

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 884

An Act to amend and reenact §§ 58.1-3, 58.1-439, 58.1-3245.6, 58.1-3245.8, 58.1-3245.12, 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1, 59.1-282.2, 59.1-284.01, and 59.1-284.17 of the Code of Virginia; to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 47, consisting of sections numbered 59.1-530 through 59.1-541; and to repeal §§ 59.1-272 through 59.1-278, 59.1-279.1, 59.1-280.2, 59.1-282, and 59.1-282.3 through 59.1-284 of Title 59.1 of the Code of Virginia, relating to enterprise zones.

[H 2570]

Approved March 28, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3, 58.1-439, 58.1-3245.6, 58.1-3245.8, 58.1-3245.12, 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1, 59.1-282.2, 59.1-284.01, and 59.1-284.17 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 47, consisting of sections numbered 59.1-530 through 59.1-541, as follows:

§ 58.1-3. Secrecy of information; penalties.

A. Except in accordance with a proper judicial order or as otherwise provided by law, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to § 58.1-2712.2, or any former officer or employee of any of the aforementioned offices shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation. Such prohibition specifically includes any copy of a federal return or federal return information required by Virginia law to be attached to or included in the Virginia return. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. The provisions of this subsection shall not be applicable, however, to:

1. Matters required by law to be entered on any public assessment roll or book;
2. Acts performed or words spoken or published in the line of duty under the law;
3. Inquiries and investigations to obtain information as to the process of real estate assessments by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information obtained shall be privileged;
4. The sales price, date of construction, physical dimensions or characteristics of real property, or any information required for building permits;
5. Copies of or information contained in an estate's probate tax return, filed with the clerk of court pursuant to § 58.1-1714, when requested by a beneficiary of the estate or an heir at law of the decedent;
6. Information regarding nonprofit entities exempt from sales and use tax under § 58.1-609.11, when requested by the General Assembly or any duly constituted committee of the General Assembly.

B. Nothing contained in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof or the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department may assist in the collection of such delinquent taxes. This section shall not be construed to prohibit a local tax official from disclosing whether a person, firm or corporation is licensed to do business in that locality and divulging, upon written request, the name and address of any person, firm or corporation transacting business under a fictitious name. Additionally, notwithstanding any other provision of law, the commissioner of revenue is authorized to provide, upon written request stating the reason for such request, the Tax Commissioner with information obtained from local tax returns and other information pertaining to the income, sales and property of any person, firm or corporation licensed to do business in that locality.

C. Notwithstanding the provisions of subsection A or B or any other provision of this title, the Tax Commissioner is authorized to: (i) divulge tax information to any commissioner of the revenue, director of finance or other similar collector of county, city or town taxes who, for the performance of his official duties, requests the same in writing setting forth the reasons for such request; (ii) provide to the Commissioner of the Department of Social Services, upon written request, information on the amount of income reported by persons on their state income tax returns who have applied for public assistance or social services benefits as defined in § 63.2-100; (iii) provide to the chief executive officer of the designated student loan guarantor for the Commonwealth of Virginia, upon written request, the names and home addresses of those persons identified by the designated guarantor as having delinquent loans guaranteed by the designated guarantor; (iv) provide current address information upon request to state agencies and institutions for their confidential use in facilitating the collection of accounts receivable,

and to the clerk of a circuit or district court for their confidential use in facilitating the collection of fines, penalties and costs imposed in a proceeding in that court; (v) provide to the Commissioner of the Virginia Employment Commission, after entering into a written agreement, such tax information as may be necessary to facilitate the collection of unemployment taxes and overpaid benefits; (vi) provide to the Alcoholic Beverage Control Board, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of state and local taxes and the administration of the alcoholic beverage control laws; (vii) provide to the Director of the State Lottery Department such tax information as may be necessary to identify those lottery ticket retailers who owe delinquent taxes; (viii) provide to the Department of the Treasury for its confidential use such tax information as may be necessary to facilitate the location of owners and holders of unclaimed property, as defined in § 55-210.2; (ix) provide to the State Corporation Commission, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of taxes and fees administered by the Commission; (x) provide to the Executive Director of the Potomac and Rappahannock Transportation Commission for its confidential use such tax information as may be necessary to facilitate the collection of the motor vehicle fuel sales tax; (xi) provide to the Director of the Department of Charitable Gaming such tax information as may be necessary to identify those applicants for registration as a supplier of charitable gaming supplies who have not filed required returns or who owe delinquent taxes; (xii) provide to the Department of Housing and Community Development for its confidential use such tax information as may be necessary to facilitate the administration of the *remaining effective provisions of the Enterprise Zone Act* (§ 59.1-270 et seq.), *and the Enterprise Zone Grant Program* (§ 59.1-530 et seq.); (xiii) provide current name and address information to private collectors entering into a written agreement with the Tax Commissioner, for their confidential use when acting on behalf of the Commonwealth or any of its political subdivisions; however, the Tax Commissioner is not authorized to provide such information to a private collector who has used or disseminated in an unauthorized or prohibited manner any such information previously provided to such collector; (xiv) provide current name and address information as to the identity of the wholesale or retail dealer that affixed a tax stamp to a package of cigarettes to any person who manufactures or sells at retail or wholesale cigarettes and who may bring an action for injunction or other equitable relief for violation of Chapter 10.1, Enforcement of Illegal Sale or Distribution of Cigarettes Act; (xv) provide to the Commissioner of Labor and Industry, upon entering into a written agreement, such tax information as may be necessary to facilitate the collection of unpaid wages under § 40.1-29; and (xvi) provide to the Director of the Department of Human Resource Management, upon entering into a written agreement, such tax information as may be necessary to identify persons receiving workers' compensation indemnity benefits who have failed to report earnings as required by § 65.2-712. The Tax Commissioner is further authorized to enter into written agreements with duly constituted tax officials of other states and of the United States for the inspection of tax returns, the making of audits, and the exchange of information relating to any tax administered by the Department of Taxation. Any person to whom tax information is divulged pursuant to this section shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

