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**SENATE BILL NO. 1345**

Offered January 11, 2023

Prefiled January 11, 2023

*A BILL to amend and reenact § 62.1-132.3:2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 62.1-132.3:2.1, 62.1-132.3:2.2, 62.1-132.3:2.3, 62.1-132.3:5, and 62.1-132.3:6, relating to Virginia Port Authority; tax credits and grants.*

Patron—Barker

Referred to Committee on Transportation

**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 and that the Code of Virginia is amended by adding sections numbered 62.1-132.3:2.1, 62.1-132.3:2.2, 62.1-132.3:2.3, 62.1-132.3:5, and 62.1-132.3:6 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

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59 related party as listed in § 267(b) of the Internal Revenue Code or a trade or business under common  
60 control as defined in regulations issued pursuant to § 52(b) of the Internal Revenue Code.

61 C. Beginning January 1, 2014, but not later than ~~June 30, 2025~~ *December 31, 2024*, and subject to  
62 appropriation, any qualified company that locates or expands a facility within the Commonwealth shall  
63 be eligible to apply for a one-time grant from the Fund, in an amount determined as follows:

64 1. One thousand dollars per new, permanent full-time position if the qualified company creates at  
65 least 25 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 2. Fifteen hundred dollars per new, permanent full-time position if the qualified company creates at  
68 least 50 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;

70 3. Two thousand dollars per new, permanent full-time position if the qualified company creates at  
71 least 75 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; and

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

76 D. The maximum amount of grant allowable per qualified company in any given fiscal year is  
77 \$500,000. The maximum amount of grants allowable among all qualified companies in any given fiscal  
78 year is \$5 million.

79 E. To qualify for a grant pursuant to this section, a qualified company must apply for the grant not  
80 later than March 31 in the year immediately following the location or expansion of a facility within the  
81 Commonwealth pursuant to an application process developed by the Virginia Port Authority. Within 90  
82 days after the filing deadline, the Executive Director shall certify to the Comptroller and the qualified  
83 company the amount of grant to which the qualified company is entitled under this section. Payment of  
84 each grant shall be made by check issued by the State Treasurer on warrant of the Comptroller within  
85 60 days of such certification and in the order that each completed eligible application is received. In the  
86 event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the  
87 Fund or \$5 million, such grants shall be paid in the next fiscal year in which funds are available.

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

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

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

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

**§ 62.1-132.3:2.1. Port of Virginia Economic Development Grant Program and Fund.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Port of Virginia Economic Development Grant Fund (the Fund), to be administered by the Virginia Port Authority. The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of providing grants to qualified applicants to the Program. 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.

B. There is hereby created the Port of Virginia Economic Development Grant Program (the Program). The Program shall consist of the following component programs:

1. The Economic and Infrastructure Development Grant Program established by § 62.1-132.3:2.2.
2. The International Trade Facility Grant Program established by § 62.1-132.3:2.3.

C. 1. Except as provided in subdivision 3, for the Economic and Infrastructure Development Grant Program, the maximum amount of grants allowable among all qualified companies, as that term is defined in § 62.1-132.3:2.2, in any fiscal year shall be \$5 million plus any amounts carried over from a prior fiscal year.

2. Except as provided in subdivision 3, for the International Trade Facility Grant Program, the maximum amount of grants allowable among all international trade facilities, as that term is defined in § 62.1-132.3:2.3, in any fiscal year shall be \$1.25 million plus any amounts carried over from a prior fiscal year.

3. In the event that the amount of grants claimed for either of the programs described in subdivision 1 or 2 in any fiscal year is less than the maximum allowable amount, the excess amount may (i) be used to provide grants by the other program if that program is oversubscribed or (ii) be carried over to the next fiscal year.

**§ 62.1-132.3:2.2. Economic and Infrastructure Development Grant Program.**

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

"Fund" means the Port of Virginia Economic Development Grant Fund established by § 62.1-132.3:2.1.

"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 the 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; (iv) is engaged in 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; and (v) pays a minimum entry-level wage rate per hour of at least 1.2 times the federal minimum wage or the Virginia minimum wage, as required by the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), whichever is higher. In areas that have an unemployment rate of one and one-half times the statewide average unemployment rate, the wage rate minimum may be waived by the Authority. Only full-time positions that qualify for benefits shall be eligible for assistance.

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

192 B. The Port of Virginia shall develop as a component of the Port of Virginia Economic Development  
193 Program the Economic and Infrastructure Development Grant Program.

