

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 630

An Act to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 22.5, consisting of sections numbered 59.1-284.20, 59.1-284.21, and 59.1-284.22, relating to economic development and workforce development grant programs.

[S 651]

Approved March 12, 2008

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 22.5, consisting of sections numbered 59.1-284.20, 59.1-284.21, and 59.1-284.22, as follows:

CHAPTER 22.5.

AEROSPACE ENGINE MANUFACTURING PERFORMANCE GRANT PROGRAM.

§ 59.1-284.20. Aerospace Engine Manufacturing Performance Grant Program; eligible county.

A. As used in this section:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Capital investment" means an investment in real property, tangible personal property, or both, within the Commonwealth that is capitalized.

"Eligible county" means Prince George County.

"Grant" means the aerospace engine manufacturing performance grant as described in this section.

"Manufacture of aerospace engines" means (i) the manufacture or assembly and test of aircraft engines and engine parts; (ii) the design or development of aircraft engines and engine parts; or (iii) the manufacturing activities of a private company described under 2007 index number 336412 of the North American Industry Classification System.

"Memorandum of understanding" means a performance agreement entered into accordance with a memorandum of understanding entered into on November 20, 2007, among a qualified manufacturer, the Commonwealth, and others setting forth the requirements for capital investment and the creation of new full-time jobs that will make the qualified manufacturer eligible for a grant under this section.

"New full-time job" means employment of an indefinite duration in an eligible county, created as the direct result of new capital investment, for which the average annual wage is at least equal to the prevailing average annual wage in an eligible county and for which the standard fringe benefits are paid by the qualified manufacturer, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such manufacturer's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section. Other positions, which may or may not be of indefinite duration, including supplemental employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors may be considered new full-time jobs, if so designated in the memorandum of understanding between such manufacturer, the Commonwealth, and others as such memorandum of understanding was in effect on November 20, 2007.

"Qualified manufacturer" means a manufacturer that (i) is expected to make a capital investment of at least \$500 million by June 30, 2023, in an eligible county related to the manufacture of aerospace engines and (ii) is expected to create at least 540 jobs in an eligible county for the manufacture of aerospace engines or activities ancillary or supportive of such manufacture.

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

B. Any qualified manufacturer that, after July 1, 2008, first begins operations in an eligible county shall be eligible to receive a grant each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2013, and ending with the Commonwealth's fiscal year starting on July 1, 2022, unless such time frame is extended in accordance with subsection E. The grants under this section (i) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Aerospace Engine Manufacturing Performance Grant Fund, which Fund is hereby established on the books of the Comptroller, (ii) shall not exceed \$35 million in the aggregate, and (iii) shall be paid to the qualified manufacturer during each fiscal year contingent upon the qualified manufacturer meeting the requirements for the aggregate (a) number of new full-time jobs created and the substantial retention of the same and (b) amount of the capital investment made and substantially retained as set forth in the memorandum of understanding.

C. If grants to be paid to qualified manufacturers under this section in a fiscal year exceed the aggregate amount available in the Aerospace Engine Manufacturing Performance Grant Fund for that year, each qualified manufacturer's grants for the year shall equal the amount of grants to which the qualified manufacturer would otherwise be eligible multiplied by a fraction. The numerator of the fraction shall equal the aggregate amount available for payment from the Aerospace Engine Manufacturing Performance Grant Fund for that fiscal year, and the denominator shall equal the aggregate dollar amount of grants to which all qualified manufacturers otherwise would be eligible for such fiscal year.

The aggregate amount of the grants payable under this section shall be subject to the following requirements and limitations:

1. Grants shall be awarded after July 1, 2013, and before July 1, 2023, unless such time frame is extended in accordance with subsection E.

2. The amount of the grant to be paid in each fiscal year shall be conditional upon the qualified manufacturer meeting the requirements for the (i) aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the end of such fiscal year, and (ii) aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the end of such fiscal year as set forth in the memorandum of understanding entered into on November 20, 2007. Grants shall be paid based upon such requirements as agreed to on November 20, 2007, regardless if such memorandum of understanding is later modified, amended, superseded, or otherwise changed.

3. The aggregate amount of grants that may be awarded in a particular fiscal year shall not exceed the following:

- a. \$5.5 million for the Commonwealth's fiscal year beginning July 1, 2013;
- b. \$11 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2014;
- c. \$14 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2015;
- d. \$17 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2016;
- e. \$20 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2017;
- f. \$23 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2018;
- g. \$26 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2019;
- h. \$29 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2020;
- i. \$32 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2021; and
- j. \$35 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2022.