D. Notwithstanding the provisions of subsection A or B or any other provision of this title, the commissioner of revenue or other assessing official is authorized to (i) provide, upon written request stating the reason for such request, the chief executive officer of any county or city with information furnished to the commissioner of revenue by the Tax Commissioner relating to the name and address of any dealer located within the county or city who paid sales and use tax, for the purpose of verifying the local sales and use tax revenues payable to the county or city; (ii) provide to the Department of Professional and Occupational Regulation for its confidential use the name, address, and amount of gross receipts of any person, firm or entity subject to a criminal investigation of an unlawful practice of a profession or occupation administered by the Department of Professional and Occupational Regulation, only after the Department of Professional and Occupational Regulation exhausts all other means of obtaining such information; and (iii) provide to any representative of a condominium unit owners' association, property owners' association or real estate cooperative association, or to the owner of property governed by any such association, the names and addresses of parties having a security interest in real property governed by any such association; however, such information shall be released only upon written request stating the reason for such request, which reason shall be limited to proposing or opposing changes to the governing documents of the association, and any information received by any person under this subsection shall be used only for the reason stated in the written request. The treasurer or other local assessing official may require any person requesting information pursuant to clause (iii) of this subsection to pay the reasonable cost of providing such information. Any person to whom tax information is divulged pursuant to this subsection shall be subject to the prohibitions and penalties prescribed herein as though he were a tax official.

Notwithstanding the provisions of subsection A or B or any other provisions of this title, the treasurer or other collector of taxes for a county, city or town is authorized to provide information relating to any motor vehicle, trailer or semitrailer obtained by such treasurer or collector in the course of performing his duties to the commissioner of the revenue or other assessing official for such

jurisdiction for use by such commissioner or other official in performing assessments.

This section shall not be construed to prohibit a local tax official from imprinting or displaying on a motor vehicle local license decal the year, make, and model and any other legal identification information about the particular motor vehicle for which that local license decal is assigned.

E. Notwithstanding any other provisions of law, state agencies and any other administrative or regulatory unit of state government shall divulge to the Tax Commissioner or his authorized agent, upon written request, the name, address, and social security number of a taxpayer, necessary for the performance of the Commissioner's official duties regarding the administration and enforcement of laws within the jurisdiction of the Department of Taxation. The receipt of information by the Tax Commissioner or his agent which may be deemed taxpayer information shall not relieve the Commissioner of the obligations under this section.

F. Additionally, it shall be unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by subsection A, B, C, or D of this section ~~or by § 59.1-282.4~~. This prohibition shall not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Any person violating the provisions of this subsection shall be guilty of a Class 2 misdemeanor.

§ 58.1-439. Major business facility job tax credit.

A. For taxable years beginning on and after January 1, 1995, but before January 1, 2010, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 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 this title as set forth in this section.

B. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A "major business facility" is a company that satisfies the following criteria:

1. Subject to the provisions of subsections K or L, the establishment or expansion of the company shall result in the creation of at least 100 jobs for qualified full-time employees; the first such 100 jobs shall be referred to as the "threshold amount"; and

2. The company is engaged in any business in the Commonwealth, except a retail trade business if such trade is the principal activity of an individual facility in the Commonwealth. Examples of types of major business facilities that are eligible for the credit provided under this section include, but are not limited to, a headquarters, or portion of such a facility, where company employees are physically employed, and where the majority of the company's financial, personnel, legal or planning functions are handled either on a regional or national basis. A company primarily engaged in the Commonwealth in the business of manufacturing or mining; agriculture, forestry or fishing; transportation or communications; or a public utility subject to the corporation income tax shall be deemed to have established or expanded a major business facility in the Commonwealth if it meets the requirements of subdivision 1 during a single taxable year and such facilities are not retail establishments. A major business facility shall also include facilities that perform central management or administrative activities, whether operated as a separate trade or business, or as a separate support operation of another business. Central management or administrative activities include, but are not limited to, general management; accounting; computing; tabulating; purchasing; transportation or shipping; engineering and systems planning; advertising; technical sales and support operations; central administrative offices and warehouses; research, development and testing laboratories; computer-programming, data-processing and other computer-related services facilities; and legal, financial, insurance, and real estate services. The terms used in this subdivision to refer to various types of businesses shall have the same meanings as those terms are commonly defined in the Standard Industrial Classification Manual.

