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## SENATE BILL NO. 693

Offered January 22, 2010

A *BILL to amend and reenact §§ 2.2-2309 and 58.1-439 of the Code of Virginia, relating to economically distressed areas and the major business facility job tax credit.*

Patrons—McWaters, Hurt, McDougle, Norment, Vogel, Wagner and Wampler

Referred to Committee on Finance

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

**1. That §§ 2.2-2309 and 58.1-439 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-2309. Creation, administration, and management of Virginia Export Fund.

A. In addition to any other fund or account the Authority may create pursuant to subdivision 23 of § 2.2-2285, there shall be a permanent fund known as the Virginia Export Fund (the Fund). The Fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) receipts by the Fund from loans or loan guarantees made against it, (iii) all income from the investment of moneys held by the Fund, and (iv) any other sums designated for deposit to the Fund from any source, public or private. The Fund shall be administered and managed by the Authority, and all moneys in the Fund shall be used to provide loans or loan guarantees as provided in subsection D. Any balances remaining in the Fund shall not revert to the general fund but shall be retained in order to make additional loans or loan guarantees.

B. All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned to the Fund.

C. The Authority, or its designated agent, may collect moneys due to the Fund. Proceedings to recover moneys due to the Fund may be instituted by the Authority in the name of the Fund in any appropriate court.

D. The Fund shall be used to make loans or to provide a guarantee for up to ninety percent of the principal amount of any commercial loan or line of credit made by a lender for the purpose of facilitating the sale of goods, products, or services outside of the United States by persons, firms, or corporations utilizing a Virginia air, land, or sea port to ship such goods, products, or services. Such guarantee shall not exceed one million dollars.

E. The Authority shall determine the terms and conditions of any loans or loan guarantee made against the Fund and may allow for use of the Fund in single or multiple transactions. No loan shall exceed a term of twelve months, nor shall a loan guarantee exceed a term of eighteen months. In the case of loans, the Authority shall charge an annual interest rate. In the case of guarantees, the Authority shall charge an annual guarantee fee. However, the Authority may waive such guarantee fees in an economically distressed area as defined in § 58.1-439. *An area shall qualify as economically distressed if it is a locality with an unemployment rate for the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such year.* In connection with applications for loans or loan guarantees made against the Fund, the Authority may require the production of any document, instrument, certificate, legal opinion, or other information it deems necessary or convenient.

F. All loans or loan guarantees made against the Fund shall be approved by the Board or an authorized committee or subcommittee thereof.

§ 58.1-439. Major business facility job tax credit.

A. For taxable years beginning on and after January 1, 1995, but before January 1, 2020, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of this title as set forth in this section.

B. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A "major business facility" is a company that satisfies the following criteria:

1. ~~Subject to the provisions of subsections K or L, the~~ The establishment or expansion of the company shall result in the creation of at least 100 25 jobs for qualified full-time employees; the first such 100 25 jobs shall be referred to as the "threshold amount"; and

2. The company is engaged in any business in the Commonwealth, except a retail trade business if

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59 such trade is the principal activity of an individual facility in the Commonwealth. Examples of types of  
60 major business facilities that are eligible for the credit provided under this section include, but are not  
61 limited to, a headquarters, or portion of such a facility, where company employees are physically  
62 employed, and where the majority of the company's financial, personnel, legal or planning functions are  
63 handled either on a regional or national basis. A company primarily engaged in the Commonwealth in  
64 the business of manufacturing or mining; agriculture, forestry or fishing; transportation or  
65 communications; or a public utility subject to the corporation income tax shall be deemed to have  
66 established or expanded a major business facility in the Commonwealth if it meets the requirements of  
67 subdivision 1 during a single taxable year and such facilities are not retail establishments. A major  
68 business facility shall also include facilities that perform central management or administrative activities,  
69 whether operated as a separate trade or business, or as a separate support operation of another business.  
70 Central management or administrative activities include, but are not limited to, general management;  
71 accounting; computing; tabulating; purchasing; transportation or shipping; engineering and systems  
72 planning; advertising; technical sales and support operations; central administrative offices and  
73 warehouses; research, development and testing laboratories; computer-programming, data-processing and  
74 other computer-related services facilities; and legal, financial, insurance, and real estate services. The  
75 terms used in this subdivision to refer to various types of businesses shall have the same meanings as  
76 those terms are commonly defined in the Standard Industrial Classification Manual.

