployment rate for
149 calendar year 2019 that was greater than the final statewide average unemployment rate for that calendar
150 year and (ii) a poverty rate for calendar year 2019 that exceeded the statewide average poverty rate for
151 that year; and

152 2. From and after July 1, 2023, any locality that has (i) an annual unemployment rate for the most
153 recent calendar year for which such data is available that is greater than the final statewide average
154 unemployment rate for that calendar year and (ii) a poverty rate for the most recent calendar year for which
155 such data is available that exceeds the statewide average poverty rate for that year.

156 c. For so long as a data center operator is claiming an exemption pursuant to this subdivision 18,
157 such operator shall be required to submit an annual report to the Virginia Economic Development
158 Partnership Authority on behalf of itself and, if applicable, its participating tenants that includes their
159 employment levels, capital investments, average annual wages, qualifying expenses, and tax benefit, and
160 such other information as the Virginia Economic Development Partnership Authority determines is

161 relevant, pursuant to procedures developed by the Virginia Economic Development Partnership Authority.
162 The annual report shall be submitted by the data center operator in a format prescribed by the Virginia
163 Economic Development Partnership Authority. The Virginia Economic Development Partnership
164 Authority shall share all information collected with the Department.

165 The Department, in collaboration with the Virginia Economic Development Partnership Authority,
166 shall publish a biennial report on the exemption that shall include aggregate information on qualifying
167 expenses claimed under this exemption, the total value of the tax benefit, a return on investment analysis
168 that includes direct and indirect jobs created by data center investment, state and local tax revenues
169 generated, and any other information the Department and the Virginia Economic Development Partnership
170 Authority deem appropriate to demonstrate the costs and benefits of the exemption. The report shall not
171 include, and the Department and the Virginia Economic Development Partnership Authority shall not
172 publish or disclose, any such information if it is unaggregated or if such report or publication could be
173 used to identify a business or individual. The Department shall submit the report to the Chairmen of the
174 Senate Committee on Finance and Appropriations and the House Committees on Appropriations and
175 Finance. The Virginia Economic Development Partnership Authority may publish on its website and
176 distribute annual information indicating the job creation and ranges of capital investments made by a data
177 center operator and, if applicable, its participating tenants, in a format to be developed in consultation with
178 data center operators.

179 19. a. Notwithstanding any provision of subdivision 18 to the contrary, the exemption set forth in
180 subdivision 18 may be extended for the purchase or lease of computer equipment or enabling software by
181 data center operators for use in data centers in the Commonwealth that are under common ownership or
182 affiliation with the data center operator as set forth in this subdivision 19.

183 b. To qualify for an extension pursuant to this subdivision 19, a data center operator shall enter
184 into a memorandum of understanding with the Virginia Economic Development Partnership Authority on
185 or after January 1, 2023, that at a minimum provides the details for determining the amount of capital
186 investment made and the number of new jobs created; the locality or localities in which the capital

187 investment shall be made and new jobs shall be created in order to qualify for the extension; and the
188 timeline for making the capital investment and creating the new jobs in each specified locality.

189 c. If on or after January 1, 2023, but before July 1, 2035, a data center operator that has entered
190 into a memorandum of understanding pursuant to subdivision b (i) makes a capital investment of at least
191 \$35 billion in data centers in localities identified in a memorandum of understanding and (ii) creates at
192 least 1,000 new full-time jobs, as defined in § 59.1-284.41, at such data centers, of which at least 100 of
193 such jobs shall pay at least one and a half times the prevailing average wage in the Commonwealth, the
194 data center operator shall be eligible to continue to utilize the exemption set forth in subdivision 18 through
195 June 30, 2040.

196 d. If a data center operator that has entered into a memorandum of understanding pursuant to
197 subdivision b qualifies for the extension set forth in subdivision c, and on or after January 1, 2023, but
198 before July 1, 2040, (i) makes a total capital investment of at least \$100 billion, inclusive of the \$35 billion
199 investment required in subdivision c, in data centers in the localities identified in such memorandum of
200 understanding and (ii) creates a total of at least 2,500 new full-time jobs, as defined in § 59.1-284.41, at
201 such data centers, of which at least 100 of such jobs shall pay at least one and a half times the prevailing
202 average wage in the Commonwealth, inclusive of the 1,000 jobs created pursuant to subdivision c, the
203 data center operator shall be eligible to continue to utilize the exemption set forth in subdivision 18 through
204 June 30, 2050.

