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SENATE BILL NO. 1106

Offered January 20, 1997

A BILL to amend and reenact §§ 59.1-279, 59.1-280, 59.1-280.1 and 59.1-280.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 59.1-280.1:1, relating to enterprise zone eligibility and tax credits.

Patrons—Marsh, Benedetti and Lambert; Delegates: Cantor, Cunningham, Hall, Jones, D.C. and McEachin

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Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-279, 59.1-280, 59.1-280.1 and 59.1-280.2 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 59.1-280.1:1 as follows:

§ 59.1-279. Eligibility.

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

1. (i) It establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth by such taxpayer, and (ii) forty percent or more of the employees employed at the business firm's establishment or establishments located within the enterprise zone 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) increases the average number of full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least ten percent over the lower of the preceding two years' employment with no less than forty percent of such increase being employees who either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of the zone. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.

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

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

1. 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) increases the average number of full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least fifty employees over the lower of the preceding two years' employment. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.

2. It (i) is actively engaged in the conduct of a trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone and (ii) increases the average number of full-time employees employed at the business firm's establishment or establishments within the enterprise zone by at least fifty employees over the lower of the preceding two years' employment of the business firm prior to relocation. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees *employed by the business firm within the enterprise zone.*

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

~~B.~~*D.* After designation as a qualified business firm *or qualified reinvestment business firm* pursuant to this section, each business firm in an enterprise zone shall submit annually to the Department a statement requesting one or more of the tax incentives provided in § 59.1-280 or § 59.1-282. Such a statement shall be accompanied by an approved form supplied by the Department and completed by an independent certified public accountant licensed by the Commonwealth which states that the business firm met the definition of a "qualified business firm" *or "qualified reinvestment business firm* and continues to meet the requirements for eligibility as a qualified business firm *or qualified reinvestment business firm* in effect at the time of its designation. A copy of the statement submitted by each business firm to the Department shall be forwarded to the zone administrator.

~~C.~~*E.* The form referred to in subsection ~~B~~*D* of this section, prepared by an independent certified public accountant licensed by the Commonwealth, shall be prima facie evidence of the eligibility of a business firm for the purposes of this section*, but the evidence of eligibility shall be subject to rebuttal. The Department or the Department of Taxation or the State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or qualified reinvestment business firm or (ii) for a tax credit claimed pursuant to this chapter.*

§ 59.1-280. Enterprise zone business income tax credit.

A. *As used in this section:*

"Business income tax credit" means a credit means a credit against any tax due under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 or against any income tax, franchise tax, gross receipts tax or shares tax due from a public service company, bank, bank and trust company, trust company, insurance company, other than a foreign fire or casualty insurance company, national bank, mutual savings bank, savings institution, partnership or sole proprietorship.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of $25 million when such qualified zone investments result in the creation of at least 100 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 public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the *business income* tax credit provided herein for a qualified business firm ~~against any tax due under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 or against any income tax, franchise tax, gross receipts tax or shares tax due from a public service company, bank, bank and trust company, trust company, insurance company, other than a foreign fire or casualty insurance company, national bank, mutual savings bank, savings institution, partnership or sole proprietorship, in an amount equaling~~ . *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 income 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. ~~However, if the qualified business firm makes qualified zone investments (as defined in subsection K of § 59.1-280.1) in excess of $25 million and such qualified zone investments result in the creation of at least 100 full-time positions, the percentage amounts of the income tax credits available to such qualified business firms under this subsection shall be~~ *Except as provided in subdivision B 1 of § 59.1-280.2, the total amount of (i) business income 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 five million dollars.*

D. Large qualified business firms shall be allowed a business income 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 ~~other~~ *small* qualified business firms as set forth in ~~the preceding sentence~~ *subsection C. Except as provided in subdivision B 2 of § 59.1-280.2, the total amount of (i) business income 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 income* tax credit not usable may not be applied to future tax years. ~~The total amount of tax credits granted to qualified business firms (other than firms that are granted a tax credit under subsection J of § 59.1-280.1) under this section and to qualified zone residents under subsection B of § 59.1-280.1, for each fiscal year, shall not exceed five million dollars.~~ However, 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 ~~such~~ *the* five-million-dollar limitation *set forth in subsection C or the three-million-dollar limitation set forth in subsection D.*

~~B~~ *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. ~~Any qualified business firm having taxable income from business activity, both within and without the enterprise zone, shall allocate and apportion its taxable income attributable to the conduct of business in accordance with the procedures contained in §§ 58.1-302 through 58.1-420.~~

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

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

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

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

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

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

§ 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, or (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. 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 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 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 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 or business by such owner or tenant within the enterprise zone.

