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HOUSE BILL NO. 485

Offered January 9, 2002

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

Patrons—Suit, Bland, Cole, Sears and Spruill

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 59.1-280.1 of the Code of Virginia is amended and reenacted as follows:**

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

"Qualified zone improvements" 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 within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include 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. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

Qualified zone improvements shall not include:

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

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

3. The basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and 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 Internal Revenue Code § 1014 (a).

"Qualified zone investments" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property within an enterprise zone. For purposes of this section, machinery, tools and equipment shall only be deemed to include the cost of such property which is placed in service in the enterprise zone on or after July 1, 1995. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the

59 taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under
60 common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service
61 in Virginia and has a basis in the hands of the person acquiring it, determined in whole or part by
62 reference to the basis of such property in the hands of the person from whom acquired, or Internal
63 Revenue Code § 1014 (a).

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

67 "Real property investment tax credit" means a credit against the taxes imposed by Articles 2
68 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1
69 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

70 "Small qualified zone resident" means any qualified zone resident other than a large qualified zone
71 resident.

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

74 C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an
75 amount equaling thirty percent of the qualified zone improvements. Any tax credit granted pursuant to
76 this subsection is refundable; however, in no event shall the cumulative credit allowed to a small
77 qualified zone resident pursuant to this subsection exceed \$125,000 in any five-year period. Except as
78 provided in subdivision B 1 of § 59.1-280.2, the total amount of (i) real property investment tax credits
79 granted to small qualified zone residents under this subsection and (ii) business tax credits granted to
80 small qualified business firms under subsection C of § 59.1-280, for each fiscal year, shall not exceed
81 \$16 million.

82 D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an
83 amount of up to five percent of such qualified zone investments. The percentage amount of the real
84 property investment tax credit granted to a large qualified zone resident shall be determined by
85 agreement between the Department and the large qualified zone resident, provided such percentage
86 amount shall not exceed five percent. Except as provided in subdivision B 2 of § 59.1-280.2, the total
87 amount of (i) real property investment tax credits granted to large qualified zone residents under this
88 subsection and (ii) business tax credits granted to large qualified business firms under subsection D of
89 § 59.1-280, for each fiscal year, shall not exceed three million dollars. The real property investment tax
90 credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit
91 not usable for the taxable year generated may be carried over until the full amount of such credit has
92 been utilized.

93 E. The Department shall certify the nature and amount of qualified zone improvements and qualified
94 zone investments eligible for a real property investment tax credit in any taxable year. Only qualified
95 zone improvements and qualified zone investments that have been properly certified shall be eligible for
96 the credit. Any form filed with the Department of Taxation or State Corporation Commission for the
97 purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the
98 taxpayer by the Department. Any certification by the Department pursuant to this section shall not
99 impair the authority of the Department of Taxation or State Corporation Commission to deny in whole
100 or in part any claimed tax credit if the Department of Taxation or State Corporation Commission
101 determines that the taxpayer is not entitled to such tax credit. The Department of Taxation or State
102 Corporation Commission shall notify the Department in writing upon determining that a taxpayer is
103 ineligible for such tax credit.

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

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

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