

13 VAC 5-111 VIRGINIA ENTERPRISE ZONE PROGRAM REGULATION

PART I.

DEFINITIONS AND PURPOSE

13 VAC 5-111-10 Definitions

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

“Assumption or acquisition of trade or business” means 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:

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" (for purposes of qualifying for the general tax credit) means the taxable year preceding the first taxable year for which a firm qualifies for state tax incentives under this program. This definition only applies to business firms qualified prior to July 1, 1995 and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995. The following definition applies to businesses applying for enterprise zone incentives on or after July 1, 1995: "Base taxable year" (for purposes of qualifying for the general tax credit) means the lower of two taxable years immediately preceding the first year of qualification, at the choice of the business firm.

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"Base year" (for purposes of qualifying for enterprise zone incentive grants) as provided in Part VI (13 VAC 5-111-210 et seq.) means either of the two calendar years immediately preceding a business firm's first year of grant eligibility, at the choice of the business firm.

"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.

The term "business firm" does not include organizations which are exempt from state income tax on all income except unrelated business taxable income as defined in the federal Internal Revenue Code, § 512; nor does it include homeowners associations as defined in the federal Internal Revenue Code, § 528.

"Business tax credit" means a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia due from a business firm.

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

"Conduct of business" means the active pursuit of economic profit by an on-going concern by providing goods and/or services to others as evidenced by a preponderance of the following: payment of wages and salaries; social security taxes; unemployment taxes; workers compensation taxes; self-employment taxes; local business taxes; maintenance of business records such as those related to sales, shipments, personnel or payroll.

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

"Develop" means to make improvements to land through the construction, conservation, repair, restoration, rehabilitation, conversion, alteration, enlargement or remodeling of a structure or structures to accommodate the principal use to which the land is or will be put. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone

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incentives offered prior to July 1, 1995. Businesses applying for enterprise zone tax credits on or after July 1, 1995, shall use the term qualified zone improvements for purposes of qualification for credits under § 59.1-280 of the Code of Virginia.

"Employee of a zone establishment" means a person employed by a business firm who is on the payroll of the firm's establishment or establishments within the zone. In the case of an employee who is on the payroll of two or more establishments of the firm, both inside and outside the zone, the term "employee of a zone establishment" refers only to such an employee assigned to the firm's zone establishment or establishments for at least one-half of his normally scheduled work days.

"Enterprise zone incentive grant" or "grant" means a grant provided for creating permanent full-time positions pursuant to § 59.1-282.1 of the Code of Virginia.

"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.

"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.

"Expansion" means an increase in square footage or the footprint of an existing building via a shared wall, or enlargement of an existing room or floor plan.

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~~"Family" means (i) one or more persons living in a single residence who are related by blood, marriage or adoption. A stepchild or stepparent shall be considered to be related by marriage; (ii) one or more persons not living in the same residence but who were claimed as a dependent on another person's federal Income Tax Return for the previous year shall be presumed, unless otherwise demonstrated, part of the other person's family; or (iii) an individual 18 or older who receives less than 50% of his support from the family, and who is not the principal earner nor the spouse of the principal earner, shall not be considered a member of the family. Such an individual shall be considered a family of one.~~

"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.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters.

~~"Family income" means all income actually received by all family members over 16 from the following sources:~~

- ~~1. gross wages and salary (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 (OASI), 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 family income:~~

- ~~1. non-cash benefits such as food stamps and housing assistance;~~
- ~~2. public assistance payments;~~
- ~~3. disability payments;~~

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~~4. unemployment and employment training benefits;~~

~~5. capital gains and losses; and~~

~~6. one time unearned income.~~

~~When computing family income, income of a spouse and/or other family members shall be counted for the portion of the income determination period that the person was actually a part of the family.~~

~~"Household income" means all income actually received by all household members over the age of 16 from the following sources:~~

~~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 (OASI), 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. Non-cash 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.~~

~~"Family size" means the largest number of family members during the income determination period.~~

~~"First year of grant eligibility" means the first calendar year for which a business firm was both eligible~~

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~~and applied for an enterprise zone incentive grant.~~

"Household size" means the largest number of household members during the income determination period.

"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 job grant amount. A full month is calculated by taking the total number of days in a calendar year (365) and dividing that number by 12. Therefore, a full month for the purpose of calculating job grants is equivalent to 30.416666.

"Full-time employee" means a person employed by a business firm who is normally scheduled to work at least 35 hours per week during the firm's payroll period or 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. The term "full-time employee" does not include unpaid volunteer workers, leased employees or contract labor. This definition only applies to business firms qualified prior to July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives offered prior to July 1, 1995.

Businesses applying for enterprise zone tax credits on or after July 1, 1995, shall use the term permanent full-time employee for purposes of qualification pursuant to 13 VAC 5-111-90.

"Grant year" means the calendar year for which a business firm applies for an enterprise zone incentive grant pursuant to § 59.1-282.1 of the Code of Virginia.

"Gross receipts attributable to the active conduct of trade or business within an enterprise zone" means all receipts of the business firm arising from the firm's activities or from the investment and use of the firm's capital in its establishment or establishments within the zone. The proportion of gross receipts arising from the firm's activities or from its investment and use of capital within the zone shall be calculated by dividing the total expenses of the firm's establishment or establishments within the zone by the firm's total expenses both inside and outside the zone.

1. This calculation must be used to allocate and apportion taxable gross receipts against which state

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franchise or license tax credits may be claimed (see 13 VAC 5-111-50 C).

2. This calculation may not be used to allocate and apportion Virginia Taxable Income against which state corporate and individual income tax credits may be claimed or taxable net capital against which state franchise tax credits may be claimed.

"High investment/limited job creation qualified business firm" means a qualified business firm making qualified zone investments of \$50 million or more when such qualified zone investments result in the creation of fewer than 50 permanent full-time positions.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired.

"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.

"Jurisdiction" means the county, city or town which made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application.

"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 fifty permanent full-time positions.

"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.

"Local zone administrator" means the chief executive of the county, city, or town in which an enterprise zone is located, or his or her designee.

"Low-income person" means a person who is employed in a permanent full-time position with a business firm in an enterprise zone that is seeking qualification for enterprise zone incentives and whose

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familyhousehold income was less than or equal to 80% of area median familyhousehold 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.

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

~~"Metropolitan central city" means a city so designated by the U.S. Office of Management and Budget.~~

"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 non-zone location or locations is less than it was before the zone location occurred.

"New construction" means a single, nonresidential facility built on previously undeveloped land or a 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

"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.

"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.

"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 thirty –five hours per week for the entire normal year of the business

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firm's operations, which normal year must consist of at least forty-eight weeks, (ii) a minimum of thirty-five 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 qualified after July 1, 1995, and only for the purpose of qualifying for enterprise zone incentives pursuant to 13 VAC 5-111-70.

"Permanent full-time position" means a job of indefinite duration at a business firm located in an enterprise zone, requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of thirty-five hours of an employee's time a week for the entire normal year of the business firm's operations, which normal year must consist of at least forty-eight weeks, (ii) a minimum of thirty-five hours of an employee's time a 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. Seasonal, temporary, leased or contract labor positions, or a position created when a job function is shifted from an existing location in this Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions. This definition only applies to business firms qualified after July 1, 1995, and only for the purpose of qualifying for zone incentive grants pursuant to 13 VAC 5-111-210.

"Placed in service" means (i) the final certificate of occupancy has been issued by the local jurisdiction for real property improvements; or (ii) the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or (iii) in the case of tools and equipment it means the

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first moment they are used in the performance of duty or service.

"Qualified business firm" means a business firm meeting the business firm requirements in 13 VAC 5-111-30 or 13 VAC 5-111-90 and designated a qualified business firm by the department.

"Qualified zone improvements" 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.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery,

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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) which was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code §267 (b), or a trade or business under common control, as defined by Internal Revenue Code §52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired it, or Internal Revenue Code § 1014 (a).

