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HOUSE BILL NO. 1183

Offered January 18, 2012

A BILL to amend and reenact §§ 10.1-1188, 58.1-439.12:06, 58.1-439.12:09, 58.1-439.12:10, 62.1-129, 62.1-132.6, 62.1-132.7, and 62.1-139 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-400.4 and 62.1-132.3:1, relating to the Virginia Port Authority and promotion of the ports of Virginia.

Patrons—Cosgrove and Purkey

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1188, 58.1-439.12:06, 58.1-439.12:09, 58.1-439.12:10, 62.1-129, 62.1-132.6, 62.1-132.7, and 62.1-139 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-400.4 and 62.1-132.3:1 as follows:

§ 10.1-1188. State agencies to submit environmental impact reports on major projects.

A. All state agencies, boards, authorities and commissions or any branch of the state government shall prepare and submit an environmental impact report to the Department on each major state project.

"Major state project" means the acquisition of an interest in land for any state facility construction, or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning, which costs $500,000 or more. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2 or Chapter 643, as amended, of the 1964 Acts of Assembly. *Nor shall it include the Virginia Port Authority created pursuant to the provisions of § 62.1-128, unless such project is a capital project that costs in excess of $5 million.* Nor shall authority include any housing development or redevelopment authority established pursuant to state law. For the purposes of this chapter, branch of state government shall include any county, city or town of the Commonwealth only in connection with highway construction, reconstruction, or improvement projects affecting highways or roads undertaken by the county, city, or town on projects estimated to cost more than $500,000.

Such environmental impact report shall include, but not be limited to, the following:

1. The environmental impact of the major state project, including the impact on wildlife habitat;

2. Any adverse environmental effects which cannot be avoided if the major state project is undertaken;

3. Measures proposed to minimize the impact of the major state project;

4. Any alternatives to the proposed construction; and

5. Any irreversible environmental changes which would be involved in the major state project.

For the purposes of subdivision 4 ~~of this subsection~~, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

B. For purposes of this chapter, this subsection shall only apply to the review of highway and road construction projects or any part thereof. The Secretaries of Transportation and Natural Resources shall jointly establish procedures for review and comment by state natural and historic resource agencies of highway and road construction projects. Such procedures shall provide for review and comment on appropriate projects and categories of projects to address the environmental impact of the project, any adverse environmental effects which cannot be avoided if the project is undertaken, the measures proposed to minimize the impact of the project, any alternatives to the proposed construction, and any irreversible environmental changes which would be involved in the project.

§ 58.1-400.4. Route 460 Corridor Interstate 85 Connector Economic Development Zone.

A. The Virginia General Assembly, finding the further development and diversification of the Virginia economy through utilization of the Port of Virginia and Virginia's commercial maritime assets to be in the best interests of the entire Commonwealth, and finding that the proposed location of the Route 460 Corridor Improvement Project, with its proximity to the Port of Virginia and the rail lines of two Class I railroads, provides for the location of the necessary logistical, support, and manufacturing facilities needed to sustain economic development and job growth through the Port of Virginia, does hereby designate the following localities to be part of the Route 460 Corridor Interstate 85 Connector Economic Development Zone: the Counties of Isle of Wight, Prince George, Sussex, and Southampton and the Cities of Chesapeake, Norfolk, Portsmouth, Suffolk, and Virginia Beach.

B. Any qualified company that locates within the Route 460 Corridor Interstate 85 Connector Economic Development Zone on or after January 1, 2015, shall be entitled to a partial or complete exemption from the taxes imposed pursuant to Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) on income from sources within the Zone during the first two taxable years of operation within the Zone. Any qualified company that locates within the Zone on or after January 1, 2014, but before January 1, 2015, shall be entitled to such an exemption for the 2015 and 2016 taxable years. The maximum amount of credits allowed for all qualified companies pursuant to this section shall not exceed $25 million for each calendar year. If the cumulative amount of tax credits requested by qualified companies exceeds $25 million, then the $25 million in credits shall be prorated among the qualified companies that requested the credit.

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

"Qualified company" means a corporation, limited liability company, partnership, joint venture, or other business entity that (i) was not located in Virginia prior to locating within the Zone; (ii) employs at least 25 qualified full-time employees during its first taxable year of operation within the Zone; (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 imported and exported through the Port of Virginia; ship building and ship repair; dredging; marine construction; or offshore energy exploration and extraction.

