

LD7628611

SENATE BILL NO. 1036

Offered January 23, 1995

A *BILL to amend and reenact §§ 59.1-274 and 59.1-279 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 59.1-280.1, 59.1-280.2 and 59.1-283.1, relating to the Enterprise Zone Act.*

Patrons—Bell, Barry, Benedetti, Calhoun, Chichester, Earley, Goode, Lambert, Lucas, Marsh, Martin, Marye, Maxwell, Miller, K.G., Norment, Quayle, Robb, Stolle, Trumbo, Waddell, Wampler and Woods; Delegates: Abbitt, Albo, Callahan, Cox, Crouch, Diamonstein, Dudley, Fisher, Forbes, Ingram, Katzen, Kidd, Kilgore, McClure, Morgan, Newman, Nixon, O'Brien, Orrock, Purkey, Ruff, Wagner, Wardrup and Wilkins

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-274 and 59.1-279 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 59.1-280.1, 59.1-280.2 and 59.1-283.1 as follows:

§ 59.1-274. Enterprise zone and rural 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. The governing body of any city with a population of at least 250,000 may make written application to the Department to have more than one designated area 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 of Housing and Community Development the designation of up to ~~twenty-five~~ *fifty* areas as enterprise zones for a period of twenty years; ~~however, when twenty-five areas have been designated as enterprise zones, any~~ . Any city with a population of at least 102,000 but no more than 107,000, any city with a population of at least 169,000 but no more than 174,000, any city with a population of at least 200,000 but no more than 205,000, and any city with a population of at least 260,000 but no more than 265,000 shall be eligible to apply for additional enterprise zone designations. However, each such city seeking an additional enterprise zone designation shall already have at least one such designation and shall be limited to a total of three enterprise zones. Any county with a population of at least 200,000 but no more than 210,000 shall be eligible to apply for additional enterprise zone designations. Additionally, any counties having a population of more than 26,300 and less than 27,000, more than 33,000 and less than 34,700, and more than 16,300 and less than 17,000, shall be eligible to apply for additional enterprise zone designations. 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, *except for counties with a population density of 150 or fewer persons per square mile at the most recent decennial census where the zone may consist of noncontiguous areas*. 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.

§ 59.1-279. Eligibility.

A. Any business firm may be designated a "qualified business firm" for purposes of this chapter if:

1. It (i) ~~begins the operation of a trade or business within an enterprise zone~~ *establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth by such taxpayer,* and (ii) ~~during the taxable year has at least fifty percent of the gross receipts of such business firm attributable to the active conduct of such trade or business within the enterprise zone, and (iii) forty percent or more of the employees employed at the business firm's establishment or establishments located within the enterprise zone meet the criteria set forth in subdivision B (i) or B (ii) of § 59.1-274 prior to employment; or either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of the zone.~~

2. It (i) is actively engaged in the conduct of a trade or business in an area immediately prior to such an area being designated as an enterprise zone, and (ii) ~~meets the requirements of subdivision 1 (ii) of~~

INTRODUCED

SB1036

60 this subsection, and (iii) increases the average number of full-time employees employed at the business
 61 firm's establishment or establishments located within the enterprise zone by at least ten percent over the
 62 lower of the preceding two year's employment with no less than forty percent of such increase being
 63 employees meeting the criteria of subdivision B (i) or B (ii) of § 59.1-274 prior to employment. who
 64 either have incomes below eighty percent of the median income for the jurisdiction prior to employment
 65 or are residents of the zone. Current employees of the business firm that are transferred directly to the
 66 enterprise zone facility from another site within the state resulting in a net loss of employment at that
 67 site shall not be included in calculating the increase in the average number of full-time employees
 68 employed by the business firm within the enterprise zone.

