

# VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

## CHAPTER 801

*An Act to amend and reenact §§ 2.2-115, 58.1-405, 58.1-408, 58.1-417 through 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.2-958.2:01 and 58.1-405.1, relating to income tax; modification for certain companies; grants.*

[S 883]

Approved April 9, 2018

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

**1. That §§ 2.2-115, 58.1-405, 58.1-408, 58.1-417 through 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-958.2:01 and 58.1-405.1 as follows:**

**§ 2.2-115. Commonwealth's Development Opportunity Fund.**

A. As used in this section, unless the context requires otherwise:

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the 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 location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

"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 economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.

"Private investment" means the private investment required under this section.

B. There is created the Commonwealth's Development Opportunity Fund (the Fund) to be used by the Governor to attract economic development prospects and secure the expansion of existing industry in the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Governor shall report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance as funds are awarded in accordance with this section.

C. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. The criteria for making such grants or loans shall include (i) job creation, (ii) private capital investment, and (iii) anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created. Loans shall be approved by the Governor and made in accordance with guidelines established by the Virginia Economic Development Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the Fund. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the Fund in every such five-year period shall be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate for the calendar year that immediately precedes the calendar year of the award. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable minimum private investment and new jobs requirements set forth in this section, then any funds remaining in the Fund at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period.

D. Funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband

Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. However, in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.

It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality, unless the procedures set forth in § 30-310 are followed. The Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall, pursuant to § 30-310, submit such projects to the MEI Project Approval Commission established pursuant to § 30-309.

E. 1. a. Except as provided in this subdivision, no grant or loan shall be awarded from the Fund unless the project involves a minimum private investment of \$5 million and creates at least 50 new jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage. For projects, including but not limited to projects involving emerging technologies, for which the average wage of the new jobs created, excluding fringe benefits, is at least twice the prevailing average wage for that locality or region, the Governor shall have the discretion to require no less than one-half the number of new jobs as set forth for that locality in this subdivision.

b. Notwithstanding the provisions of subdivision a, a grant or loan may be awarded from the Fund if the project involves a minimum private investment of \$100 million and creates at least 25 new jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage.

2. Notwithstanding the provisions of subdivision 1 a, in localities (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year or (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year, a grant or loan may be awarded from the Fund pursuant to subdivision 1 a if the project involves a minimum private investment of \$2.5 million and creates at least 25 new jobs for which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

3. Notwithstanding the provisions of subdivisions 1 a and 2, in localities (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year, a grant or loan may be awarded from the Fund pursuant to such subdivisions if the project involves a minimum private investment of \$1.5 million and creates at least 15 new jobs for which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

4. For projects that are eligible under subdivision 2 or 3, the average wage of the new jobs, excluding fringe benefits, shall be no less than 85 percent of the prevailing average wage. In addition, for projects in such localities, the Governor may award a grant or loan for a project paying less than 85 percent of the prevailing average wage but still providing customary employee benefits, only after the Secretary of Commerce and Trade has made a written finding that the economic circumstances in the area are sufficiently distressed (i.e., high unemployment or underemployment and negative economic forecasts) that assistance to the locality to attract the project is nonetheless justified. However, the minimum private investment and number of new jobs required to be created as set forth in this subsection shall still be a condition of eligibility for an award from the Fund. Such written finding shall promptly be provided to the chairs of the Senate Committee on Finance and the House Committee on Appropriations.

F. 1. The Virginia Economic Development Partnership shall assist the Governor in developing objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund. The guidelines may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports that have been provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. The guidelines may include a requirement for the affected locality or localities to provide matching funds which may be cash or in-kind, at the discretion of the Governor. The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. At the discretion of the Governor, this cap may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and criteria, the Virginia Economic Development Partnership shall use the measure for Fiscal Stress published by the Commission on Local Government of the Department of Housing and Community Development for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund.

