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SENATE BILL NO. 509

Offered January 25, 1994

A *BILL* to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 22.3, containing sections numbered 59.1-284.13 through 59.1-284.25, relating to the Virginia Environmental Economic Development Act and the creation of recycling zones and incentives therefor.

Patrons—Gartlan, Calhoun, Holland, C.A., Holland, E.M., Holland, R.J., Howell, Marye, Quayle, Waddell and Woods; Delegates: Cooper, Darner, Ingram, Keating and Scott

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 22.3, containing sections numbered 59.1-284.13 through 59.1-284.25 as follows:

CHAPTER 22.3.

VIRGINIA ENVIRONMENTAL ECONOMIC DEVELOPMENT ACT.

§ 59.1-284.13. Definitions.

As used in this chapter:

"Business firm" means any business entity authorized to conduct business in the Commonwealth and subject to the state income tax on net corporate income pursuant to Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1, 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.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Department" means the Department of Economic Development.

"End-use manufacturer" means a manufacturer of new products which incorporates a minimum of thirty percent, by weight or by volume, of recycled materials in the finished product. No more than half of the recycled material may be shop scrap from the manufacturer's production to qualify, or alternatively, fifty percent of the recycled content shall be post-consumer.

"Incentives" means the offerings that the Commonwealth (or an agency thereof), or a locality (or an agency thereof), or both may provide to businesses locating within a Virginia recycling zone.

"Intermediary processor" means a business that receives source-separated recyclable materials and processes the materials for shipment to an end-use manufacturer.

"Material Recovery Facility" means a business which receives source-separated recyclable materials and processes the materials for shipment to an intermediary processor or an end-use manufacturer.

"Processes" means to change the shape, form, or density of recyclable materials while preparing the materials for a reuse.

"Program" means the Virginia Recycling Zone Program.

"Recycling business" means any business that accepts recyclable materials or processes recyclable materials or remanufactures recyclable materials into new materials.

"Recycling zone" means a geographic area meeting the requirements of this chapter and designated by the locality and the Commonwealth.

"Recyclable material" means manufactured material separated from a waste stream for purposes of being reused.

"Secretary" means the Secretary of Economic Development.

§ 59.1-284.14. Administration.

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

1. Establish criteria for determining approval and setting application fees for the establishment of Virginia recycling zones;

2. Administer and enforce the rules, regulations, and requirements as provided herein or as may hereafter be established;

3. Conduct a continuing evaluation program of recycling zones, including listing of established zones, listing of local and state incentives for each established zone, and evaluating use of recycling zone incentives by the Department and local economic development authorities in attracting recycling businesses;

4. Assist counties, cities, and towns in establishing recycling zones and incentives;

5. Develop an application and review form for administering submission and approval of

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60 applications by October 1, 1994.

61 6. Develop regulations regarding application criteria, fees and review times, penalties for violating
62 terms of applications by either jurisdictions or businesses located within zones, or other requirements as
63 become necessary for the efficient operation of this program. Regulations are to be developed so that
64 incentives provided through this act will (i) attract new recycling businesses to Virginia and increase the
65 local markets for recyclable materials and (ii) entice existing business to change existing production
66 lines to use recycled content, expand production capabilities, increase employment, develop better
67 markets and new markets for recyclable materials.

68 7. Develop administrative procedures for implementing this act by October 1, 1994. If it is decided
69 by the Secretary of the Department that a committee is needed, a committee may be provided to help in
70 the development of these procedures. The committee should consist of one member each representing the
71 Department of Environmental Quality, Department of Economic Development, the Virginia Municipal
72 League, the Virginia Association of Counties, the Virginia Planning Districts Commissions, and the
73 Chamber of Commerce. The committee may develop a graduated incentives program by which greater
74 incentives are provided to encourage more efficient recovery methods, higher landfill diversion
75 capabilities, water and energy conservation, and highest utilization of materials.

76 § 59.1-284.15. Recycling zone designation.

77 The governing body of any county, city or town may apply to the Department of Environmental
78 Quality to request that an area or areas be declared a recycling zone. Such application shall include a
79 description of the location of the area or areas in question and a general statement identifying proposed
80 local incentives to complement applicable state and federal incentives. Two or more adjacent
81 jurisdictions may file a joint application for a recycling zone lying between the jurisdictions submitting
82 the application. The application for declaration as a recycling zone shall attest to the areas' use for the
83 location of material recovery facilities, recycling facilities, recyclable materials remanufacturing, and
84 manufacturing facilities using more than thirty percent, by volume or by weight, recycled content in the
85 finished product. An application may request that the entire jurisdiction of the applicant be declared a
86 recycling zone.

87 § 59.1-284.16. Expansion of recycling zones.

