

# LEGISLATION FROM THE 2011 SESSION OF SPECIAL INTEREST TO VIRGINIA MANUFACTURERS

Manufacturing Development Commission  
May 17, 2011

## TAXATION

### **PASSED:**

**House Bill 1447 (Del. Cline) and Senate Bill 1326 (Sen. Herring): Income tax; research and development expenses tax credit.** The bill creates a refundable income tax credit for qualified research and development expenses. The tax credit amounts are (i) 15 percent of the first \$167,000 in Virginia qualified research and development expenses, or (ii) 20 percent of the first \$175,000 of Virginia qualified research and development expenses if the research was conducted in conjunction with a Virginia public or private college or university. The expenses are required to exceed a base amount determined based on the percentage of gross receipts spent on R&D expenses in Virginia in the preceding 3 years. Qualified R&D expenses includes expenses incurred in-house and contract research expenses for research undertaken for the purpose of discovering information that is technological in nature and that is intended to be useful in the development of a new or improved business component. There is a \$5 million cap on the total amount of credits allowed in any fiscal year. The tax credit expires in 2016.

**House Bill 1874 (Del. Purkey) and Senate Bill 1384 (Sen. Colgan): Commonwealth's tax code; conformity with federal law; emergency.** This bill provides that Virginia's tax laws will conform to provisions of the federal Internal Revenue Code as it existed on December 31, 2010; currently, Virginia's conformity to the IRC is fixed to the IRC as it existed on January 22, 2010. Advancing the conformity date allows several changes in federal tax law to flow through to Virginia taxable income. One effect is to continue to allow the federal deduction for qualified domestic production activities (in effect since 2005) under § 199 of the Internal Revenue Code at a level equal to two-thirds of the federal deduction. As a result, corporations will be eligible for a 6 percent deduction of net income from such activities, which include manufacturing of tangible personal property.

**House Bill 2385 (Del. Purkey) and Senate Bill 1282 (Sen. McWaters): Income tax, state; barge and rail usage tax credit.** This bill authorizes the Tax Commissioner to issue up to \$1.5 million per year in tax credits to companies engaged in port-related activities that use barge and rail, rather than trucks or other motor vehicles, to move cargo containers throughout the Commonwealth. The amount of the credit is \$25 per 20-foot equivalent unit (TEU) moved by barge or rail rather than by motor vehicles on highways. A TEU is based on a container 20 feet long, 8 feet wide, and 8.5 feet high. The credit will expire in 2015.

**House Bill 2531 (Del. Purkey) and Senate Bill 1481 (Sen. Wagner): Virginia port volume increase corporate income tax credit.** This bill creates an income tax credit to taxpayers engaged in manufacturing goods or the distribution of manufactured goods that use Virginia port facilities and increase their port cargo volume by five percent in a single year over their base year port cargo volume. The tax credit would equal \$50 for each TEU above the base year port cargo volume. The five percent requirement may be waived for a taxpayer qualifying as a major facility. The total credit amount available in a calendar year is \$3.2 million and each taxpayer generally would be limited to \$250,000 annually. The credit expires in 2016.

**Senate Bill 1136 (Sen. Wagner): International trade facility tax credit.** This bill grants companies engaged in port activities, including warehouses and distributors, the option to take an income tax credit equal to either (i) \$3,000 for every employee it hires that results from increased cargo moving through a Virginia Port Authority facility or (ii) two percent of any capital investment it makes to facilitate increased cargo moving through a Virginia Port Authority facility. To be eligible, the company must transport at least 10 percent more cargo through maritime port facilities during the year than was transported by the company in the preceding year. Tax credits are capped at \$250,000 per year. The credit will be available until 2015.

**FAILED:**

**House Bill 1410 (Del. Bell, Richard): Reduced corporate income tax rate for small business.** This bill would have provided a reduction of one-half of one percent in the corporate income tax rate, for up to three years, for small businesses (250 or fewer employees or average annual gross receipts of \$10 million or less) that increase the number of their employees by a minimum of five percent over the previous year.

**House Bill 1604 (Del. Albo) and Senate Bill 1006 (Sen. Watkins): Corporate income tax; market-based sourcing.** This bill would have changes the way the sales factor is determined, for purposes of the corporate income tax, by basing it on market-based sourcing rather than costs-of-performance. Sales, other than sales of tangible personal property, would be deemed to be made in Virginia if the taxpayer has exploited the market provided by the Commonwealth to the extent that any benefit or use of such sale is to a person or location in the Commonwealth. For example, sales of services would be sourced to Virginia to the extent the purchasers received the benefit of the service in Virginia. Revenue generated from this change would be deposited in the Highway Maintenance and Operating Fund. SB 1006 was referred to JLARC for study.