"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.

"Real property improvements tax credit" means a credit provided to a small qualified zone resident pursuant to § 59.1-280.1 C of the Code of Virginia.

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage.

"Redetermined base year" means the base year for calculation of the number of eligible permanent full-time positions in a second or subsequent three-year grant period. If a second or subsequent three-year grant period is requested within two years after the previous three-year period, the redetermined base year

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will be the last grant year. The calculation of this redetermined base year will be determined by the number of positions in the preceding base year, plus the number of threshold positions, plus the number of permanent full-time positions receiving grants in the final year of the previous grant period. If a business firm applies for subsequent three-year periods beyond the two years immediately following the completion of a three-year grant period, the firm shall use one of the two preceding calendar years as the base year, at the choice of the business firm.

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

"Report for work" means that for the majority of a permanent full-time position's scheduled work week, the employee filling that position works ~~at a single physical location within an enterprise zone.~~ at a qualified business' enterprise zone establishment.

"Seasonal employment" 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 or a high investment/limited job creation qualified business firm.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident.

"Single facility" means one or more buildings constructed simultaneously at a single physical location within an enterprise zone and are all necessary to facilitate the conduct of the same trade or business.

This definition only applies to new construction.

"Surplus public land" means land within a zone which is owned ~~by the Commonwealth or~~ by a unit of local government and which meets the following standards.

1. ~~In the case of land owned by a unit of local government, (i)~~ the land is not being used for a public

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purpose nor designated or targeted for a specific public use in an adopted land use plan, facilities plan, capital improvements plan or other official public document; ~~(ii)~~

~~2.~~ no tangible harm would be incurred by the unit of local government if the land were eliminated from its holdings; and

~~(iii)~~ ~~3.~~ sale of the land would not violate any restriction stated in the deed.

~~2. In the case of land owned by agencies of the Commonwealth, except land acquired by the Virginia Department of Transportation for the construction of highways, the land has been determined to be surplus to the Commonwealth in accordance with criteria and procedures established pursuant to §§ 2.1-504 through 2.1-512, of the Code of Virginia.~~

~~3. In the case of land acquired by the Virginia Department of Transportation for the construction of highways, the land has been determined to be surplus to the needs of the State Highway Commission and the Commonwealth in accordance with criteria and procedures established pursuant to §§ 33.1-93, 33.1-149 and 33.1-154, of the Code of Virginia. The State Transportation Commission, prior to determining that land surplus to its needs is also surplus to the Commonwealth, may make such land available to other State agencies in accordance with procedures established pursuant to §§ 2.1-504 through 2.1-512, of the Code of Virginia.~~

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission.

"Tax year" means the year in which the assessment is made.

~~"Taxable event" means any act or failure to act that results in a tax liability for the business firm. The following shall not constitute a taxable event: any exchange, merger, consolidation, disposition of assets or other corporate reorganization that occurs under the federal non-recognition rules.~~

"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.

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"Threshold number" means 110 percent of the number of permanent full-time positions in the base year for the first three-year period in which a business firm is eligible for an enterprise zone incentive grant. For a second and any subsequent three-year period of eligibility, the threshold means 120 percent of the number of permanent full-time positions in the applicable base year as redetermined for the subsequent three-year period. If such number would include a fraction, the threshold number shall be the next highest integer. Where there are no permanent full-time positions in the base year, the threshold will be zero.

"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.

"Unit of local government" means any county, city or town. Special-purpose political subdivisions, such as redevelopment and housing authorities and industrial development authorities, are not units of local government.

"Wholly owned pass through entity" means an entity that is owned entirely by an operating company and is not itself subject to income tax, and passes items of income, deductions, and other tax attributes through to the operating company.

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

"Zone 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.

"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.

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13 VAC 5-111-20 Purpose of program.

The purpose of the Virginia Enterprise Zone Program is to stimulate business and industrial growth which would result in neighborhood, commercial and economic revitalization by means of regulatory flexibility and tax incentives. This program is to be directed to areas of the Commonwealth that need special governmental attention to attract private sector investment.

PART II

BUSINESS FIRM REQUIREMENTS FOR BUSINESSES QUALIFYING PRIOR TO JULY 1, 1995

13 VAC 5-111-30 Requirements for becoming a qualified business firm.

- A. In order to become qualified for the purpose of receiving state tax incentives, a business firm must meet the requirements of subsection B or C of this section.
- B. Requirements for new firms. A business firm which begins the operation of a trade or business within a zone after the date of zone designation must meet the following requirements: (i) at least 50% of its gross receipts earned during the taxable year for which state tax incentives are requested must be attributable to trade or business conducted within the zone; and (ii) at least 40% of the average number of full-time employees of its zone establishment or establishments must be low-income persons.
- C. Requirements for existing firms. A business firm which is engaged in the conduct of a trade or business in a zone at the time of zone designation must meet the following requirements: (i) at least 50% of its gross receipts earned during the taxable year for which state tax incentives are requested must be attributable to trade or business conducted within the zone; (ii) the average number of full-time employees of its zone establishment or establishments must be at least 10% greater than the average for the base taxable year; and (iii) at least 40% of such increase must be low-income persons.

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PART III.

BUSINESS FIRM PROCEDURES FOR BUSINESSES QUALIFYING PRIOR TO JULY 1, 1995

13 VAC 5-111-40 Procedures for becoming a qualified business firm.

- A. In order to become qualified for the purpose of receiving state tax incentives under this program, a new business firm must submit to the department Form EZ-4N stating that it meets the requirements of 13 VAC 5-111-30 B. An existing business firm must submit Form EZ-4E stating that it meets the requirements of 13 VAC 5-111-30 C. These forms must be prepared by an independent certified public accountant (CPA) licensed by the Commonwealth.
- B. Proof of qualification. Form EZ-4N or Form EZ-4E, when completed and signed by an independent CPA, shall be prima facie evidence that a business firm is qualified to receive state tax incentives 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 this section.
- C. Determination of employee low-income status - In determining whether a business firm meets the requirements of 13 VAC 5-111-30 B or C, an independent CPA may accept a signed statement from an employee affirming that he meets the definition of a low-income person.
- D. Annual submission of form. A business firm must submit either Form EZ-4N or Form EZ-4E for each year in which state tax incentives are requested. Form EZ-4N or Form EZ-4E must be submitted to the department no later than 30 calendar days prior to the firm's normal or extended deadline for filing a return for state corporate income tax, state individual income tax, state franchise or license tax on gross receipts, or state franchise tax on net capital.
- E. Certification by the department. Within 14 calendar days of receipt of Form EZ-4N or Form EZ-4E, the department will:

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1. Review the form;
2. 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
3. Forward three copies of the certification to the firm (one copy for the firm's records and two copies to be filed with the applicable state tax returns) or notify the firm that it fails to qualify for state tax incentives under 13 VAC 5-111-30.

F. Submission of state tax returns. A business firm, upon receipt from the department of copies 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.

G. 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. 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.

H. Time limits for receiving Virginia state tax incentives. Businesses that began operations before July 1, 1992, are eligible to receive five years of tax incentives beginning with the first taxable year in which the

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firm qualifies. Businesses that began operations after July 1, 1992, are eligible to receive tax incentives for ten years beginning with the first taxable year in which they qualify. If a firm fails to become qualified for any taxable year during its qualification period, it forfeits the right to request state tax incentives for that year. However, the firm is eligible to become qualified for any remaining years of its five-or ten-year cycle.

I. Prohibition on requalification due to reorganization of a firm. A business firm may not qualify for State tax incentives for more than its qualification period by reorganizing or changing its form in a manner that does not alter the basis of the firm's assets or result in a taxable event.

13 VAC 5-111-50 Procedures for requesting state tax incentives.

A. A business firm shall submit annually to the department, along with Form EZ-4N or Form EZ-4E, a statement requesting one or more of the state tax incentives provided for in this section. In the case of a partnership or a small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code, the statement requesting state tax incentives shall include the name, address and social security number of each partner or shareholder requesting a credit or credits against state individual income tax as provided for in subsection C of this section.