194 C. Beginning January 1, 2025, and subject to appropriation, any qualified company that locates or  
195 expands a facility within the Commonwealth shall be eligible to apply for a one-time grant from the  
196 Fund, in an amount determined as follows:

197 1. If the qualified company creates at least 25 new, permanent full-time positions for qualified  
198 full-time employees during its first year of operation or during the year in which the expansion occurs,  
199 \$1,000 per new, permanent full-time position;

200 2. If the qualified company creates at least 50 new, permanent full-time positions for qualified  
201 full-time employees during its first year of operation or during the year in which the expansion occurs,  
202 \$1,500 per new, permanent full-time position;

203 3. If the qualified company creates at least 75 new, permanent full-time positions for qualified  
204 full-time employees during its first year of operation or during the year in which the expansion occurs,  
205 \$2,000 per new, permanent full-time position; and

206 4. If the qualified company creates at least 100 new, permanent full-time positions for qualified  
207 full-time employees during its first year of operation or during the year in which the expansion occurs,  
208 \$3,000 per new, permanent full-time position.

209 E. To qualify for a grant pursuant to this section, a qualified company must apply for the grant not  
210 later than March 31 in the year immediately following the location or expansion of a facility within the  
211 Commonwealth pursuant to an application process developed by the Virginia Port Authority. Within 90  
212 days after the filing deadline, the Executive Director shall certify to the Comptroller and the qualified  
213 company the amount of grant to which the qualified company is entitled under this section. Payment of  
214 each grant shall be made by check issued by the State Treasurer on warrant of the Comptroller within  
215 60 days of such certification and in the order that each completed eligible application is received.

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

226 G. Prior to receipt of a grant, the qualified company shall enter into a memorandum of  
227 understanding with the Virginia Port Authority establishing the requirements for maintaining the number  
228 of new, permanent full-time positions for qualified employees at the qualified company's location within  
229 the Commonwealth. If the number of new, permanent full-time positions for any of the three years  
230 immediately following receipt of a grant falls below the number of new, permanent full-time positions  
231 created during the year for which the grant is claimed, the amount of the grant shall be recalculated  
232 using the decreased number of new, permanent full-time positions, and the qualified company shall  
233 repay the difference.

234 H. No qualified company shall apply for a grant, nor shall one be awarded under this section to an  
235 otherwise qualified company, if (i) a credit pursuant to § 58.1-439 or 58.1-439.12:06 or a grant  
236 pursuant to § § 62.1-132.3:2.3 is claimed for the same employees or for capital expenditures at the  
237 same facility by the qualified company, by a related party as listed in § 267(b) of the Internal Revenue  
238 Code, or by a trade or business under common control as defined in regulations issued pursuant to  
239 § 52(b) of the Internal Revenue Code or (ii) the qualified company was a party to a reorganization as  
240 defined in § 368(b) of the Internal Revenue Code, and any corporation involved in the reorganization as  
241 defined in § 368(a) of the Internal Revenue Code previously received a grant under this section for the  
242 same facility or operations.

243 I. The Virginia Port Authority, with the assistance of the Virginia Economic Development

Partnership, shall develop guidelines establishing procedures and requirements for qualifying for the grant, including the affirmative determination that each applicant is a qualified company, as defined above, engaged in a port-related business. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.). For the purposes of administering this grant program, the Virginia Port Authority and the Department of Taxation shall exchange information regarding whether a qualified company, 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 has claimed a credit pursuant to § 58.1-439 or 58.1-439.12:06 or a grant pursuant to § 62.1-132.3:2.3 for the same employees or for capital expenditures at the same facility.

**§ 62.1-132.3:2.3. International Trade Facility Grant Program.**

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, 2025. Machinery, tools, and equipment excludes property (i) for which a credit under this section was previously granted; (ii) placed in service by 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 (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" does 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, or 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.

"Fund" means the Port of Virginia Economic Development Grant Fund established by § 62.1-132.3:2.1.

"Indexing ratio" means the greater of (i) the change in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the previous year, or (ii) zero.

"International trade facility" means a company that:

1. Is engaged in port-related activities, including, warehousing, distribution, freight forwarding and handling, and goods processing;
2. Uses maritime port facilities located in the Commonwealth;
3. Transports at least five percent more cargo through maritime port facilities in the Commonwealth during the calendar year than was transported by the company through such facilities during the preceding calendar year; and
4. Pays a minimum entry-level wage rate per hour of at least 1.2 times the federal minimum wage or the Virginia minimum wage, as required by the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.), whichever is higher. In areas that have an unemployment rate of one and one-half times the statewide average unemployment rate, the wage rate minimum may be waived by the Authority. Only full-time positions that qualify for benefits shall be eligible for assistance.

