

VIRGINIA ACTS OF ASSEMBLY -- 2012 RECONVENED SESSION

CHAPTER 775

An Act to amend and reenact §§ 2.2-900, 2.2-902, 2.2-904, and 2.2-904.1 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 9 of Title 2.2 an article numbered 2, consisting of sections numbered 2.2-903.1, 2.2-903.2, 2.2-904.01, and 2.2-904.02; and to repeal § 2.2-904.2 of the Code of Virginia, relating to the Department of Business Assistance; Virginia Jobs Investment Program.

[H 768]

Approved April 18, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-900, 2.2-902, 2.2-904, and 2.2-904.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 2.2 an article numbered 2, consisting of sections numbered 2.2-903.1, 2.2-903.2, 2.2-904.01, and 2.2-904.02, as follows:

Article 1.

General Provisions.

§ 2.2-900. Creation of Department; appointment of Director; powers and duties.

A. There is *hereby* created a Department of Business Assistance (the "Department") that shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

§ 2.2-902. Duties of the Department; state agencies to furnish information.

A. The Department shall serve as the liaison between the Commonwealth's existing business and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Provide for training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses;

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth; and

6. ~~Manage the Small Business Jobs Grant Fund created pursuant to § 2.2-904.2~~ *Administer any programs established under the Virginia Jobs Investment Program described in § 2.2-903.1.*

B. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

Article 2.

Virginia Jobs Investment Program.

§ 2.2-903.1. *Virginia Jobs Investment Program; composition; general qualifications.*

A. *There is hereby created the Virginia Jobs Investment Program (the Program) to support private sector job creation by encouraging the expansion of existing Virginia businesses and the start-up of new business operations in Virginia. The Program shall support existing businesses and economic development prospects by offering funding to offset recruiting and training and retraining costs incurred by companies that are either creating new jobs or implementing technological upgrades and by providing assistance with workforce-related challenges and organizational development workshops.*

B. *The Program shall consist of the following component programs:*

1. *The Virginia New Jobs Program;*

2. *The Workforce Retraining Program;*

3. *The Small Business New Jobs and Retraining Programs; and*

4. *The Small Business Jobs Grant Fund Program.*

C. *To be eligible for assistance under any of the component programs of the Program, a company must:*

1. *Create or sustain employment for the Commonwealth in a basic sector industry or function, which*

would include businesses or functions that directly or indirectly derive more than 50 percent of their revenues from out of state sources, as determined by the Department;

2. Pay a minimum entry-level wage rate per hour of at least 1.35 times the federal minimum wage. In areas that have an unemployment rate of one and one-half times the statewide average unemployment rate, the wage rate minimum may be waived by the Department. Only full-time positions that qualify for benefits shall be eligible for assistance; and

3. Meet such additional criteria as may be set forth by the Department.

D. There is hereby established in the state treasury a special nonreverting fund to be known as the Virginia Jobs Investment Program Fund. The Fund shall consist of any moneys appropriated thereto by the General Assembly from time to time and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this article in ensuing fiscal years. Moneys in the Fund shall be used solely for grants to eligible businesses as provided in this article, except for assistance under the Small Business Jobs Grant Fund Program. The total amount of funds provided to eligible businesses under this article for any year, except for assistance under the Small Business Jobs Grant Fund Program, shall not exceed the amount appropriated by the General Assembly to the Fund for such year, plus any carryover from previous years. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his designee. The Fund shall be administered by the Director.

E. As used in this article:

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be capitalized by the company and that establishes or increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both.

"Full-time employee" means a natural person employed for indefinite duration in a position requiring a minimum of either (i) 35 hours of the employee's time per week for the entire normal year, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary employees shall not qualify as new full-time employees under this article.

§ 2.2-903.2. Virginia New Jobs Program.

A. The Department shall develop as a component of the Virginia Jobs Investment Program the Virginia New Jobs Program to support the expansion of existing Virginia companies and new facility locations involving competition with other states or countries.

B. In addition to the requirements of subsection C of § 2.2-903.1 regarding company eligibility, to be eligible for assistance an expansion of an existing company or a new company location must (i) create a minimum of 25 net new jobs for full-time employees, (ii) make a capital investment of at least \$1 million, and (iii) include Virginia in a current competition for the location of the project with at least one other state or country.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

§ 2.2-904. Workforce Retraining Program.