B. State corporate income tax credits. A qualified business firm subject to the corporate income tax under Article 10 (§58.1 - 400 et seq.) of Chapter 3, Title 58.1, of the Code of Virginia, may request credits against any such tax due. Corporate income tax credits shall not extend for more than five consecutive tax years for firms that began operations before July 1, 1992, or ten consecutive tax years for firms that began operations after July 1, 1992.

The sum of the corporate income tax credits claimed under this section shall not exceed the business firm's state corporate income tax liability. Corporate income tax credits shall apply only to taxable income attributable to the conduct of business within a zone. A business firm having taxable income from business activity both inside and outside a zone shall allocate and apportion its taxable income

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attributable to the conduct of business in accordance with the procedures contained in §§ 58.1-406 through 58.1-420, of the Code of Virginia.

1. General credit - A credit may be claimed against corporate income tax liability for each of five or ten consecutive years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future years.

2. Unemployment tax credit - A credit may be claimed against corporate income tax liability for each of five or ten consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of such tax due for the second tax year; 40% of such tax due for the third tax year; 20% of such tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unemployment tax credit may only be claimed against the amount of taxable corporate income remaining after the subtraction of any general credit claimed under subdivision 1 of this subsection. An unused unemployment tax credit may be applied to future tax years within the five- to ten-year period established by subdivision C 2 of this section.

C. State individual income tax credits. A qualified business firm which is subject to state individual income tax under Article 2 (§58.1 - 320 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia, may request credits against any such tax due. Individual income tax credits shall not extend more than five consecutive tax years for firms beginning operations before July 1, 1992, or ten consecutive tax years for firms beginning operations after July 1, 1992. The sum of the individual income tax credits claimed under § 59.1-280 of the Code of Virginia shall not exceed the business firm's state individual income tax

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liability. When a partnership or a small business corporation electing to be taxed under Subchapter S of the federal Internal Revenue Code is eligible for this tax credit, each partner or shareholder may request the credit on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively.

Individual income tax credits shall apply only to taxable income attributable to the conduct of business within a zone. A business firm having taxable income from business activity both inside and outside the zone shall allocate and apportion its taxable income attributable to conduct of business in accordance with the same procedures set forth for corporations subject to corporate income tax, as contained in §§ 58.1-406 through 58.1-420, of Title 58.1 of the Code of Virginia.

1. General credit. A credit may be claimed against individual income tax liability for each of the five or ten consecutive tax years in an amount equaling: Firms beginning operations before July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future tax years.

2. Unemployment tax credit. A credit may be claimed against individual income tax liability for each of the five or ten consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years.

An unemployment tax credit may only be claimed against the amount of taxable individual income remaining after the subtraction of any general credit claimed under subdivision 1 of this subsection. An unused employment tax credit may be applied to future tax years within the five- or ten-year period

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established by subdivision 2 of this subsection.

D. Credits against state franchise or license tax on gross receipts. A qualified business firm which is subject to state franchise tax on gross receipts or state license tax on gross premium receipts may request a credit against any such tax due. Credits against state franchise ~~of~~or license tax on gross receipts shall not extend for more than five consecutive tax years for firms beginning operations before July 1, 1992, or ten consecutive tax years for firms beginning operations after July 1, 1992. The sum of the credits against state franchise or license tax on gross receipts claimed under this section shall not exceed the business firm's state franchise or license tax liability. Credits against state franchise or license tax on gross receipts shall apply only to taxable gross receipts attributable to the active conduct of trade or business within a zone. A business firm having taxable gross receipts from business activity both inside and outside the zone shall allocate and apportion its taxable gross receipts attributable to conduct of business in accordance with the procedures outlined in the definition for "gross receipts attributable to the active conduct of a trade or business within an "enterprise zone".

1. General credit. A credit may be claimed against tax liability on gross receipts for each of the five or ten consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future tax years.

2. Unemployment tax credit. A credit may be claimed against tax liability on gross receipts for each of the five or ten consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of such tax due for the second tax year; 40% of such tax due for the third tax year; 20% of such tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due

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for the first tax year; 60% of the tax due for the second through tenth tax years. An unemployment tax credit may only be claimed against the amount of taxable individual income remaining after the subtraction of any general credit claimed under subdivision E 1 of this subsection. An unused unemployment tax credit may be applied to future tax years within the five or ten-year period established by this part.

E. Credits against state franchise tax on net capital. A qualified business which is subject to state franchise tax on net capital may request credits against any such tax due. Credits against state franchise tax on net capital shall not extend for more than five consecutive tax years for firms beginning operations before July 1, 1992, or ten consecutive tax years for firms beginning operations after July 1, 1992.

1. General credit. A credit may be claimed against tax liability on net capital for each of the five or ten consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second tax year; 40% of the tax due for the third tax year; 20% of the tax due for the fourth and fifth tax years. Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unused tax credit may not be applied to future tax years.

2. Unemployment tax credit. A credit may be claimed against tax liability on net capital for each of the five or ten consecutive tax years in an amount equaling: firms beginning operations before July 1, 1992; 80% of the state unemployment tax due on employees of zone establishments for the first tax year; 60% of such tax due for the second tax year; 40% of such tax due for the third tax year; 20% of such tax due for the fourth and fifth tax years.

Firms beginning operations after July 1, 1992; 80% of the tax due for the first tax year; 60% of the tax due for the second through tenth tax years. An unemployment tax credit may only be claimed against the amount of taxable net capital remaining after the subtraction of any general credit claimed under subdivision 1 of this subsection. Any unused unemployment tax credit may be applied to future tax years

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within the qualification period established by subdivision 2 of this subsection.

3. State sales and use tax exemption. A qualified business firm may request an exemption from State taxes on all items purchased or leased for the conduct of trade or business within a zone as required under §§ 58.1-600 et seq., of the Code of Virginia: This exemption applies only to the state portion of the sales and use tax and not to any portion of the tax levied under local option. A business firm in its statement to the department requesting an exemption shall specify the amount of state sales and use tax actually paid during the year for which the exemption is claimed. The Virginia Department of Taxation shall review the amount requested and make an appropriate refund to the firm. State sales and use tax exemptions shall not extend for more than five consecutive tax years.

G. Notification to localities of requests for state tax incentives. The department shall forward to the local governing body of the jurisdiction in which the zone is located: (i) a copy of the business firm's statement requesting state tax incentives; and (ii) the department's determination that the firm is qualified or not qualified to receive such incentives in accordance with the requirements of 13 VAC 5-111-30.

13 VAC 5-111-60 Allowance for business firms qualified prior to July 1, 1995 to use other enterprise zone incentives.

Business firms already qualified prior to July 1, 1995, may apply for both the real property tax credits provided by Part V (13 VAC 5-111-140 et seq.) and enterprise zone incentive grants provided in Part VI (13 VAC 5-111-210 et seq.), provided the appropriate provisions are met. However, businesses qualified prior to July 1, 1995, are not eligible for additional general tax credit periods other than those previously qualified for. In addition, these businesses shall not be subject to inclusion in the \$16 million limitation set forth in 13 VAC 5-111-85 A or the \$3 million limitation set forth in 13 VAC 5-111-85B.

PART IV.

BUSINESS FIRM PROCEDURES FOR BUSINESSES QUALIFYING FOR GENERAL TAX CREDIT

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ON OR AFTER JULY 1, 1995

13 VAC 5-111-70 Effective dates.

Beginning on and after July 1, 1995, but before ~~January~~ July 1, 2005, a small qualified business firm 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 ten 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.

13 VAC 5-111-80 Calculation of credit.

A. The amount of credit allowed shall not exceed the tax imposed for such taxable year. 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.

C. For large qualified business firms, the percentage amounts of the income tax credits available to such qualified business firms under 13 VAC 5-111-70 shall be determined by agreement between the department and the qualified business firm. The negotiated percentage amount shall not exceed the percentages specified in 13 VAC 5-111-70.

