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SENATE BILL NO. 65

Offered January 14, 2004

Prefiled December 29, 2003

A BILL to amend and reenact § 59.1-280.1 of the Code of Virginia, relating to real property investment tax credits available under the Enterprise Zone Act.

 Patron—Martin

 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. (Expires July 1, 2005) 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~~ 35 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~~ 48 weeks, (ii) a minimum of ~~thirty-five~~ 35 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

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

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

68 "Real property investment tax credit" means a credit against the taxes imposed by Articles 2
69 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1
70 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

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

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

75 C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an
76 amount equaling ~~thirty~~30 percent of the qualified zone improvements. Any tax credit granted pursuant to
77 this subsection is refundable; however, in no event shall the cumulative credit allowed to a small
78 qualified zone resident pursuant to this subsection exceed \$125,000 ~~in any five-year period per zone~~
79 ~~resident per facility placed in service by such resident~~. Except as provided in subdivision B 1 of
80 § 59.1-280.2, the total amount of (i) real property investment tax credits granted to small qualified zone
81 residents under this subsection and (ii) business tax credits granted to small qualified business firms
82 under subsection C of § 59.1-280, for each fiscal year, shall not exceed \$16 million.

83 D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an
84 amount of up to five percent of such qualified zone investments. The percentage amount of the real
85 property investment tax credit granted to a large qualified zone resident shall be determined by
86 agreement between the Department and the large qualified zone resident, provided such percentage
87 amount shall not exceed five percent. Except as provided in subdivision B 2 of § 59.1-280.2, the total
88 amount of (i) real property investment tax credits granted to large qualified zone residents under this
89 subsection and (ii) business tax credits granted to large qualified business firms under subsection D of
90 § 59.1-280, for each fiscal year, shall not exceed ~~three~~\$3 million ~~dollars~~. The real property investment
91 tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any
92 credit not usable for the taxable year generated may be carried over until the full amount of such credit
93 has been utilized.

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

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

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

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

114 **2. That the provisions of this act shall apply to expanded, rehabilitated, or newly constructed real**
115 **property (i) for which a real property investment tax credit is applicable and (ii) that is placed in**
116 **service by the small qualified zone resident in taxable years beginning on or after January 1, 2003.**
117 **The cumulative credit allowed to a small qualified zone resident for all such real property placed**
118 **in service by the resident in taxable years beginning prior to January 1, 2003, shall not exceed**
119 **\$125,000 in any five-year period.**