

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [S 1459]  
5 Approved

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

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

8 **§ 62.1-132.3:2. Port of Virginia Economic and Infrastructure Development Grant Fund and**  
9 **Program.**

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

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

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

35 "Qualified company" means a corporation, limited liability company, partnership, joint venture, or  
36 other business entity that (i) locates or expands a facility within the Commonwealth; (ii) creates at least  
37 25 new, permanent full-time positions for qualified full-time employees at a facility within the  
38 Commonwealth during its first year of operation or during the year when the expansion occurs; (iii) is  
39 involved in maritime commerce or exports or imports manufactured goods through the Port of Virginia;  
40 and (iv) is engaged in one or more of the following: the distribution, freight forwarding, freight  
41 handling, goods processing, manufacturing, warehousing, crossdocking, transloading, or wholesaling of  
42 goods exported and imported through the Port of Virginia; ship building and ship repair; dredging;  
43 marine construction; or offshore energy exploration or extraction.

44 "Qualified full-time employee" means an employee filling a new, permanent full-time position in the  
45 qualified company's location within the Commonwealth. A "qualified full-time employee" does not  
46 include an employee (i) for whom a tax credit was previously earned pursuant to § 58.1-439 or  
47 58.1-439.12:06 by a related party as listed in § 267(b) of the Internal Revenue Code or by a trade or  
48 business under common control as defined in regulations issued pursuant to § 52(b) of the Internal  
49 Revenue Code; (ii) who was previously employed in the same job function at an existing location in the  
50 Commonwealth by a related party as listed in § 267(b) of the Internal Revenue Code; or (iii) whose job  
51 function was previously performed at a different location in the Commonwealth by an employee of a  
52 related party as listed in § 267(b) of the Internal Revenue Code or a trade or business under common  
53 control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code.

54 C. Beginning January 1, 2014, but not later than June 30, ~~2020~~ 2025, and subject to appropriation,  
55 any qualified company that locates or expands a facility within the Commonwealth shall be eligible to  
56 apply for a one-time grant from the Fund, in an amount determined as follows:

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

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

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

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

69 D. The maximum amount of grant allowable per qualified company in any given fiscal year is  
70 \$500,000. The maximum amount of grants allowable among all qualified companies in any given fiscal  
71 year is \$5 million.

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

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

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

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

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