

LD3179637

SENATE BILL NO. 761

Offered January 16, 1995

A BILL to amend and reenact §§ 59.1-271, 59.1-273, 59.1-274, 59.1-278, 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 sections numbered 59.1-282.1 through 59.1-282.5 and 59.1-284.1, and to repeal § 59.1-277 of the Code of Virginia, relating to the Enterprise Zone Act.

Patrons—Cross, Andrews, Colgan, Gartlan, Holland, E.M., Schewel and Stosch

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-271, 59.1-273, 59.1-274, 59.1-278, 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 sections numbered 59.1-282.1 through 59.1-282.5 and 59.1-284.1 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 § 59.1-282.2 or § 59.1-282.3.

"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 [Repealed.]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 § 59.1-282.4.

§ 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~~ fifty 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

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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. 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.

§ 59.1-278. Rules and regulations. ~~Rules and regulations prescribing procedures effectuating the purpose of this chapter shall be promulgated by the~~ The Board of Housing and Community Development shall promulgate regulations, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), prescribing procedures effectuating the purpose of this chapter, including but not limited to (i) defining criteria for the number of eligible positions and qualified real property improvements; (ii) establishing procedures for the allocation of grants to business firms; and (iii) prescribing schedules and documentation requirements for the submission of applications for benefits under this chapter.

§ 59.1-279. Eligibility prior to July 1, 1995.

A. Any business firm may be designated a "qualified business firm" for purposes of this chapter prior to July 1, 1995, if:

1. It (i) begins the operation of a trade or business within an enterprise zone, (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

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, (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 preceding 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.

3. For the purposes of this section, the term "full-time employee" shall mean (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.

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 § 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 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 local 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.

D. The Department shall not designate any business firm as a qualified business firm on or after July 1, 1995.

§ 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 which is designated as a qualified business firm prior to July 1, 1995, 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. 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 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.

§ 59.1-282. State sales tax exemptions.

A. 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.

B. The maximum amount of the exemption from the taxes imposed under Chapter 6 of Title 58.1 for any qualified business shall not exceed an amount equal to ten percent of the cost of qualified real property improvements (as defined in § 59.1-282.2) incurred by the qualified business firm during the period of its designation as a qualified business firm, not to exceed \$250,000. If the amount of the tax exemption claimed by a qualified business firm for items purchased prior to July 1, 1995, exceeds such maximum amount, the qualified business firm shall not be required to refund the excess amount of the exemption.

C. A qualified business firm may apply annually for a refund of the exempt portions of the tax it has paid. A qualified business firm applying for a refund shall provide the Tax Commissioner with evidence of the cost of qualified real property improvements, the value of the exemption to the firm in previous years of eligibility, and such additional information as the Tax Commissioner may reasonably require.

§ 59.1-282.1. Eligibility for enterprise zone incentive grants.

A business firm shall be eligible for enterprise zone incentive grants on or after July 1, 1995, if it satisfies the criteria for eligibility set forth in §§ 59.1-282.2 and 59.1-282.3.

§ 59.1-282.2. Grants for qualified real property improvements.

A. As used in this section:

"Cost of qualified real property improvements" means expenditures incurred in making qualified real property improvements. The cost of qualified real property improvements shall not include costs (i) of acquiring land or existing buildings; (ii) of any personal property or any furnishings that are not permanently affixed to real estate; (iii) for legal, appraisal, accounting, architectural and other professional services; (iv) of financing the qualified real property improvements; and (v) for recordation, permits, zoning approval, inspections, utility connections, and other governmental services.

"Qualified real property improvements" means any valuable addition or amelioration made to land and structures erected on or affixed to land, which enhances its value or utility as an industrial or commercial facility in which a trade or business is conducted by a business firm within an enterprise zone. Examples of qualified real property improvements include, but are not limited to, the rehabilitation of existing buildings, construction of new buildings, installation of fixtures, and installation of water and wastewater treatment and distribution systems.