"Qualified full-time employee" means an employee filling a new, permanent full-time position in the qualified company's location within the Zone. A new, permanent full-time position is a job of an indefinite duration, created by the company as a result of operations within the Zone, 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, or transferred to, the qualified company's location within the Zone. Seasonal or temporary positions, or jobs created when job functions are shifted from an existing location in the Commonwealth to the qualified company's location within the Zone, and positions in building and grounds maintenance, security, and 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. A qualified full-time employee does not include an employee (i) for whom a credit was previously earned pursuant to § 58.1-439 or 58.1-439.12:06 by a related party as defined in § 267(b) of the Internal Revenue Code or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code; (ii) who was previously employed in the same job function in Virginia by a related party as defined in § 267(b) of the Internal Revenue Code; or (iii) whose job function was previously performed at a different location in Virginia by an employee of a related party as defined in § 267(b) of the Internal Revenue Code or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code.

"Zone" means the Route 460 Corridor Interstate 85 Connector Economic Development Zone.

D. The amount of the exemption created by subsection B shall be determined as follows:

1. 25 percent of the income from sources within the Zone if the qualified company employs at least 25 qualified full-time employees during its first taxable year of operation within the Zone;

2. 50 percent of the income from sources within the Zone if the qualified company employs at least 50 qualified full-time employees during its first taxable year of operation within the Zone;

3. 75 percent of the income from sources within the Zone if the qualified company employs at least 75 qualified full-time employees during its first taxable year of operation within the Zone; and

4. 100 percent of the income from sources within the Zone if the qualified company employs at least 100 qualified full-time employees during its first taxable year of operation within the Zone.

E. If the number of qualified full-time employees for any year during which an exemption is claimed under this section falls below the number of qualified full-time employees during the qualified company's first taxable year of operation within the Zone, the amount of the exemption for that year must be recalculated using the decreased number of qualified full-time employees.

F. For the purposes of this section, a company may be deemed to have income from sources within the Zone if it has:

1. Items of income, gain, loss, or reduction attributable to:

a. The ownership of any interest in real or tangible personal property within the Zone; or

b. A business, trade, profession, or occupation carried on in the Zone;

2. Income from intangible personal property, including annuities, dividends, interest, royalties, and gains from the disposition of intangible personal property to the extent that such income is from property employed by the taxpayer in a business, trade, profession, or occupation carried on in the Zone.

G. If the entire business of a qualified company within the Commonwealth is transacted or conducted *within the Zone, the exemption created by this section shall apply to the entire Virginia taxable income of such company for the taxable year. The entire business of the company shall be deemed to have been transacted or conducted within the Zone if such company has no income from sources within any other county or city of the Commonwealth.*

H. Any corporation having income from sources within the Zone and within other counties or cities of the Commonwealth shall allocate and apportion its Virginia taxable income as provided in §§ 58.1-407 through 58.1-420, omitting the sales factor, substituting "Route 460 Corridor Interstate 85 Connector Economic Development Zone" for the words "state" or "Commonwealth," substituting "in the Commonwealth" for "everywhere," and substituting "total business in the Commonwealth" for "total business." Any qualified company other than a corporation having income from sources within the Zone and within other counties or cities of the Commonwealth shall allocate and apportion its Virginia taxable income in the same manner except that such company shall also substitute "business entity" for "corporation" in §§ 58.1-407 through 58.1-420.

I. No exemption may be claimed under this section by an otherwise qualified company if (i) the qualified company, a related party as defined in § 267(b) of the Internal Revenue Code, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code was located within the Zone prior to January 1, 2014; (ii) 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 in § 267(b) of the Internal Revenue Code, or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code; or (iii) 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 was located within the Zone prior to January 1, 2014, or previously received an exemption under this section for the same facility or operations.

J. If a qualified company files a consolidated or combined income tax return pursuant to § 58.1-442, the exemption provided under this section shall only apply to the taxable income attributable to the corporation or corporations that separately meet the requirements of this section.

K. The Tax Commissioner shall develop guidelines implementing the provisions of this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-439.12:06. International trade facility tax credit.

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

"Affiliated companies" means two or more companies related to each other so that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) the same interest owns at least 80 percent of the voting power of two or more companies.

"Capital investment" means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year and the cost of machinery, tools, and equipment used in an international trade facility directly related to the movement of cargo. Capital investment includes expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. For purposes of this section, machinery, tools, and equipment shall be deemed to include only that property placed in service by the international trade facility on and after January 1, 2011. Machinery, tools, and equipment excludes property (i) for which a credit under this section was previously granted; (ii) placed in service by the taxpayer, a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; or (iii) previously in service in the Commonwealth that has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired or § 1014(a) of the Internal Revenue Code, as amended.

