

# VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

## CHAPTER 407

*An Act to amend and reenact § 2.2-5100 of the Code of Virginia, relating to the Virginia Investment Partnership Act; definitions.*

[H 243]

Approved March 30, 2012

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

**1. That § 2.2-5100 of the Code of Virginia is amended and reenacted 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~~ *most recently preceding decennial* census, a Virginia employer that:

a. (i) creates or causes to be created at least 400 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage or (ii) creates or causes to be created at least 300 jobs with average salaries at least 100 percent greater than the Prevailing Average Wage, and

b. 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~~ *three* 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, (ii) the Investment Performance Grant subfund, 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 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.