A. The Department shall develop a ~~program~~ as a component of the Virginia Jobs Investment Program the Workforce Retraining Program to provide consulting services and funding to assist companies and businesses with retraining their existing workforces to increase productivity.

B. There is hereby established in the state treasury a special nonreverting fund to be known as the Workforce Retraining Fund. The Fund shall consist of any moneys appropriated thereto by the General Assembly from time to time and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this article in ensuing fiscal years.

C. To be eligible for moneys from the Fund, a company shall:

1. ~~Demonstrate~~ In addition to the requirements of subsection C of § 2.2-903.1 regarding company eligibility, to be eligible for assistance a company must demonstrate (i) that it is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of new skills and technological capabilities by the firm's existing labor force; and (ii) that, for each such integration of new technology, change of product, or substantial change to its service delivery process, (a) no less than 10 full-time employees are involved and (b) a minimum capital investment of \$500,000 will be made within a 12-month period.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

2. Demonstrate that, for each such integration of new technology into its production process, change of product line in keeping with marketplace demands, or substantial change to its service delivery process:

- a. No less than 10 and no more than 200 full-time employees are involved; and
- b. A minimum capital investment of \$500,000 is committed within a 12-month period;

3. Certify that:

- a. The company has not received moneys from the Fund in the previous 24 months;
 - b. The company counted only full-time employees to qualify for the program; and
 - c. Such full-time employees carry a minimum pay rate of \$8 per hour; and
4. Meet such additional criteria as may be promulgated by the Department.

D. As used in this section:

"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 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.

"Full-time employee" means a natural person employed for indefinite duration, requiring a minimum of either (i) 35 hours of the employee's time per week for the entire normal year, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary employees shall not qualify as new full-time employees under this section.

E. Moneys in the Fund shall be used solely for grants to eligible businesses as provided in this section. The total amount of funds provided to eligible businesses under this section for any year shall not exceed the amount appropriated by the General Assembly to the Fund for such year. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his designee. The Fund shall be administered by the Director.

§ 2.2-904.01. Small Business New Jobs and Retraining Programs.

A. The Department shall develop as a component of the Virginia Jobs Investment Program the Small Business New Jobs and Retraining Programs to support the establishment or expansion of Virginia's small businesses or to improve their efficiency through retraining.

B. In addition to the requirements of subsection C of § 2.2-903.1 regarding company eligibility, to be eligible for assistance for new job creation a company must create a minimum of five net new jobs for full-time employees and make a capital investment of at least \$100,000. In addition to the requirements of subsection C of § 2.2-903.1 regarding company eligibility, to be eligible for assistance for retraining a company must demonstrate (i) that it is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of new skills and technological capabilities by the firm's existing labor force and (ii) that, for each such integration of new technology, change of product, or substantial change to its service delivery process, (a) no less than five full-time employees are involved and (b) a minimum capital investment of \$50,000 will be made within a 12-month period.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

§ 2.2-904.02. Small Business Jobs Grant Fund Program.

A. The Department shall develop as a component of the Virginia Jobs Investment Program the Small Business Jobs Grant Fund Program to assist Virginia small businesses job creation.

B. In addition to the requirements of subsection C of § 2.2-903.1 regarding company eligibility, to be eligible for assistance under the Program a company must (i) create a minimum of five net new full-time positions and (ii) make a new capital investment of at least \$100,000.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

C. There is hereby created in the state treasury a permanent nonreverting fund to be known as the Small Business Jobs Grant Fund (the Fund). The Fund shall consist of (i) transfers from the Virginia Jobs Investment Program funded in the general appropriation act currently in effect and (ii) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be managed and administered as a part of the Virginia Jobs Investment Program established within the Department.

D. Moneys in the Fund shall be used solely for the purpose of providing grants to small businesses that create at least five new full-time positions within any 24-month period. A small business meeting the conditions of this section shall be eligible to receive a grant from the Fund ranging from \$500 to

\$2,000 per each new full-time position that has been created based on criteria established by the Department pursuant to subsection F.

In awarding grants, priority shall be given to small businesses creating new full-time positions in areas with an annual average unemployment rate of more than 125 percent of the statewide average unemployment rate.