D. For purposes of this section, the "credit year" is the first taxable year following the taxable year in which the major business facility commenced or expanded operations.

E. The Department of Taxation shall make all determinations as to the classification of a major business facility in accordance with the provisions of this section.

F. A "qualified full-time employee" means an employee filling a new, permanent full-time position in a major business facility in ~~this the~~ Commonwealth. A "new, permanent full-time position" is a job of an indefinite duration, created by the company as a result of the establishment or expansion of a major business facility in ~~this the~~ Commonwealth, requiring a minimum of 35 hours of an employee's time a week for the entire normal year of the company's operations, which "normal year" shall consist of at least 48 weeks, or a position of indefinite duration which requires a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the major business facility in ~~this the~~ Commonwealth. Seasonal or temporary positions, or a job created when a job function is shifted from an existing location in ~~this the~~

Commonwealth to the new major business facility and positions in building and grounds maintenance, security, and other such positions which are ancillary to the principal activities performed by the employees at a major business facility shall not qualify as new, permanent full-time positions.

G. For any major business facility, the amount of credit earned pursuant to this section shall be equal to \$1,000 per qualified full-time employee, over the threshold amount, employed during the credit year. The credit shall be allowed ratably, with one-third of the credit amount allowed annually for three years beginning with the credit year. The portion of the \$1,000 credit earned with respect to any qualified full-time employee who is employed in ~~this~~ *the* Commonwealth for less than 12 full months during the credit year will be determined by multiplying the credit amount by a fraction, the numerator of which is the number of full months that the qualified full-time employee worked for the major business facility in ~~this~~ *the* Commonwealth during the credit year, and the denominator of which is 12. A separate credit year and a three-year allowance period shall exist for each distinct major business facility of a single taxpayer.

H. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year the credit was allowed may be, to the extent usable, carried over for the next 10 succeeding taxable years. 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 is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit allowed 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 allowed pursuant to this section.

I. No credit shall be earned pursuant to this section for any employee (i) for whom a credit under this section was previously earned by 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); (ii) who was previously employed in the same job function in Virginia by 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); (iii) whose job function was previously performed at a different location in Virginia by an employee of 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 (iv) whose job function previously qualified for a credit under this section at a different major business facility on behalf of 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).

J. Subject to the provisions of subsections K or L, recapture of this credit, under the following circumstances, shall be accomplished by increasing the tax in any of the five years succeeding the taxable year in which a credit has been earned pursuant to this section if the number of qualified full-time employees decreases below the average number of qualified full-time employees employed during the credit year. Such tax increase amount shall be determined by (i) recomputing the credit which would have been earned for the original credit year using the decreased number of qualified full-time employees and (ii) subtracting such recomputed credit from the amount of credit previously earned. In the event that the average number of qualifying full-time employees employed at a major business facility falls below the threshold amount in any of the five taxable years succeeding the credit year, all credits earned with respect to such major business facility shall be recaptured. No credit amount will be recaptured more than once pursuant to this subsection. Any recapture pursuant to this section shall reduce credits earned but not yet allowed, and credits allowed but carried forward, before the taxpayer's tax liability may be increased.

K. In the event that a major business facility is located in an economically distressed area or in an enterprise zone as defined in § 59.1-271 *or in Chapter 47 (§ 59.1-530 et seq.) of Title 59.1* during a credit year, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to 50 for purposes of subdivision C 1 and subsection J. An area shall qualify as economically distressed if it is a city or county with an unemployment rate for the preceding year of at least 0.5 percent higher than the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all economically distressed areas at least annually.

L. For taxable years beginning on or after January 1, 2004, but before January 1, 2006, in the event that a major business facility is located in a severely economically distressed area, the threshold amount required to qualify for a credit pursuant to this section and to avoid full recapture shall be reduced from 100 to 25 for purposes of subdivision C 1 and subsection J. However, the total amount of credit allowable under this subsection shall not exceed \$100,000 in aggregate. An area shall qualify as severely economically distressed if it is a city or county with an unemployment rate for the preceding year of at least twice the average statewide unemployment rate for such year. The Virginia Economic Development Partnership shall identify and publish a list of all severely economically distressed areas at least annually.

M. The Tax Commissioner shall promulgate regulations, in accordance with the Administrative

Process Act (§ 2.2-4000 et seq.), relating to (i) the computation, carryover, and recapture of the credit provided under this section; (ii) defining criteria for (a) a major business facility, (b) qualifying full-time employees at such facility, and (c) economically distressed areas; and (iii) the computation, carryover, recapture, and redemption of the credit by affiliated companies pursuant to subsection S.

N. The provisions of this section shall apply only in instances where an announcement of intent to establish or expand a major business facility is made on or after January 1, 1994. An announcement of intent to establish or expand a major business facility includes, but is not limited to, a press conference or extensive press coverage, providing information with respect to the impact of the project on the economy of the area where the major business facility is to be established or expanded and the Commonwealth as a whole.

O. The credit allowed pursuant to this section shall be granted to the person who pays taxes for the qualified full-time employees pursuant to Chapter 5 (§ 60.2-500 et seq.) of Title 60.2.