"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 full-time employee" means an employee filling a new, permanent full-time position in the qualified company's location within the Commonwealth. "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.

B. The Port of Virginia shall develop as a component of the Port of Virginia Economic Development Program the International Trade Facility Grant Program.

C. Beginning January 1, 2025, and subject to appropriation, an international trade facility that increases its qualified trade activities shall be eligible to receive a grant from the Fund. The amount of such grant shall be equal to either (i) \$3,500, adjusted each year by the indexing ratio, per qualified full-time employee that results from increased qualified trade activities by the applicant or (ii) an amount equal to two percent of the capital investment made by the applicant to facilitate the increased qualified trade activities. The election of which award to apply for shall be the responsibility of the applicant. Both awards shall not be granted for the same activities that occur in a calendar year. The portion of such grant earned under clause (i) 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.

D. Prior to receipt of a grant, the international trade facility shall enter into a memorandum of understanding with the Virginia Port Authority establishing the requirements for either a schedule of capital investment or maintaining the number of new, permanent full-time positions for qualified employees at the international trade facility's location within the Commonwealth. If the number of new, permanent full-time positions for any of the three years immediately following receipt of a grant falls below the number of new, permanent full-time positions created during the year for which the grant is claimed, the amount of the grant shall be recalculated using the decreased number of new, permanent full-time positions, and the international trade facility shall repay the difference.

E. No international trade facility shall apply for a grant, nor shall one be awarded under this section to an otherwise qualified international trade facility, if (i) a credit pursuant to § 58.1-439 or 58.1-439.12:06 or a grant pursuant to §§ 62.1-132.3:2.2 is claimed for the same employees or for capital expenditures at the same facility by the international trade facility, 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 or (ii) the international trade facility 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 previously received a grant under this section for the same facility or operations.

F. The Virginia Port Authority, with the assistance of the Virginia Economic Development Partnership, shall develop guidelines establishing procedures and requirements for qualifying for the grant, including the affirmative determination that each applicant is an international trade facility, engaged in a port-related business. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

#### **§ 62.1-132.3:5. Virginia Port Volume Increase Grant Program and Fund.**

A. As used in this section:

"Agricultural entity" means a person engaged in growing or producing wheat, grains, fruits, nuts, or crops; tobacco, nursery, or floral products; forestry products, excluding raw wood fiber or wood fiber processed or manufactured for use as fuel for the generation of electricity; or seafood, meat, dairy, or poultry products.

"Base year port cargo volume" means the total amount of (i) net tons of noncontainerized cargo, (ii) TEUs of cargo, or (iii) units of roll-on/roll-off cargo actually transported by way of a waterborne ship or vehicle through a port facility during the period from January 1, 2023, through December 31, 2024. Base year port cargo volume must be at least 75 net tons of noncontainerized cargo, 10 loaded TEUs, or 10 units of roll-on/roll-off cargo for an eligible entity to be eligible for the grants provided in this section. For an eligible entity that did not ship that amount in the year ending December 31, 2023, including an eligible entity that locates in Virginia after such periods, its base cargo volume shall 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, 10 loaded TEUs, or 10 units of roll-on/roll-off cargo. Base year port cargo volume shall be recalculated each calendar year after the initial base year.

"Eligible entity" means an agricultural entity, manufacturing-related entity, or mineral and gas entity.

"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.

"Manufacturing-related entity" means a person engaged in the manufacturing of goods or the distribution of manufactured goods.

"Mineral and gas entity" means a person engaged in severing minerals or gases from the earth.

"Port cargo volume" means the total amount of net tons of noncontainerized cargo, net units of roll-on/roll-off 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 that handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

"TEU" or "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. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Port Volume Increase Grant Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of providing grants to eligible entities pursuant to subsections C and D. 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.

C. 1. Beginning January 1, 2025, an eligible entity 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 shall be eligible to receive a grant from the Fund in an amount determined by the Virginia Port Authority in accordance with subdivisions 2 and 3. 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 eligible entity that qualifies as a major facility.

