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HOUSE BILL NO. 466

Offered January 9, 2002

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A BILL to amend and reenact §§ 59.1-280 and 59.1-280.1 of the Code of Virginia, relating to enterprise zones.

Patrons—Suit, Bland, Byron, Cole, Dudley, McDonnell, McDougle, Morgan, Rapp, Reid, Saxman, Sears and Spruill

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 59.1-280 of the Code of Virginia is amended and reenacted as follows:**

§ 59.1-280. Enterprise zone business tax credit.

A. As used in this section:

"Business tax credit" means a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 due from a business firm.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such qualified zone investments result in the creation of at least fifty permanent full-time positions. "Qualified zone investment" and "permanent full-time position" shall have the meanings provided in subsection A of § 59.1-280.1.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm.

B. The Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of (i) business firms subject to tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title 58.1 to the Commissioner of Insurance for the State Corporation Commission, or (ii) business firms subject to tax under Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the business tax credit provided herein for a qualified business firm. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or State Corporation Commission shall notify the Department in writing upon determining that a business firm is ineligible for such tax credit.

C. Small qualified business firms shall be allowed a business tax credit in an amount equal to eighty percent of the tax due to the Commonwealth for the first tax year and sixty percent of the tax due the Commonwealth for the second tax year through the tenth tax year. Except as provided in subdivision B 1 of § 59.1-280.2, the total amount of (i) business tax credits granted to small qualified business firms under this subsection and (ii) real property investment tax credits granted to small qualified zone residents under subsection C of § 59.1-280.1, for each fiscal year, shall not exceed \$16 million.

D. Large qualified business firms shall be allowed a business tax credit in a percentage amount determined by agreement between the Department and the large qualified business firm, provided such percentage amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C. Except as provided in subdivision B 2 of § 59.1-280.2, the total amount of (i) business tax credits granted to large qualified business firms under this subsection and (ii) real property investment tax credits granted to large qualified zone residents under subsection D of § 59.1-280.1, for each fiscal year, shall not exceed three million dollars.

E. Any business tax credit not usable *by a large qualified business firm* may not be applied to future tax years; *however, business tax credits not usable by a small qualified business firm may be applied to future tax years, not to exceed five years.* ~~However, tax~~ Tax credits granted under this section to business firms designated as qualified business firms prior to July 1, 1995, shall not be subject to inclusion in the \$16 million limitation set forth in subsection C or the three-million-dollar limitation set forth in subsection D.

F. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively.

58 G. Tax credits provided for in this section shall only apply to taxable income of a qualified business
59 firm attributable to the conduct of business within the enterprise zone. Any qualified business firm
60 having taxable income from business activity both within and without the enterprise zone shall allocate
61 and apportion its Virginia taxable income attributable to the conduct of business as follows:

62 1. The portion of a qualified business firm's Virginia taxable income allocated and apportioned to
63 business activities within an enterprise zone shall be determined by multiplying its Virginia taxable
64 income by a fraction, the numerator of which is the sum of the property factor and the payroll factor,
65 and the denominator of which is two.

66 a. The property factor is a fraction. The numerator is the average value of real and tangible personal
67 property of the business firm which is used in the enterprise zone. The denominator is the average value
68 of real and tangible personal property of the business firm used everywhere in the Commonwealth.

69 b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the
70 enterprise zone during the taxable period by the business firm for compensation. The denominator is the
71 total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the
72 business firm for compensation.

73 2. The property factor and the payroll factor shall be determined in accordance with the procedures
74 established in §§ 58.1-409 through 58.1-413 for determining the Virginia taxable income of a
75 corporation having income from business activities which is taxable both within and without the
76 Commonwealth, mutatis mutandis.

77 3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore
78 prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a
79 lesser portion of its Virginia taxable income than is reasonably attributable to business conducted within
80 the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its
81 objections and of such alternative method of allocation or apportionment as it believes to be appropriate
82 under the circumstances with such detail and proof and within such time as the Department of Taxation
83 may reasonably prescribe. If the Department of Taxation concludes that the method of allocation or
84 apportionment employed is in fact inequitable or inapplicable, it shall redetermine the taxable income by
85 such other method of allocation or apportionment as best seems calculated to assign to an enterprise
86 zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to
87 business conducted within the enterprise zone.