"Real property investment tax credit" means 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.

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

B. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a ~~taxpayer~~ *qualified zone resident* shall be allowed a *real property investment tax* 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~~ *C.* For any *small* qualified zone resident, a *real property investment tax* credit shall be allowed ~~pursuant to this section~~ in an amount equaling thirty percent of the qualified zone improvements. ~~However~~ *Any tax credit granted pursuant to this subsection is refundable; however*, in no event shall the cumulative credit allowed to a *small* qualified zone resident pursuant to this ~~section~~ *subsection* exceed $125,000 in any five-year period. ~~The~~ *Except as provided in subdivision B 1 of § 59.1-280.2, the* total amount of *(i) real property investment* tax credits granted to *small* qualified zone residents under this subsection and *(ii) business income tax credits granted* to *small* qualified business firms under *subsection C of* § 59.1-280, for each fiscal year, shall not exceed five million dollars.

~~C. "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, or (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. 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.~~

~~D. "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 or business by such owner or tenant within the enterprise zone.~~

~~E. "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 F 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 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).~~

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

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

~~G~~ *E.* The Department shall certify the nature and amount of qualified zone improvements and *qualified zone* investments eligible for *a real property investment tax* credit in any taxable year. Only *qualified zone* improvements and *qualified zone* investments that have been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation *or State Corporation Commission* for the purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department. *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*

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Commission determines that the taxpayer 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 taxpayer is ineligible for such tax credit.

~~H. The amount of credit allowed pursuant to subsection B of this section shall not exceed the tax imposed for such taxable year. Any tax credit granted pursuant to subsection B of this section is refundable; however, a taxpayer shall not be eligible to receive more than $125,000 of tax credits under subsection B of this section within a five-year period.~~

~~I~~ *F*. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" 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.

~~J. In the event that a qualified zone resident (i) makes qualified zone investments in excess of $100 million and (ii) such qualified zone investments result in the creation of at least 200 permanent full-time positions, then such qualified zone resident shall be eligible for a credit in an amount of up to five percent of such qualified zone investments in lieu of the credit provided by subsection B of this section. The percentage amount of the investment tax credit granted to a qualified zone resident shall be determined by agreement between the Department and the qualified zone resident, provided such percentage amount shall not exceed five percent. The total amount of tax credits granted to qualified zone residents under subsection J, and to qualified business firms under § 59.1-280 for firms granted a tax credit under subsection J of this section, for each fiscal year shall not exceed three million dollars. The percentage amounts of the business income tax credit provided in § 59.1-280 which may be granted to a qualified business firm that is eligible for an investment tax credit under this subsection shall be determined by agreement between the Department and the qualified zone resident, provided such percentage amounts shall not exceed the percentages provided in § 59.1-280. The investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.~~

~~K. "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 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 part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).~~

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

~~M~~ *H*. 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.

§ 59.1-280.1:1. Enterprise zone reinvestment tax credit.

A. As used in this section:

"Qualified zone reinvestment resident" means a zone resident that is not eligible as a qualified business, as defined under this act, but is making qualified zone investments in excess of $25 million when such qualified zone investments result in the creation of at least fifty permanent full-time positions (as defined in § 59.1-280.1).

"Qualified zone reinvestment 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 reinvestment improvements include expenditures associated with an 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 reinvestment 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 reinvestment 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 reinvestment 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 feed; (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).

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

"Reinvestment tax credit" means 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.