2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision that receives a grant or loan from the Fund shall enter into a contract with each business beneficiary of funds from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i) subsequently distributed by the political subdivision to the person or entity or (ii) used by the political subdivision for the benefit of the person or entity but never distributed to the person or entity.

b. The contract between the political subdivision and the business beneficiary shall provide in detail (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair market value of all matching funds (or in-kind match) that the political subdivision has agreed to provide, (iii) how funds committed by the Commonwealth (including but not limited to funds from the Fund committed by the Governor) and funds that the political subdivision has agreed to provide are to be spent, (iv) the minimum private investment to be made and the number of new jobs to be created agreed to by the business beneficiary, (v) the average wage (excluding fringe benefits) agreed to be paid in the new jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes agreed to be used for measuring compliance with the minimum private investment and new jobs requirements, including consideration of any layoffs instituted by the business beneficiary over the course of the period covered by the contract.

The contract shall state the date by which the agreed upon private investment and new job requirements shall be met by the business beneficiary of funds from the Fund and may provide for the political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the political subdivision subsequent to the execution of the contract. Any extension of such date granted by the political subdivision shall be in writing and promptly delivered to the business beneficiary, and the political subdivision shall simultaneously provide a copy of the extension to the Virginia Economic Development Partnership.

The contract shall provide that if the private investment and new job contractual requirements are not met by the expiration of the date stipulated in the contract, including any extension granted by the political subdivision, the business beneficiary shall be liable to the political subdivision for repayment of a portion of the funds provided under the contract. The contract shall include a formula for purposes of determining the portion of such funds to be repaid. The formula shall, in part, be based upon the fair market value of all funds that have been provided by the Commonwealth and the political subdivision and the extent to which the business beneficiary has met the private investment and new job contractual requirements. Any such funds repaid to the political subdivision that relate to the award from the Commonwealth's Development Opportunity Fund shall promptly be paid over by the political subdivision to the Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State Treasurer of such payment, the Comptroller shall deposit such repaid funds into the Commonwealth's Development Opportunity Fund.

c. The contract shall be amended to reflect changes in the funds committed by the Commonwealth or agreed to be provided by the political subdivision.

d. Notwithstanding any provision in this section or in the guidelines, whenever layoffs instituted by a business beneficiary over the course of the period covered by a contract cause the net total number of the new jobs created to be fewer than the number agreed to, then the business beneficiary shall return the portion of any funds received pursuant to the repayment formula established by the contract.

3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such contract with a business beneficiary, the political subdivision shall provide a copy of the proposed contract to the Attorney General. The Attorney General shall review the proposed contract (i) for enforceability as to its provisions and (ii) to ensure that it is in appropriate legal form. The Attorney General shall provide any written suggestions to the political subdivision within seven days of his receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the enforceability of the contract's provisions and the legal form of the contract.

4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until such contract as described herein is executed with the business beneficiary.

G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance which shall include, but is not limited to, the following information regarding grants and loans awarded from the Fund during the immediately preceding six-month period for economic development projects: the name of the company that is the business beneficiary of the grant or loan and the type of business in which it engages; the location (county, city, or town) of the project; the amount of the grant or loan committed from the Fund and the amount of all other funds committed by the Commonwealth from other sources and the purpose for which such grants, loans, or other funds will be used; the amount of all moneys or funds agreed to be provided by political subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created by the business beneficiary; the amount of investment in the project agreed to be made by the business beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average

wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

H. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

I. On a quarterly basis, the Virginia Economic Development Partnership shall notify the Governor, his campaign committee, and his political action committee of awards from the Fund made in the prior quarter. Within 18 months of the date of each award from the Fund, the Governor, his campaign committee, and his political action committee shall submit to the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355 a report listing any contribution, gift, or other item with a value greater than \$100 provided by the business beneficiary of such award to the Governor, his campaign committee, or his political action committee, respectively, during (i) the period in which the business beneficiary's application for such award was pending and (ii) the one-year period immediately after any such award was made.

*J. 1. Notwithstanding any provision of this section, the Governor may give grants or loans to any eligible company, as defined in § 58.1-405.1, provided that such company shall be required to distribute at least half of such grant or loan to its employees in jobs located in a qualified locality, as defined in § 58.1-405.1. If the Governor gives a grant or loan pursuant to this subsection, it shall not be required to meet other provisions in this section, including provisions, restrictions, and procedural requirements related to job creation, investment, local matching funds, or contracts with business beneficiaries.*

*2. The grant or loan shall not exceed \$2,000 per new job, as defined in § 58.1-405.1; however, the Governor may give a new grant or loan each year to the same eligible company.*

