

# Virginia Administrative Code

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## CHAPTER 112

### ENTERPRISE ZONE GRANT PROGRAM REGULATION

#### Part I

#### Definitions

#### **13VAC5-112-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agreed-upon procedures engagement" means an engagement between an independent certified public accountant licensed by the Commonwealth and the business or zone investor seeking to qualify for Enterprise Zone incentive grants pursuant to § 59.1-549 of the Code of Virginia whereby the independent certified public accountant, using procedures specified by the department, will test and report on the assertion of the business or zone investor as to their qualification to receive the Enterprise Zone incentive.

"Assumption or acquisition" means, in connection with a trade or business, that the inventory, accounts receivable, liabilities, customer list and good will of an existing Virginia company has been assumed or acquired by another taxpayer, regardless of a change in federal identification number or employees.

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal workdays during the payroll period. Paid leave time may be counted as work time.
2. For a business firm that uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" means either of two taxable years immediately preceding the first year of

qualification, at the choice of the business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Building" means any construction meeting the common ordinarily accepted meaning of the term (building, a usually roofed and walled structure built for permanent use) where (i) areas separated by interior floors or other horizontal assemblies and (ii) areas separated by fire walls or vertical assemblies shall not be construed to constitute separate buildings, irrespective of having separate addresses, ownership or tax assessment configurations, unless there is a property line contiguous with the fire wall or vertical assembly.

"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia. This shall also include business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems and that generate the majority of their revenue from customers outside the Commonwealth.

"Capital lease" means a lease that meets one or more of the following criteria and as such is classified as a purchase by the lessee: the lease term is greater than 75% of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceed 90% of the fair market value of the property.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

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

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.
2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Existing business firm" means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Expansion" means an increase in square footage or the footprint of an existing nonresidential building via a shared wall, or enlargement of an existing room or floor plan. Pursuant to real property investment grants this shall include mixed-use buildings.

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction, as well as to the rehabilitation and expansion of existing structures.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 USC § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis.

"Food and beverage service" means a business whose classification falls under subsector 722 Food Services and Drinking Places of North American Industry Classification System.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the grant amount under 13VAC5-112-260. A full month is calculated by dividing the total number of days in calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant-eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service or food and beverage service shall not be considered grant-eligible positions.

"Health benefits" means that at a minimum medical insurance is offered to employees and the employer shall offer to pay at least 50% of the cost of the premium at the time of employment and annually thereafter.

"High unemployment area" means enterprise zone localities with unemployment rates one and one-half times or more than the state average based on the most recent annualized unemployment data

published by the Virginia Employment Commission.

"Household" means all the persons who occupy a single housing unit. Occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Household income" means all income actually received by all household members over the age of 16 from the following sources. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. Gross wages, salaries, tips, commissions, etc. (before deductions);
2. Net self-employment income (gross receipts minus operating expenses);
3. Interest and dividend earnings; and
4. Other money income received from net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from household income:

1. Noncash benefits such as food stamps and housing assistance;
2. Public assistance payments;
3. Disability payments;
4. Unemployment and employment training benefits;
5. Capital gains and losses; and
6. One-time unearned income.

When computing household income, income of a household member shall be counted for the portion of the income determination period that the person was actually a part of the household.

"Household size" means the largest number of household members during the income determination period. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives and grants under this program.

"Job creation grant" means a grant provided under § 59.1-547 of the Code of Virginia.

"Joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

"Jurisdiction" means the city or county which made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of \$15 million when such zone investments result in the creation of at least 50 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of \$100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Local zone administrator" means the chief executive of the city or county, in which an enterprise zone is located, or his designee. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Low-income" means household income was less than or equal to 80% of area median household income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Median household income" means the dollar amount, adjusted for household size, as determined annually by the department for the city or county in which the zone is located. This definition applies only

for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Mixed use" means a building incorporating residential uses in which a minimum of 30% of the useable floor space will be devoted to commercial, office or industrial use. Buildings where less than 30% of the useable floor space is devoted to commercial, office or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13VAC5-112-330. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Net loss" applies to firms that relocate or expand operations and means (i) after relocating into a zone, a business firm's gross permanent employment is less than it was before locating into the zone, or (ii) after a business firm locates or expands within a zone, its gross employment at its nonzone location or locations is less than it was before the zone location occurred.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"New construction" means a single, nonresidential facility built on previously undeveloped land of a nonresidential structure built on the site/parcel of a previously razed structure with no remnants of the prior structure or physical connection to existing structures or outbuildings on the property. Pursuant to real property investment grants this shall include mixed-use buildings.

"Number of eligible permanent full-time 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. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time employee" means a person employed by a business firm who is normally scheduled to work either (i) a minimum of 35 hours per week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours per week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the

business firm for the employee. Permanent full-time employee also means 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. Seasonal, temporary, leased or contract labor employees or employees shifted from an existing location in the Commonwealth to a business firm location within an enterprise zone shall not qualify as permanent full-time employees. This definition only applies to business firms for the purpose of qualifying for enterprise zone incentives pursuant to 13VAC5-112-20.

"Permanent full-time position" (for the purpose of qualifying for grants pursuant to § 59.1-547 of the Code of Virginia) means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report to work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (a) seasonal, temporary or contract positions, (b) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located with an enterprise zone, (c) any position that previously existed in the Commonwealth, or (d) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Personal service" means such positions classified under NAICS 812.

"Placed in service" means the final certificate of occupancy has been issued or the final building inspection has been approved by the local jurisdiction for real property improvements or real property investments, or in cases where a project does not require permits, the licensed third party inspector's report that the project was complete; or pursuant to 13VAC5-112-110 the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or in the case of tools and equipment, the first moment they are used in the performance of duty or service.

"Qualification year" the calendar year for which a qualified business firm or qualified zone investor is applying for a grant pursuant to 13VAC5-112-260.

"Qualified business firm" means a business firm meeting the business firm requirements in 13VAC5-112-20 or 13VAC5-112-260 and designated a qualified business firm by the department.

"Qualified real property investment" (for purposes of qualifying for a real property investment grant) means the amount properly chargeable to a capital account for improvements to rehabilitate, expand or

construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) \$100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) \$500,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.
2. Other costs including (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, 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 connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
3. The basis of any property (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) that was previously placed in service in Virginia by the qualified zone investor, 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 (iv) that 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 it was acquired or Internal Revenue Code § 1014(a).

"Qualified zone improvements" (for purposes of qualifying for an Investment Tax Credit) means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable nonresidential 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 construct, expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include, but are not limited to, the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning and clean-up.

2. Qualified zone improvements do 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, 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; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new nonresidential construction, qualified zone improvements also do not include land, land improvements, paving, grading, driveway, and interest. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) that 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) that 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 whom acquired it, or Internal Revenue Code § 1014(a). This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements. Units of local, state and federal government or political subdivisions shall not be considered qualified zone investors.

"Qualified zone resident" means an owner or tenant of nonresidential 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. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" means the partnership, limited liability company or S corporation. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Real property investment grant" means a grant made under § 59.1-548 of the Code of Virginia. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Reduced wage rate threshold" means 150% of the federal minimum wage pursuant to 13VAC5-112-270, 13VAC5-112-280, and 13VAC5-112-285 and high unemployment areas.