D. For high investment/limited job creation qualified business firms, the percentage amounts of business tax credit available to such firms under 13 VAC 5-111-70 shall be determined by agreement between the

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department and the high investment/limited job creation qualified business firm, provided that (i) the amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C and (ii) it can be demonstrated that the amount of the business tax credits shall not exceed the amount that will be recovered by the Commonwealth through the revenues generated from new state income taxes resulting from the new permanent full-time positions within a five-year period. The demonstration required by clause (ii) shall be based on an analysis conducted by the department or its designee using information provided by the high investment/limited job creation qualified business firm. The negotiated percentage amount shall not exceed the percentages specified in 13 VAC 5-111-70.

~~D.E.~~ 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

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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 which 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.F. 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 which may be requested each year shall be subject to the limitations provided by 13 VAC 5-111-70 and 13 VAC 5-111-170 A.

F.G. In the event that a taxpayer who is subject to the annual fiscal limitation imposed pursuant to subsection E of this section and is also allowed another credit pursuant to another section of the Code of Virginia, such taxpayer shall be considered to have first utilized any credit allowed which does not have a

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carry forward provision, and then any credit which is carried forward from a preceding taxable year, prior to utilization of any credit granted pursuant to this section.

13 VAC 5-111-85 Annual Fiscal Limitations.

A. Except as provided in subdivision B1 of § 59.1-280.2 of the Code of Virginia, the total amount of (i) business tax credits granted to small qualified business firms in 13 VAC 5-111-70 and (ii) real property investment tax credits granted to small qualified zone residents in 13 VAC 5-111-150 for the Commonwealth's fiscal year ending June 30th as provided for in § 59.1-280A of the Code of Virginia shall not exceed \$16 million.

B. Except as provided in subdivision B1 of § 59.1-280.2 of the Code of Virginia, the total amount of (i) business tax credits granted to large qualified business firms in 13 VAC 5-111-80 C and (ii) real property investment tax credits granted to large qualified zone residents in 13 VAC 5-111-170 for the Commonwealth's fiscal year ending June 30th as provided for in § 59.1-280A of the Code of Virginia shall not exceed \$3 million.

C. If the total amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280.1 of the Code of Virginia exceeds \$16 million in any fiscal year in which the amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D of § 59.1-280.1 of the Code of Virginia is less than \$3 million, then the amount of tax credits available to such small qualified business firms and small qualified zone residents shall be increased by the amount by which the tax credits for such large qualified business firms and large qualified zone residents are eligible is less than \$3 million.

D. If the total amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D

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of § 59.1-280.1 of the Code of Virginia exceeds \$3 million in any fiscal year in which the amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280.1 of the Code of Virginia is less than \$16 million, then the amount of tax credits available to such large qualified business firms and large qualified zone residents shall be increased by the amount by which the tax credits for such small qualified business firms and small qualified zone residents are eligible is less than \$16 million.

13 VAC 5-111-90 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 eighty percent 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 the lower of the two preceding taxable years' employment with no less than 25% (except for businesses qualifying

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prior to July 1, 1997, when it shall be no less than 40%) of such increase being employees who have incomes below eighty percent 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 13 VAC 5-111-120.

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 lower of two preceding 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 eighty percent 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. A business firm that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations must meet the requirements for qualification described in subdivision 3 of this section and 13 VAC 5-111-120.

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, or 2, ~~and~~or 3 of this section, 13 VAC 5-111-100, and 13 VAC 5-111-120.

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 13

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VAC 5-111-120.

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 13 VAC 5-111-80 C prior to seeking initial qualification under this section.

~~8-9.~~ The business firm must certify annually to the Department of Housing and Community Development 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 13 VAC 5-111-70.

13 VAC 5-111-95 Qualifying for General Income Tax Credits in zones whose designation period is ending.

A. Small qualified business firms located in a zone whose designation period is ending must begin their ten consecutive year incentive period prior to the zone termination date by qualifying under 13 VAC 5-111-90 for a tax year that ends prior to the zone termination date. Small qualified businesses that have qualified under 13 VAC 5-111-90 by or before that date may receive the remainder of their incentive period provided they continue to qualify under 13 VAC 5-111-90.

B. Large qualified business firms and high investment/low employment qualified business firms with a documented negotiated agreement with the department that are located in a zone whose designation

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period is ending may begin their incentive period after zone termination. Large qualified businesses that have qualified under 13 VAC 5-111-90 before the zone termination date may receive the remainder of their incentive period provided they continue to qualify under 13 VAC 5-111-90. In both cases, the incentive period shall be for ten consecutive years or until the negotiated credit amount is reached, which ever is sooner.

13 VAC 5-111-100 Application submittal and processing.

~~A. Any business firm who qualifies for general tax credits on or after July 1, 1995, and whose taxable year ends on or before December 31, 1995, shall submit an application requesting a general tax credit to the department by no later than May 1, 1996.~~

~~B. For taxable years ending after December 31, 1995, and on or before January 1, 1997, applications requesting a general tax credit shall be submitted to the department by no later than May 1, 1997.~~

C. A. For taxable years thereafter, for any tax year that ends For tax years that end on or after January 1 and 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.

~~D. B.~~ Any business firm which is interested in amending past tax returns in order to qualify for and receive general tax credits 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. ~~Because this credit was not available prior to July 1, 1995, business firms cannot request or amend returns for tax years prior to 1995.~~

~~E. 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

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15.

~~F.-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.

~~G.-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.

~~H.-F.~~ Applicants may only apply for credits which they are otherwise eligible to claim for such taxable year, subject to the limitations provided by 13 VAC 5-111-80 A and 13 VAC 5-111 170 A.

~~I.-G.~~ Prohibition on requalification due to reorganization of a firm. A business firm may not qualify for a tax credit pursuant to 13 VAC 5-111-70 for more than its qualification period by reorganizing or changing its form in a manner that does not alter the basis of the firm's assets or result in a taxable event. 13 VAC 5-111-110 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 two copies of the certification to the firm one copy for the firm's records and one copy to be filed with the applicable state tax return or returns or 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 copies 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

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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. 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.

13 VAC 5-111-120 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 location 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.

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B. A new permanent full-time position which 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.

13 VAC 5-111-130 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.

PART V.

PROCEDURES FOR QUALIFYING FOR REAL PROPERTY IMPROVEMENT TAX CREDIT AND
ZONE INVESTMENT TAX CREDIT

13 VAC 5-111-140 Effective dates.

For taxable years beginning on and after July 1, 1995, but before ~~January~~July 1, 2005, a qualified small zone resident shall be allowed a real property improvement 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.

13 VAC 5-111-150 Computation of credit.

A. For any small qualified zone resident, the amount of credit earned shall be equal to 30% of the qualified zone improvements and shall be refundable. However, in no event shall the cumulative credit allowed to a small qualified zone resident exceed \$125,000 dollars in any five-year period. An unused tax credit may not be applied to future years. Any credit not useable for the taxable year the credit was

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allowed shall not be carried back to a preceding taxable year. Any credit determined in accordance with this subsection that exceeds the tax liability for the taxable year it is requested shall be refunded to the taxpayer subject to the limitations contained in subsection C of this section.

B. Qualified zone improvements shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party, or a trade or business under common control; or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

C. The credits provided for in this section and in 13 VAC 5-111-70 for small qualified businesses are subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in §§ 59.1-280.1 C and 59.1-280.2 B1 of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation the taxpayer shall be granted a pro rata amount by the department, determined in accordance with 13 VAC 5-111-85 A.

D. If the total amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280.1 of the Code of Virginia exceeds \$16 million in any fiscal year in which the amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D of § 59.1-280.1 of the Code of Virginia is less than \$3 million, then the amount of tax credits available to such small qualified business firms and small qualified zone residents shall be increased by the amount by which the tax credits for such large qualified business firms and large qualified zone residents are eligible is less than \$3 million.