"Capital investment" shall not include:

1. The cost of acquiring any real property or building;

2. The cost of furnishings;

3. Any expenditure associated with appraisal, architectural, engineering, or interior design fees;

4. Loan fees, points, or capitalized interest;

5. Legal, accounting, realtor, sales and marketing, or other professional fees;

6. Closing costs, permit fees, user fees, zoning fees, impact fees, and inspection fees;

7. Bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities costs incurred during construction;

8. Utility hook-up or access fees;

9. Outbuildings; or

10. The cost of any well or septic system.

"Credit year" means the first taxable year following the taxable year in which the international trade facility commenced or expanded its operations. A separate credit year and a three-year allowance shall exist for each distinct international trade facility of a single taxpayer.

"International trade facility" means a company that:

1. Is engaged in port-related activities, including, but not limited to, warehousing, distribution, freight forwarding and handling, and goods processing;

2. Uses maritime port facilities located in the Commonwealth; and

3. Transports at least 10 percent more cargo, measured in 20-foot equivalent marine containers, through maritime port facilities in the Commonwealth during the taxable year than was transported by the company through such facilities during the preceding taxable year.

"New, permanent full-time position" means a job of indefinite duration, created by the company after establishing or expanding an international trade facility in the Commonwealth, requiring a minimum of 35 hours of employment per week for each employee for the entire normal year of the company's operations, or a position of indefinite duration that requires a minimum of 35 hours of employment per week for each employee for the portion of the taxable year in which the employee was initially hired for, or transferred to, the international trade facility in the Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in the Commonwealth to the international trade facility, and positions in building and grounds maintenance, security, and other such positions that are ancillary to the principal activities performed by the employees at the international trade facility shall not qualify as new, permanent full-time positions.

"Normal year" means at least 48 weeks in a calendar year.

"Qualified full-time employee" means an employee filling a new, permanent full-time position in an international trade facility in the Commonwealth.

"Qualified trade activities" means the completed exportation or importation of at least one International Organization for Standardization ocean container, with a minimum 20-foot length, through a Virginia Port Authority-operated cargo facility. An export container must be loaded on a barge or ocean-going vessel and an import must be discharged from a barge or ocean-going vessel at such facility.

B. For taxable years beginning on and after January 1, 2011, ~~but before January 1, 2015,~~ a taxpayer satisfying the requirements of this section shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.). The amount of the credit earned pursuant to this section shall be equal to either (i) ~~$3,000~~ *$500* per qualified full-time employee that results from increased qualified trade activities by the taxpayer or (ii) an amount equal to two percent of the capital investment made by the taxpayer to facilitate the increased qualified trade activities. The election of which tax credit amount to claim shall be the responsibility of the taxpayer. Both tax credits shall not be claimed for the same activities that occur in a calendar year. The portion of the ~~$3,000~~ *$500* credit earned with respect to any qualified full-time employee who works in the Commonwealth for less than 12 full months during the credit year shall be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full months such employee worked for the international trade facility in the Commonwealth during the credit year and the denominator of which is 12.

C. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than $250,000 in tax credits pursuant to this section in any fiscal year of the Commonwealth. If the amount of tax credits requested under this section for any taxable year exceeds $250,000, such credits shall be allocated proportionately among all qualified taxpayers. ~~The Tax Commissioner shall not issue tax credits under this section subsequent to the Commonwealth's fiscal year ending on June 30, 2015.~~ The taxpayer shall not be allowed to claim any tax credit under this section unless it has applied to the Department for the tax credit and the Department has approved the credit. The Department shall determine the credit amount allowable for the taxable year and shall provide a written certification to the taxpayer, which certification shall report the amount of the tax credit approved by the Department. The taxpayer shall attach the certification to the applicable income tax return.

D. The amount of the credit allowed pursuant to this section shall not exceed 50 percent of the tax imposed for the taxable year. Any remaining credit amount may be carried forward for the next 10 taxable years. In the event a taxpayer who is subject to the limitation imposed pursuant to this subsection is allowed a different tax credit pursuant to another section of the Code, or has a credit carry forward from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit that does not have a carry forward provision, and then any credit carried forward from a preceding taxable year, before using any of the credit allowed pursuant to this section.