77 D. For purposes of this section, the "credit year" is the first taxable year following the taxable year  
78 in which the major business facility commenced or expanded operations.

79 E. The Department of Taxation shall make all determinations as to the classification of a major  
80 business facility in accordance with the provisions of this section.

81 F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in  
82 a major business facility in the Commonwealth. A "new, permanent full-time position" is a job of an  
83 indefinite duration, created by the company as a result of the establishment or expansion of a major  
84 business facility in the Commonwealth, requiring a minimum of 35 hours of an employee's time a  
85 week for the entire normal year of the company's operations, which "normal year" shall consist of at  
86 least 48 weeks, or a position of indefinite duration which requires a minimum of 35 hours of an  
87 employee's time a week for the portion of the taxable year in which the employee was initially hired  
88 for, or transferred to, the major business facility in the Commonwealth. Seasonal or temporary positions,  
89 or a job created when a job function is shifted from an existing location in the Commonwealth to the  
90 new major business facility and positions in building and grounds maintenance, security, and other such  
91 positions which are ancillary to the principal activities performed by the employees at a major business  
92 facility shall not qualify as new, permanent full-time positions.

93 G. For any major business facility, the amount of credit earned pursuant to this section shall be equal  
94 to ~~\$1,000~~ \$10,000 per qualified full-time employee, over the threshold amount, employed during the  
95 credit year. The credit shall be allowed ratably, with ~~one-third of the credit amount~~ \$2,000 allowed  
96 annually for ~~three~~ five years beginning with the credit year. However, for taxable years beginning  
97 January 1, 2009, through December 31, 2010, one-half of the credit amount shall be allowed each year  
98 for two years. The portion of the ~~\$1,000~~ \$10,000 credit earned with respect to any qualified full-time  
99 employee who is employed in the Commonwealth for less than 12 full months during the credit year  
100 will be determined by multiplying the credit amount by a fraction, the numerator of which is the number  
101 of full months that the qualified full-time employee worked for the major business facility in the  
102 Commonwealth during the credit year, and the denominator of which is 12. A separate credit year and a  
103 ~~three-year~~ allowance period shall exist for each distinct major business facility of a single taxpayer;  
104 except for credits allowed for taxable years beginning January 1, 2009, through December 31, 2010,  
105 when a two-year allowance period shall exist for each distinct major business facility of a single  
106 taxpayer.

107 H. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such  
108 taxable year. Any credit not usable for the taxable year the credit was allowed may be, to the extent  
109 usable, carried over for the next 10 succeeding taxable years. No credit shall be carried back to a  
110 preceding taxable year. In the event that a taxpayer who is subject to the tax limitation imposed  
111 pursuant to this subsection is allowed another credit pursuant to any other section of the Code of  
112 Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to  
113 have first utilized any credit allowed which does not have a carryover provision, and then any credit  
114 which is carried forward from a preceding taxable year, prior to the utilization of any credit allowed  
115 pursuant to this section.

116 I. No credit shall be earned pursuant to this section for any employee (i) for whom a credit under  
117 this section was previously earned by a related party as defined by Internal Revenue Code § 267(b) or a  
118 trade or business under common control as defined by Internal Revenue Code § 52(b); (ii) who was  
119 previously employed in the same job function in Virginia by a related party as defined by Internal  
120 Revenue Code § 267(b) or a trade or business under common control as defined by Internal Revenue

Code § 52(b); (iii) whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) whose job function previously qualified for a credit under this section at a different major business facility on behalf of the taxpayer, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b).

