

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 470

An Act to amend and reenact §§ 15.2-1301 and 62.1-132.3:2 of the Code of Virginia, relating to Port of Virginia Economic and Infrastructure Development Grant Program.

[H 672]

Approved April 1, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1301 and 62.1-132.3:2 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1301. Voluntary economic growth-sharing agreements.

A. Any county, city or town, or combination thereof, may enter voluntarily into an agreement with any other county, city or town, or combination thereof, whereby the locality may agree for any purpose otherwise permitted, including the provision on a multi-jurisdictional basis of one or more public services or facilities or any type of economic development project, to enter into binding fiscal arrangements for fixed time periods, to exceed one year, to share in the benefits of the economic growth of their localities. However, if any such agreement contains any provision addressing any issue provided for in Chapters 32, 33, 36, 38, 39, or 41 of this title, the agreement shall be subject to the review and implementation process established by Chapter 34 of this title.

B. The terms and conditions of the revenue, tax base or economic growth-sharing agreement as provided in subsection A shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality. However, the public hearing shall not take place until the Commission on Local Government has issued its findings in accordance with subsection D. For purposes of this section, "revenue, tax base, and economic growth-sharing agreements" means any agreement authorized by subsection A which obligates any locality to pay another locality all or any portion of designated taxes or other revenues received by that political subdivision, but shall not include any interlocal service agreement.

C. Any revenue, tax base or economic growth-sharing agreement entered into under the provisions of this section that creates a debt pursuant to Article VII, Section 10 (b) of the Constitution of Virginia, shall require the board of supervisors to hold a special election on the question as provided in § 15.2-3401.

D. Revenue, tax base, and economic growth-sharing agreements drafted under the provisions of this chapter shall be submitted to the Commission on Local Government for review as provided in subdivision 4 of § 15.2-2903. However, no such review shall be required for two or more localities located in the Port of Virginia Economic and Infrastructure Development Zone, established pursuant to § 62.1-132.3:2, to enter entering into an economic growth-sharing agreement pursuant to this section in order to facilitate the reception of grants for qualified companies in such locality pursuant to the Port of Virginia Economic and Infrastructure Development Grant Fund and Program established pursuant to § 62.1-132.3:2.

§ 62.1-132.3:2. Port of Virginia Economic and Infrastructure Development Grant Fund and Program.

A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, and any funds transferred at the request of the Executive Director from the Port Opportunity Fund created pursuant to § 62.1-132.3:1, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Port of Virginia Economic and Infrastructure Development Zone Grant Fund (the Fund), to be administered by the Virginia Port Authority. The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Director. Moneys in the Fund shall be used solely for the purpose of grants to qualified applicants to the Port of Virginia Economic and Infrastructure Development Zone Grant Program.

B. The Virginia General Assembly does hereby designate the following localities to be part of the Port of Virginia Economic and Infrastructure Development Zone: the Counties of Brunswick, Chesterfield, Charles City, Clarke, Dinwiddie, Frederick, Gloucester, Greensville, Henrico, Hanover, Isle of Wight, James City, Mecklenburg, Montgomery, New Kent, Page, Prince George, Shenandoah, Southampton, Surry, Sussex, Warren, and York; and the Cities of Chesapeake, Colonial Heights,

Emporia, Franklin, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, Williamsburg, and Winchester.

C. As used in this section, unless the context requires a different meaning:

"New, permanent full-time position" means a job of an indefinite duration, created by a qualified company as a result of operations within the ~~Zone~~ Commonwealth, requiring a minimum of 35 hours of an employee's time per week for the entire normal year of the company's operations, which normal year shall consist of at least 48 weeks, or a position of indefinite duration that requires a minimum of 35 hours of an employee's time per week for the portion of the taxable year in which the employee was initially hired for the qualified company's location within the ~~Zone~~ Commonwealth. ~~Seasonal~~ "New, permanent full-time position" includes security positions as required within a foreign trade zone, established pursuant to Foreign Trade Zones Act of 1934, as amended (19 U.S.C. §§ 81a through 81u). "New, permanent full-time position" does not include seasonal or temporary positions, or jobs created when a position is shifted from an existing location in the Commonwealth to the qualified company's new or expanded location within the ~~Zone~~, and or positions in building and grounds maintenance, security, and or other positions that are ancillary to the principal activities performed by the employees at the qualified company's location within the ~~Zone~~ shall not qualify as new, permanent full-time positions Commonwealth.

"Qualified company" means a corporation, limited liability company, partnership, joint, venture, or other business entity that (i) locates or expands a facility within the ~~Zone~~ Commonwealth; (ii) creates at least 25 new, permanent full-time positions for qualified full-time employees at a facility within the ~~Zone~~ Commonwealth during its first year of operation within the ~~Zone~~ or during the year when the expansion occurs; (iii) is involved in maritime commerce or exports or imports manufactured goods through the Port of Virginia; and (iv) is engaged in one or more of the following: the distribution, freight forwarding, freight handling, goods processing, manufacturing, warehousing, crossdocking, transloading, or wholesaling of goods exported and imported through the Port of Virginia; ship building and ship repair; dredging; marine construction; or offshore energy exploration or extraction.