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage. Pursuant to real property investment grants this shall include mixed-use buildings.

"Regular basis" means at least once a month. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Retail" means a business whose classification falls under sectors 44-45 Retail Trade of North American Industry Classification System.

"Same trade or business" means the operations of a single company or related companies or

companies under common control.

"Seasonal employee" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-350 C.

"Subsequent base year" means the base year for calculating the number of grant-eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as subsequent base year, at the choice of the business firm.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Tax year" means the year in which the assessment is made. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts or state taxable net capital is accrued. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Threshold number" means an increase of four permanent full-time positions over the number of

permanent full-time positions in the base year or subsequent base year.

"Transferred employee" means an employee of a firm in the Commonwealth that is relocated to an enterprise zone facility owned or operated by that firm.

"Useable floor space" means all space in a building finished as appropriate to the use(s) of the building as represented in measured drawings. Unfinished basements, attics, and parking garages would not constitute useable floor space. Finished common areas such as stairwells and elevator shafts should be apportioned appropriately based on the majority use (51%) of that floor(s).

"Wage rate" means the hourly wage paid to an employee inclusive of shift premiums and commissions. In the case of salaried employees, the hourly wage rate shall be determined by dividing the annual salary, inclusive of shift premiums and commissions, by 1,820 hours. Bonuses, overtime and tips are not to be included in the determination of wage rate.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone real property investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Zone resident" means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 26, Issue 1, eff. October 14, 2009; Volume 26, Issue 22, eff. August 4, 2010; Volume 27, Issue 26, eff. September 28, 2011.

## Part II

### Procedures for Qualifying for General Tax Credit

**13VAC5-112-20. Effective dates.**

Beginning on July 1, 2005, small qualified and large qualified business firms shall be allowed a credit against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et. seq.); Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25 or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; § 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia as provided in this regulation for up to 10 consecutive years in an amount equaling up to 80% of the tax due the first tax year, and up to 60% of the tax due for the second through tenth tax years.

The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to § 59.1-280 of the Code of Virginia on or before July 1, 2005;
2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with § 59.1-280 of the Code of Virginia on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

**Statutory Authority**

§ 59.1-541 of the Code of Virginia.

**Historical Notes**

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-30. Computation of credit.**

A. The amount of credit allowed shall be subject to the limitations provided by 13VAC5-112-20. An unused tax credit may not be applied to future years. Any credit not useable for the taxable year the credit was allowed shall not be carried back to a preceding taxable year. The credit is not refundable.

B. If, due to adjustments, the amount of actual tax liability as reported on the application changes, the amount of credit that the qualified business firm will be eligible to receive will not exceed the amount of credit authorized by the department. However, if, as a result of adjustments, the tax liability decreases from the amount stated on the application, the qualified business firm will receive a lower credit amount based on the new tax liability in accordance with the percentage amounts specified in 13VAC5-112-20.

C. For large qualified business firms, the percentage amounts of the income tax credits available to

such qualified business firms under this section will have been determined by agreement between the department and the qualified business firm. The negotiated percentage amount shall not exceed the percentages specified by 13VAC5-112-30.

D. Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. Any qualified business firm having taxable income from business activity both within and without the enterprise zone, shall allocate and apportion its Virginia taxable income attributable to the conduct of business as follows:

1. The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone shall be determined by multiplying its Virginia taxable income by a fraction, the numerator of which is the sum of the property factor and the payroll factor, and the denominator of which is two.

- a. The property factor is a fraction. The numerator is the average value of real and tangible personal property of the business firm that is used in the enterprise zone. The denominator is the average value of real and tangible personal property of the business firm used everywhere in the Commonwealth.

- b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation. The denominator is the total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the business firm for compensation.

2. The property factor and the payroll factor shall be determined in accordance with the procedures established in §§ 58.1-409 through 58.1-413 of the Code of Virginia for determining the Virginia taxable income of a corporation having income from business activities that is taxable both within and without the Commonwealth, *mutatis mutandis*.

3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a lesser portion of its Virginia taxable income that is reasonably attributable to a business conducted within the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be appropriate under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonable prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is in fact

inequitable or inapplicable, it shall redetermine the taxable income by such other method of allocation or apportionment as best seems calculated to assign to an enterprise zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to business conducted within the enterprise zone.

E. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation, each taxpayer shall be granted a pro rata amount as determined by the department. The amount of such prorated credit shall be determined by applying a fraction, the numerator of which shall be the gross credits requested by the taxpayer for such year, and the denominator of which shall be the total gross credits requested by all taxpayers for such year, to the Commonwealth's annual financial limitation. The credit that may be requested each year shall be subject to the limitations provided by 13VAC5-112-40 and 13VAC5-112-130.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-40. Annual fiscal limitations.**

A. The total amount of tax credits awarded to small and large qualified business firms under this section and qualified large zone residents in 13VAC5-112-110 shall not exceed \$7.5 million annually until the end of fiscal year 2019 as provided for in §§ 59.1-280 and 59.1-280.1 of the Code of Virginia.

B. Upon receiving applications for tax credits under this section and 13VAC-5-112-110, the department shall determine the amount of the tax credit to be allocated to each eligible business firm. In the event that the amount of tax credits to which all applicants qualifying under this section and 13VAC-5-112-110 are eligible, exceeds \$7.5 million annually, the tax credits shall be apportioned among eligible applicants pro rata, based upon the amount of the tax credits to which an applicant is eligible and the amount of tax credits available for allocation.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-50. Qualified business.**

Qualification for the credit can occur by satisfying the criteria in subdivisions 1 through 3 of this section. Any business firm may be designated a qualified business for the purpose of this credit if:

1. A business firm establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth of Virginia by such taxpayer, and at least 25% or more (except for businesses qualifying prior to July 1, 1997, when it shall be at least 40% or more) of the permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone must either have incomes below 80% of the median income for the jurisdiction prior to employment or be zone residents. Zone residency will be subject to annual verification, while low-income status verification is only required upon initial employment. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone.
2. A business firm is actively engaged in the conduct of a trade or business in the Commonwealth of Virginia, and increases the average number of permanent full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least 10% over base taxable years' employment with no less than 25% (except for businesses qualifying prior to July 1, 1997, when it shall be no less than 40%) of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. In the event that a company has activities both inside and outside the enterprise zone, the business firm may not aggregate activity from outside the zone for calculation of employment increase. Other employment positions that shall not be used in the calculation of the 10% employment increase are referred to in subdivision 3 of this section and 13VAC5-112-90.
3. A business firm 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 increases the average number of permanent full-time employees by at least 10% over the base taxable years' employment with no less than 25% or more (except for businesses qualifying prior to July 1, 1997, when it shall be at least 40% or more) of such increase being employees who have incomes below 80% of the median income for the jurisdiction prior to employment or are zone residents. 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 permanent full-time employees by the

business firm within the enterprise zone.

4. If a business firm is actively engaged in the conduct of a trade or business in the Commonwealth and its operations continue following its assumption or acquisition by another entity, the resulting entity must meet the requirements for qualification described in subdivision 3 of this section and 13VAC5-112-90.

5. A business firm located within a locality's enterprise zone or zones that moves to another location within that locality's enterprise zone or zones must meet the requirements for qualification described in subdivisions 1, 2, or 3 of this section and 13VAC5-112-90.