J. Subject to the provisions of subsections K or L, recapture of this credit, under the following circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the taxable year in which a credit has been earned pursuant to this section if the number of qualified full-time employees decreases below the average number of qualified full-time employees employed during the credit year. Such tax increase amount shall be determined by (i) recomputing the credit which would have been earned for the original credit year using the decreased number of qualified full-time employees and (ii) subtracting such recomputed credit from the amount of credit previously earned. In the event that the average number of qualifying full-time employees employed at a major business facility falls below the threshold amount in any of the five taxable years succeeding the credit year, all credits earned with respect to such major business facility shall be recaptured. No credit amount will be recaptured more than once pursuant to this subsection. Any recapture pursuant to this section shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability may be increased.

K. In the event that a major business facility is located in an economically distressed area or in an enterprise zone as defined in § 59.1-271 or in Chapter 49 (§ 59.1-538 et seq.) of Title 59.1 during a credit year, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to 50 for purposes of subdivision C 1 and subsection J. An area shall qualify as economically distressed if it is a city or county with an unemployment rate for the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all economically distressed areas at least annually.

L. For taxable years beginning on or after January 1, 2004, but before January 1, 2006, in the event that a major business facility is located in a severely economically distressed area, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to 25 for purposes of subdivision C 1 and subsection J. However, the total amount of credit allowable under this subsection shall not exceed \$100,000 in aggregate. An area shall qualify as severely economically distressed if it is a city or county with an unemployment rate for the preceding year of at least twice the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all severely economically distressed areas at least annually.

MK. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), relating to (i) the computation, carryover, and recapture of the credit provided under this section; (ii) defining criteria for (a) a major business facility, (b) qualifying full-time employees at such facility, and (c) economically distressed areas; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies pursuant to subsection S Q.

NL. The provisions of this section shall apply only in instances where an announcement of intent to establish or expand a major business facility is made on or after January 1, 1994. An announcement of intent to establish or expand a major business facility includes, but is not limited to, a press conference or extensive press coverage, providing information with respect to the impact of the project on the economy of the area where the major business facility is to be established or expanded and the Commonwealth as a whole.

OM. The credit allowed pursuant to this section shall be granted to the person who pays taxes for the qualified full-time employees pursuant to Chapter 5 (§ 60.2-500 et seq.) of Title 60.2.

PN. No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to § 58.1-439.2.

QO. No person operating a business in the Commonwealth pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 shall claim a credit pursuant to this section.

RP. Notwithstanding subsection OM, a taxpayer may, for the purpose of determining the number of qualified full-time employees at a major business facility, include the employees of a contractor or a subcontractor if such employees are permanently assigned to the taxpayer's major business facility. If the taxpayer includes the employees of a contractor or subcontractor in its total of qualified full-time employees, it shall enter into a contractual agreement with the contractor or subcontractor prohibiting the contractor or subcontractor from also claiming these employees in order to receive a credit given under this section. The taxpayer shall provide evidence satisfactory to the Department of Taxation that it has entered into such a contract.

182       §Q. For purposes of satisfying the criteria of subdivision C 1, two or more affiliated companies may  
183 elect to aggregate the number of jobs created for qualified full-time employees as the result of the  
184 establishment or expansion by the individual companies in order to qualify for the credit allowed  
185 pursuant to this section. For purposes of this subsection, "affiliated companies" means two or more  
186 companies related to each other such that (i) one company owns at least 80 percent of the voting power  
187 of the other or others or (ii) at least 80 percent of the voting power of two or more companies is owned  
188 by the same interests.

189       ¶R. The General Assembly of Virginia finds that modern business infrastructure allows businesses to  
190 locate their administrative or manufacturing facilities with minimal regard to the location of markets or  
191 the transportation of raw materials and finished goods, and that the economic vitality of the  
192 Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the  
193 provisions of this section targeting the credit to major business facilities and limiting the credit to those  
194 companies which establish a major business facility in Virginia are integral to the purpose of the credit  
195 earned pursuant to this section and shall not be deemed severable.

196       **2. That the tax credits pursuant to this act shall only be allowed for qualified full-time employees,**  
197 **as defined in § 58.1-439 of the Code of Virginia, first hired on or after January 1, 2010.**