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## SENATE BILL NO. 1073

Offered January 10, 2001

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*A BILL to amend and reenact §§ 59.1-274 and 59.1-280.1 of the Code of Virginia, relating to Enterprise Zone Act; creation of zones and real property investment tax credit limit.*

Patrons—Maxwell; Delegates: Barlow, Crittenden, Diamonstein and Hamilton

Referred to Committee on Commerce and Labor

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

**1. That §§ 59.1-274 and 59.1-280.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 59.1-274. Enterprise zone designation.**

A. The governing body of any county, city or town may make written application to the Department to have an area or areas declared to be an enterprise zone. Such application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives. Two or more adjacent jurisdictions may file a joint application for an enterprise zone lying in the jurisdictions submitting the application.

B. The Governor may approve upon the recommendation of the Director of the Department the designation of up to sixty areas, of which five shall be designated as provided in subsection C and five shall be designated as provided in subsection D, as enterprise zones for a period of twenty years. *Any areas designated as enterprise zones on or after July 1, 2001, other than those designated as provided in subsections C and D, shall be in urban areas with revitalization needs.* Any county, city, or town shall be eligible to apply for more than one enterprise zone designation; however, each county, city, and town shall be limited to a total of three enterprise zones. One enterprise zone in any county, city or town may consist of two noncontiguous zone areas; however, a joint enterprise zone may consist of the joint zone area and one additional noncontiguous zone area in each of the adjacent jurisdictions that submitted the application for the joint enterprise zone. The size of the enterprise zone shall consist of the total of the noncontiguous zone areas. The noncontiguous zone areas shall not be considered as separate zones for the purpose of calculating the maximum number of zone designations established by this chapter. Any such area shall consist of contiguous United States census tracts or block groups or any part thereof in accordance with the most current United States Census or with the most current data from the Center for Public Service or the local planning district commission. Any such area seeking designation as an enterprise zone shall also meet at least one of the following criteria: (i) have twenty-five percent or more of the population with incomes below eighty percent of the median income of the jurisdiction, (ii) have an unemployment rate 1.5 times the state average, or (iii) have a demonstrated floor area vacancy rate of industrial and/or commercial properties of twenty percent or more.

C. Five of the areas designated as enterprise zones on or after July 1, 1999, shall be located in localities that (i) have annual average unemployment rates for the most recent calendar year that are fifty percent higher than the final statewide average unemployment rate for the most recent calendar year or (ii) are within planning districts that have annual average unemployment rates for the most recent calendar year that are at least one percent greater than the final annual statewide average for the most recent calendar year. No area shall be designated as an enterprise zone pursuant to this subsection unless it also meets all the other eligibility criteria established pursuant to this chapter.

D. Five of the areas designated as enterprise zones on or after July 1, 2000, shall be located in localities that have annual average unemployment rates for the most recent calendar year that are fifty percent higher than the final statewide average unemployment rate for the most recent calendar year. No area shall be designated as an enterprise zone pursuant to this subsection unless it also meets all the other eligibility criteria established pursuant to this chapter.

**§ 59.1-280.1. Enterprise zone real property investment tax credit.**

**A. As used in this section:**

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions.

"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, (ii) a

59 minimum of thirty-five hours of an employee's time a week for the portion of the taxable year in which  
60 the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680  
61 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal or  
62 temporary positions, or a position created when a job function is shifted from an existing location in this  
63 Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent  
64 full-time positions.

65 "Qualified zone improvements" means the amount properly chargeable to a capital account for  
66 improvements to rehabilitate or expand depreciable real property placed in service during the taxable  
67 year within an enterprise zone, provided that the total amount of such improvements equals or exceeds  
68 (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or  
69 expansion. Qualified zone improvements include expenditures associated with any exterior, structural,  
70 mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or  
71 industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land  
72 improvements. Qualified zone improvements shall include, but not be limited to, costs associated with  
73 demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression  
74 systems, roofing and flashing, exterior repair, cleaning, and cleanup.

75 Qualified zone improvements shall not include:

76 1. The cost of acquiring any real property or building; however, the cost of any newly constructed  
77 depreciable nonresidential real property (excluding land, land improvements, paving, grading, driveways,  
78 and interest) shall be considered to be a qualified zone improvement eligible for the credit if the total  
79 amount of such expenditure is at least \$250,000 with respect to a single facility.