E. Grant payments under this section shall be conditional upon the small business substantially retaining (i) the number of full-time positions in its base year plus (ii) the number of new full-time positions for which grants are to be paid. In no case shall the retention period, as determined by the Department, for any new full-time position for which a grant is to be paid be less than 12 months.

No grant shall be awarded or paid for any new full-time position created prior to July 1, 2010. No grant shall be awarded or paid for any new full-time position created solely as a result of a merger, acquisition, or similar business combination or a change in business form unless such new full-time position is moved into the Commonwealth from outside of the Commonwealth.

F. The Department shall establish criteria for determining the amount of the grant to be awarded for each eligible new full-time position created by a small business that will be based on the level of education, training, and experience required for the job. Such criteria shall also (i) prohibit a small business from receiving more than one grant under this section for the same position and (ii) require the employee to be employed in the new full-time position for at least 90 days prior to the award of the grant.

G. The Department shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department may require the production of any document, instrument, certificate, or legal opinion or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department.

H. As used in this section:

"Base year" means the calendar year immediately preceding the 24-month period in which a small business creates new full-time positions making it eligible for grants under this section.

"New full-time position" means employment of a resident of the Commonwealth for an indefinite duration in the Commonwealth at a small business requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the small business's operation, which "normal year" must consist of at least 48 weeks, or (ii) a minimum of 1,680 hours per year. Seasonal, temporary, or contract positions or positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as a new full-time position.

"Small business" means an independently owned and operated business that has been organized pursuant to Virginia law or maintains a principal place of business in Virginia and has 250 or fewer employees in its base year.

Article 3.

Small Business Permitting Program.

§ 2.2-904.1. One-stop small business permitting program.

A. As used in this ~~section~~ article, unless the context requires a different meaning:

"Business Permitting Center" or "Center" means the business registration and permitting center established by this section and located in and under the administrative control of the Department.

"Comprehensive application" means a document incorporating pertinent data from existing applications for permits covered under this section.

"Comprehensive permit" means the single document designed for public display issued by the Business Permitting Center that certifies state agency permit approval and that incorporates the endorsements for individual permits included in the comprehensive permitting program.

"Comprehensive permitting program" or "Program" means the mechanism by which comprehensive permits are issued and renewed, permit and regulatory information is disseminated, and account data are exchanged by state agencies.

"Department" means the Department of Business Assistance or any division of the Department to which the Director has delegated or assigned the duties and responsibilities of administering the comprehensive permitting program.

"Permit" means the whole or part of any state agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, to engage in activity associated with or involving the establishment of a small business in the Commonwealth.

"Permit information packet" means a collection of information about permitting requirements and application procedures custom assembled for each request.

"Regulatory" means all permitting and other governmental or statutory requirements establishing a small business or professional activities associated with establishing a small business.

"Regulatory agency" means any state agency, board, commission, or division that regulates one or more professions, occupations, industries, businesses, or activities.

"Renewal application" means a document used to collect pertinent data for renewal of permits covered under this section.

"Small business" means an independently owned and operated business that, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

"Veteran" means an individual who has served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.

B. There is created within the Department the comprehensive permitting program (the Program). The Program is established to serve as a single access point to aid entrepreneurs in filling out the various permit applications associated with establishing a small business in Virginia. The Program in no way supersedes or supplants any regulatory authority granted to any state agency with permits covered by this section. As part of the Program, the Department shall coordinate with the regulatory agency, and the regulatory agency shall determine consistent with applicable law, what types of permits are appropriate for inclusion in the Program as well as the rules governing the submission of and payment for those permits. The website of the Department shall provide access to information regarding the Program. The Department shall have the power and duty to:

1. Create a comprehensive application that will allow an entrepreneur, or an agent thereof, seeking to establish a small business, to create accounts that will allow them to acquire the appropriate permits required in the Commonwealth. The comprehensive application shall:

- a. Allow the business owner to choose a business type and to provide common information, such as name, address, and telephone number, on the front page, eliminating the need to repeatedly provide common information on each permit application;

- b. Allow the business owner to preview and answer questions related to the operation of the business;

- c. Provide business owners with a customized to-do agency checklist, which checklist shall provide the permit applications pertinent to each business type and provide the rules, regulations, and general laws applicable to each business type as well as local licensing information;

- d. Allow the business owner to submit permit applications by electronic means as authorized by § 59.1-496 and to affix thereto his electronic signature as defined in § 59.1-480;

- e. Allow the business owner to check on the status of applications online and to receive information from the permitting agencies electronically; and

- f. Allow a business owner to submit electronic payment for application or permitting fees for applications that have been accepted by the permitting agency.