6. A business firm moving from one locality's enterprise zone to another locality's enterprise zone prior to being qualified shall be subject to the requirements described in subdivision 3 of this section and 13VAC5-112-90.

7. A business firm that has already qualified for enterprise zone incentives and moves from one locality's enterprise zone into another locality's enterprise zone shall no longer be qualified unless the firm increases its permanent full-time employment by an additional 10% over the last year of qualification.

8. Large qualified business firms must meet the terms of their documented negotiation agreement with the Department pursuant to subdivision 2 of 13VAC5-112-20, prior to seeking initial qualification under this section.

9. The business firm must certify annually to the department on prescribed form or forms, and other documentation as required by the department, that the firm has met the criteria for qualification prescribed in subdivisions 1 through 7 of this section. The form or forms referred to in this subdivision must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the definition of a qualified business but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to 13VAC5-112-20.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-60. Qualification in zones whose designation period is ending.**

A. Small qualified business firms located in a zone whose designation period is ending that have qualified under 13VAC5-112-20 by or before the zone expiration date may receive the remainder of their incentive period provided they continue to qualify under 13VAC5-112-20. Tax credits are not authorized beyond the end of fiscal year 2019 as specified in § 59.1-280 I of the Code of Virginia.

B. Large qualified business firms located in a zone whose designation period is ending that have qualified under 13VAC5-112-20 by or before the zone expiration date may receive the remainder of their incentive period provided they continue to qualify under 13VAC5-112-20. The incentive period shall be for 10 consecutive years or until the negotiated credit amount is reached, whichever is sooner. Tax credits are not authorized beyond the end of fiscal year 2019 as specified in § 59.1-280 I of the Code of Virginia.

Statutory Authority

§ 59.1-541 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-70. Application submittal and processing.**

A. For tax years that end on or before December 31, or for businesses with tax years in accordance with § 441(f) of the Internal Revenue Code on or before January 7 of the subsequent year, applications requesting a general tax credit shall be submitted to the department by no later than May 1 of the subsequent calendar year. If the May 1 due date falls on a weekend or holiday, applications are due the next business day. These applications must be signed by an independent certified public accountant licensed by the Commonwealth.

B. Beginning with tax years ending in 2005, any business firm that is eligible to qualify for tax credits under this section pursuant to 13VAC5-112-20 may amend past tax returns in order to qualify for and receive general tax credits. Such business firms shall submit an application requesting general tax credits to the department by no later than May 1 of any of three subsequent calendar years immediately following the year the business firm is requesting the credit provided that there is an outstanding credit balance remaining for that particular tax year. These requests will be handled on a first-come, first-serve basis. Business firms may not amend past tax returns in order to become initially eligible for tax credits under this section pursuant to 13VAC5-112-20.

C. The department shall review all applications for completeness and notify business firms of any errors no later than June 1. Business firms must respond to any unresolved issues by no later than June 15. If the department does not meet its June 1 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

D. The department shall notify all applicants by June 30 as to the amount of applicable general credit it may claim for the taxable year the request was made.

E. Applications must be made on forms prescribed by the department, and either hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and post marked no later than the date specified in this section.

F. Applicants may only apply for credits that they are otherwise eligible to claim for such taxable year, subject to the limitations provided by 13VAC5-112-40 and 13VAC5-112-130.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-80. Certification to Tax Commissioner in accordance with § 59.1-280 A of the Code of Virginia.**

A. The department shall certify to the Commissioner of the Virginia 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 credits requested by the firm; and forward the certification to the firm. A copy should be retained for the firm's records. The firm shall file the original with the applicable state tax return or returns. If the firm is not eligible for qualification, the department shall notify the firm that it fails to qualify for state tax incentives under this part.

B. Submission of state tax returns. A business firm, upon receipt from the department of the certificate of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax

return a photocopy of the appropriate certificate of qualification received by the firm.

C. Denial of tax credit. Any certification by the department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-90. Anti-churning.**

A. A permanent full-time employee shall not include any employee:

1. For which a credit under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267(b) or a trade or business under common control;
2. Who was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. Whose job function was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. Whose previous job function previously qualified for a credit in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control;
5. Whose job function counted for purposes of determining a 10% increase by an existing business firm and credited in an earlier taxable year on behalf of the taxpayer, a related party, or a trade or business under common control; or
6. Whose job function was filled in the Commonwealth and the trade or business where this job function was located was acquired or assumed by another taxpayer.

B. A new permanent full-time position that otherwise qualifies for the credit will not be disqualified for purposes of the credit where the employer chooses to use more than one individual to fill the position. This exception is limited to those situations where no more than two employees are used to fill a position, such employees are eligible for essentially the same benefits as full-time employees, and each employee works at least 20 hours per week for at least 48 weeks per year.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-100. Pass-through entities.**

The amount of any credit attributable to a partnership, S corporation, or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively. The credit will be allocated in the manner in which income is allocated for federal income tax purposes.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part III

#### Procedures for Qualifying for Zone Real Property Investment Tax Credit

#### **13VAC5-112-110. Effective dates.**

Beginning on July 1, 2005, a qualified large zone resident shall be allowed a real property investment tax credit against taxes imposed by Articles 2 (Individuals; § 58.1-320 et seq.) and 10 (Corporations; § 58.1-400 et seq.) of Chapter 3; Chapter 12 (Bank Franchise; § 58.1-1200 et. seq.); Article 1 (Insurance Companies; § 58.1-2500 et seq.) of Chapter 25, or Article 2 (Telegraph, Telephone, Water, Heat, Light, Power and Pipeline Companies; § 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia, as provided in this chapter.

The provisions of this section shall apply only as follows:

1. To those large qualified zone residents that have initiated use of enterprise zone tax credits pursuant to § 59.1-280.1 of the Code of Virginia on or before July 1, 2005;
2. To those large qualified zone residents that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with § 59.1-280.1 of the Code of Virginia on or before July 1, 2005.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

## Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### **13VAC5-112-120. Computation of credit.**

A. A large qualified zone resident shall be eligible for a credit in an amount of up to 5.0% of the qualified zone investments. The zone real property investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any tax credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized. However, this incentive period shall not last beyond 2019 as specified in § 59.1-280 I of the Code of Virginia.

B. The percentage amount of the zone real property investment tax credit granted to a large qualified zone resident must have been determined by agreement between the department and the large qualified zone resident, provided such percentage amount does not exceed 5.0%.

C. The percentage amounts of the business income tax credit provided in 13VAC5-112-30 C that may be granted to a large qualified business firm are also subject to agreement between the department in the event that a large qualified zone resident is also a large qualified business firm, provided such percentage amounts shall not exceed the percentage amounts otherwise provided in 13VAC5-112-30 C.

D. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, or a trade or business under common control; or (iii) that 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 § 1014(a) of the Internal Revenue Code.

## Statutory Authority

§ 59.1-541 of the Code of Virginia.

## Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### **13VAC5-112-130. Annual fiscal limitations.**

A. The total amount of tax credits awarded to small and large qualified business firms in 13VAC5-112-20 and qualified large zone residents under this section shall not exceed \$7.5 million annually until the end of fiscal year 2019 as provided for in §§ 59.1-280 and 59.1-280.1 of the Code of Virginia.

