CHAPTER 1234

An Act to amend and reenact §§ 2.2-1605 and 2.2-1616 of the Code of Virginia and to repeal §§ 2.2-1611 and 2.2-1615 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; small business grant funds.

[H 1505]

Approved April 22, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1605 and 2.2-1616 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1605. Powers and duties of Department.

A. The Department shall have the following powers and duties:

1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, women-owned, and minority-owned businesses;

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, baccalaureate institutions of higher education, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;

3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, women-owned, and minority-owned businesses;

4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, women-owned, and minority-owned businesses and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, women-owned, and minority-owned businesses;

5. Advise the Small Business Financing Authority on the management and administration of the Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law; and

7. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a business certified pursuant to this chapter has failed to comply with its subcontracting plan under subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this chapter has failed to comply with the subcontracting plan, the business shall provide a written explanation.

B. In addition, the Department shall serve as the liaison between the Commonwealth's existing businesses and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Encourage the training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses; *and*

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth~~; and~~

~~6. Administer the Small Business Jobs Grant Fund Program described in Article 2 (§ 2.2-1611 et seq.)~~.

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

§ 2.2-1616. Creation, administration, and management of the Small Business Investment Grant Fund.

A. As used in this section:

"Authority" means the Virginia Small Business Financing Authority.

"Eligible investor" means an individual subject to the tax imposed by § 58.1-320 or a special purpose entity established for the purpose of making investments for an individual. "Eligible investor" does not include an individual who engages in the business of making debt or equity investments in private businesses, or any person that would be allocated a portion of the grant under this section as a partner, shareholder, member, or owner of an entity that engages in such business.

"Fund" means the Small Business Investment Grant Fund.

"Pass-through entity" means the same as that term is defined in § 58.1-390.1.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt.

"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross revenues of no more than $5 million in its most recent fiscal year; (ii) has its principal office or facility in the Commonwealth; (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth; (iv) has not obtained during its existence more than $5 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from national or state-chartered banking or savings and loan institutions; (v) has no more than 50 employees who are employed within the Commonwealth; and (vi) has been designated as such by the Authority pursuant to the provisions of this section.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance, (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person, and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Small Business Investment Grant Fund, to be administered by the Department. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants pursuant to this section, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the Director. Grants from the Fund shall only be made to applications pursuant to this section.

C. An eligible investor that makes a qualified investment in a small business on or after July 1, 2019, but prior to January 1, 2022, that has been certified by the Authority pursuant to subsection D shall be eligible for a grant in an amount equal to the lesser of ~~50~~ *25* percent of the qualified investment or $50,000. An eligible investor may apply for a grant for each qualified investment that is made to one or more small businesses not to exceed a total grant allocation from the Fund of $250,000 per eligible investor.

D. A small business shall apply with the Authority to receive qualified investments eligible for the grant pursuant to this section and shall provide to the Authority such information as the Authority deems necessary to demonstrate that it meets the qualifications set forth in subsection A.

E. Any eligible investor applying for a grant pursuant to this section shall submit an application to the Authority. The Authority shall determine the amount of the grant allowable to the eligible investor for the year.

F. If an eligible investor is awarded a grant pursuant to this section and the small business in which the investment was made (i) relocates outside of the Commonwealth within two years of the award of the grant or (ii) closes within two years of the award of the grant as a result of a criminal conviction on the part of any officer, director, manager, or general partner of such business relating to his involvement with the business, such investor shall forfeit the grant and refund such moneys to the Authority.

Additionally, unless the eligible investor transfers the equity received in connection with a qualified investment as a result of (a) the liquidation of the small business issuing such equity; (b) the merger, consolidation, or other acquisition of such business with or by a party not affiliated with such business; or (c) the death of the eligible investor, any eligible investor that fails to hold such equity for at least two years shall forfeit the grant and shall pay the Authority interest on the total allowed grant at the rate of one percent per month, compounded monthly, from the date the grant was awarded to the taxpayer.

The Authority shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

G. Grants shall be issued in the order that each completed eligible application is received by the Authority. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund, such grants shall be paid in the next fiscal year in which funds are available.

H. An eligible investor shall not be awarded a grant pursuant to this section for any investment in a small business for which the eligible investor has been allowed a tax credit pursuant to § 58.1-339.4.

I. The Authority shall establish policies and procedures relating to (i) the certification of small businesses, (ii) the application for grants, and (iii) the recapture of grant awards claimed with interest in the event that the qualified investment is not held for the requisite period set forth in subsection F. Such policies and procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

2. That §§ 2.2-1611 and 2.2-1615 of the Code of Virginia are repealed.

3. That any cash balances in the Small Business Jobs Grant Fund as of the effective date of this act shall be transferred by the Department of Small Business and Supplier Diversity to the Small Business Investment Grant Fund established pursuant to § 2.2-1616 of the Code of Virginia. The Virginia Small Business Financing Authority (the Authority) may utilize such cash balance to implement a grant program for small businesses affected by the novel coronavirus (COVID-19) pandemic public health crisis during the period for which the Governor has declared a state of emergency (the emergency). A small business must demonstrate financial stress from the emergency; be established before March 12, 2020; be in good standing; have annual gross revenues of no more than $1.5 million in its most recent fiscal year; have no more than 25 employees, all of whom are employed within the Commonwealth; and otherwise meet the requirements of a "small business" as that term is defined in subsection A of § 2.2-1616 of the Code of Virginia. A small business shall apply with the Authority to receive a grant of up to $5,000 pursuant to this enactment for the following eligible expenses: (i) payroll support, including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits during those periods of leave; (ii) employee salaries; (iii) mortgage payments; (iv) rent (including rent under a lease agreement); (v) utilities; and (vi) principal and interest payments for any business loans from national or state-chartered banking, savings and loan institutions, or credit unions, that were incurred before or during the emergency. A small business shall provide to the Authority such information as the Authority deems necessary to demonstrate that it meets the qualifications set forth in this enactment and in subsection A of § 2.2-1616 of the Code of Virginia.

4. That an emergency exists and this act is in force from its passage.