

VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

CHAPTER 792

An Act to amend and reenact §§ 59.1-271, 59.1-273, 59.1-274, 59.1-279, 59.1-280, 59.1-282, 59.1-283, and 59.1-284 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 22 of Title 59.1 sections numbered 59.1-280.1, 59.1-280.2, 59.1-282.1, 59.1-282.2, 59.1-282.3 and 59.1-284.01; and to amend and reenact the second enactment of Chapter 301 of the 1992 Acts of Assembly, relating to the Enterprise Zone Act.

[S 761]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-271, 59.1-273, 59.1-274, 59.1-279, 59.1-280, 59.1-282, 59.1-283, and 59.1-284 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 22 of Title 59.1 sections numbered 59.1-280.1, 59.1-280.2, 59.1-282.1, 59.1-282.2, 59.1-282.3 and 59.1-284.01 as follows:

§ 59.1-271. Definitions.

As used in this chapter:

"Business firm" means any business entity authorized to do business in the Commonwealth of Virginia and subject to the state income tax on net corporate rate income (§ 58.1-400 et seq.), or a public service company subject to a franchise or license tax on gross receipts, or a bank, mutual savings bank, savings and loan association, or a partnership or sole proprietorship.

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

~~"Secretary" means the Secretary of Commerce and Trade.~~

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

"Enterprise zone incentive grant" or "grant" means a grant provided pursuant to § 59.1-282.1.

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

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § 59.1-279.

§ 59.1-273. Administration.

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

1. To establish criteria for determining what areas qualify as enterprise zones. Such criteria shall be the minimum required for implementation of the purpose of this chapter;

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

3. To conduct a continuing evaluation program of enterprise zones;

4. To assist cities, towns and counties in obtaining the reduction of regulations within enterprise zones; ~~and~~

5. [Repealed.]

6. To administer and enforce the regulations promulgated by the Board of Housing and Community Development; ~~and~~

7. To administer the Enterprise Zone Grant Fund established by § 59.1-282.2.

§ 59.1-274. Enterprise zone and rural 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. ~~The governing body of any city with a population of at least 250,000 may make written application to the Department to have more than one designated area 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 of Housing and Community Development the designation of up to ~~twenty-five~~ *fifty* areas as enterprise zones for a period of twenty years; ~~however, when twenty-five areas have been designated as enterprise zones, any city with a population of at least 102,000 but no more than 107,000, any city with a population of at least 169,000 but no more than 174,000, any city with a population of at least 200,000 but no more than 205,000, and any city with a population of at least 260,000 but no more than 265,000 shall be eligible to apply for additional enterprise zone designations. However, each such city seeking an additional enterprise zone designation shall already have at least one such designation and shall be limited to a total of three enterprise zones. Any county with a population of at least 200,000 but no more than 210,000 shall be eligible to apply for additional enterprise zone designations. Additionally,~~

any counties having a population of more than 26,300 and less than 27,000, more than 33,000 and less than 34,700, and more than 16,300 and less than 17,000, shall be eligible to apply for additional enterprise zone designations. 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. Counties with a population density of 150 or fewer persons per square mile at the most recent decennial census shall be limited to a total of two enterprise zones, one of which may contain two zone areas, each consisting of at least one square mile, which are non-contiguous. Such additional areas shall not be considered as separate zones for the purpose of calculating the maximum number of zone designations established by this chapter, but shall serve as extensions of the existing zones. 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 twenty-five percent or more of the population with incomes below eighty 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 twenty percent or more.

§ 59.1-279. Eligibility.

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

1. It (i) begins the operation of a trade or business within an enterprise zone establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth by such taxpayer, and (ii) during the taxable year has at least fifty percent of the gross receipts of such business firm attributable to the active conduct of such trade or business within the enterprise zone, and (iii) forty percent or more of the employees employed at the business firm's establishment or establishments located within the enterprise zone meet the criteria set forth in subdivision B (i) or B (ii) of § 59.1-274 prior to employment; or either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of the zone.