80 2. (i) The cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering  
81 and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales  
82 and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees,  
83 and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary  
84 facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; or (ix) the  
85 cost of any well or septic or sewer system.

86 3. The basis of any property: (i) for which a credit under this section was previously granted; (ii)  
87 which was previously placed in service in Virginia by the taxpayer, a related party as defined by  
88 Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal  
89 Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands  
90 of the person acquiring it, determined in whole or in part by reference to the basis of such property in  
91 the hands of the person from whom acquired or Internal Revenue Code § 1014 (a).

92 "Qualified zone investments" means the sum of qualified zone improvements and the cost of  
93 machinery, tools and equipment used in manufacturing tangible personal property within an enterprise  
94 zone. For purposes of this section, machinery, tools and equipment shall only be deemed to include the  
95 cost of such property which is placed in service in the enterprise zone on or after July 1, 1995.  
96 Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit under  
97 this section was previously granted; (ii) which was previously placed in service in Virginia by the  
98 taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under  
99 common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service  
100 in Virginia and has a basis in the hands of the person acquiring it, determined in whole or part by  
101 reference to the basis of such property in the hands of the person from whom acquired, or Internal  
102 Revenue Code § 1014 (a).

103 "Qualified zone resident" means an owner or tenant of real property located in an enterprise zone  
104 who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such  
105 owner or tenant within the enterprise zone.

106 "Real property investment tax credit" means a credit against the taxes imposed by Articles 2  
107 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1  
108 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

109 "Small qualified zone resident" means any qualified zone resident other than a large qualified zone  
110 resident.

111 B. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a qualified  
112 zone resident shall be allowed a real property investment tax credit as set forth in this section.

113 C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an  
114 amount equaling thirty percent of the qualified zone improvements. Any tax credit granted pursuant to  
115 this subsection is refundable; however, in no event shall the cumulative credit allowed to a small  
116 qualified zone resident pursuant to this subsection exceed \$425,000250,000 in any five-year period.  
117 Except as provided in subdivision B 1 of § 59.1-280.2, the total amount of (i) real property investment  
118 tax credits granted to small qualified zone residents under this subsection and (ii) business tax credits  
119 granted to small qualified business firms under subsection C of § 59.1-280, for each fiscal year, shall not  
120 exceed \$16 million.

121 D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an  
122 amount of up to five percent of such qualified zone investments. The percentage amount of the real  
123 property investment tax credit granted to a large qualified zone resident shall be determined by  
124 agreement between the Department and the large qualified zone resident, provided such percentage  
125 amount shall not exceed five percent. Except as provided in subdivision B 2 of § 59.1-280.2, the total  
126 amount of (i) real property investment tax credits granted to large qualified zone residents under this  
127 subsection and (ii) business tax credits granted to large qualified business firms under subsection D of  
128 § 59.1-280, for each fiscal year, shall not exceed three million dollars. The real property investment tax  
129 credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit  
130 not usable for the taxable year generated may be carried over until the full amount of such credit has  
131 been utilized.

132 E. The Department shall certify the nature and amount of qualified zone improvements and qualified  
133 zone investments eligible for a real property investment tax credit in any taxable year. Only qualified  
134 zone improvements and qualified zone investments that have been properly certified shall be eligible for  
135 the credit. Any form filed with the Department of Taxation or State Corporation Commission for the  
136 purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the  
137 taxpayer by the Department. Any certification by the Department pursuant to this section shall not  
138 impair the authority of the Department of Taxation or State Corporation Commission to deny in whole  
139 or in part any claimed tax credit if the Department of Taxation or State Corporation Commission  
140 determines that the taxpayer is not entitled to such tax credit. The Department of Taxation or State  
141 Corporation Commission shall notify the Department in writing upon determining that a taxpayer is  
142 ineligible for such tax credit.

143 F. In the case of a partnership, limited liability company or S corporation, the term "qualified zone  
144 resident" as used in this section means the partnership, limited liability company or S corporation.  
145 Credits granted to a partnership, limited liability company or S corporation shall be passed through to  
146 the partners, members or shareholders, respectively.

147 G. The Tax Commissioner shall have the authority to issue regulations relating to the computation  
148 and carryover of the credit provided under this section.

149 H. In the first taxable year only, the credit provided in this section shall be prorated equally against  
150 the taxpayer's estimated payments made in the third and fourth quarters and the final payment, if such  
151 taxpayer is required to make quarterly payments.