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13 VAC 5-111-160 Eligibility.

A. A business firm is eligible to receive a credit for real property improvements for the tax year that the property was placed in service provided:

1. The total amount of the rehabilitation or expansion of depreciable nonresidential real property placed in service during the taxable year within the enterprise zone equals or exceeds \$50,000 and the assessed value of the original facility immediately prior to rehabilitation or expansion. In the case of real property where more than one tenant conducts business in the building, a tenant seeking to qualify for the real property improvement tax credit shall use a proration based on the amount of square footage they occupy of the total building square footage to determine their portion of the assessed value of the building.

2. The cost of any newly constructed depreciable nonresidential real property (as opposed to rehabilitation or expansion) is at least \$250,000 with respect to a single facility. For purposes of this subparagraph, land, land improvements, paving, grading, driveway and interest shall not be deemed to be qualified zone improvements.

B. In cases of real property with mixed residential and nonresidential use, only the square footage related to the nonresidential use shall be eligible for the real property improvement tax credit. A proration based on the amount of square footage the nonresidential use occupies of the total building square footage must be used in determining qualification as it relates to A 1 or 2 of this section.

C. The business firm must certify to the Department of Housing and Community Development on 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

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the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to 13 VAC 5-111-150 A.

13 VAC 5-111-162 Eligibility in zones whose designation period is ending.

Business firms located in a zone whose designation period is ending must qualify under 13 VAC 5-111-160 for a tax year ending prior to the zone termination date. Firms may not qualify for any additional tax credits under this section after the zone termination date.

13 VAC 5-111-165 Intrastate Anti-Piracy Rule

Real property improvement tax credits will not be available to assist a Virginia firm to relocate from one area of Virginia to another unless there is an increase in employment, investment in machinery or equipment, or building square footage for the firm.

13 VAC 5-111-170 Zone Investment Tax Credits.

A. A large qualified zone resident shall be eligible for a credit in an amount of up to 5% of the qualified zone investments in lieu of the credit provided for in 13 VAC 5-111-150 A. The zone 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. The use of zone investment tax credits may be initiated in accordance with 13 VAC 5-111-190 once the job creation and investment identified in the negotiation have been completed.

B. The percentage amount of the zone investment tax credit granted to a large qualified zone resident shall be determined by agreement between the department and the large qualified zone resident, provided such percentage amount does not exceed 5%.

C. The percentage amounts of the business income tax credit provided in 13 VAC 5-111-80 C which 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 13 VAC 5-111-80 C.

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D. The credits provided for in this section and in 13 VAC 5-111-80 C for large qualified businesses are subject to annual fiscal limitations based on the Commonwealth's fiscal year ending June 30th as provided for in §§ 59.1-280.1 D and 59.1-280.2 B2 of the Code of Virginia. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation the taxpayer shall be granted a pro rata amount by the department, determined in accordance with 13 VAC 5-111-85 B. In the event that taxpayer requests exceed the Commonwealth's annual fiscal limitation, each taxpayer shall be granted a pro rata credit as determined by the department. The amount of such prorated grant shall be determined by applying a fraction, the numerator of which shall be the gross credit 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 fiscal limitation. The credit which may be requested each year shall be subject to the limitation provided by subsection A of this section.

E. If the total amount of tax credits for which large qualified business firms are eligible under subsection D of § 59.1-280 of the Code of Virginia and large qualified zone residents are eligible under subsection D of § 59.1-280.1 of the Code of Virginia exceeds \$3million in any fiscal year in which the amount of tax credits for which small qualified business firms are eligible under subsection C of § 59.1-280 of the Code of Virginia and small qualified zone residents are eligible under subsection C of § 59.1-280.1 of the Code of Virginia is less than 16 million dollars, then the amount of tax credits available to such large qualified business firms and large qualified zone residents shall be increased by the amount by which the tax credits for such small qualified business firms and small qualified zone residents are eligible is less than \$16 million.

F. In the event that a taxpayer who is subject to the annual fiscal limitation imposed pursuant to subsection D of this section and is also allowed another credit pursuant to another section of the Code of Virginia, such taxpayer shall be considered to have first utilized any credit allowed which does not have a carry forward provision, and then any credit which is carried forward from a preceding taxable year, prior

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to utilization of any credit granted pursuant to this section.

G. The business firm must certify to the Department of Housing and Community Development 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 13 VAC 5-111-170 A.

13 VAC 5-111-172 Investment Tax Credit in zones whose designation period is ending.

Business firms that have a documented negotiation agreement with the department that are located in a zone whose designation period is ending may begin their incentive period after zone termination upon qualifying under 13 VAC 5-111-170. Business firms that have a documented negotiation agreement with the Department of Housing and Community Development who qualify by or before that date may receive the tax credits until the negotiated tax credit amount is reached, provided they continue to qualify under 13 VAC 5-111-170.

13 VAC 5-111-175 Anti-churning.

A. 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

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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 location 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.

13 VAC 5-111-180 Pass through entities.

A. 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.

B. In situations where an operating company forms a wholly-owned ~~conduit-pass-through~~ entity, such as a limited liability company (LLC), to rehabilitate or construct a building that is to be leased to the operating company, the ~~LLC-pass through entity~~ can qualify for the real property improvement tax credit provided the qualified expenses are paid by the ~~LLC-pass-through entity~~ and the operating company occupies the building. Any credit earned by the ~~LLC-pass-through entity~~ would pass through to the operating company.

C. In instances where a ~~conduit-pass through~~ entity is formed by an operating company and a development firm to rehabilitate or construct a building that is to be leased to the operating company, the ~~conduit-pass through~~ entity would qualify for the real property improvement tax credit provided the qualified expenses are paid by the ~~conduit-pass through~~ entity and the operating company occupies the building. However, the actual credit allowed would be limited to the qualified expenses attributable to the operating company limited to its investment in the ~~conduit-pass through~~ entity. The development firm would ~~be~~ ineligible to receive the tax credit.

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13 VAC 5-111-190 Application submittal and processing.

~~A. Any business firm whose taxable year begins on or after July 1, 1995, and ends on or before December 31, 1995, shall submit an application for real property improvements tax credit (13 VAC 5-111-150) and zone investment tax credits (13 VAC 5-111-170) to the department by no later than May 1, 1996.~~

~~B. For taxable years ending after December 31, 1995, and before January 1, 1997, applications requesting a real property improvements tax credit and zone investment tax credits shall be submitted to the department by no later than May 1, 1997.~~

~~C. A.~~ For taxable years thereafter, for any tax year that endsFor tax years that end on or after January 1 and 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 real property improvements tax credit ~~and~~ or zone investment tax credits shall be submitted to the department by no later than May 1 of the subsequent calendar year.

~~D. B.~~ Any business firm which is interested in amending past tax returns in order to qualify for and receive real property improvement tax credits shall submit an application requesting real property improvement 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. ~~Because this credit was not available prior to July 1, 1995, business firms cannot amend returns for tax years beginning prior to July 1, 1995.~~

~~E. C.~~ 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.

~~F. D.~~ The department shall notify all applicants by June 30 as to the amount of applicable credit or

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refund it is eligible for in the taxable year the request was made.

~~G.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.

~~H. F.~~ Applicants may only apply for credits which they are otherwise eligible to claim for such taxable year, subject to the limitations provided by 13 VAC 5-111-80 A and 13 VAC 5-111-170 A.

~~I. G.~~ Prohibition on requalification due to reorganization of a firm. A business firm may not qualify for tax credits pursuant to 13 VAC 5-111-140 for more than \$125,000 within a five year period by reorganizing or changing its form in a manner that does not alter the basis of the firm's assets or result in a taxable event.

13 VAC 5-111-200 Certification to Tax Commissioner in accordance with § 59.1-208 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 two copies of the certification to the firm one copy for the firm's records and one copy to be filed with the applicable state tax return or returns or notify the firm that it fails to qualify for state tax incentives under PART IV (13 VAC 5-111-70 et seq.).

