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HOUSE BILL NO. 599**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Finance)

(Patron Prior to Substitute—Delegate Dudley)

House Amendments in [] - February 4, 2004

A BILL to amend and reenact §§ 59.1-274, 59.1-280, 59.1-280.1 and 59.1-280.2 of the Code of Virginia, relating to enterprise zone designation and funding.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-274, 59.1-280, 59.1-280.1 and 59.1-280.2 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-274. Enterprise zone designation.

A. The governing body of any county, city or town may make written application to the Department to have an area or areas declared to be an enterprise zone. Such application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives. Two or more adjacent jurisdictions may file a joint application for an enterprise zone lying in the jurisdictions submitting the application.

B. The Governor may approve upon the recommendation of the Director of the Department the designation of up to ~~60~~ 65 areas, of which five shall be designated as provided in subsection C and, five shall be designated as provided in subsection D, *and five shall be designated as provided in subsection E*, as enterprise zones. Any county, city, or town shall be eligible to apply for more than one enterprise zone designation; however, each county, city, and town shall be limited to a total of three enterprise zones. One enterprise zone in any county, city or town may consist of two noncontiguous zone areas; however, a joint enterprise zone may consist of the joint zone area and one additional noncontiguous zone area in each of the adjacent jurisdictions that submitted the application for the joint enterprise zone. The size of the enterprise zone shall consist of the total of the noncontiguous zone areas. The noncontiguous zone areas shall not be considered as separate zones for the purpose of calculating the maximum number of zone designations established by this chapter. Any such area shall consist of contiguous United States census tracts or block groups or any part thereof in accordance with the most current United States Census or with the most current data from the Center for Public Service or the local planning district commission. Any such area seeking designation as an enterprise zone shall also meet at least one of the following criteria: (i) have 25 percent or more of the population with incomes below 80 percent of the median income of the jurisdiction, (ii) have an unemployment rate 1.5 times the state average, or (iii) have a demonstrated floor area vacancy rate of industrial and/or commercial properties of 20 percent or more.

C. Five of the areas designated as enterprise zones on or after July 1, 1999, shall be located in localities that (i) have annual average unemployment rates for the most recent calendar year that are 50 percent higher than the final statewide average unemployment rate for the most recent calendar year or (ii) are within planning districts that have annual average unemployment rates for the most recent calendar year that are at least one percent greater than the final annual statewide average for the most recent calendar year. No area shall be designated as an enterprise zone pursuant to this subsection unless it also meets all the other eligibility criteria established pursuant to this chapter.

D. Five of the areas designated as enterprise zones on or after July 1, 2000, shall be located in localities that have annual average unemployment rates for the most recent calendar year that are 50 percent higher than the final statewide average unemployment rate for the most recent calendar year. No area shall be designated as an enterprise zone pursuant to this subsection unless it also meets all the other eligibility criteria established pursuant to this chapter.

E. Five of the areas designated as enterprise zones on or after July 1, 2004, shall be located in localities that do not have an enterprise zone as of such date. No area shall be designated as an enterprise zone pursuant to this subsection unless it also meets all the other eligibility criteria established pursuant to this chapter.

F. If any portion of an area designated as an enterprise zone under this chapter is included in an area designated as an enterprise zone by an agency of the federal government, the area designated by this chapter shall be enlarged to include the area designated by the federal agency.

G. If an area that has not been designated as an enterprise zone under this chapter is designated by an agency of the federal government as a federal enterprise zone, that area shall then receive designation as a state zone under this chapter effective January 1 of the year following its designation as a federal enterprise zone.

H. Unless earlier terminated as provided in this chapter, an area's designation as an enterprise zone shall be for a period of 20 years; however, if the area is designated by an agency of the federal

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60 government as an enterprise zone at the time of the scheduled expiration of its enterprise zone
61 designation, the area's enterprise zone designation shall continue until the expiration of the area's federal
62 enterprise zone designation.

63 § 59.1-280. Enterprise zone business tax credit.

64 A. As used in this section:

65 "Business tax credit" means a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10
66 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of
67 Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 due from a business firm.

68 "High investment/limited job creation qualified business firm" means a qualified business firm
69 making qualified zone investments of \$50 million or more when such qualified zone investments result
70 in the creation of fewer than 50 permanent full-time positions. "Qualified zone investment" and
71 "permanent full-time position" shall have the meanings provided in subsection A of § 59.1-280.1.

72 "Large qualified business firm" means a qualified business firm making qualified zone investments in
73 excess of \$15 million when such qualified zone investments result in the creation of at least 50
74 permanent full-time positions. "Qualified zone investment" and "permanent full-time position" shall have
75 the meanings provided in subsection A of § 59.1-280.1.

76 "Small qualified business firm" means any qualified business firm other than a large qualified
77 business firm or a high investment/limited job creation qualified business firm.

78 B. The Department shall certify annually to the Commissioner of the Department of Taxation, or in
79 the case of (i) business firms subject to tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 of Title
80 58.1 to the Commissioner of Insurance for the State Corporation Commission, or (ii) business firms
81 subject to tax under Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 to the Director of Public
82 Service Taxation for the State Corporation Commission, the applicability of the business tax credit
83 provided herein for a qualified business firm. Any certification by the Department pursuant to this
84 section shall not impair the authority of the Department of Taxation or State Corporation Commission to
85 deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation
86 Commission determines that the qualified business firm is not entitled to such tax credit. The
87 Department of Taxation or State Corporation Commission shall notify the Department in writing upon
88 determining that a business firm is ineligible for such tax credit.