205 e. The extension provided in this subdivision shall apply to the computer equipment or enabling
206 software purchased or leased for use in the data centers subject to the capital investment and job
207 requirements set forth herein, as well as to any such computer equipment or enabling software purchased
208 or leased to upgrade, supplement, or replace computer equipment or enabling software purchased or leased
209 in the initial investment. Once the capital investment and job creation metrics set forth in this subdivision
210 19 are met, the extension shall also apply to any computer equipment or software purchased or leased in
211 data centers under common ownership or affiliation with the data center operator for which the data center
212 operator entered into a memorandum of understanding with the Virginia Economic Development
213 Partnership Authority to qualify for the exemption set forth in subdivision 18.

214 f. The reporting requirements set forth in subdivision 18 shall continue to apply to a data center
215 operator for the duration of any extension granted pursuant to this subdivision 19.

216 20. If the preponderance of their use is in the manufacture of beer by a brewer licensed pursuant
217 to subdivision 3 or 4 of § 4.1-206.1, (i) machinery, tools, and equipment, or repair parts therefor or
218 replacements thereof, fuel, power, energy, or supplies; (ii) materials for future processing, manufacturing,
219 or conversion into beer where such materials either enter into the production of or become a component
220 part of the beer; and (iii) materials, including containers, labels, sacks, cans, bottles, kegs, boxes, drums,
221 or bags for future use, for packaging the beer for shipment or sale.

222 ~~20.~~ 21. If the preponderance of their use is in advanced recycling, as defined in § 58.1-439.7, (i)
223 machinery, tools, and equipment, or repair parts therefor or replacements thereof, fuel, power, energy, or
224 supplies; (ii) materials for processing, manufacturing, or conversion for resale where such materials either
225 are recycled or recovered; and (iii) materials, including containers, labels, sacks, cans, boxes, drums, or
226 bags used for packaging recycled or recovered material for shipment or resale.

227 CHAPTER 22.20.

228 CLOUD COMPUTING CLUSTER INFRASTRUCTURE GRANT FUND.

229 § 59.1-284.41. Cloud Computing Cluster Infrastructure Grant Fund.

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

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

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

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

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

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

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

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

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

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

261 "MEI Commission" means the MEI Project Approval Commission established pursuant to Chapter
262 47 (§ 30-309 et seq.) of Title 30.

263 "Memorandum of understanding" means a memorandum of understanding entered into on or after
264 January 1, 2023, between a qualified company, the Commonwealth, and VEDP that sets forth (i) the grant
265 amount that the qualified company shall be eligible to receive for each new full-time job created and each
266 \$1 million of capital investment in construction costs made; (ii) the total aggregate amount of grants that

267 the qualified company shall be eligible to receive; (iii) the performance date; (iv) the requirements and
268 timing for capital investment and new full-time job creation by the qualified company; (v) the
269 identification of the locality or localities in which such investment and job creation shall take place; and
270 (vi) any other terms and conditions deemed necessary or appropriate to be eligible for grant payments
271 from the Fund.

272 "New full-time jobs" means job positions in which the employee of a qualified company works at
273 a facility, for which the average annual wage is at least \$122,300, and for which the qualified company
274 provides standard fringe benefits. Such position shall require a minimum of either (i) 35 hours of an
275 employee's time per week for the entire normal year of the employer's operations, which normal year shall
276 consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions shall not qualify
277 as new full-time jobs. Positions created after January 1, 2023, by contractors that are dedicated full-time
278 to providing operational services after the opening of a facility may constitute new full-time jobs of the
279 qualified company but shall not exceed 20 percent of the number used to meet any performance criteria
280 for the creation of new full-time jobs. A position created when a job function is shifted from an existing
281 location in the Commonwealth to a new facility shall qualify as a new full-time job if the qualified
282 company certifies that it has hired a new employee or contractor to fill substantially the same job at the
283 existing location as that performed by the transferred position. Such jobs shall be in addition to any full-
284 time jobs that a qualified company had in the Commonwealth as of January 1, 2023.