B. Upon receiving applications for tax credits under this section and 13VAC-5-112-20, the department

shall determine the amount of the tax credit to be allocated to each eligible business firm. In the event that the amount of tax credits to which all applicants qualifying under §§ 59.1-280 and 59.1-280.1 of the Code of Virginia are eligible, exceeds \$7.5 million annually, the tax credits shall be apportioned among eligible applicants pro rata, based upon the amount of the tax credits to which an applicant is eligible and the amount of tax credits available for allocation.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-140. Eligibility.**

A. The use of zone real property investment tax credits may be initiated in accordance with 13VAC5-112-120 C once the job creation and investment identified in the negotiation have been completed.

B. The business firm must certify to the department on the prescribed form or forms, and other documents as prescribed by the department, that the firm has met the criteria for qualification prescribed in this section. The form or forms referred to in this subsection must be prepared by an independent certified public accountant licensed by the Commonwealth and shall serve as prima facie evidence that the business firm met the qualifications, but the evidence of eligibility shall be subject to rebuttal. The department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to 13VAC5-112-120 A.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-150. Qualification in zones whose designation period is ending.**

Large qualified zone residents located in a zone whose designation period is ending that have a documented negotiation agreement with the department and that have qualified by or before that the zone expiration date may continue receive the tax credits until the negotiated tax credit amount is reached, provided they continue to qualify under 13VAC5-112-110. This incentive period shall not last beyond 2019 as specified in § 59.1-280 I of the Code of Virginia.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-160. Anti-churning.**

The following shall not be included in the calculation of permanent full-time positions:

1. An employee for whom a credit under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267(b) or a trade or business under common control;
2. A position in which an employee filling that position was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. A job function that was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;
4. A position that previously qualified for a credit in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control; or
5. A position that was filled in the Commonwealth of Virginia and the trade or business where that position was located was purchased by another taxpayer.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-170. Pass through entities.**

The amount of any credit attributable to a partnership, S corporation, or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively. The credit will be allocated in the manner in which income is allocated for federal income tax purposes.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-180. Application submittal and processing.**

A. For tax years that end on or before December 31, or for businesses with tax years in accordance with § 441(f) of the Internal Revenue Code on or before January 7 of the subsequent year, applications requesting zone real property investment tax credits shall be submitted to the department by no later than May 1 of the subsequent calendar year. If the May 1 due date falls on a weekend or holiday, applications are due the next business day. These applications must be signed by independent certified public accountant licensed by the Commonwealth.

B. The department shall review all applications for completeness and notify business firms of any errors by no later than June 1. Business firms must respond to any unresolved issues by no later than June 15. If the department does not meet its June 1 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification. The department shall notify all applicants by June 30 as to the amount of applicable credit it is eligible for in the taxable year the request was made.

C. Applications must be made on forms prescribed by the department, and either hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

D. Applicants may only apply for credits that they are otherwise eligible to claim for such taxable year, subject to the limitations provided by 13VAC5-112-40 and 13VAC5-112-130.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-190. Certification to Tax Commissioner in accordance with § 59.1-280 B of the Code of Virginia.**

A. The department shall certify to the Commissioner of the Virginia 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 credits requested by the firm; and forward the certification to the firm, which should make a copy for its records and file original with the applicable state tax return or returns or notify the firm that it fails to qualify for state tax incentives under Part II (13VAC5-112-20 et seq.) of this chapter.

B. Submission of state tax returns. A business firm, upon receipt from the department of the certificate

of its qualification to receive state tax incentives, may file the applicable state tax returns. In order for the Virginia Department of Taxation or the State Corporation Commission to grant the incentive or incentives requested, the appropriate copy of the certificate of qualification must be attached to the firm's tax return.

When a partnership or small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code requests a credit or credits against state individual income tax on behalf of its partners or shareholders, each partner or shareholder must attach to its state individual income tax return a photocopy of the appropriate certificate of qualification received by the firm.

C. Any certification by the department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or the State Corporation Commission shall notify the department in writing upon determining that a business firm is ineligible for such a tax credit.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-200. (Repealed.)**

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; repealed, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

#### **13VAC5-112-210. (Repealed.)**

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; repealed, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

#### **13VAC5-112-220. (Repealed.)**

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; repealed, Virginia Register

Volume 26, Issue 1, eff. October 14, 2009.

**13VAC5-112-230. (Repealed.)**

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; repealed, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

**13VAC5-112-240. (Repealed.)**

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; repealed, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

**13VAC5-112-250. (Repealed.)**

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; repealed, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

Part IV

Procedures for Qualifying for Enterprise Zone Job Creation Grants

**13VAC5-112-260. Effective dates.**

Beginning on July 1, 2005, a business firm shall be eligible to receive enterprise zone job creation grants for the creation of new permanent full-time positions above the threshold number.

Statutory Authority

§ 59.1-541 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-270. Computation of grant amount.**

A. For any qualified business the grant amount is calculated as follows:

1. \$800 per year for up to five consecutive years for each grant-eligible position that is paid a wage rate during the qualification year that is at least of 200% of the federal minimum wage in place during the qualification year, and that is provided with health benefits, or
2. \$500 per year for up to five years for each grant-eligible position that is paid a wage rate during such year that is less than 200% of the federal minimum wage, but at least 175% of the federal

minimum wage or the reduced wage rate threshold if in a high unemployment area, and that is provided with health benefits.

B. A business firm may receive grants for up to a maximum of 350 grant-eligible jobs annually.

C. Job creation grants are based on a calendar year. The grant amount for any permanent full-time position that is filled for less than a full calendar year must be prorated based on the number of full months worked.

1. In cases where a position is grant eligible for only a portion of a qualification year the grant amount will be prorated based on the number of full months the position was grant eligible. This shall include cases where changes in wage rate, health benefits, or the federal minimum wage rate change a position's grant eligibility.

2. In cases where a change in a grant-eligible position's wage rate or the federal minimum wage rate during a qualification year changes the per position maximum grant amount available for that position, the grant amount shall be prorated based on the period the position was paid a minimum of 200% of the federal minimum wage rate and the period the position was paid a minimum of 175% of the federal minimum wage or the reduced wage rate threshold if in a high unemployment area, but less than 200%.

D. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant-eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

E. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 of the Code of Virginia shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

1. Large qualified business firms and large qualified zone residents may qualify for job creation grants pursuant to this section for permanent full-time positions that have been created above the permanent full-time positions as required by their documented negotiation agreement with the department pursuant to subdivision 2 of 13VAC5-112-20.

2. Small qualified business firms may qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time employees in the most recently reported qualification year.

3. Business firms that have previously qualified for department enterprise zone job grants may

qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time positions in the most recently reported qualification year.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 26, Issue 1, eff. October 14, 2009; Volume 26, Issue 22, eff. August 4, 2010.

#### **13VAC5-112-280. Eligibility.**

A. A business firm shall be eligible to receive job creation grants for five consecutive years beginning with the first year of grant eligibility for permanent full-time positions created above the threshold number. Additional permanent full-time positions created during the remainder of years in the grant period are eligible for additional grant funding over the previous year's level or such positions may be used instead to begin a subsequent grant period pursuant to subsection B of this section.

