

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 875

An Act to amend the Code of Virginia by adding in Chapter 32.1 of Title 2.1 an article numbered 8, consisting of sections numbered 2.1-548.43:1 through 2.1-548.43:6, relating to creation of the Virginia Investment Partnership Act.

[H 2460]

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 32.1 of Title 2.1 an article numbered 8, consisting of sections numbered 2.1-548.43:1 through 2.1-548.43:6, as follows:

Article 8.

Virginia Investment Partnership Act.

§ 2.1-548.43:1. Short title.

This article shall be known and may be cited as the "Virginia Investment Partnership Act."

§ 2.1-548.43:2. Definitions.

As used in this article, 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.

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing facility within the Commonwealth that is capitalized by the manufacturer 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. 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 manufacturer" means an existing Virginia manufacturer that makes a capital investment of at least \$25 million that is announced on or after July 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.

"Existing Virginia manufacturer" means a manufacturer that has a legal presence within the Commonwealth for at least five 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, comprised of (i) the Major Eligible Manufacturer Grant subfund and (ii) the Investment Performance Grant subfund, created pursuant to § 2.1-548.43:5.

"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.

"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 twenty 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 manufacturer's manufacturing facility, created as the direct result of the eligible manufacturer's capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) thirty-five 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 forty-eight 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 this Commonwealth to the eligible manufacturer's manufacturing 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.

"Productivity" means the number of hours of labor required to produce a unit of goods.

"Secretary" means the Secretary of Commerce and Trade.

§ 2.1-548.43:3. Virginia Investment Performance Grants.

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant subfund, any eligible manufacturer that is not eligible for a major eligible manufacturer grant under § 2.1-548.43:4 shall be eligible for an investment performance grant as provided in this section.

B. The Partnership shall establish an application process by which eligible manufacturers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

C. The amount of the investment performance grant that an eligible manufacturer shall be eligible to receive under this section shall be determined by the Secretary, based on the recommendation of the Partnership, and contingent upon approval by the Governor. The determination of the appropriate amount of an investment performance grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the eligible investment.

D. The Partnership shall assist the Secretary in developing objective guidelines which shall be used in awarding investment performance grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the chairmen of the House Appropriations and Senate Finance Committees. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act. The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;
2. The wages paid for the new jobs and the amount by which wages exceed the average manufacturing wage for the locality or region;
3. The extent to which the capital investment produces (i) measurable increases in capacity, productivity, or both, and/or (ii) measurable decreases in the production of flawed product;
4. The amount of the capital investment;
5. The net present value of benefits to Virginia;
6. The amount of other incentives offered by the Commonwealth and the locality; and
7. The importance of the manufacturing facility to the economy of the locality or region.

The guidelines shall also address the eligibility of manufacturers that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same manufacturer within stated periods of time.

E. The amount of an investment performance grant to any eligible manufacturer under this section shall not exceed \$3,000,000 or ten percent of the amount appropriated by the General Assembly to the Investment Performance Grant subfund in the year that the terms of a grant are determined. Under no circumstances shall an eligible manufacturer be eligible for a grant under this section of more than \$25 million.

F. The aggregate amount of investment performance grants approved under this section in any year shall not exceed \$6 million, and the aggregate amount of grants outstanding to all eligible manufacturers under this section for all years shall at no time exceed \$30 million. The annual obligations of the Commonwealth to make grant payments to individual eligible manufacturers under this section shall not exceed \$600,000.

G. Any eligible manufacturer shall be eligible to receive a grant from the Fund in five equal installments beginning in the sixth year after the capital investment is completed and the Partnership has verified that the requirements applicable to such grant have been satisfied.

§ 2.1-548.43:4. Performance grant for major eligible manufacturers.

A. As used in this section, "major eligible manufacturer" means any eligible manufacturer that makes a capital investment of at least \$100 million that results in the creation of at least 1,000 new jobs.

B. Subject to the appropriation by the General Assembly of sufficient moneys to the Major Eligible Manufacturer Grant subfund, any major eligible manufacturer shall be eligible for a grant under this section of \$25 million, to be payable from such subfund over a period of not less than five years and not more than seven years, commencing in the sixth year following the approval by the Secretary of the manufacturer's grant application.

C. The Partnership shall establish an application process by which major eligible manufacturers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

D. The Comptroller shall not draw any warrants to issue checks for grants under this article without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriations act. The payment of any grant under this section shall be in accordance with the terms and conditions set forth in a memorandum of understanding between a major eligible manufacturer and the Commonwealth. These terms and conditions shall supplement the provisions of this article and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible manufacturer's fulfillment of the terms of the memorandum of understanding. The Secretary shall consult with the House Appropriations Committee and Senate Finance Committee prior to entering into any memorandum of understanding. The House

Appropriations Committee and Senate Finance Committee shall have the opportunity to review any memorandum of understanding prior to its execution by the Commonwealth.

§ 2.1-548.43:5. Requirements for grants generally.

A. Any eligible manufacturer eligible to apply for a grant under this article shall provide evidence, satisfactory to the Secretary, of the amount of the capital investment, the number of new jobs created as a result of the capital investment and such other evidence that requirements of this article have been satisfied. An eligible manufacturer whose application has been approved shall continue to comply with the requirements for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for approval of any grant have been satisfied.

B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the appropriate subfund, payment of such grant shall be made from the subfund by check issued by the Treasurer of Virginia on warrant of the Comptroller within sixty days of such certification.

C. As a condition of receipt of a grant, a major eligible manufacturer shall make available to the Partnership for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this article have been satisfied. All such documents appropriately identified by the major eligible manufacturer shall be considered confidential and proprietary.

D. Within thirty days of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Appropriations and Senate Finance Committees which shall include, but is not limited to, the following information: the name of the eligible manufacturer determined to be eligible for a grant; the product it manufactures; the locality of the manufacturing facility; the amount of the grant made or committed from the Fund; the number of new jobs created or projected to be created; the amount of the manufacturer's capital investment; and the timetable for the completion of the capital investment and new jobs created.

E. The Secretary shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If funds are committed for years beyond the fiscal years covered under the existing appropriation act, the state treasurer shall set aside and reserve such funds as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

§ 2.1-548.43:6. Virginia Investment Partnership Grant Fund.

A. There is hereby established a special fund in the state treasury to be known as the Virginia Investment Partnership Grant Fund. The Fund shall consist of the Major Eligible Manufacturer Grant subfund and the Investment Performance Grant subfund. Each subfund shall include such moneys as may be appropriated by the General Assembly from time to time and designated for the respective subfund. The Fund shall be used solely for the payment of investment incentive grants to existing Virginia manufacturers pursuant to this article. The Partnership shall administer the Virginia Investment Partnership Grant Fund.

B. The Partnership shall allocate, from the appropriate subfund, moneys in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible manufacturers did not receive the full amount of any grant to which they were eligible in a prior year and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the appropriate subfund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the subfund available for allocation to such class.

C. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year, such manufacturer shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Partnership to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

D. The Partnership shall determine the amount of the grants to be allocated to eligible applicants by June 30 of each year. The Partnership shall then certify to the Comptroller the amount of grant an eligible manufacturer shall receive. Payments shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

E. All excess funds remaining in any given year shall be carried forward on the books of the Fund for use in subsequent years.

F. Actions of the Partnership relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 9-6.14:4.1.

2. That the provisions of this act shall not be construed to prohibit the Governor from negotiating and proposing incentive packages with respect to other economic development and investment opportunities that are not within the scope of this act, provided that funding for any such incentive packages shall be subject to appropriation by the General Assembly.