"Qualified full-time employee" means an employee filling a new, permanent full-time position in the qualified company's location within the ~~Zone~~ Commonwealth. A "qualified full-time employee" does not include an employee (i) for whom a tax credit was previously earned pursuant to § 58.1-439 or 58.1-439.12:06 by a related party as defined listed in § 267(b) of the Internal Revenue Code or by a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code; (ii) who was previously employed in the same job function at an existing location in ~~Virginia~~ the Commonwealth by a related party as defined listed in § 267(b) of the Internal Revenue Code; or (iii) whose job function was previously performed at a different location in ~~Virginia~~ the Commonwealth by an employee of a related party as defined listed in § 267(b) of the Internal Revenue Code or a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code.

"Zone" means the Port of Virginia Economic and Infrastructure Development Zone.

D. C. Beginning January 1, 2013 2014, but not later than June 30, 2020, and subject to appropriation, any qualified company that locates or expands a facility within the ~~Port of Virginia Economic and Infrastructure Development Zone~~ Commonwealth shall be eligible to apply for a one-time grant from the Fund, in an amount determined as follows:

1. One thousand dollars per new, permanent full-time position if the qualified company creates at least 25 new, permanent full-time positions for qualified full-time employees during its first year of operation within the ~~Zone~~ or during the year in which the expansion occurs;
2. Fifteen hundred dollars per new, permanent full-time position if the qualified company creates at least 50 new, permanent full-time positions for qualified full-time employees during its first year of operation within the ~~Zone~~ or during the year in which the expansion occurs;
3. Two thousand dollars per new, permanent full-time position if the qualified company creates at least 75 new, permanent full-time positions for qualified full-time employees during its first year of operation within the ~~Zone~~ or during the year in which the expansion occurs; and
4. Three thousand dollars per new, permanent full-time position if the qualified company creates at least 100 new, permanent full-time positions for qualified full-time employees during its first year of operation within the ~~Zone~~ or during the year in which the expansion occurs.

E. D. The maximum amount of grant allowable per qualified company in any given fiscal year is \$500,000. The maximum amount of grants allowable among all qualified companies in any given fiscal year is ~~\$5,000,000~~ \$5 million.

F. E. To qualify for a grant pursuant to this section, a qualified company must apply for the grant not later than March 31 in the year immediately following the location or expansion of a facility within the ~~Zone~~ Commonwealth pursuant to an application process developed by the Virginia Port Authority. Within 90 days after the filing deadline, the Executive Director shall certify to the Comptroller and the qualified company the amount of grant to which the qualified company is entitled under this section. Payment of each grant shall be made by check issued by the State Treasurer of ~~Virginia~~ on warrant of the Comptroller within 60 days of such certification and in the order that each completed eligible

application is received. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund or ~~\$5,000,000~~ \$5 million, such grants shall be paid in the next fiscal year in which funds are available.

~~G.~~ F. Prior to receipt of a grant, the qualified company shall enter into a memorandum of understanding with the Virginia Port Authority establishing the requirements for maintaining the number of new, permanent full-time positions for qualified employees at the qualified company's location within the ~~Zone~~ Commonwealth. If the number of new, permanent full-time positions for any of the three years immediately following receipt of a grant falls below the number of new, permanent full-time positions created during the year for which the grant is claimed, the amount of the grant must be recalculated using the decreased number of new, permanent full-time positions and the qualified company shall repay the difference.

~~H.~~ G. No qualified company shall apply for a grant nor shall one be awarded under this section to an otherwise qualified company if (i) a credit pursuant to § 58.1-439 or 58.1-439.12:06 is claimed for the same employees or for capital expenditures at the same facility by the qualified company, by a related party as ~~defined~~ listed in § 267(b) of the Internal Revenue Code, or by a trade or business under common control as defined in *regulations issued pursuant to* § 52(b) of the Internal Revenue Code or (ii) the qualified company was a party to a reorganization as defined in § 368(b) of the Internal Revenue Code, and any corporation involved in the reorganization as defined in § 368(a) of the Internal Revenue Code previously received a grant under this section for the same facility or operations.

~~I.~~ H. The Virginia Port Authority, with the assistance of the Virginia Economic Development Partnership, shall develop guidelines establishing procedures and requirements for qualifying for the grant, including the affirmative determination that each applicant is a qualified company, as defined above, engaged in a port-related business. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). *For the purposes of administering this grant program, the Virginia Port Authority and the Department of Taxation shall exchange information regarding whether a qualified company, a related party as listed in § 267(b) of the Internal Revenue Code, or a trade or business under common control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code has claimed a credit pursuant to § 58.1-439 or 58.1-439.12:06 for the same employees or for capital expenditures at the same facility.*