*3. An eligible company's eligibility for or receipt of a grant or loan pursuant to this subsection shall not prevent it from receiving any other grant or loan for which it may be qualified pursuant to this section.*

**§ 15.2-958.2:01. Grants for certain corporations and pass-through entities.**

*A. The counties and cities listed in subsection B may give grants or loans to any eligible company, as defined in § 58.1-405.1.*

*B. The counties and cities that may give grants pursuant to subsection A are:*

*1. The Counties of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe and the Cities of Bristol, Galax, and Norton;*

*2. The Counties of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, and Prince Edward and the Cities of Danville and Martinsville;*

*3. The Counties of Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and Westmoreland; and*

*4. The Counties of Brunswick and Dinwiddie and the City of Petersburg.*

**§ 58.1-405. Corporations transacting or conducting entire business within this Commonwealth.**

*¶ Except as provided in § 58.1-405.1, if the entire business of the corporation is transacted or conducted within the Commonwealth, the tax imposed by this chapter shall be upon the entire Virginia taxable income of such corporation for each taxable year; however, if such corporation is certified by the Virginia Economic Development Partnership Authority as an eligible company pursuant to § 58.1-405.1, it may elect to (i) apportion its income between qualified localities, as defined in § 58.1-405.1, and other localities in the Commonwealth, provided that it shall not apportion any of its income to a state other than Virginia and (ii) utilize any modification for which it may be eligible pursuant to the provisions of § 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, as applicable. The entire business of the corporation shall be deemed to have been transacted or conducted within the Commonwealth if such corporation is not subject in any other state to a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing business.*

**§ 58.1-405.1. Eligibility of companies for apportionment modification; certification by the Virginia Economic Development Partnership Authority.**

*A. For purposes of this section:*

*"Authority" means the Virginia Economic Development Partnership Authority.*

*"Eligible company" means a corporation or pass-through entity, as defined in § 58.1-390.1, that does not have any existing property or payroll in Virginia as of January 1, 2018, and on or after January 1, 2018, but before January 1, 2025, (i) either (a) spends at least \$5 million on new capital investment in a qualified locality or qualified localities and creates at least 10 new jobs in a qualified locality or qualified localities or (b) creates at least 50 new jobs in a qualified locality or qualified localities; (ii) is a traded-sector company; and (iii) is certified by the Authority as generating a positive fiscal impact pursuant to subsection B.*

*"New capital investment" means real property acquired in a qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2025, and any improvements to real property in a qualified locality or qualified localities on or after January 1, 2018, but before January 1, 2025.*

*"New job" means a permanent, full-time position of indefinite duration that pays at least 150 percent of the minimum wage, as defined in the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), and that requires a minimum of (i) 35 hours of an employee's time a week for the entire normal year of the eligible company's operations, which normal year shall consist of at least 48 weeks, or (ii) 1,680 hours per year.*

*"Qualified development site" means real property that is in a locality adjacent to a qualified locality and, before January 1, 2018, either (i) was owned or partly owned by a qualified locality or an industrial development authority of which a qualified locality is a member or (ii) was owned or partly owned by a locality or industrial development authority, was leased to a private party, and was subject to a revenue-sharing agreement providing that a portion of the revenues from the lease would be distributed to a qualified locality. "Qualified development site" does not include real property that is not owned by the Commonwealth or a political subdivision thereof.*

*"Qualified locality" means (i) the County of Alleghany, Bland, Buchanan, Carroll, Craig, Dickenson, Giles, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, or Wythe or the City of Bristol, Galax, or Norton; (ii) the County of Amelia, Appomattox, Buckingham, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Patrick, Pittsylvania, or Prince Edward or the City of Danville or Martinsville; (iii) the County of Accomack, Caroline, Essex, Gloucester, King and Queen, King William, Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, or Westmoreland; or (iv) the County of Brunswick or Dinwiddie or the City of Petersburg. "Qualified locality" includes a qualified development site.*

*"Traded-sector company" means a company that directly or indirectly derives more than 50 percent of its revenue from out-of-state sources.*

*B. 1. The Authority shall determine whether a company will generate a positive fiscal impact based on the following factors: (i) job creation; (ii) private capital investment; and (iii) anticipated additional state and local tax revenue. The Authority also shall consider the additional revenue the Commonwealth likely would expend in and for the localities if the economy in the localities continues to erode. In making its determination, the Authority shall consult with the Department regarding the revenue impact of certifying such company. The Authority shall certify a company only if it determines such company will generate a positive fiscal impact.*