B. A business firm may be eligible for subsequent five consecutive calendar-year grant periods if it creates new grant-eligible positions above the threshold number for its subsequent base year.

1. If a second or subsequent five-year grant period is requested within two years of the previous grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period.

2. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

C. A business firm is eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility.

D. Job creation grants shall be available beginning with calendar year 2005.

E. Any qualified business firm receiving a major business facility job tax credit pursuant to § 58.1-439

of the Code of Virginia shall not be eligible to receive an enterprise zone job creation grant under this section for any job used to qualify for the major business facility job tax credit.

F. The following positions are not grant eligible:

1. Those in retail, personal service or food and beverage service.
2. Those paying less than 175% of the federal minimum wage or that are not provided with health benefits.
3. Notwithstanding subdivision 2 of this subsection, in a high unemployment area those paying less than the reduced wage rate threshold or that are not provided with health benefits.
4. Seasonal, temporary or contract positions.

Statutory Authority

§ 59.1-541 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 26, Issue 22, eff. August 4, 2010; Volume 28, Issue 21, eff. July 18, 2012.

**13VAC5-112-285. Eligibility for reduced wage rate threshold.**

A. Prior to each qualification year, the department shall prepare the list of enterprise zone localities that are high unemployment areas that shall be used in determining eligibility for reduced wage rate thresholds for that qualification year.

B. Qualified business firms located in an enterprise zone listed as a high unemployment area are eligible to use the reduced wage rate threshold (150% of federal minimum wage) in qualifying for the \$500 grant amount.

C. Once a qualified business is eligible for the reduced wage rate threshold it remains so through the end of its current five consecutive calendar-year grant period, regardless of changes to the unemployment rate of the enterprise zone locality.

Statutory Authority

§ 59.1-541 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 26, Issue 22, eff. August 4, 2010.

**13VAC5-112-290. Application submittal and processing.**

A. In order to claim the grant, an application must be submitted to the department on prescribed form or forms. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the business is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to permanent full-time positions, wage rates and provision of health benefits are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for job creation grants as provided for in § 59.1-547 of the Code of Virginia shall be exempt from the attestation requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the department.

E. In order to request job creation grants, business firms shall submit the application form, final attestation report, if an attestation is required, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.

F. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.

G. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection H of this section.

H. The department shall notify the business in writing of any incomplete or missing required documentation or request written clarification from the business firm on information provided by no later than May 15. Business firms must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

I. Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the department determines that funds remain and it will not have to prorate grant awards. At such time, the department will review and process such applications and any applications pursuant to

subsection F of this section on a first-come first served basis.

J. The department shall award job creation grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

K. Applications must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

L. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13VAC5-112-400.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 27, Issue 26, eff. September 28, 2011.

#### **13VAC5-112-300. Accuracy and validity of information.**

A. The department may at any time review qualified zone businesses records related to qualification under this section to assure that information provided in the application process is accurate.

B. Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period.

C. Job creation grants that do not have adequate documentation regarding permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-310. Anti-churning.**

No grant shall be allowed for any permanent full-time position:

1. That a grant under this chapter was previously earned by a related party, as defined by the Internal Revenue Code § 267(b), or a trade or business under common control;
2. Where an employee filling that position was previously employed in the same job function in

Virginia by a related party, or a trade or business under common control;

3. That was previously performed at a different location in Virginia by an employee of the taxpayer, a related party, or a trade or business under common control;

4. That previously qualified for a grant in connection with a different enterprise zone locality on behalf of the taxpayer, a related party, or a trade or business under common control; or

5. That was filled in the Commonwealth of Virginia and the trade or business where that position was located was purchased by another taxpayer.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-320. Qualification in zones whose designation period is ending.**

Business firms located in a zone whose designation period is ending that have qualified by or before the zone expiration date may receive the balance of their five consecutive year incentive period provided they continue to qualify under 13VAC5-112-270 and 13VAC5-112-280. Firms may initiate a five-year grant period based on grant-eligible positions created up to the date of the zone expiration date notwithstanding 13VAC5-112-290. Business firms may not begin additional five-year grant period after the zone expiration date.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part V

#### Procedures for Qualifying for Real Property Investment Grant

#### **13VAC5-112-330. Effective dates.**

Beginning on July 1, 2005, a qualified zone investor shall be allowed a real property investment grant. Units of local, state and federal government or political subdivisions shall not be considered qualified zone investors.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-340. Computation of grant amount.**

A. For any qualified zone investor, the amount of the grant shall be equal to 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility. In the case of the rehabilitation or expansion of an existing building or facility grants shall be equal to 20% of the amount of qualified real property investment in excess of \$100,000. Qualified zone investments are defined as below:

1. Qualified zone investments include expenditures associated with (i) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (ii) excavations; (iii) grading and paving; (iv) installing driveways; and (v) landscaping or land improvements. These can include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.
2. Qualified real property investments do not include:
  - a. The cost of acquiring any real property or building.
  - b. Other costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, 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 connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.
  - c. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by § 267(b) of the Internal Revenue Code, or a trade or business under common control as defined by § 52(b) of the Internal Revenue Code); or (iv) that 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 it was acquired or § 1014(a) of the Internal Revenue Code.

B. For any qualified zone investor making less than \$5 million in qualified real property investment, the cumulative grant will not exceed \$100,000 within any five-year period for any building or facility.

1. In cases where subsequent qualified real property investment within the five-year period results in the total qualified real property investment equaling \$5 million or more then the qualified investor (s) shall be eligible to receive a grant(s) provided that the total of all grants received within the five-year period does not exceed a maximum of \$200,000 per building or facility.

2. In such cases the grant will be available to the qualified zone investor or investors whose qualified real property investment application(s) results in the total qualified real property investment for the building or facility to equal \$5 million or more for the calendar year in which the \$5 million threshold is met. The grant will be equal to 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000 notwithstanding the \$200,000 cap per building or facility pursuant to subsection D of this section.

C. For any qualified zone investor making \$5 million or more in qualified real property investments, the cumulative grant will not exceed \$200,000 within any five-year period for any building or facility.

D. Notwithstanding subsection E of this section, in the case of a building with multiple tenants and/or owners, the maximum amount of the real property investment grant to each tenant and/or owner shall relate to the proportion of the property for the tenant holds a valid lease or the owner has a deed of trust.

1. This maximum shall be determined by the cumulative level of qualified real property investment made within the five consecutive year period. The first five consecutive year period starts with the first real property investment grant issued pursuant to § 59.1-548 of the Code of Virginia.

2. If the total of all qualified real property investments up to and including those made in the current grant year are less than \$5 million then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal to the qualified zone investor's proportion of the building or facility's useable floor space times \$100,000 or 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or

facility, or in the case in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000, whichever is less.

3. If the total of all qualified real property investments up to and including those made in the current grant year are \$5 million or more then the maximum real property investment grant that any one qualified zone investor shall receive shall be equal the qualified zone investor's proportion of the building or facility's useable floor space times \$200,000 or 20% of the amount of qualified real property investment in excess of \$500,000 in the case of the construction of a new building or facility, or in the case of the rehabilitation or expansion of an existing building or facility 20% of the amount of qualified real property investment in excess of \$100,000, whichever is less.