2. It (i) is actively engaged in the conduct of a trade or business in an area immediately prior to such an area being designated as an enterprise zone, and (ii) meets the requirements of subdivision 1 (ii) of this subsection, and (iii) increases the average number of full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least ten percent over the lower of the preceding two years' employment with no less than forty percent of such increase being employees meeting the 7 criteria of subdivision B (i) or B (ii) of § 59.1-274 prior to employment who either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of the zone. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.

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

4. For the purposes of this section, the term "full-time employee" shall mean 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 an enterprise zone a qualified business firm pursuant to this section, each qualified business firm in such an enterprise zone shall submit annually to the Department a statement requesting one or more of the tax incentives provided in this chapter § 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 meets 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 governing body of the county, city or town in which the enterprise zone is located 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.

§ 59.1-280. State business income tax credit.

A. The Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credit provided herein for a qualified business firm against any tax due under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 or against any income tax, franchise tax, gross receipts tax or shares tax due from a public service company, bank, bank and trust company, trust company, insurance company, other than a foreign fire or casualty insurance company, national bank, mutual savings bank, savings and loan association, partnership or sole proprietorship, in an amount equaling eighty percent of the tax due to the Commonwealth for the first tax year and sixty percent of the tax due the Commonwealth for the second tax year through the tenth tax year. *However, if the qualified business firm makes qualified zone investments (as defined in subsection K of § 59.1-280.1) in excess of \$25 million and such qualified zone investments result in the creation of at least 100 full-time positions, the percentage amounts of the income tax credits available to such qualified business firms under this subsection shall be determined by agreement between the Department and the qualified business firm, provided such percentage amounts shall not exceed the percentages provided for other qualified business firms as set forth in the preceding sentence.* Any tax credit not usable may not be applied to future tax years. *The total amount of tax credits granted to qualified business firms (other than firms that are granted a tax credit under subsection J of § 59.1-280.1) under this section and to qualified zone residents under subsection B of § 59.1-280.1, for each fiscal year, shall not exceed five million dollars. However, tax credits granted under this section to business firms designated as qualified business firms prior to July 1, 1995, shall not be subject to inclusion in such five-million-dollar limitation.*

B. In addition to the provisions of subsection A of this section, the Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of public service companies to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the tax credit provided herein for qualified business firms against any tax due under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 or against any income tax, franchise tax, gross receipts tax or shares tax due from a public service company, bank, bank and trust company, trust company, insurance company, national bank, mutual savings bank, savings and loan association, partnership or sole proprietorship, in an amount equaling: eighty percent of the unemployment tax due to the Commonwealth for the first tax year on employees employed at establishments within an enterprise zone and sixty percent of such unemployment tax due to the Commonwealth for the second tax year through the tenth tax year. *However, the sum of the tax credits which any qualified business firm may claim pursuant to this section shall not exceed 100 percent of the firm's income, franchise, gross receipts or shares tax liability. Any tax credit under this subsection which is not usable may be applied to future tax years but only within the ten year period established by the provisions of this section.*

C. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively. Any qualified business firm having taxable income from business activity, both within and without the enterprise zone, shall allocate and apportion its taxable income attributable to the conduct of business in accordance with the procedures contained in §§ 58.1-302 through 58.1-420. 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.

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

A. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a taxpayer shall be allowed a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1, as set forth in this section.

B. For any qualified zone resident, a credit shall be allowed pursuant to this section in an amount equaling thirty percent of the qualified zone improvements. *However, in no event shall the cumulative credit allowed to a qualified zone resident pursuant to this section exceed \$125,000 in any five-year period. The total amount of tax credits granted to qualified zone residents under this subsection and to qualified business firms under § 59.1-280, for each fiscal year, shall not exceed five million dollars.*

C. "Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, or (ii) a minimum of thirty-five hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in this

Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

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

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

1. Except as provided in subsection F of this section, qualified zone improvements shall not include the cost of acquiring any real property or building.

2. Qualified zone improvements shall not include: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; or (ix) the cost of any well or septic or sewer system.

3. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

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

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

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

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

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

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

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

M. 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. 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) for carrying forward eligibility for tax credits to subsequent periods if an applicant does not obtain a reservation of the tax credit or any portion thereof for which he is eligible in any year as the result of the oversubscription of tax credits; (iv) priorities for allocating reservations to applicants whose eligibility for reservations of tax credits was carried forward from a preceding year but who did not receive a credit to which they were otherwise eligible; and (v) 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.

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

D. 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 § 9-6.14:4.1.

§ 59.1-282. State sales tax exemptions.

The Department shall certify annually to the Tax Commissioner ~~of Taxation~~ that any qualified business firm is exempt from the payment of taxes for all items purchased for the conduct of its business located within the enterprise zone, as required under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1. Such exemption shall extend for a period not to exceed five years. No business firm designated as a qualified business firm on or after July 1, 1995, shall be entitled to such exemption.

§ 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 hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, or (ii) a minimum of thirty-five hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm. Seasonal or temporary

positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"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 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. 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.

§ 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 (§ 9-6.14:1 et seq.) pursuant to subdivision B 4 of § 9-6.14:4.1.

§ 59.1-282.3. Assignment of enterprise zone incentive grants.

A business firm may assign all or any portion of any enterprise zone incentive grant to which it is eligible to the owner of any real property within an enterprise zone occupied by the business firm as tenant or to a financial institution regularly engaged in the business of lending money which has made a loan to the business firm for the purpose of expanding, constructing or rehabilitating a nonresidential building or facility for the conduct of a trade or business by the business firm within an enterprise zone, or both, as they may agree. A business firm assigning its interest in an enterprise zone incentive grant shall notify the Department. Following receipt of such notification, the Department may request the Comptroller to issue warrants in the name of the firm's assignee for grant payments that the business firm would have received.

§ 59.1-283. Local incentives.

A. In making an application for designation as an enterprise zone, the applying locality or localities may propose local tax incentives, including, but not limited to: (i) reduction of permit fees; (ii) reduction of user fees; and (iii) reduction of the business, professional, and occupational license tax; and (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221. The extent and duration of such incentive proposals 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, such application may also contain proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances; and (iv) 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 for business firms that are the same as, or more stringent than, the criteria for eligibility for grants or other benefits provided by this chapter.

§ 59.1-284. Review and termination of enterprise zone.

A. Upon designation of an area as an enterprise zone, the proposals for regulatory flexibility, tax incentives and other public incentives specified in this chapter shall be binding upon the local governing body to the extent and for the period of time specified in the application for zone designation. If the local governing body is unable or unwilling to provide the regulatory flexibility, tax incentives or other public incentives as proposed in the application for zone designation, the enterprise zone shall terminate. Qualified business firms located in such enterprise zone shall be eligible to receive the state tax 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. The governing body may amend its application with the approval of the Department, provided the governing body proposes an incentive equal to or superior to the unamended application.

B. The Department shall periodically review the effectiveness of state and local incentives in increasing investment and employment in each enterprise zone, and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Finance Committee, and the House Committee on Labor and Commerce. If no business firms in an enterprise zone have qualified for benefits provided pursuant to this chapter within a five-year period, the Department shall terminate that enterprise zone designation.

§ 59.1-284.01. Expiration of chapter.

The provisions of this chapter shall expire on July 1, 2005, unless extended by an act of the General Assembly.

2. That the second enactment of Chapter 301 of the 1992 Acts of Assembly is amended and reenacted as follows:

2. That the provisions of this act shall apply to qualified business firms which begin operations within an enterprise zone on or after July 1, 1992, or which are first designated as qualified business firms on or after July 1, 1995.

3. That the Board of Housing and Community Development shall establish the policies and procedures required pursuant to subsection B of § 59.1-280.2 on or before July 1, 1995, which shall be the effective date of such policies and procedures. The policies and procedures, which are necessitated by an emergency situation, shall be deemed to be emergency regulations as set forth in subdivision C 5 of § 9-6.14:4.1.