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

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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.

PART VI.

PROCEDURES FOR QUALIFYING FOR ZONE INCENTIVE GRANTS

13 VAC 5-111-210 Effective dates.

Beginning on and after July 1, 1995, but before ~~January~~ July 1, 2005, a business firm shall be eligible to receive enterprise zone incentive grants for the creation of new permanent full-time positions.

13 VAC 5-111-220 Grant funding.

There is a special fund established in the state treasury known as the Enterprise Zone Grant Fund, which shall be administered by the department. The fund includes moneys as may be appropriated by the General Assembly from time to time. The fund shall be used solely for the payment of enterprise zone incentive grants to business firms pursuant to § 59.1-282.1 of the Code of Virginia.

13 VAC 5-111-230 Computation of grant amount.

A. For any eligible business firm, the amount of any grant earned shall be equal to (i) \$1,000 multiplied by the number of eligible permanent full-time positions filled by zone residents, and (ii) \$500 multiplied by the number of eligible permanent full-time positions filled by employees whose permanent place of residence is outside the enterprise zone.

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1. The number of eligible permanent full-time positions filled by zone residents shall be determined for any grant year by multiplying the number of eligible permanent full-time positions by a fraction, the numerator of which shall be the number of employees hired for permanent full-time positions from January 1 of the applicable base year through December 31 of the grant year who are zone residents, and the denominator of which shall be the total number of employees hired for permanent full-time positions by the business firm during the same period. Zone residency is subject to annual verification and if an employee moves outside the zone he cannot be considered a zone resident for the remaining grant period.

2. The number of eligible permanent full-time positions filled by employees whose permanent place of residence is outside the enterprise zone shall be determined for any grant year by subtracting the number of eligible positions filled by employees whose permanent place of residence is within the enterprise zone, as determined in subdivision 1 of this subsection, from the number of eligible positions.

B. The amount of the grant for which a business firm is eligible with respect to any employee who is employed in an eligible position for less than 12 full months during the grant year will be determined by multiplying the grant amount by a fraction, the numerator of which is the number of full months that the employee worked for the business firm during the grant year, and the denominator of which is 12.

C. The maximum grant that may be earned by a business firm in one grant year, is limited to \$100,000. Each member of an affiliated group of corporations shall be eligible to receive up to a maximum grant of \$100,000 in a single grant year.

13 VAC 5-111-240 Eligibility.

A. A business firm shall be eligible to receive job grants for three consecutive calendar years commencing with the first year of grant eligibility. Business firms applying for the first three-year period shall demonstrate that they have increased the business firm's enterprise zone permanent full-time positions by 10% over the base year. Permanent full-time positions created during the second or third year of the grant period are eligible for additional grant funding over the previous year level at the option

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of the business firm, but only during the three year grant period.

B. For the second and any subsequent three-year period of grant eligibility, the business firm must demonstrate that it has increased employment by 20% over a redetermined base year.

1. If a business firm applies for a subsequent three-year period within two years immediately following the completion of the first three-year period, the firm must base the increase on the number of positions in the preceding base year, plus the number of threshold positions, plus the number of permanent full-time positions receiving grants in the final year of the previous grant period.

2. If a business firm applies for subsequent three-year periods later than two years following the completion of the first three-year period, the firm must base the increase of permanent full-time positions over one of the two preceding calendar years.

C. The amount of the grant for which a business firm is eligible in any year shall not include amounts for the number of eligible positions in any year other than the preceding calendar year, except as provided in 13 VAC 5-111-260 A, regarding carry-forward of unsatisfied grant amounts.

D. In order to claim the grant an application must be submitted to the local zone administrator by March 31 of the year following the grant year. Applications for grants shall be made on form or forms as prescribed by the department and may include other documentation as requested by the local zone administrator or department. 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 eligibility requirements.

E. The local zone administrator shall review applications and determine the completeness of each application and the requested documentation, and forward applications for grants to the department by no later than April 30 of the year following the grant year. Applications forwarded to the department by the local zone administrator must be 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

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section.

F. The department shall review all applications for completeness and notify business firms of any errors no later than June 1 of the year following the grant year. Business firms must respond to any unresolved issues by no later than June 15 of the year following the grant year.

G. The department shall notify all businesses by June 30 as to the amount of applicable zone incentive grant it is eligible for in the calendar year the request was made.

H. Any business firm receiving an enterprise zone incentive grant under § 59.1-282.1 of the Code of Virginia shall not be eligible for a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia with respect to any enterprise zone location which is receiving an enterprise zone incentive grant.

13 VAC 5-111-245 Eligibility in zones whose designation period is ending.

A. Business firms located in a zone whose designation period is ending must begin their three consecutive year incentive period prior to the zone termination date by qualifying for the calendar year ending prior to the zone termination date. Business firms that qualify by or before that date may receive the balance of their three consecutive year incentive period provided they continue to qualify under 13 VAC 5-111-240. Business firms may not begin additional three-year incentive period after the zone termination date.

13 VAC 5-111-250 Anti-churning.

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

1. Which 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 positions was previously employed in the same job function in Virginia by a related party, or a trade or business under common control;
3. Which 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;

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4. Which previously qualified for a grant in connection with a different enterprise zone location 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.

13 VAC 5-111-260 Grant allocations.

- A. Upon receiving applications for grants from the local zone administrators, the department shall determine the amount of the grant to be allocated to each eligible business firm by June 30 of the year following the grant year. The department shall allocate moneys in the following order of priority:
 1. First, to unpaid grant amounts carried forward from prior years because business firms did not receive the full amount of any grant to which they were eligible for in a prior year.
 2. Second, to other eligible applicants.
- B. In the event that moneys in the fund are less than the amount of grants to which applicants in any class of priority are eligible, the moneys in the fund shall be apportioned among eligible applicants in such class pro rata, based upon the amount of the grant to which an applicant is eligible and the amount of money in the fund available for allocation to such class.
- C. In the event that a business firm is allocated less than the full grant amount to which it is eligible in any year, the firm shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which the firm was eligible shall be carried forward by the department to the following year and shall be in the class of priority as provided in subsection A of this section.

13 VAC 5-111-270 Assignment of enterprise zone incentive grants.

- A. A business firm may assign all or any portion of any enterprise zone incentive grant to which it is eligible to the owner of any real property within an enterprise zone occupied by the business firm as tenant or to a financial institution regularly engaged in business of lending money which has made a loan to the business firm for the purpose of expanding, constructing or rehabilitating a nonresidential building

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or facility for the conduct of a trade or business by the business firm within the enterprise zone, or both, as they may agree.

B. A business firm that has assigned its interest in an enterprise zone incentive grant shall notify the department within 30 days. Following the receipt of such notification, the department may request the Comptroller to issue warrants in the name of the firm's assignee for grant payments that the business firm would have received.

PART VII.

ENTERPRISE ZONE ELIGIBILITY CRITERIA

13 VAC 5-111-280 Eligible applicants for zone designation.

- A. Eligible applicants include the governing body of any county, city or town.
- B. The governing body of a county may apply for designation of an enterprise zone on behalf of a town located within the county.
- C. Two or more adjacent jurisdictions may file a joint application for an enterprise zone lying in the jurisdictions submitting the application.
- D. Jurisdictions may apply for more than one enterprise zone designation. This includes the submission of a joint application with other jurisdictions. Each county, city and town is limited to a total of three enterprise zones.

13 VAC 5-111-290 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. For counties, cities and towns the proposed zone must consist of an area made up of contiguous United States Census tracts or block groups or any part thereof. However, one enterprise zone in any county, city, or town may ~~consist of two noncontiguous zone areas~~ consist of one primary zone area and one noncontiguous sub zone area. The size of the enterprise zone shall consist of the total of the ~~two~~

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~~noncontiguous zone areas-primary zone area and sub zone area.~~ The ~~two noncontiguous zone areas- sub zone area~~ shall not be considered ~~as a separate zones- zone~~ for the purpose of calculating the maximum number of zone designations. The maximum combined land area cannot exceed maximum size guidelines set forth in subdivisions D 1, 2, 3 and 4 of this section.