E. The total grant amount per building or facility within a five-year period shall not exceed \$200,000.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 24 Issue 8, eff. January 23, 2008; Volume 26, Issue 1, eff. October 14, 2009.

#### **13VAC5-112-350. Eligibility.**

A. Only office, commercial or industrial or mixed use real property is eligible. A mixed-use building where the office, commercial or industrial use is less than 30% shall not be eligible for this grant.

B. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service provided that:

1. The total amount of the rehabilitation or expansion of depreciable office, commercial or industrial or mixed use real property placed in service during the calendar year within the enterprise zone equals or exceeds \$100,000 with respect to a building or facility.

2. The cost of any newly constructed depreciable office, commercial or industrial or mixed-use real property (as opposed to rehabilitation or expansion) is at least \$500,000 with respect to a building or facility.

C. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the property for which the tenant holds a valid lease.

D. In the case of buildings with a tenant or multiple tenants, such tenant(s) shall request written consent from the owner to apply for the grant.

E. In the case of buildings with a tenant or multiple tenants, such tenants shall coordinate with the owner and all other tenants under this section. Unless other coordination and agreements have been reached by the owner and all tenants, the department will automatically determine the amount of each tenant's real property investment pursuant to 13VAC5-112-340 D.

F. In the case of buildings with multiple owners, such owners shall have written coordination from all other owners. Unless other coordination and agreements have been reached by all owners, the department will automatically determine the amount of each owner's real property investment pursuant to 13VAC5-112-340 D.

G. Units of local, state and federal government or political subdivisions are not eligible to apply for this grant.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

#### **13VAC5-112-360. Qualification in zones whose designation period is ending.**

In the case of zones whose designation period is ending, zone investors must apply for qualified real property investments that were placed in service prior to the zone expiration date to receive a real property investment grant notwithstanding 13VAC5-112-350 B. Zone investors may not qualify for investments made after the zone expiration date.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-370. Intrastate Anti-Piracy Rule.**

Real property investment grants will not be available to assist a Virginia qualified zone investor to relocate from one area of Virginia to another unless there is an increase in employment or building square footage for the qualified zone investor.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-380. Application submittal and processing.**

A. In order to claim the grant an application must be submitted to the department on prescribed form or forms. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the building or facility is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to qualified real property investments are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. In order to request real property investment grants, zone investors shall submit the application form, final attestation report, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.

E. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.

F. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection H of this section.

G. The department shall notify zone investors in writing of any incomplete or missing required documentation or request written clarification from the business firms on information provided by no later than May 15. Zone investors must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

H. Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the department determines that funds remain and it will not have to prorate grant awards. At such time, the department will review and process such applications and any applications pursuant to subsection F of this section on a first-come first served basis.

I. The department shall award real property investment grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

J. Applications must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

K. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13VAC5-112-400.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-390. Accuracy and validity of information.**

A. The department may at any time review qualified zone investors records related to qualification to assure that information provided in the application process is accurate.

B. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

C. Real property investment grants that do not have adequate documentation regarding qualified real property investments may be subject to repayment by the qualified zone investor.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part VI

#### Policies and Procedures for Enterprise Zone Grants

#### **13VAC5-112-400. Allocating enterprise zone grants.**

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone grants provided for in 13VAC5-112-260 and 13VAC5-112-330 to the extent that they apply for and are approved for grant allocations through the department.

B. Upon receiving applications for grants provided for under 13VAC5-112-260 and 13VAC5-112-330, the department shall determine the amount of the grant to be allocated to each eligible business firm and

zone investor.

C. The department shall prioritize allocations to fully fund the grants under 13VAC5-112-260 with any remaining funds to be allocated to grants under 13VAC5-112-330. In such cases, the amount of the grant that each qualified zone investor is eligible for under 13VAC5-112-330 shall be prorated in a proportional manner based on the funds remaining in the annual appropriation after full payment of the grants under 13VAC5-112-260.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 26, Issue 1, eff. October 14, 2009; Volume 26, Issue 22, eff. August 4, 2010.

#### **13VAC5-112-410. Actions of the department.**

Actions of the department relating to the approval or denial of applications for enterprise zone grants under this section shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002 of the Code of Virginia.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part VII

#### Enterprise Zone Designation

#### **13VAC5-112-420. Status of enterprise zones designated prior to July 1, 2005.**

All enterprise zones designated pursuant to §§ 59.1-274, 59.1-274.1, and 59.1-274.2 of the Code of Virginia as those that were in effect prior to July 1, 2005, shall continue in effect until the end of their 20-year designation period. Such zones shall be governed by the provisions of Chapter 49 (§ 59.1-438 et seq.) of Title 59.1, exclusive of § 59.1-542 E of the Code of Virginia.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-430. Eligible applicants for zone designation.**

A. Eligible applicants include the governing body of any county or city.

B. Towns are not eligible applicants. However, county applicants may include acreage in an incorporated town as part of the county's proposed enterprise zone provided that the town is located within the applicant county. In such situations, towns may provide local incentives in addition to the county incentives.

C. Two or more adjacent localities may file a joint application for an enterprise zone.

D. Jurisdictions may apply for more than one enterprise zone designation. This includes the submission of a joint application with other jurisdictions. Each jurisdiction is limited to a total of three enterprise zones.

Statutory Authority

§ 59.1-541 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

**13VAC5-112-440. Zone eligibility requirements.**

A. To be eligible for consideration, an application for an enterprise zone must meet the requirements set out in this section.

B. Enterprise zones may consist of no more than three noncontiguous areas. The size of the enterprise zone shall consist of the total of the acreage of all noncontiguous areas. The maximum combined land area cannot exceed maximum size guidelines set forth in subdivisions C 1, 2, 3 and 4 of this section.

C. All proposed zones shall conform to the following size guidelines:

1. Cities -- minimum: 1/4 square mile (160 acres); maximum: 1 square mile (640 acres) or 7.0% of the jurisdiction's land area or an area that includes 7.0% of the population, whichever is largest. Towns designated as enterprise zones pursuant to former §§ 59.1-274, 59.1-274.1 and 59.1-274.2 of the Code of Virginia shall conform to the size guidelines for cities.
2. Unincorporated areas of counties -- minimum: 1/2 square mile (320 acres); maximum: 6 square miles (3,840 acres).

3. Consolidated cities -- zones in cities the boundaries of which were created through the consolidation of a city and county or the consolidation of two cities shall conform substantially to the minimum and maximum size guidelines for unincorporated areas of counties as set forth in subdivision 2 of this subsection.

4. In no instance shall a zone consist only of a site for a single business firm.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-450. Relationship to federal empowerment zone program.**

For enterprise zones designated by the Governor that have been enlarged to conform with the boundaries of a federal empowerment zone, the state enterprise zone designation shall continue until the expiration of the area's federal empowerment zone designation, unless earlier terminated as provided in this chapter.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part VIII

#### Procedures and Requirements for Zone Designations

#### **13VAC5-112-460. Procedures for zone application and designation.**

A. Upon recommendation of the Director of the Department of Housing and Community Development, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this section. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions or the termination of designations pursuant to 13VAC5-112-510, 13VAC5-112-520, and 13VAC5-112-530 D.