P. No person shall claim a credit allowed pursuant to this section and the credit allowed pursuant to § 58.1-439.2.

Q. No person operating a business in the Commonwealth pursuant to Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 shall claim a credit pursuant to this section.

R. Notwithstanding subsection O, a taxpayer may, for the purpose of determining the number of qualified full-time employees at a major business facility, include the employees of a contractor or a subcontractor if such employees are permanently assigned to the taxpayer's major business facility. If the taxpayer includes the employees of a contractor or subcontractor in its total of qualified full-time employees, it shall enter into a contractual agreement with the contractor or subcontractor prohibiting the contractor or subcontractor from also claiming these employees in order to receive a credit given under this section. The taxpayer shall provide evidence satisfactory to the Department of Taxation that it has entered into such a contract.

S. For purposes of satisfying the criteria of subdivision C 1, two or more affiliated companies may elect to aggregate the number of jobs created for qualified full-time employees as the result of the establishment or expansion by the individual companies in order to qualify for the credit allowed pursuant to this section. For purposes of this subsection, "affiliated companies" means two or more companies related to each other such that (i) one company owns at least 80 percent of the voting power of the other or others or (ii) at least 80 percent of the voting power of two or more companies is owned by the same interests.

T. The General Assembly of Virginia finds that modern business infrastructure allows businesses to locate their administrative or manufacturing facilities with minimal regard to the location of markets or the transportation of raw materials and finished goods, and that the economic vitality of ~~this the~~ Commonwealth would be enhanced if such facilities were established in Virginia. Accordingly, the provisions of this section targeting the credit to major business facilities and limiting the credit to those companies which establish a major business facility in Virginia are integral to the purpose of the credit earned pursuant to this section and shall not be deemed severable.

§ 58.1-3245.6. Definitions.

As used in this article, unless the context clearly shows otherwise, the term or phrase:

"Base assessed value" means the assessed value of real estate or machinery and tools within a local enterprise zone as shown upon the records of the local assessing officer on January 1 of the year preceding the effective date of the ordinance establishing the local enterprise zone development taxation.

"Current assessed value" means the annual assessed value of real estate or machinery and tools in a local enterprise zone as shown upon the records of the local assessing officer.

"Enterprise zone" means an area designated by the Governor as an enterprise zone pursuant to ~~§ 59.1-274~~ Chapter 47 (§ 59.1-530 et seq.) of Title 59.1.

"Local enterprise zone" means an enterprise zone designated as a local enterprise zone by an ordinance adopted pursuant to § 58.1-3245.8.

"Tax increment" means all or a portion of the amount by which the current assessed value of real estate or machinery and tools, or both, in a local enterprise zone exceeds the base assessed value.

§ 58.1-3245.8. Adoption of local enterprise zone development taxation program.

A. The governing body of any county, city, or town may adopt a local enterprise zone development taxation program by passing an ordinance designating an enterprise zone located within its boundaries as a local enterprise zone; however, an ordinance may designate an area as a local enterprise zone contingent upon the designation of the area as an enterprise zone pursuant to ~~§ 59.1-274~~ Chapter 47 (§ 59.1-530 et seq.) of Title 59.1. If the county, city, or town contains more than one enterprise zone, such ordinance may designate one or more as a local enterprise zone. If an enterprise zone is located in more than one county, city, or town, the governing body may designate the portion of the enterprise zone located within its boundaries as a local enterprise zone. An ordinance designating a local enterprise zone shall provide that all or a specified percentage of the real estate taxes, machinery and tools taxes, or both, in the local enterprise zone shall be assessed, collected and allocated in the following manner:

1. The local assessing officer shall record in the appropriate books both the base assessed value and the current assessed value of the real estate or machinery and tools, or both, in the local enterprise zone.

2. Real estate taxes or machinery and tools taxes attributable to the lower of the current assessed value or base assessed value of real estate or machinery and tools located in a local enterprise zone shall be allocated by the treasurer or director of finance as they would be in the absence of such ordinance.

3. All or the specified percentage of the increase in real estate taxes or machinery and tools taxes, or both, attributable to the difference between (i) the current assessed value of such property and (ii) the base assessed value of such property shall be allocated by the treasurer or director of finance and paid into a special fund entitled the "Local Enterprise Zone Development Fund" to be used as provided in § 58.1-3245.10. Such amounts paid into the fund shall not include any additional revenues resulting from an increase in the tax rate on real estate or machinery and tools after the adoption of a local enterprise zone development taxation ordinance, nor shall it include any additional revenues merely resulting from an increase in the assessed value of real estate or machinery and tools which were located in the zone prior to the adoption of a local enterprise zone development taxation ordinance unless such property is improved or enhanced.

B. The governing body shall hold a public hearing on the need for a local enterprise zone development taxation program in the county, city, or town prior to adopting a local enterprise zone development taxation ordinance. Notice of the public hearing shall be published once each week for three consecutive weeks immediately preceding the public hearing in each newspaper of general circulation in such county, city, or town. The notice shall include the time, place and purpose of the public hearing; define local enterprise zone development taxation; indicate the proposed boundaries of the local enterprise zone; state whether all or a specified percentage of real property or machinery or tools, or both, will be subject to local enterprise zone development taxation; and describe the purposes for which funds in the Local Enterprise Zone Development Fund are authorized to be used.