B. A business firm which occupies, as owner or tenant, real estate on which qualified real property improvements are completed and placed in service for the conduct of a trade or business shall be eligible to receive an enterprise zone incentive grant in an amount equal to ten percent of the cost of qualified real property improvements, provided that the cost of the qualified real property improvements

183 equals or exceeds \$100,000. However, in no event shall a business firm be eligible for a grant of more
184 than \$250,000 for qualified real estate improvements at any facility in any calendar year.

185 C. Grant applications shall be submitted to the local zone administrator by March 31 of the year
186 following the calendar year in which the qualified real property improvements were placed in service.
187 Applications for grants shall include evidence of the cost of the qualified real property improvements,
188 the date the improvements were placed in service, and other relevant information as the local zone
189 administrator and the Department may reasonably require.

190 D. The amount of the grant for which a business firm is eligible in any year shall not include the
191 cost of qualified real property improvements placed in service in any year other than the preceding
192 calendar year, except as provided in § 59.1-282.4 regarding carry-forward of unsatisfied grant request
193 amounts.

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

196 § 59.1-282.3. Grants for creating permanent full-time positions.

197 A. As used in this section:

198 "Base year" means (i) the calendar year immediately preceding a business firm's first year of grant
199 eligibility or (ii) at the option of the business firm, the next preceding calendar year. A calendar year
200 shall not qualify as a business firm's base year unless the firm employed five or more employees within
201 the enterprise zone a minimum of thirty-five hours weekly for at least forty-eight weeks in the calendar
202 year.

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

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

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

209 "Permanent full-time position" means a job of an indefinite duration at a business firm located
210 within an enterprise zone requiring the employee to report for work within the enterprise zone, and
211 requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal
212 year of the business firm's operations, which "normal year" must consist of at least forty-eight weeks, or
213 (ii) a minimum of thirty-five hours of an employee's time a week for the portion of the taxable year in
214 which the employee was initially hired for, or transferred to, the business firm. Seasonal or temporary
215 positions shall not qualify as permanent full-time positions.

216 "Threshold number" means 110 percent of the number of permanent full-time positions in the base
217 year for the first three-year period in which a business firm is eligible for a grant under this section.
218 For the second and any subsequent three-year period of grant eligibility, the threshold number means
219 120 percent of the number of permanent full-time positions in the applicable base year. If such number
220 would include a fraction, the threshold number shall be the next highest integer.

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

227 C. The amount of the grant for which a business firm is eligible in any grant year shall be equal to
228 (i) \$1,000 multiplied by the number of eligible positions filled by employees whose permanent place of
229 residence is within the enterprise zone, and (ii) \$500 multiplied by the number of eligible positions filled
230 by employees whose permanent place of employment is outside of the enterprise zone. The amount of the
231 grant for which a business firm is eligible with respect to any employee who is employed in an eligible
232 position for less than twelve full months during the grant year will be determined by multiplying the
233 grant amount by a fraction, the numerator of which is the number of full months that the employee
234 worked for the business firm during the grant year, and the denominator of which is twelve. In no event
235 shall any business firm be eligible for a grant pursuant to this section in excess of \$100,000 for any
236 grant year.

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

241 E. The amount of the grant for which a business firm is eligible in any year shall not include
242 amounts for the number of eligible positions in any year other than the preceding calendar year, except
243 as provided in § 59.1-282.4 regarding carry-forward of unsatisfied grant request amounts.

244 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.

§ 59.1-282.4. 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; (ii) next, for grants to business firms which in the preceding year received a grant pursuant to § 59.1-282.3 and continue to be eligible for a grant pursuant to such section; and (iii) 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 § 59.1-282.5, 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 subsection B 4 of § 9-6.14:4.1.

§ 59.1-282.5. 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 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

306 application with the approval of the Department, provided the governing body proposes an incentive
307 equal to or superior to the unamended application.

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

314 *§ 59.1-284.1. Expiration of chapter.*

315 *The provisions of this chapter shall expire on July 1, 2000, unless extended by an act of the General*
316 *Assembly.*

317 **2. That § 59.1-277 of the Code of Virginia is repealed.**