2. Develop and administer a computerized system program capable of storing, retrieving, and exchanging permit information, while protecting the confidentiality of information submitted to the Department to the extent allowable by law. Information submitted to the Department shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) as the same would apply were the information submitted directly to the Department or to any permitting agency.

3. Issue and renew comprehensive permits in an efficient manner.

4. Identify the types of permits appropriate for inclusion in the Program. The Department shall coordinate with the regulatory agency, and the regulatory agency shall determine consistent with applicable law, what types of permits are appropriate for inclusion in the Program.

5. Incorporate permits into the Program.

6. Do all acts necessary or convenient to carry out the purposes of this chapter.

C. The Business Permitting Center shall compile information regarding the regulatory programs associated with each of the permits obtainable under the Program. This information shall include, at a minimum, a listing of the statutes and administrative rules requiring the permits and pertaining to the regulatory programs that are directly related to the permit. The Center shall provide information governed by this section to any person requesting it. Materials used by the Center to describe the services provided by the Center shall indicate that this information is available upon request.

D. Each state agency shall cooperate and provide reasonable assistance to the Department in the implementation of this section.

E. Any person requiring permits that have been incorporated into the Program may submit a comprehensive application to the Department requesting the issuance of the permits. The comprehensive application form shall contain in consolidated form information necessary for the issuance of the permits.

F. The applicant, if not a veteran, shall include with the application the handling fee established by the Department. An applicant who is a veteran shall be exempt from payment of the handling fee prescribed by this subsection. The amount of the handling fee assessed against the applicant shall be set by the Department at a level necessary to cover the costs of administering the comprehensive permitting program.

G. The authority for approving the issuance and renewal of any requested permit that requires an investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the permit shall remain with that agency. The Center may issue those permits for which proper fee payment and a completed application form have been received and for which no approval action is required by the regulatory agency.

H. Upon receipt of the application, and proper fee payment for any permit for which issuance is subject to regulatory agency action under subsection G, the Department shall immediately notify the regulatory agency with authority to approve the permit issuance or renewal requested by the applicant. Each regulatory agency shall advise the Department within a reasonable time after receiving the notice of one of the following:

1. That the regulatory agency approves the issuance of the requested permit and will advise the applicant of any specific conditions required for issuing the permit;
2. That the regulatory agency denies the issuance of the permit and gives the applicant reasons for the denial;
3. That the application is pending; or
4. That the application is incomplete and further information from or action by the applicant is necessary.

I. The Department shall issue a comprehensive permit endorsed for all the approved permits to the applicant and advise the applicant of the status of other requested permits. The applicant shall be responsible for contesting any decision regarding conditions imposed or permits denied through the normal process established by statute or by the regulatory agency with the authority for approving the issuance of the permit.

J. Regulatory agencies shall be provided information from the comprehensive application for their permitting and regulatory functions.

K. The Department shall be responsible for directing the applicant to make all payments for applicable fees established by the regulatory agency directly to the proper agency.

L. There is hereby created in the state treasury a special nonreverting fund to be known as the Comprehensive Permitting Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of all moneys collected from the handling fee established by the Department pursuant to subsection F and such other funds as may be appropriated by the General Assembly. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to administer the Program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by Director of the Department.

M. Unless otherwise directed by the regulatory agency, the Department shall not issue or renew a comprehensive permit to any person under any of the following circumstances:

1. The person does not have a valid tax registration, if required.
2. The person is a corporation, limited liability company, business trust, limited partnership or registered limited liability partnership that (i) is delinquent in the payment of fees or penalties collected by the State Corporation Commission pursuant to the business entity statutes it administers; (ii) does not exist; or (iii) is not authorized to transact business in the Commonwealth pursuant to one of the business entity statutes administered by the State Corporation Commission.
3. The person has not submitted the sum of all fees and deposits required for the requested individual permit endorsements, any outstanding comprehensive permit delinquency fee, or other fees and penalties to be collected through the comprehensive permitting program.

N. The Department may adopt regulations in accordance with § 2.2-901 as may be necessary to carry out the purposes of this section.

2. That § 2.2-904.2 of the Code of Virginia is repealed.