

§ 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.).

2023, cc. 238, 239.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.