E. No credit shall be earned for any employee (i) for whom a credit under this section was previously earned by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; (ii) who was previously employed in the same job function in Virginia by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; (iii) whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or by a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended; or (iv) whose job function previously qualified for a credit under this section at a different major business facility, as defined in subsection C of § 58.1-439, on behalf of the taxpayer, by a related party as defined in § 267(b) of the Internal Revenue Code, as amended, or a trade or business under common control as defined in § 52(b) of the Internal Revenue Code, as amended.

F. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

G. For purposes of this section, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees or the amounts of capital investments as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed herein.

H. Recapture of the credit amount, under the following circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the taxable year in which a credit has been earned pursuant to this section if the number of qualified full-time employees falls below the average number of qualified full-time employees during the taxable year. The tax increase amount shall be determined by (i) recalculating the credit that would have been earned for the original taxable year using the decreased number of qualified full-time employees and (ii) subtracting the recalculated credit amount from the amount previously earned. In the event that the average number of qualified full-time employees employed at an international trade facility falls below the number employed by the taxpayer prior to claiming any credits pursuant to this section in any of the five taxable years succeeding the year in which the credits were earned, all credits earned with respect to the international trade facility shall be recaptured. No credit amount shall be recaptured more than once pursuant to this subsection. Any recapture pursuant to this subsection shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability is increased.

I. International trade facilities that create jobs or make capital investments in a tobacco-dependent locality, as defined in subsection A of § 58.1-439.13, shall be entitled to tax credits twice the amount in subsection B to the extent moneys from the Tobacco Indemnification and Community Revitalization Fund, established under § 3.2-3106, are deposited into the Technology Initiative in Tobacco-Dependent Localities Fund (the Fund), established under § 58.1-439.15, for the purpose of funding this credit. If the amount of credits allowable pursuant to this section exceeds the amount deposited in the Fund for any fiscal year, such credits shall be allocated to taxpayers on a pro rata basis by the Department of Taxation for such year.

J. The Tax Commissioner shall issue guidelines that are necessary and desirable to carry out the provisions of this section, including (i) the computation, carryover, and recapture of the credits provided under this section; (ii) the establishment of criteria for (a) international trade facilities, (b) qualified full-time employees at such facilities, and (c) capital investments; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-439.12:09. Barge and rail usage tax credit.

A. As used in this section:

"International trade facility" means a company that:

1. Is doing business in the Commonwealth and engaged in port-related activities, including but not limited to warehousing, distribution, freight forwarding and handling, and goods processing;

2. Has the sole discretion and authority to move cargo in containers originating or terminating in the Commonwealth;

3. Uses maritime port facilities located in the Commonwealth; and

4. Uses barges and rail systems to move cargo containers through port facilities in the Commonwealth rather than trucks or other motor vehicles on the Commonwealth's highways.

B. For taxable years beginning on and after January 1, 2011, ~~but before January 1, 2015,~~ a company that is an international trade facility shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) ~~of this chapter~~; Chapter 12 (§ 58.1-1200 et seq.); Article 1 (§ 58.1-2500 et seq.) of Chapter 25; or Article 2 (§ 58.1-2620 et seq.) of Chapter 26. The amount of the credit shall be $25 per 20-foot equivalent unit (TEU) *or 16 tons of noncontainerized cargo* moved by barge or rail rather than by trucks or other motor vehicles on the Commonwealth's highways.

C. The Tax Commissioner shall issue tax credits under this section, and in no case shall the Tax Commissioner issue more than $1.5 million in tax credits pursuant to this section in any fiscal year of the Commonwealth. ~~In addition, the Tax Commissioner shall not issue tax credits under this section subsequent to the Commonwealth's fiscal year ending on June 30, 2015.~~ The international trade facility shall not be allowed to claim any tax credit under this section unless it has applied to the Department for the tax credit and the Department has approved the credit. The Department shall determine the credit amount allowable for the year and shall provide a written certification to the international trade facility, which certification shall report the amount of the tax credit approved by the Department. The international trade facility shall attach the certification to the applicable tax return.

D. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

E. Any credit not usable for the taxable year may be carried over for the next five taxable years or until such credit is fully taken, whichever occurs first. The amount of the credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. No credit shall be carried back to a preceding taxable year. If a taxpayer that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of this Code or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, before using any credit allowed pursuant to this section.

F. The Tax Commissioner shall issue guidelines that are necessary and desirable to carry out the provisions of this section, including (i) the computation and carryover of the credits provided under this section and (ii) the establishment of criteria for international trade facilities. Such guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-439.12:10. Virginia port volume increase tax credit.

