LD1655322

HOUSE BILL NO. 2423

House Amendments in [ ] — February 5, 1995

A BILL to amend and reenact §§ 59.1-274 and 59.1-279 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 59.1-280.1, 59.1-280.2 and 59.1-283.1, relating to the Enterprise Zone Act.

Patrons—Kilgore, Albo, Baker, Behm, Callahan, Cox, Crouch, Davies, Dudley, Fisher, Forbes, Guest, Hall, Ingram, Jackson, Johnson, Jones, J.C., Katzen, Kidd, McClure, McDonnell, Morgan, Newman, Nixon, Orrock, Phillips, Purkey, Ruff, Stump, Thomas, Wagner, Wardrup, Watkins, Way and Wilkins; Senators: Robb and Stolle

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-274 and 59.1-279 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 59.1-280.1, 59.1-280.2 and 59.1-283.1 as follows:

§ 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 60,000 but no more than 70,000, any city with population of at least 38,000 but no more than 40,000,*] 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 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, *except for counties with a population density of 150 or fewer persons per square mile at the most recent decennial census where the zone may consist of noncontiguous areas*. 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* year's employment with no less than forty percent of such increase being employees ~~meeting the 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 year's 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, each qualified business firm in such zone shall submit annually to the Department a statement requesting one or more of the tax incentives provided in this chapter. 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 the definition of a "qualified business firm." 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.

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.

D. For the purposes of this chapter, "qualified business firm" shall not include any business used for the following primary purposes: making and settling bets; receiving, holding, recording, or forwarding bets or offers to bet; or playing gambling devices.

§ 59.1-280.1 Enterprise zone interest income 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 and Chapter 12 (§ 58.1-1200 et seq.) of Title 58.1, as set forth in this section.

B. For any qualified zone lender, a credit shall be allowed pursuant to this section in an amount equaling fifteen percent of the qualified zone interest income. However, in no event shall the cumulative credit allowed pursuant to this section for each lender exceed $100,000 for a taxable year.

C. "Qualified zone lender" means a state or national bank, banking association, trust company, savings and loan association, investment banker, venture capital firm, investment partnership, real estate investment trust, or other financial institution which (i) is regularly engaged in the business of lending money and (ii) makes a loan that qualifies as enterprise zone indebtedness.

D. "Qualified zone interest income" means the amount of interest income reported for federal income tax purposes for the taxable year with respect to enterprise zone indebtedness. Qualified zone interest income shall not include any amount which was received from 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).

E. "Enterprise zone indebtedness" means money loaned to a trade or business operating in an enterprise zone for the express purpose of expansion, construction, or rehabilitation of industrial or commercial real property located within an enterprise zone, provided that the amount of such indebtedness is at least twenty-five percent of the basis of the real property, not including improvements, to be improved.

1. Permanent financing (which replaces construction financing that qualified as enterprise zone

indebtedness) shall qualify as enterprise zone indebtedness to the extent, immediately after the refinancing, the principal amount of the indebtedness resulting from the permanent financing does not exceed the sum of (i) the principal amount of construction financing and (ii) the reasonable closing costs, points, and fees related to the permanent financing.

2. Except as otherwise provided for permanent financing, loans made to refinance existing indebtedness shall not qualify as enterprise zone indebtedness.

3. Enterprise zone indebtedness shall not include any indebtedness which existed on July 1, 1995, or the refinancing of any indebtedness which existed on July 1, 1995.

F. The Department shall certify all enterprise zone indebtedness which qualifies for purposes of the credit provided by this section. Only indebtedness that has 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 itemize the amount and source of qualified zone interest income earned, and be accompanied by a copy of the certifications furnished to the qualified zone lender by the Department.

G. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any tax credit granted pursuant to this section is nonrefundable, but any credit not usable for the taxable year during which the credit was generated may be, to the extent usable, carried over for the next five succeeding taxable years or until the full credit is utilized. 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 has earned another credit pursuant to any other section of the Code of Virginia, or has a credit carryforward from a preceding taxable year, such taxpayer shall be considered to have first utilized any credit 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 earned pursuant to this section.

H. In the case of a partnership, limited liability company or S corporation, the term "qualified zone lender," 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.

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

J. 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. 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 per project credit allowed to a qualified zone resident pursuant to this section exceed $125,000.

C. "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 of business by such owner or tenant within the enterprise zone.

D. "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 E 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).

E. 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.

F. 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.*

G. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any tax credit granted pursuant to this section is nonrefundable, but any credit not usable for the taxable year the credit was generated may be, to the extent usable, carried over for the next five succeeding taxable years or until the full credit is utilized, whichever accrues first. 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 has earned another credit during the current taxable year 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 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 earned pursuant to this section.

H. 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.

I. In the event that a qualified zone resident is engaged in manufacturing tangible personal property in an enterprise zone in a county in Virginia, and makes qualified zone investments in excess of $50 million, then such qualified zone resident may claim a credit equaling five percent of such qualified zone investments in lieu of the credit provided by subsection B of this section. The 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.

J. "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).

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

L. 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.

§ 59.1-283.1. Clean Sites Fund eligibility.

A. Funding allocations for the site clearance fund (Clean Sites Fund) shall include localities with populations of 50,000 or greater which have enterprise zones.

B. These funds shall be used for site clearance activities within the local zones.

[2. That the General Assembly of Virginia believes that encouraging financial institutions to loan money for the rehabilitation and improvement of real property located within an enterprise zone, and encouraging businesses to make investments in and rehabilitate and improve real property located within an enterprise zone will add to the economic vitality of this Commonwealth. Accordingly, the provisions of this Act targeting the credit allowed by § 59.1-280.1 to enterprise

zone indebtedness and limiting the credit to qualified zone lenders, and limiting the credit allowed by § 59.1-280.2 to qualified zone improvements and investments are integral to the purpose of the Act and shall not be deemed severable.]