*2. The Authority shall deny certification to any company if it determines such taxpayer has engaged in a merger, acquisition, similar business combination, name change, change in business form, or other transaction the primary purpose of which is to obtain status as an eligible company.*

*3. The Authority shall make an annual re-certification according to subdivision B 1, and no company shall remain an eligible company for any taxable year that the Authority does not grant re-certification.*

*C. Any eligible company may elect to apportion its income pursuant to the provisions of § 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, as applicable. However, if the entire business of an eligible company is transacted or conducted within the Commonwealth, it shall not apportion its income pursuant to this subsection but may elect to apportion its income pursuant to the provisions of § 58.1-405.*

#### **§ 58.1-408. What income apportioned and how.**

*A. The Virginia taxable income of any corporation, except those subject to the provisions of § 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, or 58.1-422.2, excluding income allocable under § 58.1-407, shall be apportioned to the Commonwealth by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor, plus twice the sales factor, and the denominator of which is four; however, where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.*

*B. Any eligible company, as defined in § 58.1-405.1, may subtract from the numerator of the corresponding factor the value of its (i) property acquired in any qualified locality or qualified localities, as defined in § 58.1-405.1, on or after January 1, 2018, but before January 1, 2025; (ii) payroll attributable to jobs created on or after January 1, 2018, but before January 1, 2025, in any qualified locality or qualified localities; and (iii) sales in the Commonwealth during the taxable year. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (a) total, cumulative new capital investment falls below the applicable initial threshold or (b) number of new jobs falls below the applicable initial threshold.*

#### **§ 58.1-417. Motor carriers; apportionment.**

*A. Motor carriers of property or passengers shall apportion their net apportionable income to this Commonwealth by the use of the ratio of vehicle miles in this Commonwealth to total vehicle miles of the corporation everywhere. For the purposes of this section the words "vehicle miles" in the case of*

motor carriers of property shall mean miles traveled by vehicles (whether owned or operated by the corporation) hauling property for a charge or traveling on a scheduled route. In the case of motor carriers of passengers the same shall mean miles traveled by vehicles (whether owned or operated by the corporation) carrying passengers for a fare or traveling on a scheduled route.

B. The provisions of subsection A shall not be applicable to a carrier:

1. Which neither owns nor rents real or tangible personal property within this Commonwealth, except vehicles, which has made no pick-ups or deliveries within this Commonwealth, and which has traveled less than 50,000 vehicle miles in this Commonwealth in the taxable year; or

2. Which neither owns nor rents any real or tangible personal property within this Commonwealth, except vehicles, and which makes no more than twelve round trips into this Commonwealth during a taxable year.

The mileage traveled under 50,000 miles or the mileage traveled in such round trips, however, may not represent more than 5 percent of the total miles annually traveled in all states by such carrier.

*C. Any eligible company, as defined in § 58.1-405.1, may subtract its vehicle miles traveled in any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.*

#### **§ 58.1-418. Financial corporations; apportionment.**

A. The Virginia taxable income of a financial corporation, as defined herein, excluding income allocable under § 58.1-407, shall be apportioned within and without this Commonwealth in the ratio that the business within this Commonwealth is to the total business of the corporation. Business within this Commonwealth shall be based on cost of performance in the Commonwealth over cost of performance everywhere.

B. "Financial corporation" means any corporation not exempted from the imposition of tax under the provisions of § 58.1-401, which derives more than seventy percent of its gross income from the classes of income enumerated in subdivisions 1 through 4 below, without reference to the state wherein such income is earned, including but not limited to small loan companies, sales finance companies, brokerage companies and investment companies:

1. Fees, commissions, other compensation for financial services rendered;
2. Gross profits from trading in stocks, bonds, or other securities;
3. Interest; and
4. Dividends received to the extent included in Virginia taxable income.

C. In computing the amounts referred to in subdivisions 1 through 4 of subsection B of this section, any amount received by a member of an affiliated group, determined under § 1504(a) of the Internal Revenue Code but without reference to whether any such corporation is an includable corporation under § 1504(b) of the Internal Revenue Code, from another member of such group shall be included only to the extent such amount exceeds expenses of the recipient directly related thereto.