4. Grants provided by this section shall not exceed \$35 million in the aggregate.

D. Any qualified manufacturer applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the end of the fiscal year in which the grant is to be paid, and (ii) the aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the end of the fiscal year in which the grant is to be paid. The application and evidence shall be filed with the Secretary in person or by mail no later than April 1 each year following the calendar year in which the qualified manufacturer meets such aggregate new full-time job requirements and aggregate capital investment. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment set forth in subsection C. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

E. The memorandum of understanding may provide that if a grant payment has been deferred for any reason, including the initial failure to meet the aggregate capital investment and the aggregate new full-time job requirements set forth in the memorandum of understanding or the occurrence of any substantial reduction in such new full-time job requirements or capital investment requirements after such requirements have been met but before the grant payment has been made, payment in a subsequent fiscal year for which such requirements have been met for the immediately preceding calendar year shall include both the deferred payment and the scheduled grant payment as provided in subsection C.

F. Within 30 days after the filing deadline in subsection D, the Secretary shall certify to (i) the Comptroller and (ii) each qualified manufacturer the amount of the grant to which such qualified manufacturer is entitled under this section for payment in the current fiscal year. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller by June 30 of

such fiscal year.

G. As a condition of receipt of a grant, a qualified manufacturer shall make available to the Secretary or his designee for inspection upon his request all relevant and applicable documents to determine whether the qualified manufacturer has met the requirements for the receipt of grants as set forth in this section and subject to the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks for the grant program under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified manufacturer shall be considered confidential and proprietary.

§ 59.1-284.21. Aerospace Engine Manufacturing Supplier Cluster Bonus Performance Grant Program; eligible county.

A. As used in this section:

"Affiliate" means the same as such term is defined in § 59.1-284.20.

"Capital investment" means the same as such term is defined in § 59.1-284.20.

"Eligible county" means Prince George County.

"Grant" means the aerospace engine manufacturing supplier cluster bonus performance grant as described in this section.

"Memorandum of understanding" means a performance agreement entered into accordance with a memorandum of understanding entered into on November 20, 2007, among a qualified manufacturer, the Commonwealth, and others setting forth the requirements for capital investment and the creation of new full-time jobs by qualified suppliers that will make the qualified manufacturer eligible for a grant under this section.

"New full-time job" means employment of an indefinite duration in the Commonwealth, created as the direct result of new capital investment, for which the average annual wage is at least equal to the prevailing average annual wage in the applicable locality and for which the standard fringe benefits are paid by the qualified supplier, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such supplier's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section.

"Qualified manufacturer" means the same as such term is defined in § 59.1-284.20.

"Qualified supplier" means a manufacturer, assembler, distributor, or service provider on a qualified supplier list that (i) first begins doing business at a location within the Commonwealth or (ii) expands its business at a location within the Commonwealth subsequent to a qualified manufacturer commencing construction of a manufacturing, assembly, and testing facility in an eligible county. A "qualified supplier" shall deliver or provide ancillary parts, tools, or other components used by the qualified manufacturer within the Commonwealth or provide ancillary services within the Commonwealth for such qualified manufacturer. A qualified supplier shall not be an affiliate of a qualified manufacturer.

"Qualified supplier cluster" means the aggregate of qualified suppliers.

"Qualified supplier list" means a list of prospective qualified suppliers submitted by a qualified manufacturer to the Secretary no less frequently than annually.

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

B. 1. Any qualified manufacturer who attracted a qualified supplier on its qualified supplier list (i) first beginning to do business at a location within the Commonwealth subsequent to the qualified manufacturer commencing construction in an eligible county or (ii) expanding its business at a location within the Commonwealth subsequent to the qualified manufacturer commencing construction in an eligible county shall be eligible for a grant under this section. However, no grant shall be paid to the qualified manufacturer unless the qualified supplier cluster (all of which qualified suppliers are on the qualified supplier list) subsequent to the qualified manufacturer commencing construction in an eligible county makes the aggregate capital investment and meets the new full-time job requirements as set forth in this section. The grants under this section (a) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Aerospace Engine Manufacturing Supplier Cluster Grant Fund, which Fund is hereby established on the books of the Comptroller, (b) shall not exceed \$5 million in the aggregate, and (c) shall be paid, as provided in this section, to the qualified manufacturer subject to the conditions of this section being met.