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

C. For any qualified zone reinvestment resident, a reinvestment tax credit shall be allowed in an amount of up to one-half of one percent of such qualified zone reinvestments. The percentage amount of the reinvestment tax credit granted to a qualified zone reinvestment resident shall be determined by agreement between the Department and the qualified zone reinvestment resident, provided such percentage amount shall not exceed one-half of one percent. Except as provided ins subdivision B 2 of § 59.1-280.2, the total amount of (i) reinvestment tax credits granted to qualified zone reinvestment residents under this subsection and (ii) real property reinvestment tax credits granted to large qualified zone residents under subsection D of § 59.1-280.1 and (iii) business income tax credits granted to large qualified business firms under subsection D of § 59.1-280, for each fiscal year shall not exceed three million dollars. The total of the reinvestment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

D. The Department shall certify the nature and amount of re-improvements and reinvestments eligible for reinvestment credits in any taxable year. Only qualified re-improvements and qualified reinvestments that have been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation or State Corporation Commission for the purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department. 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 taxpayer is not entitled to such tax credit. The Department of Taxation of State Corporation Commission shall notify the Department in writing upon determining that a taxpayer is ineligible for such tax credit.

E. In the case of a partnership, limited liability company or S corporation the term "qualified zone reinvestment resident" 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 share holders, respectively.

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

§ 59.1-280.2. Policies and procedures for reservation and allocation of tax credits.

A. Qualified business firms and qualified zone residents shall be eligible to receive any tax credit provided under § 59.1-280 or § 59.1-280.1 in any year if, and to the extent, they reserve the tax credit through the Department.

B. *1. If the total amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 and small qualified zone residents are eligible under subsection C of § 59.1-280.1 exceeds five million dollars in any fiscal year in which the amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 and large qualified zone residents and qualified zone reinvestment residents are eligible under subsection D of § 59.1-280.1 and § 59.1-280.1:1, respectively, is less than three million dollars, then the amount of tax credits available to such small qualified business firms and small qualified zone residents shall be increased by the amount by which the tax credits for such large qualified business firms, qualified reinvestment firms, large qualified zone residents and qualified reinvestment zone residents are eligible is less than three million dollars.*

2. If the total amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 and large qualified zone residents and qualified zone reinvestment residents are eligible under subsection D of § 59.1-280.1 and § 59.1-280.1:1, respectively, exceeds three million dollars in any fiscal year in which the amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 and small qualified zone residents are eligible under subsection C of § 59.1-280.1 is less than five million dollars, then the amount of tax credits available to such large qualified business firms, qualified reinvestment business firms, large qualified zone residents and qualified zone reinvestment residents shall be increased by the amount by which the tax credits for such small qualified business firms and small qualified zone residents are eligible is less than five million dollars.

C. In order to ensure that the limited amounts of tax credits available under §§ 59.1-280, ~~and~~ 59.1-280.1, *59.1-280.1:1* in any year are not oversubscribed and are allocated in an orderly and equitable manner, the Board of Housing and Community Development shall establish policies and procedures for the reservation of tax credits by qualified business firms, *qualified* reinvestment *business firms*, qualified zone residents *and qualified zone* reinvestment *residents*. Such policies and procedures shall provide (i) requirements for applying for reservations of tax credits; (ii) a system for allocating available amount of tax credits among eligible applicants; (iii) *a method* for carrying forward eligibility for tax credits to subsequent periods if an applicant does not obtain a reservation of the tax credit or any portion thereof for which he is eligible in any year as the result of the oversubscription of tax credits; (iv) priorities for allocating reservations to applicants whose eligibility for reservations of tax credits was carried forward from a preceding year but who did not receive a credit to which they were otherwise eligible; ~~and~~ (v) *a method* for the issuance of reservations to eligible applicants who did not initially receive a reservation in any year, if the Department determines that tax credit reservations were issued to other applicants who did not use, or were determined to be wholly or partially ineligible for, a reserved tax credit*; and (vi) a procedure for the cancellation and reallocation of tax credit reservations allocated to applicants who, after reserving tax credits, have been determined to be ineligible for all or a portion of the tax credits reserved*.

~~C~~ *D.* The Department shall apply such policies and procedures in approving applications for reservations of such tax credits to qualified business firms and qualified zone residents.

~~D~~ *E.* Actions of the Department relating to the approval or denial of applications for reservations for tax credits under § 59.1-280, ~~or~~ § 59.1-280.1 *or § 59.1-280.1:1* shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 9-6.14:4.1.