

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 431

*An Act to amend and reenact §§ 2.2-5100, 2.2-5101, 2.2-5103, and 2.2-5104 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-5102.1, relating to the Virginia Investment Partnership Act.*

[H 2732]

Approved March 21, 2005

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-5100, 2.2-5101, 2.2-5103, and 2.2-5104 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-5102.1, 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 *creation, development or* 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 company" means, for companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the 2000 census, a Virginia employer that creates or causes to be created at least 400 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage, and makes a capital investment of at least \$5 million or \$6,500 per job, whichever is greater. For all companies located elsewhere in Virginia, "eligible company" shall mean a Virginia employer that creates or causes to be created at least 200 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage, and making a capital investment of at least \$6,500 per job.

"Eligible manufacturer or research and development service" means an existing Virginia manufacturer or research and development service 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 or research and development service.

"Eligible research and development service" means an existing Virginia research and development service that supports manufacturing and that makes a capital investment of at least \$25 million, 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 eligible.

"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, *created pursuant to § 2.2-5104*, comprised of (i) the Major Eligible Employer Grant subfund ~~and~~, (ii) the Investment Performance Grant subfund, ~~created pursuant to § 2.2-5104 and~~ (iii) the Economic Development Incentive Grant subfund.

"Major eligible employer" means an existing Virginia manufacturer or any other nonmanufacturing basic employer that makes a capital investment of at least \$100 million and creates at least 1,000 jobs,

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 or the North American Industry Classification System Manual issued by the United States Census Bureau.

"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 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) 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 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 the 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.

"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 eligible company is located.

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

"Research and development service" means a business firm owning or operating an establishment engaged in conducting research and experimental development that supports manufacturing in the physical, engineering and life sciences as defined in the North American Industry Classification System Manual issued by the United States Census Bureau.

"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 or research and development service 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 and research and development services 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 or research and development service 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; or (iii) measurable advances in knowledge, research, or the application of research findings for the creation of new or significantly improved products or processes that support manufacturing;
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 or research and development facility to the economy of the locality or region.

The guidelines shall also address the eligibility of manufacturers or research and development services that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same manufacturer or research and development service 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 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.~~ For all eligible projects awarded grants on or after July 1, 2005, the amount of an investment performance grant to any recipient under this section shall not exceed \$1.5 million.

F. For all eligible projects awarded grants before July 1, 2005, 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. For all such grants awarded prior to that date, the annual obligations of the Commonwealth to make grant payments to individual eligible manufacturers under this section shall not exceed \$600,000. For all eligible projects awarded grants on or after July 1, 2005, the aggregate amount of investment performance grants approved under this section in any year shall not exceed \$3 million, and the aggregate amount of such grants awarded after that date and outstanding at any time shall not exceed \$15 million. For all such grants awarded on or after that date, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed \$300,000.

G. Any eligible manufacturer or research and development service shall be eligible to receive a grant from the Fund in five equal installments beginning in the ~~sixth~~ fourth 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 or research and development service 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~~ third year after the capital investment is completed and verified.

*§ 2.2-5102.1. Virginia Economic Development Incentive Grants.*

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Economic Development Incentive Grant subfund, any eligible company that meets the requirements of this section and is not awarded a grant under § 2.2-5101 or 2.2-5102 for the same project shall be eligible to apply for an economic development incentive grant as provided in this section.

B. The Partnership shall establish an application process by which eligible companies may apply for a grant under this section. An application for a grant under this section shall not be approved for payment until the Partnership has verified that the applicable requirements of the memorandum of agreement have been satisfied.

C. The amount of the economic development incentive grant that an eligible company may receive under this section shall be determined at the sole discretion of the Governor based on the recommendation of the Secretary. The determination of the appropriate amount for an economic development incentive 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 new investment and employment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding economic development incentive 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 wage for the locality or region;
3. The amount of the capital investment;
4. The net present value of benefits to Virginia;
5. The amount of other incentives offered by the Commonwealth and the locality; and
6. The importance of the facility to the economy of the locality or region.

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

E. The aggregate amount of economic development incentive grants payable under this section in any fiscal year shall not exceed \$3 million, and the aggregate amount of such grants outstanding at any time shall not exceed \$15 million. No more than three new economic development incentive grants can be awarded under this section in any one biennium.

F. Any eligible company shall be eligible to receive a grant from the Fund in no fewer than five installments beginning in the fourth year after the Partnership has verified that the requirements applicable to such grant have been satisfied. All such terms shall be negotiated and set forth in a memorandum of agreement.

G. 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 agreement 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 agreement.*

§ 2.2-5103. Requirements for grants generally.

A. Any eligible manufacturer, *eligible company*, or *research and development service* eligible to apply for a grant under this chapter shall provide evidence, satisfactory to the Secretary, of the amount of the capital investment, the number of new jobs created as a result of the capital investment and such other evidence that requirements of this ~~article~~ *chapter* have been satisfied. An eligible manufacturer, *eligible company*, or *research and development service* whose application has been approved shall continue to comply with the requirements for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for approval of any grant have been satisfied.

B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the appropriate subfund, payment of such grant shall be made from the subfund by check issued by the State Treasurer on warrant of the Comptroller within ~~sixty~~ 60 days of certification.

C. As a condition of receipt of a grant, a major eligible employer or *eligible company* shall make available to the Partnership for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the major eligible employer or *eligible company* shall be considered confidential and proprietary.

D. Within ~~thirty~~ 30 days of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance that shall include, but is not limited to, the following information: the name of the eligible manufacturer, *eligible company*, or *research and development service* determined to be eligible for a grant; the product it manufactures, *the nature of the research, or the products it produces or services it provides, as applicable*; the locality of the manufacturing, *research and development, or other facility*; the amount of the grant made or committed from the Fund; the number of new jobs created or projected to be created; the amount of the manufacturer's, *eligible company's, or research and development service's* capital investment; and the timetable for the completion of the capital investment and new jobs created or *employment creation, as applicable*.

E. The Secretary shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If funds are committed for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve such funds as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

§ 2.2-5104. Virginia Investment Partnership Grant Fund.

A. There is established a special fund in the state treasury to be known as the Virginia Investment Partnership Grant Fund. The Fund shall consist of the Major Eligible Employer Grant subfund, *the Economic Development Incentive Grant subfund*, and the Investment Performance Grant subfund. Each subfund shall include such moneys as may be appropriated by the General Assembly and designated for the respective subfund, *and a "sinking fund" including some proportion of the marginal revenues derived from eligible companies receiving grants under this Act*. The Fund shall be used solely for the payment of investment incentive grants to ~~existing eligible~~ *Virginia manufacturers business entities* pursuant to this chapter. The Partnership shall administer the Virginia Investment Partnership Grant Fund.

B. The Partnership shall allocate, from the appropriate subfund, moneys in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible manufacturers did not receive the full amount of any grant to which they were eligible in a prior year and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the appropriate subfund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the subfund available for allocation to such class.

C. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year, it shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Partnership to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

D. The Partnership shall determine the amount of the grants to be allocated to eligible applicants by

June 30 of each year. The Partnership shall then certify to the Comptroller the amount of grant an eligible manufacturer shall receive. Payments shall be made by check issued by the State Treasurer on warrant of the Comptroller.

E. All excess funds remaining in any given year shall be carried forward on the books of the Fund for use in subsequent years.

F. Actions of the Partnership relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4006.