2. If the qualified supplier cluster has, subsequent to the qualified manufacturer commencing construction in an eligible county, (i) created and substantially retained at least 150 new full-time jobs within the Commonwealth, (ii) made and substantially retained at least \$25 million worth of capital investment within the Commonwealth, and (iii) made a written certification to the Secretary that its decision to create such new full-time jobs and make such capital investment was based in part by the location of the qualified manufacturer and was in part for a purpose of providing ancillary parts, tools, or other components used by the qualified manufacturer within the Commonwealth or for providing ancillary services within the Commonwealth for such qualified manufacturer, then a grant payment in the amount of \$2.5 million shall be paid to the qualified manufacturer as provided in subsection E. If the qualified supplier cluster has, subsequent to the qualified manufacturer commencing construction in

an eligible county, (a) created and substantially retained at least 300 new full-time jobs within the Commonwealth, (b) made and substantially retained at least \$50 million worth of capital investment within the Commonwealth, and (c) made a written certification to the Secretary that its decision to create such new full-time jobs and make such capital investment was based in part by the location of the qualified manufacturer and was in part for a purpose of providing ancillary parts, tools, or other components used by the qualified manufacturer within the Commonwealth or for providing ancillary services within the Commonwealth for such qualified manufacturer, then an aggregate amount of \$5 million in grants shall be paid to the qualified manufacturer as provided in subsection E. In no case, however, shall the aggregate amount of grants payable to all qualified manufacturers pursuant to this section exceed \$5 million and in no case shall more than \$2.5 million in grants pursuant to this section be paid in a fiscal year. Upon receipt of such written certification by the qualified supplier cluster, the Secretary shall promptly notify the qualified manufacturer of the same for purposes of applying for a grant under this section.

The memorandum of understanding may provide that a qualified manufacturer shall be eligible for a reduced grant payment if at least 100 new full-time jobs have been created and substantially retained and at least one-third of the full \$50 million capital investment has been made and substantially retained by the qualified supplier cluster. As described in the memorandum of understanding, in such case the reduction in the grant payments shall be proportional to the reduction in the new full-time jobs created and substantially retained and the reduction in the capital investment. Further, the memorandum of understanding may provide for deferred grant payments if the capital investment and the new full-time jobs have been met, but a substantial reduction occurs in the capital investment or new full-time job requirements between the date such requirements were met and the date the grant payment is to be made.

C. If grants to be paid to qualified manufacturers under this section exceed the aggregate amount of grants payable in a fiscal year, each eligible qualified manufacturer's grant for the year shall equal the amount of the grant to which the qualified manufacturer would otherwise be entitled multiplied by a fraction. The numerator of the fraction shall equal the amount of the grant payable in the fiscal year, and the denominator shall equal the aggregate dollar amount of requests for grants to which all qualified manufacturers otherwise would be eligible for such fiscal year.

D. Any qualified manufacturer applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the number of new full-time jobs created and substantially retained by a qualified supplier on a qualified supplier list as described in subdivision B 2, and (ii) the aggregate capital investment made and substantially retained by a qualified supplier on a qualified supplier list as described in subdivision B 2. The application and evidence shall be filed with the Secretary in person or by mail by between July 1 and August 31.

E. Within 30 days after filing of the application described in subsection D, the Secretary shall certify to (i) the Comptroller and (ii) each qualified manufacturer the amount of the grant to which such qualified manufacturer is entitled under this section. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller, and such payment shall be made in the fiscal year that immediately follows the fiscal year in which the qualified manufacturer had applied for the grant.

F. As a condition of receipt of a grant, a qualified manufacturer shall make available to the Secretary or his designee for inspection upon his request all relevant and applicable documents to determine the aggregate number of new full-time jobs created by the qualified supplier cluster as described in subdivision B 2, the average wages paid for such jobs, the prevailing average wage in the localities in which such jobs are located, and the aggregate amount of capital investment made by the qualified supplier cluster as described in subdivision B 2.

The Comptroller shall not draw any warrants to issue checks for any grant under this section without a specific legislative appropriation. All such documents appropriately identified by the qualified manufacturer shall be considered confidential and proprietary.

§ 59.1-284.22. Aerospace Engine Manufacturer Workforce Training Grant Fund; eligible county.

A. As used in this section:

"Affiliate" means the same as that term is defined in § 59.1-284.20.

"Capital investment" means the same as that term is defined in § 59.1-284.20.

"Eligible county" means Prince George County.

"Full-time" means employment of an indefinite duration for which the standard fringe benefits are paid, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the employer's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. The term "full-time" shall not include seasonal or temporary positions or positions created when a job function is shifted from an existing location in the Commonwealth.

