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SENATE BILL NO. 1459

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact § 62.1-132.3:2 of the Code of Virginia, relating to Port of Virginia Economic and Infrastructure Development Grant Fund and Program.*

Patrons—Vogel and Mason

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

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

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

C. Beginning January 1, 2014, but not later than June 30, 2020, and subject to appropriation,

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59 any qualified company that locates or expands a facility within the Commonwealth shall be eligible to
60 apply for a one-time grant from the Fund, in an amount determined as follows:

61 1. One thousand dollars per new, permanent full-time position if the qualified company creates at
62 least 25 new, permanent full-time positions for qualified full-time employees during its first year of
63 operation or during the year in which the expansion occurs;

64 2. Fifteen hundred dollars per new, permanent full-time position if the qualified company creates at
65 least 50 new, permanent full-time positions for qualified full-time employees during its first year of
66 operation or during the year in which the expansion occurs;

67 3. Two thousand dollars per new, permanent full-time position if the qualified company creates at
68 least 75 new, permanent full-time positions for qualified full-time employees during its first year of
69 operation or during the year in which the expansion occurs; and

70 4. Three thousand dollars per new, permanent full-time position if the qualified company creates at
71 least 100 new, permanent full-time positions for qualified full-time employees during its first year of
72 operation or during the year in which the expansion occurs.

73 D. The maximum amount of grant allowable per qualified company in any given fiscal year is
74 \$500,000. The maximum amount of grants allowable among all qualified companies in any given fiscal
75 year is \$5 million.

76 E. To qualify for a grant pursuant to this section, a qualified company must apply for the grant not
77 later than March 31 in the year immediately following the location or expansion of a facility within the
78 Commonwealth pursuant to an application process developed by the Virginia Port Authority. Within 90
79 days after the filing deadline, the Executive Director shall certify to the Comptroller and the qualified
80 company the amount of grant to which the qualified company is entitled under this section. Payment of
81 each grant shall be made by check issued by the State Treasurer on warrant of the Comptroller within
82 60 days of such certification and in the order that each completed eligible application is received. In the
83 event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the
84 Fund or \$5 million, such grants shall be paid in the next fiscal year in which funds are available.

85 F. A qualified company that has received a grant in accordance with the requirements provided in
86 this section shall be eligible for a second grant from the Fund if it (i) locates or expands an additional
87 facility in a separate location, as determined by the Virginia Port Authority, within the Commonwealth;
88 (ii) creates at least 300 new, permanent full-time positions at the additional facility over and above those
89 agreed upon in the qualified company's original memorandum of understanding with the Virginia Port
90 Authority; and (iii) increases cargo volumes through the Port of Virginia by at least five percent, not
91 including any volume increase resulting from the original grant, from the additional facility. If the
92 qualified company satisfies the requirements provided in this subsection and receives a grant consistent
93 with the requirements of this section, then the qualified company shall enter into another separate
94 memorandum of understanding with the Virginia Port Authority as provided in subsection G.

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

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

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