*D. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its business within any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.*

#### **§ 58.1-419. Construction corporations; apportionment.**

A. Construction companies which have elected to report income on the completed contract basis shall apportion income within and without this Commonwealth in the ratio that the business within the Commonwealth is to the total business of the corporation.

B. All other construction corporations not reporting under the completed contract method shall determine Virginia taxable income by reference to §§ 58.1-406 through 58.1-416.

*C. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its business within any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.*

#### **§ 58.1-420. Railway companies; apportionment.**

A. Notwithstanding the provisions of § 58.1-408, railway companies shall determine their net apportionable income to the Commonwealth by multiplying the Virginia taxable income of such company, excluding the classes of income allocable under § 58.1-407, by the use of the ratio of revenue

car miles in the Commonwealth to total revenue car miles of the company everywhere. For the purposes of this section, "revenue car mile" in the case of railway carriers of property or passengers means the movement of a unit of loaded car equipment a distance of one mile. The loaded car miles shall be determined in accordance with the Uniform System of Accounts for Railroad Companies of the Interstate Commerce Commission.

*B. Any eligible company, as defined in § 58.1-405.1, may subtract its revenue car miles traveled in any qualified locality or qualified localities, as defined in § 58.1-405.1, during the taxable year from the numerator of the ratio in subsection A. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.*

**§ 58.1-422. Manufacturing companies; apportionment.**

A. For taxable years beginning on or after July 1, 2011, the Virginia taxable income of a manufacturing company, excluding income allocable under § 58.1-407, may be apportioned within and without the Commonwealth as provided in § 58.1-408 or as follows:

1. From July 1, 2011, until July 1, 2013, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2013, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2014, and thereafter, by multiplying such income by the sales factor.

B. If the taxpayer makes one or more of the elections described in subdivision A 1, A 2, or A 3, the taxpayer may not revoke the election for a period of three taxable years.

In addition, the taxpayer shall certify to the Department that the average weekly wage of its full-time employees is greater than the lower of the state or local average weekly wages for the taxpayer's industry.

C. If the average annual number of full-time employees of a manufacturing company for the first three taxable years (in which the manufacturing company used the alternative apportionment set forth in this section) is less than 90 percent of the base year employment, or the average wage of its full-time employees as certified by the taxpayer is not greater than the lower of the state or local average weekly wage, then the Department of Taxation shall assess the manufacturing company with additional taxes pursuant to this article computed as the difference between (i) the taxes that would have been due under the apportionment formula provided under § 58.1-408 for such three taxable years, minus (ii) the taxes due under the alternative apportionment provided under this section for such three taxable years. Interest shall accrue and shall be assessed on such additional taxes at the rate prescribed under § 58.1-15, with such interest accruing from the original due date for filing of the income tax return to the date of payment of such additional taxes.

Such additional taxes and interest are hereby imposed on manufacturing companies using the alternative apportionment set forth in this section.

D. As used in this section, unless the context requires another meaning:

"Base year employment" means the average number of full-time employees employed by the manufacturing company in the Commonwealth in the taxable year that ended immediately prior to the first taxable year in which the manufacturing company used the alternative apportionment set forth in this section.

"Full-time employee" means an employee of a manufacturing company who is employed for an indefinite duration in the Commonwealth for which the standard fringe benefits are paid by the manufacturing company, for which employment requires a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such manufacturing company's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year.

"Manufacturing company" means a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industrial Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sector 11, 31, 32, or 33.

E. The General Assembly of Virginia finds that job creation is essential to the continued fiscal health of the Commonwealth. In this modern economy, states often compete for quality manufacturing jobs. Accordingly, the provisions of this section relating to manufacturing companies that increase their employment in Virginia are integral to the purpose of the election allowed pursuant to this section. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a

court of competent jurisdiction, that provision shall not be deemed severable.