§ 58.1-3245.12. Local enterprise zone program for technology zones.

The governing body of any county, city, or town may also adopt a local enterprise zone development taxation program for a technology zone, as described in § 58.1-3850, located within its boundaries, regardless of whether such technology zone has been designated by the Governor as an enterprise zone pursuant to ~~§ 59.1-274 Chapter 47~~ (§ 59.1-530 *et seq.*) of Title 59.1. Such program for a technology zone shall be adopted by local ordinance. All other provisions in this article as they relate to a local enterprise zone development taxation program for enterprise zones shall apply to such program for technology zones.

§ 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) ~~twenty-five~~ 25 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~~ 80 percent of the median income for the jurisdiction prior to employment or are residents of an enterprise 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~~ 10 percent over the lower of the preceding two years' employment with no less than ~~twenty-five~~ 25 percent of such increase being employees who either have incomes below ~~eighty~~ 80 percent of the median income for the jurisdiction prior to employment or are residents of an enterprise 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 ~~twenty-five~~ 25 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 an enterprise 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.

4. 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. After designation as a qualified 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" and continues to meet the requirements for eligibility as a qualified 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. The form referred to in subsection B 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 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 (ii) for a tax credit claimed pursuant to this chapter.

D. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

§ 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.

"High investment/limited job creation qualified business firm" means a qualified business firm making qualified zone investments of \$50 million or more when such qualified zone investments result in the creation of fewer than 50 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.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such qualified zone investments result in the creation of at least 50 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 or a high investment/limited job creation 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 80 percent of the tax due to the Commonwealth for the first tax year and 60 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 \$16 million.~~

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, (ii) business tax credits granted to high investment/limited job creation qualified business firms subject to the provisions of subsection E of this section, and (iii) 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 \$3 million.~~

E. High investment/limited job creation qualified business firms shall be allowed a business tax credit in an amount determined by agreement between the Department and the high investment/limited job

creation qualified business firm, provided that (i) the amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C and (ii) it can be demonstrated that the amount of the business tax credits shall not exceed the amount that will be recovered by the Commonwealth through the revenues generated from new state income taxes resulting from the new permanent full-time positions within a five-year period. The demonstration required by clause (ii) shall be based on an analysis conducted by the Department or its designee using information provided by the high investment/limited job creation qualified business firm.

F. 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 \$16 million limitation set forth in subsection C or the three million dollar limitation set forth in subsection D.~~

G. 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.

H. 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.

1. Tax credits awarded under this section and under § 59.1-280.1 shall not exceed \$7.5 million annually until the end of fiscal year 2019.

J. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

§ 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~~ 35 hours of an employee's time a week for the entire normal year of

the business firm's operations, which "normal year" must consist of at least ~~forty-eight~~ 48 weeks, (ii) a minimum of ~~thirty-five~~ 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in ~~this~~ the 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 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.

"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~~ 30 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 \$16 million.~~

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

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

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.

I. Tax credits awarded under this section and under § 59.1-280 shall not exceed \$7.5 million annually until the end of fiscal year 2019.

J. The provisions of this section shall apply only as follows:

1. To those large qualified zone residents that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those large qualified zone residents that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005.

§ 59.1-282.1. Grants for creating permanent full-time positions; eligibility.

A. As used in this section:

"Base year" means (i) the calendar year immediately preceding a business firm's first year of grant eligibility or (ii) at the option of the business firm, the next preceding calendar year. With respect to each three-year period of grant eligibility, a new base year shall be determined, and for the second and each subsequent three-year period of grant eligibility, the base year shall not precede the second year of grant eligibility in the preceding three-year period.

"First year of grant eligibility" means the first calendar year for which a business firm was both eligible and applied for a grant pursuant to this section.

"Grant year" means the calendar year for which a business firm applies for a grant pursuant to this section.

"Number of eligible positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number.

"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of ~~thirty-five~~ 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least ~~forty-eight~~ 48 weeks, (ii) a minimum of ~~thirty-five~~ 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in ~~this~~ the Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Threshold number" means 110 percent of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for a grant under this section. For the second and any subsequent three-year period of grant eligibility, the threshold number means 120

percent of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer.

B. A business firm shall be eligible to receive enterprise zone incentive grants for the three calendar years commencing with the first year of grant eligibility. Following the expiration of any three-year period of grant eligibility a business firm shall be eligible for grants as provided in this section, provided that the first year of grant eligibility shall be the first calendar year during which the business firm was both eligible and applied for a grant pursuant to this section following the expiration of the preceding three-year eligibility period.