B. Applications for zone designation will be solicited by the department on a competitive basis in accordance with the following procedures and requirements:

1. An application for zone designation must be submitted on Form EZ-1 to the Director, Virginia

Department of Housing and Community Development, 501 North Second Street, Richmond, Virginia 23219, on or before the submission deadline established by the department.

2. Each applicant jurisdiction(s) must hold at least one public hearing on the application for zone designation prior to submission of the application to the department. Notification of the public hearing is to be in accordance with § 15.2-2204 of the Code of Virginia relating to advertising of public hearings. An actual copy of the advertisement must be included in the application.

3. In order to be considered in the competitive zone designation process an application from a jurisdiction(s) must include all the requested information, be accompanied by a resolution(s) of the local governing body(s) and be signed by the chief administrator(s) or the clerk(s) to county board of supervisors where there is no chief administrator. The chief administrator(s) or clerk(s), in signing the application, must certify that the applicant jurisdiction(s) held the public hearing required in subdivision 2 of this subsection.

C. Within 60 days following the application submission deadline, the department shall review and the Director shall recommend to the Governor those applications that meet a minimum threshold standard as set by the department and are competitively determined to have the greatest potential for accomplishing the purposes of the program.

D. Enterprise zones designated pursuant to § 59.1-542 of the Code of Virginia will be designated for an initial 10-year period except as provided for in 13VAC5-112-510 and 13VAC5-112-520. Upon recommendation of the director of the department, the Governor may renew zones for up to two five-year renewal periods.

E. A local governing body whose application for zone designation is denied shall be notified and provided with the reasons for denial.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-470. Procedures and requirements for joint applications.**

A. Two or more adjacent localities may file a joint application for an enterprise zone as provided for in 13VAC5-112-430 and must meet the requirements set out in this section.

B. Localities applying for a joint zone must demonstrate a regional need for an enterprise zone and a

regional impact that could not be achieved through a single jurisdiction zone.

C. Applicants for a joint zone shall also specify what mechanisms will be used to ensure that the economic benefits of such a zone are shared among the applicant localities.

D. A joint enterprise zone shall consist of no more than three noncontiguous zone areas for each participating locality.

E. Each jurisdiction comprising the proposed joint enterprise zone may have the maximum acreage as specified by the size guidelines in 13VAC5-112-440.

F. The applicants may designate one jurisdiction to act as program administrator. The jurisdiction so designated shall be responsible for filing annual reports as provided for in 13VAC5-112-560.

G. In order to submit a joint application, Form EZ-1 must be completed and filed by the jurisdiction acting as program administrator in accordance with the procedures set forth in subdivision B 1 through 3 of 13VAC5-112-460. In addition, a copy of Form EZ-1-JA must be completed by each of the other participating jurisdictions to certify that they are in agreement in filing the joint application. A copy or copies of Form EZ-1-JA must be submitted to the department with Form EZ-1.

H. The applicants must meet all other requirements of these regulations pertaining to applicants. In the case of joint applications, all references to "applicant" and "local governing body" contained in the text of these regulations shall mean the governing body of each participating jurisdiction.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-480. Application considerations.**

A. Consideration for enterprise zone designations shall be based upon the localitywide need and impact of such a designation.

B. Need shall be assessed in part by the following distress factors: (i) the average unemployment rate for the locality over the most recent three-year period, (ii) the average median adjusted gross income for the locality over the most recent three-year period, and (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period. These distress factors shall account for at least 50% of the consideration given to local governments for enterprise zone designation.

C. Local governments submitting applications for enterprise zone designation shall propose local incentives that address the economic conditions within their locality and that will help stimulate real property improvements and new job creation. Such local incentives include, but are not limited to (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of business, professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221 of the Code of Virginia; and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia. The extent and duration of such incentives 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, the application may also contain proposals for regulatory flexibility, including but not limited to, (a) special zoning districts, (b) permit process reform, (c) exemptions from local ordinances, and (d) other public incentives proposed in the locality's application which shall be binding upon the locality upon designation of the enterprise zone.

D. The likely impact of proposed local incentives in addressing the economic conditions within the locality, and in stimulating real property investments and job creation together with the projected impact of state incentives, will be factors in evaluating applications.

E. A locality may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

F. Proposed local incentives may be provided by the local governing body itself or by an assigned agent or agents such as a local redevelopment and housing authority, an industrial development authority, a private nonprofit entity or a private for-profit entity. In the case of a county that includes acreage in an incorporated town(s), the county may designate the governing body of the town(s) to serve as its assigned agent for incentives to be provided by the town(s).

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part IX

#### Procedures for Zone Amendment

#### **13VAC5-112-490. Amendment of approved applications.**

A. A local governing body will be permitted to request amendments to approved applications for zone designation in accordance with the procedures and requirements set out in this section. Each jurisdiction participating in a joint zone may amend their portion of the application, including boundaries and incentives, independently of the other participating jurisdictions.

B. The applicant jurisdiction must be current on the submission of annual reports as set forth in 13VAC5-112-550 in order to amend an approved application.

C. The applicant jurisdiction must hold at least one public hearing on the requested amendment prior to its submission to the department. This public hearing may not have been held more than six months prior to the amendment submission. In the case of a boundary amendment that involves the elimination of area or areas, the applicant jurisdiction must separately notify each property owner and business located within the affected area of the proposed amendment prior to holding the public hearing.

D. A request for an amendment must be submitted to the department on Form EZ-2. This form must be accompanied by a resolution of the local governing body and must certify that the applicant jurisdiction held the public hearing required in subsection C of this section prior to the adoption of the resolution. In the case of a joint application, Form EZ-2 must be completed by the jurisdiction requesting the amendment and must be accompanied by Form EZ-2-JA. This form certifies that the other participating jurisdictions are in agreement in filing the request for amendment.

E. An enterprise zone application may be amended annually, at least 12 months from the last amendment application by the jurisdiction. Amendments may be to the entire application or individual sections such as the boundary or incentives.

F. A zone boundary amendment may not consist of a site for a single business firm or be less than 10 acres.

G. A noncontiguous area(s) may be added to an enterprise zone through a boundary amendment. However, no enterprise zone shall have more than three noncontiguous areas.

H. The total zone acreage resulting from a boundary amendment must conform to the size guidelines set forth in 13VAC5-112-440.

I. Boundary amendments that involve the elimination of area or areas from a zone shall be reviewed on a case-by-case basis with the potential impact on affected businesses and property owners being given primary consideration. Such boundary changes cannot involve more than 15% of the total zone acreage.

J. A county may amend its zone boundaries to include as part of the county's total acreage, acreage in any town located within the county provided it meets the provisions of subsections A through I of this section. This shall not constitute a joint zone and does not provide the town with the ability to make any zone amendments, add noncontiguous areas or give the town its own zone acreage allocation. In such situations, towns may provide local incentives in addition to the county incentives.

K. The department will approve an amendment to local incentives only when the proposed incentive is equal to or superior to that in the original application or any previous amendment approved by the department. The department will approve an amendment of zone boundaries only if the proposed amendment is deemed to be consistent with the purposes of the program as determined by the department.