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

"Base year port cargo volume" means the total amount of net tons of noncontainerized cargo or TEUs of cargo actually transported by way of a waterborne ship or vehicle through a port facility during the period from January 1, 2010, through December 31, 2010. Base year port cargo volume must be at least 75 net tons of noncontainerized cargo or 10 loaded TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December 31, 2010, including a taxpayer who locates in Virginia after December 31, 2010, its base cargo volume will be measured by the initial January 1 through December 31 calendar year in which it meets the requirements of 75 net tons of noncontainerized cargo or 10 loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

"Major facility" means a new facility to be located in Virginia that is projected to import or export cargo through a port in excess of 25,000 TEUs in its first calendar year.

"Port cargo volume" means the total amount of net tons of noncontainerized cargo or containers measured in TEUs of cargo transported by way of a waterborne ship or vehicle through a port facility.

"Port facility" means any publicly or privately owned facility located within the Commonwealth through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside the Commonwealth and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

"TEU" or "~~twenty-foot~~ *20-foot* equivalent unit" means a volumetric measure based on the size of a container that is 20 feet long by eight feet wide by eight feet, six inches high.

B. 1. For taxable years beginning on and after January 1, 2011, ~~but before January 1, 2016,~~ a taxpayer engaged in the manufacturing of goods or the distribution of manufactured goods that uses port facilities in the Commonwealth and increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim a credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 in an amount determined by the Virginia Port Authority. The Virginia Port Authority may waive the requirement that port cargo volume be increased by a minimum of five percent over base year port cargo volume for any taxpayer that qualifies as a major facility.

2. Qualifying taxpayers that increase their port cargo volume by a minimum of five percent in a qualifying calendar year shall receive a $50 credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for each TEU above the base year port cargo volume. A qualifying taxpayer that is a major facility as defined in this section shall receive a $50 credit against the tax levied pursuant to §§ 58.1-320 and 58.1-400 for each TEU transported through a port facility during the major facility's first calendar year. A qualifying taxpayer may not receive more than $250,000 for each calendar year except as provided for in subdivision C 2. The maximum amount of credits allowed for all qualifying taxpayers pursuant to this section shall not exceed $3.2 million for each calendar year. The Virginia Port Authority

shall allocate the credits pursuant to the provisions in subdivisions C 1 and C 2.

3. If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

4. The credit may be claimed by the taxpayer as provided in subdivision 1 only if the taxpayer owns the cargo at the time the port facilities are used.

C. 1. For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the Virginia Port Authority by March 1 of the calendar year after the calendar year in which the increase in port cargo volume occurs. The taxpayer shall attach a schedule to the taxpayer's application to the Virginia Port Authority with the following information and any other information requested by the Virginia Port Authority or the Department:

a. A description of how the base year port cargo volume and the increase in port cargo volume were determined;

b. The amount of the base year port cargo volume;

c. The amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of noncontainerized cargo and TEUs of cargo, including information that demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

d. Any tax credit utilized by the taxpayer in prior years; and

e. The amount of tax credit carried over from prior years.

2. If on March 15 of each year the $3.2 million amount of credit is not fully allocated among qualifying taxpayers, then those taxpayers who have been allocated a credit for the prior year shall be allowed a pro rata share of the remaining allocated credit up to $3.2 million. If on March 15 of each year, the cumulative amount of tax credits requested by qualifying taxpayers for the prior year exceeds $3.2 million, then the $3.2 million in credits shall be prorated among the qualifying taxpayers who requested the credit.

3. The taxpayer shall claim the credit on its income tax return in a manner prescribed by the Department. The Department may require a copy of the certification form issued by the Virginia Port Authority be attached to the return or otherwise provided.

D. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership interests in such business entities.

