

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 17

An Act to amend and reenact §§ 2.2-5100, 2.2-5101 and 2.2-5102 of the Code of Virginia, relating to Virginia Investment Partnership Act; Virginia Investment Performance Grants.

[H 2328]

Approved March 4, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-5100, 2.2-5101 and 2.2-5102 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-5100. Short title; definitions.

A. This chapter shall be known and may be cited as the "Virginia Investment Partnership Act."

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

"Average manufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid manufacturing workers in a locality or region of the Commonwealth.

"Average nonmanufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid nonmanufacturing workers in basic employment in a locality or region of the Commonwealth.

"Basic employment" means employment that brings new or additional income into Virginia and adds to the gross state product.

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

"Eligible manufacturer" means an existing Virginia manufacturer that makes a capital investment of at least \$25 million that is announced on or after June 1, 1998, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be an eligible manufacturer.

"Existing Virginia manufacturer" means a manufacturer that has a legal presence within the Commonwealth for at least five years prior to making the announcement of the capital investment that makes it an eligible manufacturer.

"Flawed product" means an irregular unit of goods that cannot be sold to an end user.

"Fund" means the Virginia Investment Partnership Grant Fund, comprised of (i) the Major Eligible Employer Grant subfund and (ii) the Investment Performance Grant subfund, created pursuant to § 2.2-5104.

"Major eligible employer" means an existing Virginia manufacturer or, ~~for investments announced on or after February 1, 2000,~~ any other nonmanufacturing basic employer that makes a capital investment of at least \$100 million and creates at least 1,000 jobs, ~~announced on or after February 1, 2000 or corporate headquarters and other basic employers that make a capital investment of at least \$100 million and create at least 400 jobs paying at least twice the prevailing average wage for the area.~~

"Manufacturer" means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.

"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed ~~twenty~~ 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under this article, for such capital investment during that period.

"New job" means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) ~~thirty-five~~ 35 hours of an employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least ~~forty-eight~~ 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 this Commonwealth to the facility, and positions with contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this article.

"Partnership" means the Virginia Economic Development Partnership.

"Productivity" means the number of hours of labor required to produce a unit of goods.

"Secretary" means the Secretary of Commerce and Trade.

§ 2.2-5101. Virginia Investment Performance Grants.

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant subfund, any eligible manufacturer that is not eligible for a major eligible employer grant under § 2.2-5102 shall be eligible for an investment performance grant as provided in this section.

B. The Partnership shall establish an application process by which eligible manufacturers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

C. The amount of the investment performance grant that an eligible manufacturer shall be eligible to receive under this section shall be determined by the Secretary, based on the recommendation of the Partnership, and contingent upon approval by the Governor. The determination of the appropriate amount of an investment performance grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the eligible investment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding investment performance grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.). The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;
2. The wages paid for the new jobs and the amount by which wages exceed the average manufacturing wage for the locality or region;
3. The extent to which the capital investment produces (i) measurable increases in capacity, productivity, or both, and/or (ii) measurable decreases in the production of flawed product;
4. The amount of the capital investment;
5. The net present value of benefits to Virginia;
6. The amount of other incentives offered by the Commonwealth and the locality; and
7. The importance of the manufacturing facility to the economy of the locality or region.

The guidelines shall also address the eligibility of manufacturers that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same manufacturer within stated periods of time.

E. The amount of an investment performance grant to any eligible manufacturer under this section shall not exceed \$3 million or ~~ten~~ 10 percent of the amount appropriated by the General Assembly to the Investment Performance Grant subfund in the year that the terms of a grant are determined. Under no circumstances shall an eligible manufacturer be eligible for a grant under this chapter of more than \$25 million.

F. The aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of grants outstanding to all eligible manufacturers under this section for all years shall at no time exceed \$30 million. The annual obligations of the Commonwealth to make grant payments to individual eligible manufacturers under this section shall not exceed \$600,000.

G. Any eligible manufacturer shall be eligible to receive a grant from the Fund in five equal installments beginning in the sixth year after the capital investment is completed and the Partnership has verified that the requirements applicable to such grant have been satisfied. *Any eligible manufacturer located in a fiscally distressed area of the State, as defined in the guidelines implementing this chapter, shall be eligible to begin receiving grants in the fourth year after the capital investment is completed and verified.*

§ 2.2-5102. Performance grant for major eligible manufacturers.

A. As used in this section, "major eligible employer" means any eligible manufacturer or other nonmanufacturing basic employer that makes a capital investment of at least \$100 million that results in the creation of at least 1,000 new jobs. *For corporate headquarters and other basic employers that make a capital investment of at least \$100 million and create at least 400 new jobs paying at least twice the prevailing average wage for the area, the 1,000 job requirement may be reduced in proportion to the factor by which the wages for the new jobs exceed the prevailing average wage for the area.* All other provisions of this chapter shall apply equally to major eligible manufacturers and major eligible nonmanufacturing basic employers, in this chapter collectively referred to as "major eligible employers."

B. Subject to the appropriation by the General Assembly of sufficient moneys to the Major Eligible Employer Grant subfund, any major eligible employer shall be eligible for a grant under this section of

up to \$25 million, to be payable from such subfund over a period of not less than five years and not more than seven years, commencing in the sixth year following the approval by the Secretary of the employer's grant application. Any major eligible employer located in a fiscally distressed area of the State, as defined in the guidelines implementing this chapter, shall be eligible to begin receiving grants in the fourth year after the capital investment is completed and verified.

C. The Partnership shall establish an application process by which major eligible employers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

D. The Comptroller shall not draw any warrants to issue checks for grants under this chapter without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act. The payment of any grant under this section shall be in accordance with the terms and conditions set forth in a memorandum of understanding between a major eligible employer and the Commonwealth. These terms and conditions shall supplement the provisions of this chapter and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible employer's fulfillment of the terms of the memorandum of understanding. The Secretary shall consult with the House Committee on Appropriations and the Senate Committee on Finance prior to entering into any memorandum of understanding. The House Committee on Appropriations and the Senate Committee on Finance shall have the opportunity to review any memorandum of understanding prior to its execution by the Commonwealth.