C. The amount of the grant for which a business firm is eligible in any grant year shall be equal to (i) \$1,000 multiplied by the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, and (ii) \$500 multiplied by the number of eligible positions filled by employees whose permanent place of residence is outside of the enterprise zone. The number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone shall be determined for any grant year by multiplying the number of eligible positions by a fraction, the numerator of which shall be the number of employees hired for permanent full-time positions by the business firm from January 1 of the applicable base year through December 31 of the grant year whose permanent place of residence is within the enterprise zone, and the denominator of which shall be the number of employees hired for permanent full-time positions by the business firm during such period. The number of eligible positions filled by employees whose permanent place of residence is outside of the enterprise zone shall be determined for any grant year by subtracting the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, determined as provided in the preceding sentence, from the number of eligible positions. The amount of the grant for which a business firm is eligible with respect to any employee who is employed in an eligible position for less than ~~twelve~~ 12 full months during the grant year will be determined by multiplying the grant amount by a fraction, the numerator of which is the number of full months that the employee worked for the business firm during the grant year, and the denominator of which is ~~twelve~~ 12. In no event shall any business firm be eligible for a grant pursuant to this section in excess of \$100,000 for any grant year.

D. Grant applications shall be submitted to the local zone administrator by March 31 of the year following the grant year. Applications for grants shall include evidence of the number of permanent full-time employees, their place of residence, and other relevant information as the local zone administrator and the Department may reasonably require.

E. The amount of the grant for which a business firm is eligible in any year shall not include amounts for the number of eligible positions in any year other than the preceding calendar year, except as provided in § 59.1-282.2 regarding carry-forward of unsatisfied grant request amounts.

F. The local zone administrator shall review and forward applications for grants to the Department by April 30 in accordance with regulations promulgated by the Board of Housing and Community Development.

G. Any business firm receiving an enterprise zone incentive grant under this section shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439.

H. This section shall apply only to those businesses that have initiated use of three-year grants for creating permanent full-time positions pursuant to this section and § 59.1-282.2 on or before July 1, 2005. This section shall govern those businesses only for the duration of such three-year grant period.

§ 59.1-282.2. Enterprise Zone Grant Fund; grant allocations.

A. There is hereby established a special fund in the state treasury to be known as the Enterprise Zone Grant Fund, which shall be administered by the Department. The Fund shall include such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be used solely for the payment of enterprise zone incentive grants to business firms pursuant to this chapter.

B. Upon receiving applications for grants from local zone administrators, the Department shall determine the amount of the grant to be allocated to each eligible business firm. The Department shall allocate moneys in the following order of priority: (i) first, to unpaid grant amounts carried forward from prior years because business firms did not receive the full amount of any grant to which they were eligible in a prior year; and (ii) then to other eligible applicants. If the moneys in the Fund are less than the amount of grants to which applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned among eligible applicants in such class pro rata, based upon the amount of the grant to which an applicant is eligible and the amount of money in the Fund available for allocation to such class.

C. If a business firm is allocated less than the full amount of a grant to which it is eligible in any year, the firm shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which the firm was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

D. The Department shall determine the amount of the grants to be allocated to eligible applicants by

June 30. The Department shall then certify to the Comptroller the amount of grant a business firm, or its assignee as provided in § 59.1-282.3, shall receive. Payments shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

E. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002.

F. This section shall apply only to those businesses that have initiated use of three-year grants for creating permanent full-time positions pursuant to § 59.1-282.1 and this section on or before July 1, 2005. This section shall govern those businesses only for the duration of such three-year grant period.

§ 59.1-284.01. Expiration of chapter; exceptions.

~~The~~ A. All provisions of this chapter *except §§ 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1, 59.1-282.2 and this section* shall expire on July 1, 2005, unless extended by an act of the General Assembly.

B. *All enterprise zones designated pursuant to §§ 59.1-274, 59.1-274.1, and 59.1-274.2 as those were in effect prior to July 1, 2005 shall continue in effect until the end of their 20-year designation period. Such zones shall be governed by the provisions of Chapter 47 (§ 59.1-530 et seq.).*

§ 59.1-284.17. (For contingent repeal, see Editor's note) Eligibility for information technology employment performance grants.

A. Subject to appropriation of sufficient moneys, any eligible firm shall be entitled to receive an information technology employment performance grant at such time as it has employed at least 50 individuals in permanent full-time positions within an eligible region for a period of 36 consecutive months. An eligible firm shall not receive more than one information technology employment performance grant under this chapter.

B. The amount of the information technology employment performance grant for which an eligible firm is entitled shall be equal to \$1,000 multiplied by the number of individuals employed in permanent full-time positions within the eligible region during the 36 consecutive-month period for which the grant is claimed; however, in no event shall the amount of any grant to an eligible firm under this chapter exceed \$150,000.

C. Any eligible firm which receives an information technology employment performance grant under this chapter shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439 or any of the benefits provided under the *remaining effective provisions of the Enterprise Zone Act* (§ 59.1-270 et seq.), *or under the Enterprise Zone Grant Program* (§ 59.1-530 et seq.).

CHAPTER 47.

ENTERPRISE ZONE GRANT PROGRAM.

§ 59.1-530. Short Title.

This chapter shall be known and may be cited as the "Enterprise Zone Grant Act."

§ 59.1-531. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Housing and Community Development.

"Department" means the Department of Housing and Community Development.

"Enterprise zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Local zone administrator" means the chief executive of the county or city in which the enterprise zone is located, or his designee.

