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SENATE BILL NO. 569

Offered January 26, 1998

A BILL to amend and reenact §§ 59.1-280, 59.1-280.1, and 59.1-280.2 of the Code of Virginia, relating to enterprise zone act tax credits.

Patrons—Stosch and Hawkins; Delegate: Diamonstein

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-280, 59.1-280.1, and 59.1-280.2 of the Code of Virginia are 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 \$2515 million when such qualified zone investments result in the creation of at least 100/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 ~~five~~ \$16 million dollars.

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 may not be applied to future tax years. 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 the ~~five-\$16 million-dollar~~ 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.

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

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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, (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 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 qualified zone resident shall be allowed a real property investment tax credit as set forth in this section.

C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an amount equaling thirty percent of the qualified zone improvements. 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 subsection exceed \$125,000 in any five-year period. 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 tax credits granted to small qualified business firms under subsection C of § 59.1-280, for each fiscal year, shall not exceed five \$16 million dollars.

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 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.

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 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.

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.

183 Credits granted to a partnership, limited liability company or S corporation shall be passed through to
184 the partners, members or shareholders, respectively.

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

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

190 § 59.1-280.2. Policies and procedures for reservation and allocation of tax credits.

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

194 B. 1. If the total amount of tax credits for which small qualified business firms are eligible under
195 subsection C of § 59.1-280 and small qualified zone residents are eligible under subsection C of
196 § 59.1-280.1 exceeds ~~five~~ \$16 million dollars in any fiscal year in which the amount of tax credits for
197 which large qualified business firms are eligible under subsection D of § 59.1-280 and large qualified
198 zone residents are eligible under subsection D of § 59.1-280.1 is less than three million dollars, then the
199 amount of tax credits available to such small qualified business firms and small qualified zone residents
200 shall be increased by the amount by which the tax credits for such large qualified business firms and
201 large qualified zone residents are eligible is less than three million dollars.

202 2. If the total amount of tax credits for which large qualified business firms are eligible under
203 subsection D of § 59.1-280 and large qualified zone residents are eligible under subsection D of
204 § 59.1-280.1 exceeds three million dollars in any fiscal year in which the amount of tax credits for
205 which small qualified business firms are eligible under subsection C of § 59.1-280 and small qualified
206 zone residents are eligible under subsection C of § 59.1-280.1 is less than ~~five~~ \$16 million dollars, then
207 the amount of tax credits available to such large qualified business firms and large qualified zone
208 residents shall be increased by the amount by which the tax credits for such small qualified business
209 firms and small qualified zone residents are eligible is less than ~~five~~ \$16 million dollars.

210 C. In order to ensure that the limited amounts of tax credits available under §§ 59.1-280 and
211 59.1-280.1 in any year are not oversubscribed and are allocated in an orderly and equitable manner, the
212 Board of Housing and Community Development shall establish policies and procedures for the
213 reservation of tax credits by qualified business firms and qualified zone residents. Such policies and
214 procedures shall provide (i) requirements for applying for reservations of tax credits; (ii) a system for
215 allocating available amount of tax credits among eligible applicants; (iii) a method for carrying forward
216 eligibility for tax credits to subsequent periods if an applicant does not obtain a reservation of the tax
217 credit or any portion thereof for which he is eligible in any year as the result of the oversubscription of
218 tax credits; (iv) priorities for allocating reservations to applicants whose eligibility for reservations of tax
219 credits was carried forward from a preceding year but who did not receive a credit to which they were
220 otherwise eligible; (v) a method for the issuance of reservations to eligible applicants who did not
221 initially receive a reservation in any year, if the Department determines that tax credit reservations were
222 issued to other applicants who did not use, or were determined to be wholly or partially ineligible for, a
223 reserved tax credit; and (vi) a procedure for the cancellation and reallocation of tax credit reservations
224 allocated to applicants who, after reserving tax credits, have been determined to be ineligible for all or a
225 portion of the tax credits reserved.

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

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