89 C. Small qualified business firms shall be allowed a business tax credit in an amount equal to 80
90 percent of the tax due to the Commonwealth for the first tax year and 60 percent of the tax due the
91 Commonwealth for the second tax year through the tenth tax year. Except as provided in subdivision B
92 1 of § 59.1-280.2, the total amount of (i) business tax credits granted to small qualified business firms
93 under this subsection and (ii) real property investment tax credits granted to small qualified zone
94 residents under subsection C of § 59.1-280.1, for each fiscal year, shall not exceed \$46 18 million.

95 D. Large qualified business firms shall be allowed a business tax credit in a percentage amount
96 determined by agreement between the Department and the large qualified business firm, provided such
97 percentage amounts shall not exceed the percentages provided for small qualified business firms as set
98 forth in subsection C. Except as provided in subdivision B 2 of § 59.1-280.2, the total amount of (i)
99 business tax credits granted to large qualified business firms under this subsection, (ii) business tax
100 credits granted to high investment/limited job creation qualified business firms subject to the provisions
101 of subsection E of this section, and (iii) real property investment tax credits granted to large qualified
102 zone residents under subsection D of § 59.1-280.1, for each fiscal year, shall not exceed \$3 million.

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

112 F. Any business tax credit not usable may not be applied to future tax years. However, tax credits
113 granted under this section to business firms designated as qualified business firms prior to July 1, 1995,
114 shall not be subject to inclusion in the \$46 18 million limitation set forth in subsection C or the
115 three-million-dollar limitation set forth in subsection D.

116 G. When a partnership or a small business corporation making an election pursuant to Subchapter S
117 of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder
118 shall be eligible for the tax credit provided for in this section on his individual income tax in proportion
119 to the amount of income received by that partner from the partnership, or shareholder from his
120 corporation, respectively.

121 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.

§ 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 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

183 and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees,
184 and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary
185 facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; or (ix) the
186 cost of any well or septic or sewer system.

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

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

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

207 "Real property investment tax credit" means a credit against the taxes imposed by Articles 2
208 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1
209 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

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

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

214 C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an
215 amount equaling ~~thirty~~ 30 percent of the qualified zone improvements. Any tax credit granted pursuant
216 to this subsection is refundable; however, in no event shall the cumulative credit allowed to a small
217 qualified zone resident pursuant to this subsection exceed \$125,000 in any five-year period. Except as
218 provided in subdivision B 1 of § 59.1-280.2, the total amount of (i) real property investment tax credits
219 granted to small qualified zone residents under this subsection and (ii) business tax credits granted to
220 small qualified business firms under subsection C of § 59.1-280, for each fiscal year, shall not exceed
221 \$46 18 million.

222 D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an
223 amount of up to five percent of such qualified zone investments. The percentage amount of the real
224 property investment tax credit granted to a large qualified zone resident shall be determined by
225 agreement between the Department and the large qualified zone resident, provided such percentage
226 amount shall not exceed five percent. Except as provided in subdivision B 2 of § 59.1-280.2, the total
227 amount of (i) real property investment tax credits granted to large qualified zone residents under this
228 subsection and (ii) business tax credits granted to large qualified business firms under subsection D of
229 § 59.1-280, for each fiscal year, shall not exceed ~~three~~ \$3 million ~~dollars~~. The real property investment
230 tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any
231 credit not usable for the taxable year generated may be carried over until the full amount of such credit
232 has been utilized.

233 E. The Department shall certify the nature and amount of qualified zone improvements and qualified
234 zone investments eligible for a real property investment tax credit in any taxable year. Only qualified
235 zone improvements and qualified zone investments that have been properly certified shall be eligible for
236 the credit. Any form filed with the Department of Taxation or State Corporation Commission for the
237 purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the
238 taxpayer by the Department. Any certification by the Department pursuant to this section shall not
239 impair the authority of the Department of Taxation or State Corporation Commission to deny in whole
240 or in part any claimed tax credit if the Department of Taxation or State Corporation Commission
241 determines that the taxpayer is not entitled to such tax credit. The Department of Taxation or State
242 Corporation Commission shall notify the Department in writing upon determining that a taxpayer is
243 ineligible for such tax credit.

244 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.

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

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

B. 1. If the total amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 and small qualified zone residents are eligible under subsection C of § 59.1-280.1 exceeds \$16 18 million in any fiscal year in which the amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 and large qualified zone residents are eligible under subsection D of § 59.1-280.1 is less than ~~three~~ \$3 million dollars, then the amount of tax credits available to such small qualified business firms and small qualified zone residents shall be increased by the amount by which the tax credits for such large qualified business firms and large qualified zone residents are eligible is less than ~~three~~ \$3 million dollars.

2. If the total amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 and large qualified zone residents are eligible under subsection D of § 59.1-280.1 exceeds ~~three~~ \$3 million dollars in any fiscal year in which the amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 and small qualified zone residents are eligible under subsection C of § 59.1-280.1 is less than \$16 18 million, then the amount of tax credits available to such large qualified business firms and large qualified zone residents shall be increased by the amount by which the tax credits for such small qualified business firms and small qualified zone residents are eligible is less than \$16 18 million.

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

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

E. Actions of the Department relating to the approval or denial of applications for reservations for tax credits under § 59.1-280 or § 59.1-280.1 shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

[2. That the provisions of this act shall become effective in due course, except that the amendments to §§ 59.1-280, 59.1-280.1 and 59.1-280.2 of this act shall become effective on July 1, 2006.]