§ 59.1-532. Administration.

The Department shall administer this chapter and shall have the following powers and duties:

1. To establish the criteria for determining what areas qualify as enterprise zones. Such criteria shall include, but not be limited to, the distress criteria specified in § 59.1-537;

2. To monitor the implementation and operation of this chapter;

3. To evaluate and report on the Enterprise Zone Program;

4. To administer, enforce, and interpret the regulations promulgated by the Board; and

5. To allocate grant funds in accordance with the provisions of this chapter.

§ 59.1-533. Rules and regulations.

Rules and regulations prescribing procedures implementing the purpose of this chapter shall be promulgated by the Board in accordance with the Administrative Process Act.

§ 59.1-534. Enterprise zone designation.

A. *Upon the Department's announcement of periodic zone designation competitions, the governing body of any county or city may make written application to the Department to have an area or areas declared an enterprise zone. Such application shall include a description of the area or areas to be included, the development potential of these areas, the need for special state incentives, the local incentives that shall be provided to support new economic activity, and other information that the Department deems necessary to assess requests for designation.*

B. *Two or more adjacent localities may file a joint application for an enterprise zone. Localities applying for a joint zone shall demonstrate a regional need for an enterprise zone and a regional*

impact that could not be achieved through a single jurisdiction zone. Applicants for a joint zone shall also specify what mechanisms will be used to ensure that the economic benefits of such a zone are shared among the applicant localities.

C. An enterprise zone may consist of no more than three noncontiguous areas. The aggregate size of these noncontiguous zone areas shall be specified by regulation. Localities shall be limited to three enterprise zone designations.

D. A joint enterprise zone shall consist of no more than three noncontiguous zone areas for each participating locality. The aggregate size of these noncontiguous areas shall be specified by regulation.

E. Upon recommendation of the Director of the Department, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this chapter. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions. The initial round of six zone designation applications and approval may be conducted prior to adoption of final program regulations provided that the process is consistent with the provisions of this chapter. Enterprise zones shall be designated for an initial 10-year period except as provided for in subsections A and B of § 59.1-538. Upon recommendation of the Director of the Department, the Governor may renew zones for up to two five-year renewal periods. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment.

F. Localities that have zone designations are responsible for providing the local incentives specified in their applications, providing timely submission of enterprise zone reports and evaluations as required by regulation, verifying that businesses and properties seeking enterprise zone incentives are physically located within their zones, and implementing an active local enterprise zone program within the context of overall economic development efforts.

§ 59.1-535. Local incentives.

A. Local governments submitting applications for enterprise zone designation shall propose local incentives that address the economic conditions within their locality and that will help stimulate real property improvements and new job creation. Such local incentives include, but are not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of business, professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221; and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1. The extent and duration of such incentives shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as an enterprise zone, the application may also contain proposals for regulatory flexibility, including but not limited to: (a) special zoning districts, (b) permit process reform, (c) exemptions from local ordinances, and (d) other public incentives proposed in the locality's application which shall be binding upon the locality upon designation of the enterprise zone.

B. A locality may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

§ 59.1-536. Amendment of enterprise zones.

Once an enterprise zone has been designated, the local government may make written application to the Department to amend the zone boundaries in accordance with the requirements of § 59.1-534. Such boundary amendments are subject to Department approval. Local governing bodies may amend their local enterprise zone incentives with the approval of the Department provided that the proposed incentive is equal to or superior to that in the original application or any previous amendment approved by the Department.

§ 59.1-537. Application review.

A. After announcement of a periodic zone designation application process, the Department shall review each application upon receipt and secure any additional information that it deems necessary for the purpose of evaluating the need and potential impact of a zone designation.

B. The Department shall complete review of the applications within 60 days of the last date designated for receipt of an application. After review of the applications the Director of the Department shall recommend to the Governor those applications with the greatest potential for accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact, along with the reasons for the denial.

C. Consideration for enterprise zone designations shall be based upon the locality-wide need and impact of such a designation. Need shall be assessed in part by the following distress factors: (i) the average unemployment rate for the locality over the most recent three-year period, (ii) the average median adjusted gross income for the locality over the most recent three-year period, and (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period. These distress factors shall account for at least 50 percent of the consideration given to local governments' applications for enterprise zone designation.

§ 59.1-538. Review and termination of enterprise zones.

A. If the local governing body is unable or unwilling to provide the specified local incentives as

proposed in its application for zone designation or as approved by the Department in an amendment, the zone designation shall terminate. Qualified business firms located in such enterprise zone shall be eligible to receive the incentives provided by this chapter even though the zone designation has terminated. No business firm may become a qualified business firm after the date of zone termination.

B. If no business firms have qualified for incentives as provided for in this chapter within a five-year period, the Department shall terminate that enterprise zone designation.

C. The Department shall review the effectiveness in creating jobs and capital investment and activity occurring within designated enterprise zones and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Appropriations Committee, and the House Committee on Commerce and Labor.

§ 59.1-539. Enterprise zone job creation grants.