*F. Any eligible company, as defined in § 58.1-405.1, that elects to apportion its income pursuant to subsection A may subtract the value of its sales in the Commonwealth during the taxable year from the numerator of the ratio in subdivision A 3. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.*

**§ 58.1-422.1. Retail companies; apportionment.**

A. For taxable years beginning on or after July 1, 2012, the Virginia taxable income of a retail company, excluding income allocable under § 58.1-407, shall be apportioned within and without the Commonwealth as follows:

1. From July 1, 2012, until July 1, 2014, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus triple the sales factor and the denominator of which is five, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus two;

2. From July 1, 2014, until July 1, 2015, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

3. From July 1, 2015, and thereafter, by multiplying such income by the sales factor.

B. As used in this section, "retail company" means a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industry Classification System (NAICS), United States Manual, United States Office of Management and Budget, 1997 Edition, would be included in Sectors 44-45.

*C. Any eligible company, as defined in § 58.1-405.1, may subtract the value of its sales in the Commonwealth during the taxable year from the numerator of the ratio in subdivision A 3. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.*

**§ 58.1-422.2. Apportionment; taxpayers with enterprise data center operations.**

A. For taxable years beginning on or after July 1, 2016, the Virginia taxable income of taxpayers with enterprise data center operations, excluding income allocable under § 58.1-407, shall be apportioned within and without the Commonwealth as follows:

1. From July 1, 2016, until July 1, 2017, by multiplying such income by a fraction, the numerator of which is the property factor plus the payroll factor plus quadruple the sales factor and the denominator of which is six, except that when the sales factor does not exist, the denominator of the fraction shall be the number of existing factors, and when the sales factor exists but the payroll factor or property factor does not exist, the denominator of the fraction shall be the number of existing factors plus three; and

2. From July 1, 2017, and thereafter, by multiplying such income by the sales factor.

B. As used in this section:

"Enterprise data center operations" means operations that (i) physically house information technology equipment such as servers, switches, routers, data storage devices, or related equipment; (ii) manage and process digital data and information to provide application services or management for data processing, such as web hosting, Internet, intranet, telecommunication, and information technology; (iii) are developed and owned by the taxpayer; and (iv) are operated by the taxpayer or any of its affiliates substantially for their own use.

C. The provisions of this section requiring an apportionment formula for taxpayers with enterprise data center operations shall apply only to taxpayers that have entered into a memorandum of understanding with the Virginia Economic Development Partnership Authority on or after July 1, 2015, to make a new capital investment of at least \$150 million in an enterprise data center in the Commonwealth on or after such date. The apportionment formula under this section shall apply to such taxpayers beginning with the taxable year for which the Virginia Economic Development Partnership Authority provides a written certification to the taxpayer that the new capital investment has been completed.

D. The General Assembly of Virginia finds that capital investment in data centers is essential to the continued fiscal health of the Commonwealth. In this modern economy, states often compete for quality data centers. Accordingly, the provisions of subsection C relating to capital investment in enterprise data centers are integral to the purpose of this section. If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, that provision shall not be deemed severable.



*E. Any eligible company, as defined in § 58.1-405.1, that apportions its income pursuant to this section may subtract the value of its sales in the Commonwealth during the taxable year from the numerator of the ratio in subdivision A 2. Such eligible company may make such modification for the taxable year in which it first becomes eligible and for the six subsequent, consecutive taxable years, except for any year in which the eligible company's (i) total, cumulative new capital investment falls below the applicable initial threshold or (ii) number of new jobs falls below the applicable initial threshold.*

**2. That the Virginia Economic Development Partnership Authority shall promulgate guidelines regarding the certification process described in subsection B of § 58.1-405.1 of the Code of Virginia, as created by this act, and that the Department of Taxation shall promulgate guidelines regarding the modifications to apportionment formulae described in §§ 58.1-405, 58.1-408, 58.1-417, 58.1-418, 58.1-419, 58.1-420, 58.1-422, 58.1-422.1, and 58.1-422.2 of the Code of Virginia, as amended by this act.**

**3. That any eligible company, as defined in § 58.1-405.1 of the Code of Virginia, as created by this act, that apportions its income pursuant to the provisions of this act shall include with its income tax return information regarding the modification of its apportionment method pursuant to this act, including the amounts subtracted from the relevant apportionment factors. The Department of Taxation shall use such information to compute the fiscal savings to such companies and shall report annually by the first day of each regular session of the General Assembly to the Chairmen of the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance the number of returns processed during the prior fiscal year for eligible companies that claimed a modified method of apportionment under this act and the estimated revenue impact of such modified methods of apportionment.**