69 3. It (i) is actively engaged in the conduct of a trade or business in the Commonwealth and relocates
 70 to begin operation of a trade or business within an enterprise zone and (ii) increases the average
 71 number of full-time employees employed at the business firm's establishment or establishments within the
 72 enterprise zone by at least ten percent over the lower of the preceding two year's employment of the
 73 business firm prior to relocation with no less than forty percent of such increase being employees who
 74 either have incomes below eighty percent of the median income for the jurisdiction prior to employment
 75 or are residents of the zone. Current employees of the business firm that are transferred directly to the
 76 enterprise zone facility from another site within the state resulting in a net loss of employment at that
 77 site shall not be included in calculating the increase in the average number of full-time employees
 78 employed by the business firm within the enterprise zone.

79 4. For the purposes of this section, the term "full-time employee" shall mean means (i) an individual
 80 employed by a business firm and who works the normal number of hours a week as required by the
 81 firm or (ii) two or more individuals who together share the same job position and together work the
 82 normal number of hours a week as required by the business firm for that one position. For the
 83 purposes of this section, the term "jurisdiction" means the county, city or town which made the
 84 application under § 59.1-274 to have the enterprise zone. In the case of a joint application, jurisdiction
 85 means all parties making such application.

86 B. After designation as an enterprise zone, each qualified business firm in such zone shall submit
 87 annually to the Department a statement requesting one or more of the tax incentives provided in this
 88 chapter. Such a statement shall be accompanied by an approved form supplied by the Department and
 89 completed by an independent certified public accountant licensed by the Commonwealth which states
 90 that the business firm meets the definition of a "qualified business firm." A copy of the statement
 91 submitted by each business firm to the Department shall be forwarded to the governing body of the
 92 county, city or town in which the enterprise zone is located.

93 C. The form referred to in subsection B of this section, prepared by an independent certified public
 94 accountant licensed by the Commonwealth, shall be prima facie evidence of the eligibility of a business
 95 firm for the purposes of this section.

96 D. For the purposes of this chapter, "qualified business firm" shall not include any business used for
 97 the following primary purposes: making and settling bets; receiving, holding, recording, or forwarding
 98 bets or offers to bet; or playing gambling devices.

99 § 59.1-280.1 Enterprise zone interest income tax credit.

100 A. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a taxpayer
 101 shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400
 102 et seq.) of Chapter 3 and Chapter 12 (§ 58.1-1200 et seq.) of Title 58.1, as set forth in this section.

103 B. For any qualified zone lender, a credit shall be allowed pursuant to this section in an amount
 104 equaling fifteen percent of the qualified zone interest income. However, in no event shall the cumulative
 105 credit allowed pursuant to this section for each lender exceed \$100,000 for a taxable year.

106 C. "Qualified zone lender" means a state or national bank, banking association, trust company,
 107 savings and loan association, investment banker, venture capital firm, investment partnership, real estate
 108 investment trust, or other financial institution which (i) is regularly engaged in the business of lending
 109 money and (ii) makes a loan that qualifies as enterprise zone indebtedness.

110 D. "Qualified zone interest income" means the amount of interest income reported for federal income
 111 tax purposes for the taxable year with respect to enterprise zone indebtedness. Qualified zone interest
 112 income shall not include any amount which was received from a related party as defined by Internal
 113 Revenue Code § 267(b) or a trade or business under common control as defined by Internal Revenue
 114 Code § 52(b).

115 E. "Enterprise zone indebtedness" means money loaned to a trade or business operating in an
 116 enterprise zone for the express purpose of expansion, construction, or rehabilitation of industrial or
 117 commercial real property located within an enterprise zone, provided that the amount of such
 118 indebtedness is at least twenty-five percent of the basis of the real property, not including improvements,
 119 to be improved.

120 1. Permanent financing (which replaces construction financing that qualified as enterprise zone
 121 indebtedness) shall qualify as enterprise zone indebtedness to the extent, immediately after the

refinancing, the principal amount of the indebtedness resulting from the permanent financing does not exceed the sum of (i) the principal amount of construction financing and (ii) the reasonable closing costs, points, and fees related to the permanent financing.

2. Except as otherwise provided for permanent financing, loans made to refinance existing indebtedness shall not qualify as enterprise zone indebtedness.