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

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

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

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

303 2. Approval by the General Assembly in a general appropriation act, including approval of the
304 specific grant amount that the company shall receive for each new full-time job created and each \$1
305 million of capital investment in construction costs made, as well as the total, aggregate amount of grants
306 from the Fund that the company shall be eligible to receive.

307 If the MEI Commission endorses a company to receive grants from the Fund, and legislation to
308 implement the MEI Commission's recommendation is introduced in a subsequent session of the General
309 Assembly, the specific grant amount recommended and any other recommended legislative changes shall
310 become public at such time as the company publicly declares its intention to make or cause to be made a
311 capital investment at facilities of at least \$50 billion and to create at least 1,500 new full-time jobs that
312 pay an average annual wage of at least \$122,300, but in no case later than the first day of the session of
313 the General Assembly in which approval is sought.

314 "Qualified company" means a company, including its affiliates, that, after qualification, enters into
315 a memorandum of understanding and is expected by the performance date to (i) make or cause to be made
316 a capital investment at facilities in localities identified in the memorandum of understanding of at least
317 \$50 billion and (ii) create at least 1,500 new full-time jobs that pay an average annual wage of at least
318 \$122,300.

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

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

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

329 C. A qualified company shall be eligible to receive grant payments for each fiscal year beginning
330 with the Commonwealth's fiscal year starting on July 1, 2025, and ending no later than the
331 Commonwealth's fiscal year starting on July 1, 2044, based upon its actual investments and the number
332 of new full-time jobs created prior to the performance date in localities that have entered into a
333 performance agreement. The grant payments under this section shall be paid to the qualified company
334 from the Fund, subject to appropriation by the General Assembly, during each such fiscal year, contingent
335 upon the qualified company meeting the requirements for receiving grant payments set forth in this section
336 and in the memorandum of understanding. The amount of the grant payment in each fiscal year shall be
337 calculated based upon the grant amount approved for the qualified company for each new full-time job
338 created by the qualified company in the prior calendar year and each \$1 million of capital investment in
339 construction costs by the qualified company in the prior calendar year, as approved by the General
340 Assembly and included in the memorandum of understanding. The total aggregate amount of all grants
341 paid to a qualified company shall not exceed the amount approved by the General Assembly and included
342 in the memorandum of understanding.

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

346 E. A qualified company applying for a grant payment pursuant to this chapter shall provide
347 evidence, satisfactory to the Secretary, of (i) the capital investment in construction costs as of the last day

348 of the calendar year that immediately precedes the application date; (ii) the aggregate number of new full-
349 time jobs created and maintained as of the last day of the calendar year that immediately precedes the date
350 of the application; and (iii) an average annual wage of the new full-time jobs of at least \$122,300. The
351 application and evidence shall be filed with the Secretary in person, by mail, or as otherwise agreed upon
352 in the memorandum of understanding, by no later than April 1 of each year following the end of the
353 calendar year upon which the evidence set forth is based. Failure to meet the filing deadline shall result in
354 a deferral of a scheduled grant payment. For filings by mail, the postmark cancellation shall govern the
355 date of the filing determination.

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

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

370 **2. That upon the signing of a memorandum of understanding, as defined in § 59.1-284.41 of the**
371 **Code of Virginia, as created by this act, the Virginia Economic Development Partnership Authority**
372 **(VEDP) shall hire a full-time project coordinator to assist each qualified company, as defined in §**
373 **59.1-284.41, with managing projects with the Commonwealth and its agencies and local government**
374 **entities. Prior to the payment of any grants from the Cloud Computing Cluster Infrastructure**

375 Grant Fund, established pursuant to § 59.1-284.41, to a qualified company, VEDP shall be credited
376 \$200,000 annually to reimburse VEDP for the cost of such coordinator. The costs for the coordinator
377 shall count toward the aggregate cap of grants that may be paid to the qualified company.

378 #