C. The proposed zone must meet at least one of the following distress criteria as enumerated in the most current U. S. Census or current data from the Center for Public Service or local planning district commission: (i) 25% or more of the households must have had incomes below 80% of the median household income of the county or city; (ii) the unemployment rate must have been at least 1.5 times the state average; or (iii) demonstrate a floor area vacancy rate of industrial and/or commercial properties of twenty percent (20%) or more.

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

~~1. Metropolitan Central Cities – Minimum: ½ square mile (320 acres); Maximum: 1 square mile (640 acres) or 7% of the jurisdiction's land area or population, whichever is largest.~~

~~21.~~ Towns and cities ~~other than Metropolitan Central Cities~~ - Minimum: ¼ square mile (160 acres); Maximum: ~~½ square mile (320 acres)- 1 square mile (640 acres)~~ or 7% of the jurisdiction's land area or population, whichever is largest.

~~32.~~ Unincorporated areas of counties - Minimum: ½ square mile (320 acres); Maximum: 6 square miles (3,840 acres).

~~43.~~ 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 3 of this subsection.

~~54.~~ In no instance shall a zone consist only of a site for a single business firm.

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PART VIII.

PROCEDURES AND REQUIREMENTS FOR ZONE DESIGNATIONS

13 VAC 5-111-300 Procedures for zone application and designation.

A. Up to 60 enterprise zones may be designated by the Governor in accordance with the procedures and

requirements set out in this section. ~~Five of the areas designated as enterprise zones on or after July 1,~~

~~1999, shall be located in localities that (i) have annual average unemployment rates for the most recent~~

~~calendar year that are fifty percent higher than the final statewide average unemployment rate for the most~~

~~recent calendar year or (ii) are within planning districts that have annual average unemployment rates for~~

~~the most recent calendar year that are at least one percent greater than the final annual statewide average~~

~~for the most recent calendar year. Five of the areas designated as enterprise zones on or after July 1,~~

~~2000, shall be located in localities that have annual average unemployment rates for the most recent~~

~~calendar year that are fifty percent higher than the final statewide average unemployment rate for the most~~

~~recent calendar year.~~—No area shall be designated as an enterprise zone pursuant to this subsection unless

it also meets all the other eligibility criteria established pursuant to 13 VAC 5-111-290.

B. Applications for zone designation will be solicited by the department 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, The Jackson Center, 501 North Second Street, Richmond, Virginia 23219, on or before the submission date established by the department.

2. The ~~local governing body~~ applicant jurisdiction must hold at least one public hearing on the application for zone designation prior to its submission 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 as Attachment A.

3. In order to be considered in the competitive zone designation process an application from a

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jurisdiction must include all the requested information, be accompanied by a resolution of the local governing body and be signed by the chief administrator or the clerk to the town council or county board of supervisors where there is no chief administrator. The chief administrator or clerk, in signing the application, must certify that the ~~local governing body~~ applicant jurisdiction held the public hearing required in subdivision 2 of this subsection.

4. As part of its application a locality may propose local incentives including but not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) special subclassifications and rates for 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; (v) infrastructure improvements;(vi) crime reduction measures; and (vii) adoption of a local enterprise zone development taxation program pursuant to § 58.1-3245 of the Code of Virginia. When making an application jurisdictions may also make proposals for regulatory flexibility, including, but not limited to: (i) special zoning districts; (ii) permit process reform; (iii) exemptions from local ordinances; (iv) removal of regulatory barriers to affordable housing; and (v) other public incentives proposed. A jurisdiction may also create a local enterprise zone association to assist in the planning process and future management of the enterprise zone to assure that major decisions affecting the zone's future take into account the needs of both the public and private sector, including citizens of the involved zone communities.

5. The likely impact of proposed local incentives in offsetting identified barriers to private investment in the proposed zone, together with the projected impact of state tax incentives, will be factors in evaluating applications.

6. A locality may establish eligibility criteria for local incentives for business firms that are less than, the same as, or more stringent than, the criteria for eligibility of grants or other benefits that the state provides.

7. Proposed local incentives may be provided by the local governing body itself or by an assigned agent

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or agents such as a local redevelopment and housing authority, an industrial development authority, a private non-profit entity or a private for-profit entity. In the case of a county which submits an application on behalf of an incorporated town, the county may designate the governing body of the town to serve as its assigned agent. In the case of a county which submits an application for a zone encompassing unincorporated county areas as well as portions of one or more towns, the county may designate the governing body or bodies of the town or towns to serve as its assigned agent or agents.

C. Within 60 days following the application submission date, 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. The department, in consultation with the Virginia Economic Development Partnership, may allow up to five enterprise zone designations to be utilized in an open submission process for significant economic development opportunities in areas that are otherwise qualified under provisions of these regulations and meet minimum threshold standards. The selection of these zones by the Governor shall be made upon recommendation and certification of consistency with the program regulations by the department.

E. The Governor shall designate, upon recommendation of the Director, enterprise zones for a period of 20 years. The Governor's designation shall be final.

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

13 VAC 5-111-310 Procedures and requirements for joint applications.

A. Two or more adjacent jurisdictions submitting a joint application as provided for in 13 VAC 5-111-300 B must meet the requirements set out in this section.

B. Each jurisdiction comprising the proposed joint enterprise zone may consist of the joint zone area and one additional noncontiguous zone area and shall conform to the size guidelines for that type of

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jurisdiction outlined in 13 VAC 5-111-290D.

C. Each jurisdiction comprising the proposed joint enterprise zone may have the maximum acreage as specified by the size guidelines in 13 VAC 5-111-290 D.

E.D. The applicants must designate one jurisdiction to act as program administrator. The jurisdiction so designated shall be responsible for filing ~~a survey of zone business conditions and~~ annual reports as provided for in ~~13 VAC 5-111-380 and~~ 13 VAC 5-111-390.

D.E. 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 4 of 13 VAC 5-111-300. 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.

E.F. 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.

13 VAC 5-111-315 Procedures for designation resulting from the termination or expiration of an enterprise zone.

Periodically, zone designations become available as a result of zones that have completed their 20-year designation period or as a result of zone termination as provided for in 13 VAC 5-111-340 and 13 VAC 5-111-350. Applications for such enterprise zone designations will be solicited in accordance with the procedures and requirements set forth in 13 VAC 5-111-300 B-F and 13 VAC 5-111-310.

PART IX.

PROCEDURES FOR ZONE AMENDMENT

13 VAC 5-111-320 Relationship to federal enterprise zone program.

A. If any portion of an area designated as an enterprise zone by the Governor is included in an area

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designated as an enterprise zone by an agency of the federal government, the area designated by the Governor shall be enlarged to include the area designated by the federal agency.

B. If an area that has not been designated as an enterprise zone is designated by an agency of the federal government as a federal enterprise zone, that area shall then receive designation as a state zone effective January 1 of the year following its designation as a federal enterprise zone.

C. Unless earlier terminated as provided in this chapter, an area's designation as a state enterprise zone shall be for a period of 20 years; however, if the area is designated by an agency of the federal government as a federal enterprise zone at the time of the scheduled expiration of its state enterprise zone designation, the area's state enterprise zone designation shall continue until the expiration of the area's federal enterprise zone designation, as long as the Virginia Enterprise Zone Program continues.

13 VAC 5-111-330 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 13 VAC 5-111-390 in order to amend an approved application.

~~B.-C.~~ The local governing body- applicant jurisdiction must hold at least one public hearing on the requested amendment prior to its submission to the department. In the case of a boundary amendment that involves the elimination of area or areas, the ~~local governing body-~~ 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.

~~C.-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 ~~local governing~~

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~~body applicant jurisdiction~~ held the public hearing required in subsection ~~B-C~~ of this section prior to the adoption of the resolution. In the case of a joint application, ~~a request for an amendment- Form EZ-2~~ must be completed by the jurisdiction ~~serving as program administrator 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.