A. As used in this section:

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis. For those permanent full-time employees filling permanent full-time, salaried positions, the minimum wage is defined as the employee's annual salary divided by 52 weeks per year divided by 35 hours per week.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the job creation grant amount. A full month is calculated by dividing the total number of days in the calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, local service or food and beverage service shall not be considered grant eligible positions.

"Permanent full-time position" means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar 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. Such position shall not include (i) seasonal, temporary or contract positions, (ii) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone, (iii) any position that previously existed in the Commonwealth, or (iv) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § 59.1-534.

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Subsequent base year" means the base year for calculating the number of grant eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

B. A business firm shall be eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility. A business firm may be eligible for subsequent five consecutive calendar year grant periods if it creates new grant eligible positions above the threshold for its subsequent base year.

C. The amount of the grant for which a business firm is eligible shall be calculated as follows:

1. Either (i) \$800 per year for up to five consecutive years for each grant eligible position that during such year is paid a minimum of 200 percent of the federal minimum wage and that is provided with health benefits, or (ii) \$500 per year for up to five years for each grant eligible position that during such year is paid less than 200 percent of the federal minimum wage, but at least 175 percent of the federal minimum wage, and that is provided with health benefits. A business firm may receive grants for up to a maximum of 350 grant eligible jobs annually.

2. Positions paying less than 175 percent of the federal minimum wage or that are not provided with health benefits shall not be eligible for enterprise zone job creation grants.

D. Job creation grants shall be based on a calendar year. The amount of the grant for which a qualified business firm is eligible with respect to any permanent full-time position that is filled for less than a full calendar year shall be prorated based on the number of full months worked.

E. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

F. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

G. Any qualified business firm receiving an enterprise zone job creation grant under this section shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439.

§ 59.1-540. Enterprise zone real property investment grants.

A. As used in this section:

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction as well as to the rehabilitation and expansion of existing structures.

"Mixed use" means a building incorporating residential uses in which a minimum of 30 percent of the useable floor space will be devoted to commercial, office or industrial use.

"Qualified real property investment" means the amount properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) \$50,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) \$250,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.

2. Other acquisition costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, 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 connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

3. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, 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 (iv) 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 it was acquired or Internal Revenue Code § 1014 (a).

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the property for which the tenant holds a valid lease.

B. For any qualified zone investor making less than \$2 million in qualified real property investment, a real property investment grant shall be allowed in an amount equaling 30 percent of the amount of qualified real property investment not to exceed \$125,000 within any five-year period for any building or facility. For any qualified zone investor making \$2 million or more in qualified real property investments, a real property investment grant shall be allowed in an amount equaling 30 percent of the amount of qualified real property investment not to exceed \$250,000 within any five-year period for any building or facility.

C. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service. Real property investments that were placed in service in calendar year 2004 that were not eligible to submit a tax credit request as a small qualified zone resident pursuant to former § 59.1-280.1 because of the timing of their tax year may apply for a real property investment grant in 2006.

§ 59.1-541. Policies and procedures for allocation of enterprise zone incentive grants.

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone incentive grants provided for in this chapter to the extent that they apply for and are approved for grant allocations through the Department.

B. If the total amount of grants for which qualified business firms are eligible under § 59.1-539 exceeds the annual appropriation for such grants, then the amount of grant that each qualified business firm is eligible for shall be prorated in a proportional manner.

C. If the total amount of grants for which qualified business firms are eligible under § 59.1-539 is less than the annual appropriation for such grants, then any amount remaining after all eligible grants have been allocated shall be made available to meet any unmet eligible grant requests pursuant to § 59.1-540.

D. If the total amount of grants for which qualified zone investors are eligible under § 59.1-540 exceeds the annual appropriation for such grants, then the amount of grant for which each qualified zone investor is eligible shall be prorated in a proportional manner.

E. If the total amount of grants for which qualified zone investors are eligible under § 59.1-540 is less than the annual appropriation for such grants, then any amount remaining after all eligible grants have been allocated shall be made available to meet any unmet eligible grant requests pursuant to § 59.1-539.

F. Qualified zone businesses and qualified zone investors shall make application to the Department each year for which they seek eligibility for enterprise zone incentive grants. Such application is to be in accordance with regulations promulgated by the Board on forms supplied by the Department and in accordance with dates specified by the Department.

G. The accuracy and validity of information on qualified real property investments, permanent full-time positions, wage rates and provision of health benefits provided in such applications are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the Department.

H. Applicants for enterprise zone incentive grants under this chapter must have the local zone administrator verify that the location of their business or property is in the enterprise zone using a form supplied by the Department. The local zone administrator shall make this verification in accordance with dates specified by the Department.

I. The Department may at any time review qualified zone businesses and qualified zone investors to assure that information provided in the application process is accurate.

J. Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

K. Enterprise zone incentive grants that do not have adequate documentation regarding qualified real property investments, permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business or qualified zone investor.

L. Actions of the Department relating to the approval or denial of applications for enterprise zone incentive grants under this chapter shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

2. That §§ 59.1-272 through 59.1-278; §§ 59.1-279.1, 59.1-280.2, and 59.1-282; and §§ 59.1-282.3 through 59.1-284 of Title 59.1 of the Code of Virginia are repealed.

3. That the Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.