3. Enterprise zone indebtedness shall not include any indebtedness which existed on July 1, 1995, or the refinancing of any indebtedness which existed on July 1, 1995.

F. The Department shall certify all enterprise zone indebtedness which qualifies for purposes of the credit provided by this section. Only indebtedness that has been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation for the purpose of claiming the credit shall itemize the amount and source of qualified zone interest income earned, and be accompanied by a copy of the certifications furnished to the qualified zone lender by the Department.

G. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any tax credit granted pursuant to this section is nonrefundable, but any credit not usable for the taxable year during which the credit was generated may be, to the extent usable, carried over for the next five succeeding taxable years or until the full credit is utilized. No credit shall be carried back to a preceding taxable year. In the event that a taxpayer who is subject to the tax limitation imposed pursuant to this subsection has earned another credit pursuant to any other section of the Code of Virginia, or has a credit carryforward from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit which does not have a carryover provision, and then any credit which is carried forward from a preceding taxable year, prior to the utilization of any credit earned pursuant to this section.

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

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

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

§ 59.1-280.2. Enterprise zone real property investment tax credit.

A. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200), 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, as set forth in this section.

B. For any qualified zone resident, a credit shall be allowed pursuant to this section in an amount equaling thirty percent of the qualified zone improvements. However, in no event shall the cumulative per project credit allowed to a qualified zone resident pursuant to this section exceed \$125,000.

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

D. "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.

1. Except as provided in subsection E of this section, qualified zone improvements shall not include the cost of acquiring any real property or building.

2. Qualified zone improvements shall not include: (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. Qualified zone improvements shall not include the basis of any property: (i) for which a credit

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

189 E. For purposes of this section, the cost of any newly constructed depreciable nonresidential real
190 property shall be considered to be a qualified zone improvement eligible for the credit if the total
191 amount of such expenditures is at least \$250,000 with respect to a single facility. For purposes of this
192 subsection, land, land improvements, paving, grading, driveways, and interest shall not be considered to
193 be qualified zone improvements.

194 F. The Department shall certify the nature and amount of qualified zone improvements eligible for
195 credit in any taxable year. Only improvements and investments that have been properly certified shall be
196 eligible for the credit. Any form filed with the Department of Taxation for the purpose of claiming the
197 credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department.

198 G. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such
199 taxable year. Any tax credit granted pursuant to this section is nonrefundable, but any credit not usable
200 for the taxable year the credit was generated may be, to the extent usable, carried over for the next five
201 succeeding taxable years or until the full credit is utilized, whichever accrues first. No credit shall be
202 carried back to a preceding taxable year. In the event that a taxpayer who is subject to the tax
203 limitation imposed pursuant to this subsection has earned another credit during the current taxable year
204 pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding
205 taxable year, such taxpayer shall be considered to have first utilized any credit which does not have a
206 carryover provision, and then any credit which is carried forward from a preceding taxable year, prior
207 to the utilization of any credit earned pursuant to this section.

208 H. In the case of a partnership, limited liability company or S corporation, the term "qualified zone
209 resident" as used in this section means the partnership, limited liability company or S corporation.
210 Credits granted to a partnership, limited liability company or S corporation shall be passed through to
211 the partners, members or shareholders, respectively.

212 I. In the event that a qualified zone resident is engaged in manufacturing tangible personal property
213 in an enterprise zone in a county in Virginia, and makes qualified zone investments in excess of \$50
214 million, then such qualified zone resident may claim a credit equaling five percent of such qualified
215 zone investments in lieu of the credit provided by subsection B of this section. The credit provided by
216 this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the
217 taxable year generated may be carried over until the full amount of such credit has been utilized.

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

229 K. The Tax Commissioner shall have the authority to issue regulations relating to the computation
230 and carryover of the credit provided under this section.

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

234 § 59.1-283.1. Clean Sites Fund eligibility.

235 A. Funding allocations for the site clearance fund (Clean Sites Fund) shall include localities with
236 populations of 50,000 or greater which have enterprise zones.

237 B. These funds shall be used for site clearance activities within the local zones.