88 Upon designation of an area as a recycling zone, the local governing body may make written
89 application to the Department to expand the area of the zone. Such application for expansion shall be
90 considered by the Department in accordance with the requirements of § 59.1-284.15 and such
91 regulations of the Department as may be applicable.

92 § 59.1-284.17. Application review.

93 The Department shall review each application upon receipt and shall secure any additional
94 information that the Department deems necessary for the purpose of determining whether the area
95 described in the application qualifies as a recycling zone.

96 § 59.1-284.18. Sale of public land.

97 Upon designation of an area as a recycling zone, the Commonwealth and any units of local
98 government that own any land within the recycling zone may sell or lease or otherwise convey all land
99 within the zone not designated or targeted for some public use with the condition that it be developed in
100 accordance with the requirements of this program.

101 § 59.1-284.19. Development of recycling infrastructure.

102 The purpose of this chapter is to provide authority to local governments to develop state-supported
103 marketing programs that will attract recycling industry that meets the localities' specific needs. To this
104 end, localities may adopt any of the following, or a combination of the following, into their local
105 ordinances, in order to accomplish the development of the recycling infrastructure necessary for their
106 local conditions:

107 1. Programs focusing on attracting manufacturers that meet the definition of an "end-use
108 manufacturer."

109 2. Programs focusing on attracting intermediary processors that meet the definition of an
110 "intermediary processor."

111 3. Programs focusing on attracting material recovery facilities that meet the definition of a "material
112 recovery facility."

113 § 59.1-284.20. Eligibility.

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

115 1. It (i) operates a trade or business within a recycling zone as an end-use manufacturer,
116 intermediary processor or material recovery facility and (ii) during the first taxable year, has at least
117 thirty percent of its gross receipts attributable to the active conduct of such recycling trade or business
118 and fifty percent of the gross receipts attributable to the active conduct of the recycling business in the
119 years thereafter.

120 2. It (i) is actively engaged in the conduct of a trade or business in an area immediately prior to
121 such an area being designated a recycling zone, (ii) meets the requirements of subdivision 1 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 recycling zone by at least ten percent over the preceding year's employment or increases its capital investment by twenty-five percent for purposes of processing or incorporating recyclable materials in the finished products, or increases the use of recyclable materials by twenty-five percent in the production process of the finished product.

3. For the purposes of this section, the term "full-time employee" means (i) an individual employed by a business firm 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 hours a week required by the business firm for that one position.

B. After designation as a recycling 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 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." This form shall be prima facie evidence of the eligibility of a business firm for the purposes of this section. A copy of the statement submitted by each qualified business firm to the Department shall be forwarded to the governing body of the county, city or town in which the zone is located.

§ 59.1-284.21. State business income tax credit.

A. The Department shall certify annually to the State Tax Commissioner, 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) 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, 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 a zone and sixty percent of the unemployment tax due to the Commonwealth for the second tax year through the tenth tax year. Any tax credit not usable may not be applied to future tax years.

B. In addition to the provisions of subsection A of this section, the Department shall certify annually to the State Tax Commissioner, 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) 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, 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 a zone and sixty percent of such unemployment tax due to the Commonwealth for the second tax year through the tenth year. However, the sum of the tax credits which any qualified business firm may claim pursuant to this subsection 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 subsection.

§ 59.1-284.22. State sales tax exemptions.

The Department shall certify annually to the State Tax Commissioner 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 recycling zone, as required under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1. Such exemptions shall extend for a period not to exceed five years.

§ 59.1-284.23. Local incentives.

A. In making an application for designation as a recycling 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. 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.

B. In making application for designation as a recycling zone, the applying locality or localities shall include statements describing regulatory flexibility by providing (i) appropriate zoning districts designated for the siting of recycling businesses and (ii) permit process reform to expedite applications from recycling businesses.

C. The locality may further provide other public incentives proposed in the locality's application.

D. All proposed incentives provided in the application shall be binding upon the locality upon designation of the recycling zone.

§ 59.1-283.24. Termination of recycling zone.

Upon designation of an area as a recycling zone, the proposals for regulatory flexibility, tax incentives and other public incentives specified in this chapter shall be binding upon the local governing

183 *body to the extent and for the period of time specified in the application for zone designation. If the*
184 *locality is unable or unwilling to provide the regulatory flexibility, tax incentives or other public*
185 *incentives as proposed in the application for zone designation, the recycling zone shall terminate.*
186 *Qualified business firms located in such recycling zone shall be eligible to receive state tax incentives*
187 *provided by this chapter even though the zone designation has terminated. No business firm may become*
188 *a qualified business firm after the date of the zone termination. The governing body may amend its*
189 *application with the approval of the Department, provided the governing body honors the incentives*
190 *offered to businesses already relying on such incentives.*