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**SENATE BILL NO. 1130**

Offered January 10, 2001

Prefiled January 10, 2001

*A BILL to amend and reenact § 59.1-280.1 of the Code of Virginia, relating to real property investment tax credits for small qualified zone residents.*

Patrons—Marsh, Edwards, Maxwell and Ticer; Delegate: Van Yahres

Referred to Committee on Commerce and Labor

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

§ 59.1-280.1. Enterprise zone real property investment tax credit.

A. As used in this section:

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions.

"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, (ii) a minimum of thirty-five hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Qualified zone improvements" means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) \$50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

Qualified zone improvements shall not include:

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

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

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

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

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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 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. *For all*  
79 *taxable years beginning on or after January 1, 2001, such cumulative credit allowed to such resident*  
80 *shall not exceed \$250,000 in any five-year period, provided that at least one-half of the cost of qualified*  
81 *zone improvements made by the taxpayer over such period were, at the time of the making of such*  
82 *improvements, made in a locality that ranks among the top twenty-five percent of all localities in the*  
83 *Commonwealth in terms of fiscal stress as measured by the rankings of the Commission on Local*  
84 *Government in effect at the time that such improvements were made.* Except as provided in subdivision  
85 B. 1. of § 59.1-280.2, the total amount of (i) real property investment tax credits granted to small  
86 qualified zone residents under this subsection and (ii) business tax credits granted to small qualified  
87 business firms under subsection C of § 59.1-280, for each fiscal year, shall not exceed \$16 million.

88 D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an  
89 amount of up to five percent of such qualified zone investments. The percentage amount of the real  
90 property investment tax credit granted to a large qualified zone resident shall be determined by  
91 agreement between the Department and the large qualified zone resident, provided such percentage  
92 amount shall not exceed five percent. Except as provided in subdivision B. 2. of § 59.1-280.2, the total  
93 amount of (i) real property investment tax credits granted to large qualified zone residents under this  
94 subsection and (ii) business tax credits granted to large qualified business firms under subsection D of  
95 § 59.1-280, for each fiscal year, shall not exceed three million dollars. The real property investment tax  
96 credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit  
97 not usable for the taxable year generated may be carried over until the full amount of such credit has  
98 been utilized.

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

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

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

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