**House Bill 1636 (Del. Purkey): Machinery and tools tax.** The introduced bill would have exempted from local taxation (by classifying as intangible personal property) machinery and tools for the 3-year period after the date they are purchased or initially brought into Virginia, and machinery and tools that have been in use for at least 10 years and have an assessed value that is greater than one percent of the original cost. A substitute narrowed the bill to exempt machinery and tools that are identified as being idle for at least one year, used by farm wineries, or have not been in service for more than 3 years. The substitute bill was reported by the House Finance Committee but was left in the House Appropriations Committee.

**House Bill 2151 (Del. Cline) and Senate Bill 1404 (Sen. Obenshain): Corporate income tax.** The bill would have eliminated Virginia's corporate income tax for taxable years beginning on and after January 1, 2011. The average revenue impact was estimated at about \$1 billion annually in 2012-2017.

**Senate Bill 998 (Sen. Stuart): Corporate income tax rate for certain businesses.** The bill would have reduced the corporate income tax rate from 6 percent to 3 percent for the first three years after a business located outside Virginia, or in a Virginia locality with a population of over 200,000, opens an office in a Virginia locality with population of 200,000 or fewer. To be eligible for the reduced tax rate, the corporation must make a capital investment of at least \$250,000 and either (i) hire five or more full-time employees or (ii) reduce the commuting distance to less than 10 miles for at least five existing full-time employees. The bill passed the Senate 30-9 but died in the House Finance Committee.

## **ECONOMIC INCENTIVE PROGRAMS**

### **PASSED:**

**House Bill 1822 (Del. Peace): Local incentives for the design, development, or production of goods for national defense.** The bill creates a separate classification of machinery and tools designed and used directly in manufacturing or processing materials, components, or equipment that are related to national defense. Local governments are authorized to tax such machinery and tools at a rate that is less than the rate generally applicable to machinery and tools. The bill also authorizes local governments to establish, by ordinance, "local defense production zones." Localities may grant incentives, including lower fees, and provide regulatory flexibility to defense production businesses located in such zones.

**House Bill 1982 (Del. Kilgore) and Senate Bill 1379 (Sen. Stanley): Criteria for grants or loans from the Governor's Development Opportunity Fund.** The bill reduces the threshold for awards from the Fund for private investment and new job creation from \$10 million and 100 new jobs to \$5 million and at least 50 new jobs. A lower job creation threshold of 25 new jobs is established for projects with a minimum private investment of \$100 million. In addition, lower new investment and job creation thresholds (as low as \$1.5 million and 15 new jobs) are established for projects in tiers of fiscally stressed localities.

**House Bill 2221 (Del. Oder) and Senate Bill 1188 (Sen. Norment): Aircraft sales and use tax exemption.** This bill creates an exemption from the 2 percent aircraft sales and use tax for qualified companies that are headquartered in Virginia, make a minimum of a \$4 million capital investment in Virginia, create at least 50 new jobs in Virginia, and enter into a memorandum of agreement with the Virginia Economic Development Partnership. The exemption expires December 31, 2014. The bill also creates an exemption from the aircraft sales and use tax for aircraft that are purchased in Virginia but are registered outside of the Commonwealth and removed from the Commonwealth within 60 days of purchase.

**House Bill 2316 (Del. Byron) and Senate Bill 1360 (Sen. Stosch): Clean Energy Manufacturing Incentive Grant Program.** This bill creates the Clean Energy Manufacturing Incentive Grant Program to provide financial incentives to companies that manufacture or assemble equipment, systems, or products used to produce renewable or nuclear energy, or products used for energy conservation, storage, or grid efficiency purposes. To be eligible for a grant, the manufacturer must make a capital investment greater than \$50 million and create at least 200 full-time jobs that pay at least the prevailing wage. A wind energy supplier must make a capital investment of greater than \$10 million and create at least 30 full-time jobs that pay at least the prevailing wage to be eligible for a grant. Solar photovoltaic manufacturing grants based on sales in 2011 are capped at \$1 million. This Program replaces the existing Solar Photovoltaic Manufacturing Incentive Grant Program and the Biofuels Production Incentive Grant Program.

**House Bill 2324 (Del. Lingamfelter) and Senate Bill 1485 (Sen. Newman): Commonwealth Research and Technology Strategic Roadmap.** The bill directs the Innovation and Entrepreneurship Investment Authority (IEIA) to develop a strategic roadmap for research in the Commonwealth. The roadmap shall identify areas of focus for research investment in the Commonwealth. The bill authorizes the Commonwealth Research Commercialization Fund (CRCF) to set up a matching funds program and an eminent researcher program. The bill also establishes a Research and Technology Investment Advisory Committee to assist the IEIA in making awards from the CRCF by ensuring that applications considered for awards are based upon sound science and research, are in an area of focus identified in the roadmap, and present significant potential for commercialization in the Commonwealth.