2. Eligible entities that increase their port cargo volume by a minimum of five percent in a calendar year shall be eligible to receive a grant in the amount of \$50 for each TEU, unit of roll-on/roll-off cargo, or 16 net tons of noncontainerized cargo, as applicable, above the base year port cargo volume. An eligible entity that is a major facility as defined in this section shall be eligible to receive a grant in the amount of \$50 for each TEU, unit of roll-on/roll-off cargo, or 16 net tons of noncontainerized cargo, as applicable, transported through a port facility during the major facility's first calendar year. An eligible entity may not receive more than \$250,000 for each calendar year. The maximum amount of grants allowed for all eligible entities pursuant to this section shall not exceed \$3.8 million for each calendar year. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund or \$3.8 million, such grants shall be paid in the next fiscal year in which funds are available. The Virginia Port Authority shall allocate the grants pursuant to the provisions of subdivision D.

3. An eligible entity shall be eligible for a grant pursuant to this section only if the eligible entity owns the cargo at the time the port facilities are used.

D. For every year in which an eligible entity applies for a grant, the eligible entity 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 eligible entity shall attach a schedule to its application with the following information and any other information requested by the Virginia Port Authority:



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

430 2. The amount of the base year port cargo volume; and

431 3. The amount of the increase in port cargo volume for the calendar year stated both as a  
432 percentage increase and as a total increase in net tons of noncontainerized cargo, TEUs of cargo, and  
433 units of roll-on/roll-off cargo, as applicable, including information that demonstrates an increase in port  
434 cargo volume in excess of the minimum amount required to claim the grants awarded pursuant to this  
435 section.

436 E. The Virginia Port Authority shall not make awards under this section to applicants who are  
437 receiving tax credits for under § 58.1-439.12:10 for the same cargo.

438 F. The Virginia Port Authority shall develop guidelines establishing procedures and requirements for  
439 qualifying for grants under this section. The guidelines shall be exempt from the Administrative Process  
440 Act (§ 2.2-4000 et seq.).

441 **§ 62.1-132.3:6. Virginia Barge and Rail Usage Grant Program and Fund.**

442 A. As used in this section:

443 "Barge and rail cargo volume" means the total amount of (i) net tons of noncontainerized cargo, (ii)  
444 TEUs of cargo, or (iii) units of roll-on/roll-off cargo actually by barge or rail rather than by trucks or  
445 other motor vehicles on the Commonwealth's highways, measured from January 1 through December 31  
446 of each calendar year.

447 "International trade facility" means a company that:

448 1. Does business in the Commonwealth and is engaged in port-related activities, including  
449 warehousing, distribution, freight forwarding and handling, and goods processing;

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

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

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

455 B. There is hereby created in the state treasury a special nonreverting fund to be known as the  
456 Virginia Barge and Rail Usage Grant Fund, referred to in this section as "the Fund." The Fund shall be  
457 established on the books of the Comptroller. All funds appropriated for such purpose and any gifts,  
458 donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury  
459 and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be  
460 credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal  
461 year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be  
462 used solely for the purpose of providing grants to international trade facilities pursuant to subsections C  
463 and D. Expenditures and disbursements from the Fund, which shall be in the form of grants, shall be  
464 made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the  
465 Executive Director.

466 C. 1. Beginning January 1, 2025, an international trade facility shall be eligible to receive a grant  
467 from the Fund in an amount determined by the Virginia Port Authority in accordance with subdivision  
468 2.

469 2. The amount of the grant shall be \$25 per 20-foot equivalent unit (TEU), 16 tons of  
470 noncontainerized cargo, or one unit of roll-on/roll-off cargo moved by barge or rail rather than by  
471 trucks or other motor vehicles on the Commonwealth's highways.

472 3. Applicants shall be required to increase their barge and rail cargo volume for a calendar year by  
473 at least five percent above the preceding calendar year's volume in order to be eligible for the grant.

474 D. The Virginia Port Authority shall issue the grants under this section, and in no case shall more  
475 than \$1 million in grants be issued pursuant to this section in any fiscal year of the Commonwealth. In  
476 the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the  
477 Fund or \$1 million, such grants shall be paid in the next fiscal year in which funds are available. The  
478 international trade facility shall not receive any grant under this section unless it has applied to the  
479 Virginia Port Authority for the grant and the Virginia Port Authority has approved the grant. The  
480 Virginia Port Authority shall determine the grant amount allowable for the year and shall provide a  
481 written certification to the international trade facility, which certification shall report the amount of the  
482 grant approved by the Virginia Port Authority.

483 E. The Virginia Port Authority shall not make awards under this section to applicants who are  
484 receiving tax credits for under § 58.1-439.12:09 for the same cargo.

485 F. The Virginia Port Authority shall develop guidelines establishing procedures and requirements for  
486 qualifying for grants under this section. The guidelines shall be exempt from the Administrative Process  
487 Act (§ 2.2-4000 et seq.).