

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 328

An Act to amend and reenact §§ 59.1-547 and 59.1-549 of the Code of Virginia, relating to the Enterprise Zone Grant Program; preference for allocating grant funds.

[H 555]

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-547 and 59.1-549 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-547. Enterprise zone job creation grants.

A. As used in this section:

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis. For those permanent full-time employees filling permanent full-time, salaried positions, the minimum wage is defined as the employee's annual salary divided by 52 weeks per year divided by 35 hours per week.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the job creation grant amount. A full month is calculated by dividing the total number of days in the calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service or food and beverage service shall not be considered grant eligible positions.

"Permanent full-time position" means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (i) seasonal, temporary or contract positions, (ii) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone, (iii) any position that previously existed in the Commonwealth, or (iv) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § 59.1-542.

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Subsequent base year" means the base year for calculating the number of grant eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

B. A business firm shall be eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility. A business firm may be eligible for subsequent five consecutive calendar year grant periods if it creates new grant eligible positions above the threshold for its subsequent base year.

C. The amount of the grant for which a business firm is eligible shall be calculated as follows:

1. Either (i) \$800 per year for up to five consecutive years for each grant eligible position that during such year is paid a minimum of 200 percent of the federal minimum wage and that is provided with health benefits, or (ii) \$500 per year for up to five years for each grant eligible position that during

such year is paid less than 200 percent of the federal minimum wage, but at least 175 percent of the federal minimum wage, and that is provided with health benefits. *In areas with an unemployment rate that is one and one-half times or more the state average, the business firm will receive \$500 per year for up to five years for each grant eligible position that during such year is paid at least 150 percent of the federal minimum wage and that is provided with health benefits. Unemployment rates used to determine eligibility for the reduced wage rate threshold shall be based on the most recent annualized unemployment data published by the Virginia Employment Commission.* A business firm may receive grants for up to a maximum of 350 grant eligible jobs annually.

2. Positions paying less than 175 percent of the federal minimum wage or that are not provided with health benefits shall not be eligible for enterprise zone job creation grants.

D. Job creation grants shall be based on a calendar year. The amount of the grant for which a qualified business firm is eligible with respect to any permanent full-time position that is filled for less than a full calendar year shall be prorated based on the number of full months worked.

E. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

F. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

G. Any qualified business firm receiving an enterprise zone job creation grant under this section shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439.

§ 59.1-549. Policies and procedures for allocation of enterprise zone incentive grants.

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone incentive grants provided for in this chapter to the extent that they apply for and are approved for grant allocations through the Department.

B. If the sum of (i) the total amount of grants for which qualified business firms are eligible under § 59.1-547 plus (ii) the total amount of grants for which qualified zone investors are eligible under § 59.1-548 exceeds the total annual appropriation for the payment of all grants under this chapter for the relevant year, then the amount of the grant that each qualified business firm and qualified zone investor is eligible for shall be prorated in a proportional manner. *The Department shall prioritize allocations to fully fund the grants under § 59.1-547 with any remaining funds to be allocated to grants under § 59.1-548. In such cases, the amount of the grant that each qualified zone investor is eligible for under § 59.1-548 shall be prorated in a proportional manner based on the funds remaining in the annual appropriation after full payment of the grants under § 59.1-547.*

C. Qualified zone businesses and qualified zone investors shall make application to the Department each year for which they seek eligibility for enterprise zone incentive grants. Such application is to be in accordance with regulations promulgated by the Board on forms supplied by the Department and in accordance with dates specified by the Department.

D. The accuracy and validity of information on qualified real property investments, permanent full-time positions, wage rates and provision of health benefits provided in such applications are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the Department.

E. Applicants for enterprise zone incentive grants under this chapter must have the local zone administrator verify that the location of their business or property is in the enterprise zone using a form supplied by the Department. The local zone administrator shall make this verification in accordance with dates specified by the Department.

F. The Department may at any time review qualified zone businesses and qualified zone investors to assure that information provided in the application process is accurate.

G. Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

H. Enterprise zone incentive grants that do not have adequate documentation regarding qualified real property investments, permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business or qualified zone investor.

I. Actions of the Department relating to the approval or denial of applications for enterprise zone incentive grants under this chapter shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.