**House Bill 2495 (Del. Jones): Advanced Shipbuilding Training Facility Grant Program.** The bill revises the Advanced Shipbuilding Training Facility Grant Program to allow the Commonwealth, the eligible city, and the qualified shipbuilder to structure an agreement whereby the eligible city would receive grants, not to exceed \$42 million, to be used toward payment of the costs of building the Facility. The qualified shipbuilder, upon fulfilling performance requirements, would gain ownership of the facility at the end of the grant period. These parties retain the authority under current law to structure an agreement whereby the qualified shipbuilder receives grants upon fulfilling performance requirements. The bill also extends the date by which a memorandum of understanding must be reached to qualify a shipbuilder for the Program from June 30, 2009, to August 31, 2011.

**Senate Joint Resolution 329 (Sen. Howell): Economic development incentive grants.** The resolution directs the Joint Legislative Audit and Review Commission (JLARC) to study the effectiveness of economic development incentive grants in Virginia. JLARC is directed to (i) identify which economic development incentive grants are available and to what extent they are used, (ii) examine the public policies for which the grant programs were established and whether the desired public policies have been achieved, and (iii) recommend a mechanism or process for the ongoing evaluation of the effectiveness of such economic development incentive grants in achieving the desired public policies for which the incentives were established. The final report is due November 30, 2012.

**FAILED:**

**House Bill 1870 (Del. Toscano): Virginia Economic Development Partnership Authority; reports by businesses receiving development subsidies.** The bill would have required any business entity that receives a development subsidy to file an annual report with the granting agency or the VEDP. A development subsidy includes any expenditure of public funds valued at \$25,000 or more that is intended to stimulate economic development and job creation in the Commonwealth, including bonds, grants, loan guarantees, fee waivers, price subsidies, tax abatement, tax exemptions, or tax credits. The reports are to include the number and type of jobs created, payroll data, information on the employer-sponsored health benefits, a statement as to whether the recipient reduced employment elsewhere in the Commonwealth, and other information to evaluate the progress and effectiveness of the particular development subsidy.

**MISCELLANEOUS**

**PASSED:**

**House Bill 1859 (Del. Anderson) and Senate Bill 1049 (Sen. Barker): Public Procurement Act; verification of legal presence.** The bill provides that effective December 1, 2013, any state contractor with more than an average of 50 employees for the previous 12 months that enters into a contract in excess of \$50,000 with any state agency to register and participate in the federal E-Verify program. The program provides a method of verifying information and work authorization of newly hired employees. An employer who fails to comply will be debarred from contracting with state agencies for up to one year, though the period of debarment ceases when the employer registers and participates in the E-Verify program.

**FAILED:**

**House Bill 1438 (Del. Cole): Goods produced or manufactured in the Commonwealth; not subject to federal regulation.** This bill would have declared that all goods produced or manufactured within the Commonwealth, when such goods are held, retained, or maintained in the Commonwealth, shall not be subject to federal law, federal regulation, or the constitutional power of the United States Congress to regulate interstate commerce. The bill passed the House 65-33-1 but died in the Senate Commerce and Labor Committee.

**House Bill 1727 (Del. Carrico): Virginia Fair Employment Act; E-Verify Program.** The introduced version of the bill would have required public contractors, employers with 15 or more employees within the Commonwealth, and localities to enroll in the E-Verify Program by December 1, 2011. They would be required to use the Program for each newly hired employee who is to perform work within the Commonwealth. Employers and contractors that fail to do so would be subject to suspension or revocation of certain licenses and invalidation of public contracts. Licenses will be reinstated when an employer or contractor enrolls in the Program or, if already enrolled but not using the Program, prepares and implements a compliance plan. A substitute that would have pushed the date of compliance back to December 1, 2013, passed the House 76-23 but died in the Senate Courts of Justice Committee's Immigration subcommittee.

**House Bill 2052 (Del. Hugo) and Senate Bill 1125 (Sen. Stosch): Right to vote by secret ballot on labor organization representation.** The bill would have declared that in any procedure providing for the designation, selection, or authorization of a labor organization to represent employees, the right of an individual employee to vote by secret ballot is a fundamental right that shall be guaranteed from infringement. The House bill passed the House (63-32) but died in the Senate Commerce and Labor Committee.

**Senate Bill 1473 (Sen. Lucas): Department of Business Assistance; job retraining accounts; tax exemptions.** The bill would have allowed an individual to open a job retraining account through the Department of Business Assistance. The account would be a trust or savings account administered by the Department and would be used by the individual for expenses related to job retraining. An individual's employer would be authorized to make matching contributions to the account and would be eligible for a tax deduction for the contributions to the extent that the contribution was included in the employer's federal taxable income. The bill passed the Senate with a reenactment clause but was tabled in the House Finance Committee.