

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 749

*An Act to amend and reenact § 59.1-284.23 of the Code of Virginia and to amend Chapters 798 and 850 of the Acts of Assembly of 2009 by adding a fifth enactment, relating to the Advanced Shipbuilding Training Facility Grant Program.*

[H 2495]

Approved March 28, 2011

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

**1. That § 59.1-284.23 of the Code of Virginia is amended and reenacted as follows:**

§ 59.1-284.23. Advanced Shipbuilding Training Facility Grant Program; eligible city.

A. As used in this section:

"Advanced shipbuilding" means (i) the manufacture, construction, assembly, overhaul, repair, and test of nuclear vessels and submarines for the U.S. Navy; (ii) the design or development of nuclear vessels and submarines for the U.S. Navy; or (iii) the manufacturing activities of a private company described under 2007 index number 336611 of the North American Industry Classification System.

"Base training expense" means the total expenditures made by a qualified shipbuilder, ~~in the year prior to entering into a memorandum of understanding, in 2008~~ that directly and indirectly support training activities.

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

"Eligible city" means the City of Newport News *or its industrial development authority*.

"Grant" means the advanced shipbuilding training facility grant as described in this section.

"Memorandum of understanding" means a performance agreement entered into on or before ~~June 30, 2009~~ *August 31, 2011*, among a qualified shipbuilder, the Commonwealth, and others as appropriate, such as the eligible city, setting forth the requirements for capital investment, training costs, and the creation of new full-time jobs that will make the qualified shipbuilder eligible for a grant under this section.

"New full-time job" means employment of an indefinite duration in an eligible city, created as the direct result of capital investment, for which the average annual wage is at least equal to the prevailing average annual wage in an eligible city and for which the standard fringe benefits are paid by the qualified shipbuilder, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such qualified shipbuilder'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 of the qualified shipbuilder, may be considered new full-time jobs, if so designated as such in the memorandum of understanding between such qualified shipbuilder, the Commonwealth, and others.

"New training facility" means a facility that, pursuant to a Memorandum of Agreement with the Secretary, is to be operated by the qualified shipbuilder for use by the shipbuilding industry, primarily to provide education, training and retraining of workers in the shipbuilding industry. Such training facility may be owned by the qualified shipbuilder, or may be operated by the qualified shipbuilder through a lease agreement with the eligible city, a local industrial development authority, or a private developer.

"Qualified shipbuilder" means a shipbuilder located in an eligible city that (i) makes a new capital investment of at least \$300 million from January 1, 2009 through December 31, 2011, related to advanced shipbuilding in an eligible city; (ii) creates at least 1,000 new full-time jobs in an eligible city for advanced shipbuilding or activities ancillary to or supportive of advanced shipbuilding; (iii) maintains an apprenticeship program accredited by the Council for Occupational Education with an average annual enrollment of at least 750 and articulation agreements with local community colleges that allow its graduates to qualify for accredited associate degrees from those institutions; and (iv) maintains a level of ~~base training expenditures no less than that spent in calendar year 2008 as set forth in the memorandum of understanding~~ *expenditures directly or indirectly supporting training activities, which level is at least equal to the base training expense.*

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

B. Any qualified shipbuilder located in an eligible city shall be eligible to receive a grant each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2012, and ending with the Commonwealth's fiscal year starting on July 1, 2016, unless such time frame is extended in accordance with subsection C or D. The grants under this section (i) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Advanced Shipbuilding Training Facility Fund, which Fund

is hereby established on the books of the Comptroller; (ii) shall not exceed \$25 million in the aggregate; (iii) shall be paid to a qualified shipbuilder during each fiscal year contingent upon the qualified shipbuilder meeting the requirements for the aggregate of (a) number of new full-time jobs created and the substantial retention of the same, (b) maintenance of base training expenses, and (c) amount of the capital investment made and substantially retained, as set forth in the memorandum of understanding; and (iv) shall be expended by the qualified shipbuilder on training costs or to pay the capital or lease cost of any new training facility to provide that training.

