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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Housing and Community Development |
| Virginia Administrative Code (VAC) citation | 13 VAC 5 -112 |
| Regulation title | Virginia Enterprise Zone Grant Program |
| Action title | Repeal of 13 VAC 5-111-10 through 400 The creation of 13 VAC 5-112 -10 through 560 to implement the Enterprise Zone Grant program created by Chapter 47, 59.1-530 through 59.1-541 of the Code of Virginia and amendments to Sections 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia. |
| Document preparation date | May 16, 2005 |

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The third enactment clause of Chapters 863 and 884 of the 2005 Acts of Assembly direct that the Board of the Department of Housing and Community Development shall promulgate regulations to implement the provisions of the Act to be effective within 280 days of its enactment on July 1, 2005.

The emergency regulations will ensure that the new program can be implemented beginning on July 1, 2005 without a gap in the provision of incentives to qualifying participants.

The emergency regulations will establish the processes and procedures for the provision of the new Real Property Investment Grants and the new Job Creation Grants; establish new enterprise zone administration processes and procedures as provided for in Chapter 47, 59.1-530 through 59.1-541 of the Code of Virginia

The emergency regulations will also establish the process and procedures for providing the Enterprise Zone Business Tax Credit, Enterprise Zone Real Property Investment Tax Credit and the Job Grants as provided for amendments to Sections 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 47, 59.1-533 of the Code of Virginia directs the DHCD Board to promulgate Enterprise Zone Grant Program regulations. This is mandatory.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Enterprise Zone Act (Chapter 22, 59.1-270 through 59.1-284.1 sunsets on July 1, 2005. The 2005 General Assembly passed legislation creating the Enterprise Zone Grant Act (Chapter 47, 59.1-530 through 59.1-541). Amendments were made to Sections 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1 and 59.1-282.2 of the Code of Virginia in order to continue certain aspects of the existing Enterprise Zone Program.

The emergency and final regulations will outline the process and procedures for implementation of all aspects of these legislative actions.

The new program will accomplish several important policy objectives. It will more directly target zone designations to localities with the greatest need and with potential for effectively putting a zone to productive use. It will increase fiscal accountability associated with state incentives and hone in on economic situations that can best benefit from financial incentives.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|------------------------|--|---------------------|-------------------------------|
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New Provisions: 1) Provides processes, procedures and eligibility criteria for business firms to access enterprise zone job creation grants; 2) Provides process, procedures and eligibility for qualified zone investors to access real property investment grants; 3) Outlines how enterprise zone grants will be allocated; 4) Provides processes, procedures and requirements for local governments to use to apply for and receive enterprise zone designations; 5) Outlines the circumstances under which an enterprise zone designation can be terminated; 6) Outlines procedures for localities with enterprise zones to use when amending their zone boundaries or local incentives; 7) Specifies the annual review process for designated zones; 8) Outlines the procedures that will be used to consider renewing designated enterprise zones at the end of 10 and 15 years of zone designation; 9) Outlines the circumstances under which a business or investor can access grants when a zone designation is ending; 10) Outlines the administrative requirements of the Enterprise Zone Program; 11) Outlines the limited circumstances under which qualified zone businesses and qualified zone residents can access enterprise zone tax credits that otherwise will not be available after July 1, 2005 12.) Expands the definition of the term "Business firm" to include additional business and professional organizations and associations.

These regulations are necessary for the welfare of Virginians because they are an essential step in implementing the Enterprise Zone Program, which is designed to help target job creation and investment to Virginia's most distressed communities. Without a regulatory framework the Department of Housing and Community Development cannot administer this program.

Input received during the process of developing final permanent regulations may lead to changes and refinements in the emergency regulations. We are not currently aware of any specific issues that may need to be addressed, but we will respond to any that are identified during the regulatory development process.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The only alternative to this regulatory action would be to take no action to create the regulations necessary to implement the 2005 legislation. This is not a viable option given the legislative directives provided in Chapters 863 and 884 of the 2005 Acts of Assembly.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

There is an indirect positive impact on the family in that one purpose of the program is to create net new jobs in distressed areas of the Commonwealth. Businesses must pay at least at 175 percent of the federal minimum wage in order to qualify for job creation grant. This can encourage economic self-sufficiency and increase disposable family income.

In addition, the emergency regulations will ensure that the new program can be implemented beginning on July 1, 2005 without a gap in the provision of incentives to qualifying participants.