~~D. Beginning on and after July 1, 1995, enterprise zone jurisdictions will be required to thoroughly examine their previously approved applications every five years. The jurisdiction shall review all aspects of the application boundaries, goals, objectives, strategies, actions and incentives, as well as barriers to development, and include as part of their annual report an explanation of why the application or sections of the application need or do not need to be amended to improve enterprise zone performance.~~

~~Application amendments relating to these requirements will be required every five years if:~~

~~1. The jurisdiction has not yet developed goals, objectives, strategies and actions to overcome barriers to development within the zone.~~

~~2. The jurisdiction has incentives that have not been utilized during the five year period.~~

E. An enterprise zone application may be amended annually, 12 months from the last amendment application by the jurisdiction. Amendments may be to the entire application or individual sections such as the boundary, ~~goals, objectives, strategies and actions~~, or incentives.

F. A proposed boundary amendment must meet the following requirements:

1. The area proposed for expansion must be contiguous to the existing zone, except one enterprise zone in any county, city, or town which may consist of two noncontiguous zone areas (see 13 VAC 5-111-290

B).

2. The enlarged zone must meet at least one of the distress criteria outlined in 13 VAC 5-111-290 C.

3. 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

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primary consideration. Such boundary changes cannot impact the zone's ability to meet the required distress criteria and cannot involve more than 15% of the total zone acreage.

G. The enlarged zone shall not exceed the maximum size guidelines outlined in 13 VAC 5-111-290.

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

I. The department will approve an amendment to local incentives only if the proposed local incentives are equal or superior to those in the application prior to the proposed amendment or if the proposed cumulative local incentive package is equal to or greater than those in the application prior to the proposed amendment. The department will approve an amendment ~~to expand of~~ zone boundaries ~~or the goals, objectives, strategies and actions~~ only if the proposed amendment is deemed to be consistent with the purposes of the program as determined by the department.

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 boundaries provided it meets sections A-H above. This shall not constitute a joint zone and does not provide the town with the ability to provide local incentives, make any zone amendments, create a sub zone or give the town its own zone acreage allocation.

~~J-K.~~ A local governing body that is denied ~~either a boundary, goals, objectives, strategies and actions, or local incentive an application~~ amendment shall be provided with the reasons for denial.

13 VAC 5-111-335 Redesignation of enterprise zones.

A. A local governing body will be permitted to request a redesignation of an enterprise zone that is located in one jurisdiction as a joint enterprise zone in accordance with the procedures and requirements set out in this section.

B. A request for redesignation must be submitted to the department on Form EZ-R. This form must be accompanied by a resolution from both local governing bodies supporting the proposed redesignation of the enterprise zone as a joint enterprise zone.

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- C. The area of the non-zone jurisdiction that is proposed for inclusion in the redesignated zone must be contiguous to the existing designated zone.
- D. The non-zone jurisdiction that will have area included in the joint zone as a result of the redesignation must have the county manager form of government.
- E. The total area of the proposed joint enterprise zone complies with at least one of the distressed criteria outlined in 13 VAC 5-111-290 C.
- F. As used in this section, joint enterprise zone means an enterprise zone located in two adjacent localities.

PART X.

PROCEDURES FOR ZONE TERMINATION

13 VAC 5-111-340 Failure to provide local program incentives.

- A. If a local governing body or its assigned agent or agents is unable or unwilling to provide any of the approved local program incentives, the following procedures will apply. In the case of joint applications, these procedures will apply if either 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 13 VAC 5-111-330 D.
- D. The department will review requests for amendments in accordance with the criterion set forth in 13 VAC 5-111-330 G. 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 may recommend to the Governor that the zone be terminated.

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E. Upon review of the department's recommendation, the Governor may terminate the zone.

13 VAC 5-111-350 Failure to qualify for state incentives.

A. If no business firms have qualified for state incentives within a five-year period ~~beginning on July 1, 1995~~, the department shall terminate the enterprise zone designation.

B. The department shall annually provide enterprise zone localities with a current listing of all business firms that have applied and qualified for state incentives.

13 VAC 5-111-360 Zone termination and business qualification.

A. A zone shall be terminated in accordance with the procedures set forth in 13 VAC 5-111-340 and 13 VAC 5-111-360 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 located in a terminated zone may continue to request state tax and job grant incentives ~~provided under §§ 59.1-280 and 59.1-282~~ for any remaining ~~taxable~~ years in the qualification period for which they are eligible as provided for in 13 VAC 5-111-95, 13 VAC 5-111-162, 13 VAC 5-111-172 and 13 VAC 5-111-240.

C. After the date of zone termination, no additional business firms may become qualified to receive state tax incentives provided under this program except as provided for in 13 VAC 5-111-95 B and 13 VAC 5-111-240.

PART XI.

ADMINISTRATIVE REQUIREMENTS

13 VAC 5-111-370 Sale of surplus public land.

~~A. The Commonwealth and any unit of local government that owns land within the zone shall: (i) upon designation of a zone, identify any surplus land and within six months make such land available for sale; and (ii) update annually its list of surplus land and make available for sale within six months any newly identified surplus parcels. The department may waive this requirement only if the owner can demonstrate~~

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~~to the department's satisfaction that the land cannot be developed due to its size, configuration, topography, location or other relevant factors.~~

~~B. The Commonwealth or any unit of local government that sells surplus land within a zone shall require the buyer to develop the land within a period not to exceed five years. This requirement of the buyer must be enforceable by the seller. The Commonwealth or any unit of local government that sells surplus land within a zone may set any additional conditions on the sale which it considers to be necessary to assure that the land is developed in a manner consistent with the purpose of the program and the local development objectives outlined in the application for zone designation. If the land is not sold within five years, such conditions shall be revised as necessary to make the land marketable.~~

~~C. In order to monitor compliance with the requirements of this section, the department will request annually from local governing bodies and state agencies with responsibility for overseeing the disposition of surplus state land, information concerning the identification and sale of surplus land. A local governing body shall document compliance with this section in its annual report to the department (see § 13 VAC 5-111-390). The department shall request annually from the Division of Engineering and Buildings of the Virginia Department of General Services and from the Virginia Department of Transportation, lists of surplus state land within zones and actions taken to sell such land.~~

A. The local governing body will certify through the designation application that it will identify any public surplus land and make this land available for sale upon designation as an enterprise zone and throughout the life of the zone.

~~13 VAC 5-111-380 Survey of zone business conditions.~~

~~Within 90 days following the date of zone designation, a local governing body shall conduct a survey of existing business conditions to serve as a basis for program evaluation. Survey data shall be submitted to the department on Form EZ-3-S. The survey shall include information on business and employment conditions in the zone as requested on Form EZ-3-S.~~

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13 VAC 5-111-390 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; ~~within 90 days of the anniversary date of zone designation no later than April 1 of the following year.~~

Annual reports shall include information ~~documenting the local governing body's compliance with 13 VAC 5-111-370~~ and data for the purpose of program evaluation as requested on Form EZ-3-AR. Annual reports shall also include an evaluation of the program's ~~success in achieving identified local development objectives—progress completing its Implementation Plan as provided in the designation application.~~

B. The department shall annually review the effectiveness of state and local incentives in increasing investment and employment in each of the enterprise zones and provide an annual report of its findings to the Senate Finance Committee, Senate Committee on Commerce and Labor, the House Finance Committee, and the House Committee on Labor and Commerce.

When the potential exists that the annual fiscal limitations on the general tax credit, the real property improvements tax credit, the zone investment tax credits, or zone incentive grants will be fully utilized, thus triggering their pro rata distribution, the department shall include this information in the annual report.

13 VAC 5-111-400 Confidentiality of information

A. 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 the tax liability, employment, property, or income of any business firm submitted to the department pursuant to Chapter 59 of the Code of Virginia. 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;

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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.