1. The amount of the grant to be paid in each fiscal year shall be conditional upon the qualified shipbuilder meeting the requirements for (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 beginning of such fiscal year; (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 beginning of such fiscal year; and (iii) ~~the expenditure of base training expenses as set forth in the memorandum of understanding entered into on or before June 30, 2009~~ *maintaining a level of expenditures directly or indirectly supporting training activities, which level is at least equal to the base training expense.* If the qualified shipbuilder has not fully met the grant requirements by December 31, 2011, the period of eligibility may be extended for up to three years, provided that the grants in any given fiscal year shall not exceed \$5 million, plus any amounts deferred in accordance with subsection C or D. Grants shall be paid based upon such requirements as agreed to on or before ~~June 30, 2009~~ *August 31, 2011*, regardless if such memorandum of understanding is later modified, amended, superseded, or otherwise changed;

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

- a. \$5 million for the Commonwealth's fiscal year beginning July 1, 2012;
- b. \$10 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2013;
- c. \$15 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2014;
- d. \$20 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2015; and
- e. \$25 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2016; and

3. Grants provided by this section shall not exceed \$25 million in the aggregate or the aggregate total of training costs expended by a qualified shipbuilder during the period, whichever is less.

C. Any qualified shipbuilder 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 beginning of the fiscal year in which the grant is to be paid; (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 beginning of the fiscal year in which the grant is to be paid; and (iii) the aggregate amount of base training expenses as of the last day of the calendar year that immediately precedes the beginning 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 shipbuilder meets such aggregate new full-time job requirements and aggregate capital investments. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment set forth in subsection B. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

D. 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 or the aggregate new full-time job requirements or the aggregate base training expenses 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 B or that a proportional payment, based on the proportional share of the required additional full-time jobs, be made.

E. As a condition of receipt of a grant, a qualified shipbuilder shall make available to the Secretary or his designee for inspection upon his request relevant and applicable documents to determine whether the qualified shipbuilder 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 shipbuilder shall be considered confidential and proprietary.

F. *An eligible city shall be eligible to receive a grant from the Advanced Shipbuilding Training Facility Fund established under subsection B each fiscal year beginning with the Commonwealth's fiscal*

year starting on July 1, 2012. The grants under this subsection may be paid to the eligible city subject to a memorandum of understanding between the Secretary, the eligible city, and the qualified shipbuilder that provides that (i) the eligible city or a private developer will build a new training facility for use by the qualified shipbuilder and the qualified shipbuilder will use the new training facility during the grant period; (ii) the new training facility is part of a development plan approved by the eligible city and the qualified shipbuilder that includes additional private capital investment adjacent to the new training facility that is equal to or greater than the cost of the facility; and (iii) the qualified shipbuilder waives its right to apply for grants under subsection B. Grants to an eligible city may be used only for the construction, lease, or lease-purchase of the new training facility, including related debt service or repayment of any loans whose proceeds are used for such costs. The memorandum of understanding may provide for a total amount of grants under this subsection of not more than \$42 million, subject to appropriation by the General Assembly, and for a period of eligibility of up to 10 years, unless such time frame is extended in accordance with subsection C or D, and may provide for a contractual agreement for payments by the Commonwealth. At the conclusion of the grant period, the qualified shipbuilder shall have the right to assume ownership of the new training facility.

**2. That Chapters 798 and 850 of the Acts of Assembly of 2009 are amended by adding a fifth enactment as follows:**

**5. That a copy of the executed memorandum of understanding, as defined in § 59.1-284.23 of the Code of Virginia pursuant to enactments of the 2011 Session of the General Assembly, shall be provided by August 31, 2011, to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance, with any analysis by the Virginia Economic Development Partnership of the economic impact of the expected capital investment and new full-time jobs described in the memorandum of understanding. Any subsequent changes to the memorandum of understanding shall be submitted to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance not later than 30 days after being executed by the Secretary. All matters, including but not limited to any memorandum of agreement, or any other agreement, necessary to effectuate the purposes of this act shall be finalized on or before October 31, 2011. The Governor shall include in the Budget Bill he submits to the General Assembly in 2011 pursuant to § 2.2-1509 of the Code of Virginia all appropriations necessary to fulfill the obligations of the Commonwealth pursuant to such final agreements.**