§ 62.1-129. Board of Commissioners; members and officers; Executive Director; agents and employees.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon the Authority shall be exercised by the Board of Commissioners of the Virginia Port Authority, hereinafter referred to as Board or Board of Commissioners. The Board shall consist of the State Treasurer and ~~eleven~~ *11* members appointed by the Governor, subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor. The terms of members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981, shall be for five years. Any appointment to fill a vacancy shall be for the unexpired term. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § 2.2-2813 for each day spent on business of the Board. No member appointed by the Governor shall be eligible to serve more than two successive terms. A person heretofore or hereafter appointed to fill a vacancy may be appointed to serve two additional terms. Beginning with those members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981: (i) appointments shall be made by the Governor in such a manner as to ensure the widest possible geographical representation of all parts of the Commonwealth, and (ii) no resident of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, or Virginia Beach shall be eligible for appointment or reappointment to the Board of Commissioners if his appointment or reappointment would increase or maintain the number of members of the Board of Commissioners residing in such cities above the number of ~~three~~ *five*. ~~One of the members appointed or reappointed from the cities previously mentioned in this section shall be a resident of the City of Portsmouth or the City of Chesapeake, one of the members appointed or reappointed shall be a resident of the City of Norfolk or the City of Virginia Beach, and one of the members appointed or reappointed shall be a resident of the City of Newport News or the City of Hampton~~ *Of the members appointed by the Governor, all members shall have executive level experience and represent the following industries: agriculture, distribution and warehousing, manufacturing, logistics and transportation, mining, marketing, legal, financial, and transportation infrastructure*.

The Board shall elect from its membership a chairman and vice-chairman and may also elect from its membership, or appoint from its staff, a secretary and treasurer and prescribe their powers and duties.

The Board of Commissioners shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, who shall be known as the Executive Director and who shall serve at the pleasure of the Board. The Executive Director's compensation from the Commonwealth shall be fixed by the Board in accordance with law. This compensation shall be established at a level which will enable the Authority to attract and retain a capable Executive Director.

The Board may also appoint from the staff an assistant secretary and an assistant treasurer, who shall, in addition to other duties, discharge such functions of the secretary and treasurer, respectively, as may be directed by the Board.

B. The Board may, at its discretion and from time to time, also form a Maritime Advisory Council, consisting of representatives from the maritime industry, to provide advice and counsel to the Board of Commissioners on all matters associated with the Authority with the exception of the annual budget and personnel issues.

§ 62.1-132.3:1. Port Opportunity Fund.

A. There is hereby created in the state treasury a special nonreverting fund that is a subfund of the Commonwealth Port Fund, known as the Port Opportunity Fund, hereinafter referred to as the Fund. The Fund shall be established on the books of the Comptroller. Disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Director of the Virginia Port Authority or his designee. Interest earned on moneys in the Fund shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes enumerated in subsection C.

B. In years when the Authority's net operating income exceeds operations expenditures, the Authority shall request that the State Treasurer transfer five percent of the net operating income from the Commonwealth Port Fund to the Port Opportunity Fund.

C. Revenues in the Fund shall be used to fund the development and implementation of a national and international marketing program and to provide incentives, as prescribed by the Board of Commissioners, for expanding the use of Virginia Port Authority facilities for the import and export of containerized and noncontainerized cargoes.

D. The Authority shall develop, and the Board of Commissioners approve, regulations governing the use of incentives that comply with applicable Virginia laws.

§ 62.1-132.6. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act.

A. The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in carrying out the provisions of this chapter. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance with this chapter, provided the Authority implement, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

B. The provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 shall not apply to the Authority.

C. Additionally, the provisions of §§ 2.2-1124, 2.2-1131.1, 2.2-1136, 2.2-1153, 2.2-1154, and 2.2-1156 shall not apply to the Authority provided that (i) the Authority adopts and the Board approves regulations governing the acquisition, lease, or sale of surplus and real property consistent with the provisions of the above-referenced sections and (ii) any acquisition, lease, or sale of real property valued in excess of $20 million shall be approved by the Governor.

§ 62.1-132.7. Employment of personnel and legal counsel.

A. The Authority may appoint, employ, dismiss, and fix and pay compensation to employees, officers, agents, advisers, and consultants, including financial and technical advisers, engineers, and public accountants within and without the Commonwealth and the United States without regard to whether such employees are citizens of the United States. The Authority shall determine the duties and compensation of its employees, officers, agents, advisers, and consultants without the approval of any other agency or instrumentality.

B. ~~The~~ *Notwithstanding any other provision of law, the* authority may retain legal counsel~~, subject to the approval of the Attorney General,~~ to represent the Authority in rate cases and all other hearings, controversies, or matters involving the interests of the Authority.

§ 62.1-139. Forms of accounts and records; annual report.

Notwithstanding any other provision of law, the Authority may retain an outside auditor to perform the annual audit of the Authority's finances, provided, however, that the General Assembly may request the Auditor of Public Accounts to conduct such an audit at any time. The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in such form as ~~the Auditor of Public Accounts prescribes~~ *accepted public accounting practices prescribe*. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The Authority shall submit an annual report to the Governor and General

Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30.