L. A local governing body that is denied an application amendment shall be provided with the reasons for denial.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-495. Redesignation of certain joint enterprise zones.**

A. Existing joint enterprise zones consisting of two localities may be redesignated for the purpose of expanding the zone provided (i) all of the local governing bodies of the localities in which the proposed redesignated zone will be located have submitted resolutions to the department supporting the proposed redesignation and application for redesignation of the joint enterprise zone and (ii) the area of the locality added to the redesignated zone is contiguous to the existing joint enterprise zone and includes a revenue-sharing district that has experienced the loss of 900 permanent full-time positions within a 12-month period.

B. When a county or city was previously added to an existing enterprise zone to create a joint enterprise zone, the department shall redesignate the enterprise zone when the term of the joint enterprise zone expires. The duration of the enterprise zone redesignated pursuant to this subsection shall be equal to the length of time the original enterprise zone existed before the county or city was added to create the joint enterprise zone.

C. Any redesignation of an existing joint enterprise zone shall be in compliance with all applicable

regulations of the Board of Housing and Community Development.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 27, Issue 26, eff. September 28, 2011; amended, Virginia Register Volume 29, Issue 26, eff. September 26, 2013.

### Part X

#### Procedures for Annual Review

#### **13VAC5-112-500. Annual review of enterprise zones.**

A. Annually, the department will review the performance and effectiveness of each enterprise zone in creating new jobs, encouraging private investment and usage of state incentives based on information provided by the locality(s) in their annual report pursuant to 13VAC5-112-550 and during periodic on-site visit. The department shall notify the locality(s) of any concerns and make recommendations for improvement where necessary.

B. The department shall annually provide enterprise zone localities with a current listing of all qualified business firms, qualified large zone residents and qualified zone investors.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part XI

#### Procedures for Zone Termination

#### **13VAC5-112-510. Failure to provide local program incentives.**

A. If the local governing body or assigned agent(s) is unable or unwilling to provide the specified local incentives as proposed in its application for zone designation or as approved by the department in an amendment the following procedures will apply. In the case of joint applications, these procedures will apply if any local governing body or its assigned agent or agents is unable or unwilling to provide approved local incentives.

B. A local governing body must notify the department in writing within 30 days of any inability or

unwillingness to provide an approved local program incentive.

C. A local governing body will have 60 days after submission of the notice required in subsection B of this section to request an amendment to its application. Such a request shall be filed in accordance with the procedures set forth in 13VAC5-112-490.

D. The department will review requests for amendments in accordance with the requirements set forth in 13VAC5-112-490. Approval of an amendment will allow a zone to continue in operation. If a local governing body fails to provide notice as set forth in subsection B of this section, or has its request for an amendment denied, then the department shall terminate that enterprise zone designation.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### **13VAC5-112-520. Failure to qualify for state incentives.**

If no business firms, large zone residents or zone investors have qualified for incentives as provided for in the Enterprise Zone Grant Act within any five-year period, the department shall terminate that enterprise zone designation.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

### Part XII

#### Procedures for Enterprise Zone Renewal

#### **13VAC5-112-530. Procedures for zone renewal.**

A. Enterprise zones designated pursuant to 13VAC5-112-460 are in effect for an initial 10-year period with up to two five-year renewal periods, except as provided for in 13VAC5-112-510 and 13VAC5-112-520. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment. The following procedures shall be used in considering such an enterprise zone for

renewal.

B. In anticipation of the tenth and fifteen anniversaries of an enterprise zone's designation, the locality (s) shall submit to the department on the prescribed form information regarding, but not limited to, (i) the area conditions; (ii) the continued need for the enterprise zone; (iii) its long-term effectiveness in creating jobs and capital investment. The department shall also consider the locality(s) long-term performance of enterprise zone responsibilities.

C. A jurisdiction that has shown satisfactory performance and effectiveness, or that is making steady improvement in performance and effectiveness or has a continued need for an enterprise zone will be recommended to the Governor by the department for an additional five-year designation period. No enterprise zone designation shall be in effect more than 20 years.

D. A jurisdiction that has shown consistently poor performance and effectiveness or that no longer needs an enterprise zone will not be recommended for renewal and will be notified of such in writing by the department.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

### Part XIII

#### Zone Termination and Incentive Qualification

##### **13VAC5-112-540. Zone termination and incentive qualification.**

A. A zone shall be terminated in accordance with the procedures set forth in 13VAC5-112-510, 13VAC5-112-520 and 13VAC5-112-530 D upon written notice to a local governing body. The date of such notice is considered to be the date of zone termination.

B. Qualified business firms, large qualified zone residents and qualified zone investors located in a terminated zone may continue to request state enterprise zone incentives for any remaining years in the incentive period for which they are eligible as provided for in 13VAC5-112-20, 13VAC5-112-110, 13VAC5-112-260 and 13VAC5-112-330.

C. In the case of qualified business firms and large qualified zone residents qualified under 13VAC5-112-20 and 13VAC5-112-110, the incentive period shall not go beyond 2019.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007; amended, Virginia Register Volume 26, Issue 1, eff. October 14, 2009.

### Part XIV

#### Administrative Requirements

##### **13VAC5-112-550. Annual reporting.**

A. A local governing body shall submit annual reports to the department for the purpose of program monitoring and evaluation. Annual reports shall be submitted to the department on Form EZ-3-AR no later than July 15 of the following year. Annual reports shall include information and data for the purpose of program evaluation as requested on Form EZ-3-AR.

B. The department shall review the effectiveness in creating jobs and capital investment and activity occurring within designated enterprise zones and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Appropriations Committee, and the House Committee on Commerce and Labor. When the potential exists that the annual fiscal limitations on the enterprise zone incentives will be fully utilized, thus triggering their pro rata distribution, the department shall include this information in the annual report.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

##### **13VAC5-112-560. Confidentiality of information.**

Pursuant to § 58.1-3 of the Code of Virginia, except in accordance with proper judicial order or as otherwise provided by law, any employee or former employee of the department shall not divulge any information acquired by him in the performance of his duties with respect to employment, property, or income of any business firm submitted to the department. Any person violating this section shall be guilty of a Class 2 misdemeanor. The provisions of this section shall not be applicable, however, to:

1. Acts performed or words spoken or published in the line of duty under law;
2. Inquiries and investigations to obtain information as to the implementation of this chapter by a

duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged;

3. Disclosures of information to the Department of Taxation or the State Corporation Commission as may be required to implement the provisions of this chapter; or

4. The publication of statistics so classified as to prevent the identification of particular business firms.

#### Statutory Authority

§ 59.1-541 of the Code of Virginia.

#### Historical Notes

Derived from Virginia Register Volume 23, Issue 12, eff. March 21, 2007.

#### FORMS (13VAC5-112)

Tax Credit Qualification Form -- Existing Forms (EZ-6E); revised 2006.

Job Grant Qualification Form (EZ-6J); revised 2006.

Tax Credit Qualification Form -- New Form (EZ-6N); revised 2006.

Investment Tax Credit Qualification Form (EZ-6I); revised 2006.

Application for 2005 Enterprise Designation Form (EZ-1); revised 2004.

Joint Application Agreement Form (EZ-1-JA); revised 2004.

Enterprise Zone Amendment Application (EZ-2); revised 2005.

Joint Amendment Application Agreement Form (EZ-2-JA); revised 2005.

Job Creation Grant Application Form (EZ-JCG); revised 2006.

Real Property Investment Grant Application Form (EZ-RPIG); revised 2006.

Form EZ-3-AR; revised 2006.

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