"Grant" means the special training grant or supplemental training grant as described in this section.

"Qualified employee" means an individual hired in the Commonwealth on or after November 20, 2007, by an entity that is a qualified manufacturer or by an affiliate thereof, who (i) is employed by the qualified manufacturer or by an affiliate for at least 90 days, and (ii) works on a full-time basis for the

qualified manufacturer or for an affiliate for at least such 90-day period.

"Qualified manufacturer" means the same as such term is defined in § 59.1-284.20.

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

"Special training grant" means a \$9,000 allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund per new qualified employee, as described in this section. The aggregate amount of special training grants under this section shall not exceed \$5,778,000.

"Supplemental training grant" means a one-time \$3 million allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund, as described in this section.

B. Grants paid to the qualified manufacturer pursuant to this section are intended to be used for workforce development, instructional, or training purposes so as to enhance the skill sets of qualified employees.

C. Any qualified manufacturer that is eligible to receive a special training grant shall (i) report to the Secretary quarterly the number of new qualified employees hired and trained who have been employed for at least 90 days and for whom a special training grant has not been previously paid pursuant to this section, and (ii) provide evidence of the hiring and training of the new qualified employees described in clause (i). The application and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark cancellation shall govern the date of the filing determination. Within 30 days after such evidence has been provided by the qualified manufacturer, the Secretary shall certify to (a) the Comptroller and (b) each qualified manufacturer the amount of the special training grant to which such qualified manufacturer is entitled under this section for payment within 60 days after such certification. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

The special training grants under this section (1) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Aerospace Engine Manufacturer Workforce Training Grant Fund, which Fund is hereby established on the books of the Comptroller, (2) shall not exceed \$5,778,000 in the aggregate, and (3) shall be paid to or for the benefit of the qualified manufacturer on a quarterly basis.

D. A supplemental training grant shall be paid to any qualified manufacturer that has made an aggregate capital investment of at least \$153.9 million in the eligible county and has hired at least 176 new qualified employees, excluding any qualified employee who has been rehired by the qualified manufacturer or an affiliate thereof or who is employed in a different position with the qualified manufacturer or an affiliate thereof. On or before June 30, 2010, and on or before each June 30 thereafter until the supplemental training grant has been paid, the qualified manufacturer shall provide written notification to the Secretary whether it has met or expects to meet the aggregate capital investment and employee requirements by the end of the current calendar year. If it has met or expects to meet such requirements by the end of the calendar year, the qualified manufacturer shall provide evidence of the same, satisfactory to the Secretary, with the written notification. The written notification and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark cancellation shall govern the date of the filing determination. Within 10 days after such notification and evidence have been provided by the qualified manufacturer, the Secretary shall certify to (i) the Comptroller and (ii) each qualified manufacturer the amount of the supplemental training grant to which such qualified manufacturer is entitled under this section for payment in the current fiscal year. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

The supplemental training grant shall not be paid prior to July 1, 2010. The supplemental training grant (a) shall be paid, subject to appropriation by the General Assembly, from the Aerospace Engine Manufacturer Workforce Training Grant Fund, (b) shall be equal to \$3 million, and (c) shall, subject to appropriation by the General Assembly, be paid to the qualified manufacturer by the end of the applicable fiscal year, as described herein. No more than \$3 million in supplemental training grants shall be paid pursuant to this section.

E. If grants to be paid to qualified manufacturers under this section in a fiscal year exceed the aggregate amount available in the Aerospace Engine Manufacturer Workforce Training Grant Fund for that year, each qualified manufacturer's grants for the year shall equal the amount of grants to which the qualified manufacturer would otherwise be eligible multiplied by a fraction. The numerator of the fraction shall equal the aggregate amount available for payment from the Aerospace Engine Manufacturer Workforce Training Grant Fund for that fiscal year, and the denominator shall equal the aggregate dollar amount of grants to which all qualified manufacturers otherwise would be eligible for such fiscal year.

F. Notwithstanding any other provision of this section, in lieu of payment of special training grants by check to qualified manufacturers, the Secretary may determine that such special training grants shall be administered in a manner similar to existing training grant programs such as those permitted by § 2.2-902.

G. As a condition of receipt of a grant, a qualified manufacturer shall make available to the Secretary or his designee for inspection upon his request all relevant and applicable documents to

determine the aggregate number of new qualified employees hired and the aggregate amount of capital investment. The Comptroller shall not draw any warrants to issue checks for a special training grant or a supplemental training grant under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified manufacturer shall be considered confidential and proprietary.