



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Board of Housing and Community Development
<b>VAC Chapter Number:</b>	111
<b>Regulation Title:</b>	Enterprise Zone Program Regulation
<b>Action Title:</b>	Final
<b>Date:</b>	04/10/00

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

These amendments to the regulations address:

1. changes made during the 1999 General Assembly session to the Virginia Enterprise Zone Act, including changes related to the increase in total state enterprise zones from 50 to 55 with special conditions for the newly designated zones;
2. changes to implement greater clarity for businesses in qualifying for the use of incentives offered under the Enterprise Zone Program, and;
3. changes to clarify many questions and issues that have been raised by clients concerning the use and implementation of the Enterprise Zone Program.

**Statement of Final Agency Action**

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On March 6, 2000 the Board of Housing and Community Development adopted a final regulation entitled “Enterprise Zone Program Regulation” (13 VAC 5 111 10 et seq.).

**Basis**

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

§59.1-278 of the Code of Virginia provides the authority and mandates the Board of Housing and Community Development to adopt and promulgate the Enterprise Zone Program Regulation. Legal citation can be found at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+59.1-278>. Because the final text differed from the proposed, proper review and approval was obtained from the Office of the Attorney General certifying that the Board has the statutory authority to promulgate the final regulation and that it comports with applicable state laws. This was obtained from the Office of the Attorney General on March 28, 2000.

**Purpose**

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

Over the past two years, many questions have arisen concerning the qualifications and requirements of the program. As the agency responsible for administering the enterprise zone program, we recommended to the Board of Housing and Community Development the option of either amending the regulations that govern this program or leaving them as they are. Many of our program clients feel that the current regulations do not clearly address the many issues

surrounding program qualification and have requested clarification. There have been several questions concerning what types of businesses are eligible for this program and how these businesses can qualify. By not amending the regulations to address these issues, the agency felt that the lack of clarification would hinder the performance and efficiency of the program. By not responding to these requests for clarification, our clients will continue to be confused about the operation of the program. In order to provide program clients with clear guidance on how to use these credits and the impact and function of the fiscal limitations, more clarification in the regulations was needed.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

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All substantive changes are designed to offer interested individuals greater guidance in applying for state incentives under the Enterprise Zone Program. Changes are a direct result of questions or concerns that have been raised by individuals concerning the mechanics of the tax credits.

### Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The advantages of this regulatory action to the public will be to; 1) stimulate new job creation and private investment in economically distressed areas of the Commonwealth, 2) implement greater flexibility for businesses in qualifying for the use of state incentives, and 3) provide businesses and CPAs concrete guidance on the use of these tax credits and grants.

The advantages for the agency and the public include clear guidance on how to implement and use the enterprise zone credits and grants in a manner that is compatible with the State Tax Code.

We foresee no anticipated disadvantages regarding these changes to the regulations.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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The only changes made to the text of the proposed regulation since its publication were strictly editorial changes.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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There was no public comment received.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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#### DEFINITION CHANGES

Full-time employee—change position to employee to show a distinction between Job Grant applicant requirements and General Income Tax applicant requirements

Large qualified business firm—deleted the word qualified from definition to reflect language in the Enterprise Zone Act

Net loss—new definition that is easier to understand

Permanent full-time employee—new definition for businesses applying for general income tax credits after July 1, 1995

Permanent full-time position—added clause “report to work” requirement (as it appears in the act) and language specifying that this definition is only for businesses qualifying after July 1, 1995 for job grants

Qualified zone improvements—word correction and addition of the word nonresidential to prohibit improvements on residential properties for the purpose of applying for Real Property Improvement Tax Credits and the word construct to specify that these improvements include construction, expansion, and rehabilitation.

Qualified zone resident—addition of word nonresidential to prohibit improvements on residential properties for the purpose of applying for Real Property Improvement Tax Credits

Report to work—new definition to reflect language in the act

Single facility—new definition to expand opportunities to businesses constructing new buildings in a zone for purpose of applying for Real Property Improvement Tax Credits

#### CHANGES TO OTHER SECTIONS

##### 13 VAC 5-111-100 Application Submittal Process

addition of language to include businesses that opt to use the 52/53 week taxable year rather than a normal 52 week taxable year

addition of language that prohibits business from reorganizing and receiving additional general income tax credits

##### 13 VAC 5-111-120 Anti-churning

replaced position with employee to conform with new definition “permanent full-time employee” for General Income Tax Credits

##### 13 VAC 5-111-130 Pass through entities

replaced "profits are" with "income is" to reflect language as it appears in the act

##### 13 VAC 5-111-160 Eligibility

addition of word nonresidential to prohibit improvements, through rehab or expansion, made to residential properties for the purpose of applying for Real Property Improvement Tax Credits

addition of language to prohibit businesses receiving real property improvement tax credits for a pure relocation from one area of the state to another unless there is an increase in employment or investment

##### 13 VAC 5-111-170 Zone Investment Tax Credit

addition of language that clarifies and explains when a negotiated businesses can apply for its tax credit

##### 13 VAC 5-111-180 Pass through entities

change "profits are" to "income is" to reflect language as it appears in the act

addition of language concerning conduit entities and ability to receive real property improvement tax credits

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

addition of language to include businesses that opt to use the 52/53 week taxable year

addition of language that prohibits business from reorganizing and receiving additional real property improvements tax credits over the maximum \$125,000 in a five year period

13 VAC 5-111-240 Eligibility

addition of language specifying mailing requirements of job grant applications by local zone administrator to DHCD to avoid complications if an application is lost in the mail

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

deletion of language to conform to the act

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

new language concerning five new zones created in 1999 General Assembly

change citation from Code of Virginia concerning requirements for holding public hearings

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

new language specifying zone size limits for each locality of a joint zone application

13 VAC 5-111-390 Annual reporting

correction of name of House Committee on Labor and Commerce

## Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The changes addressed in Enterprise Zone Program Regulation directly impact businesses and the benefits businesses receive when hiring individuals who are either low-to moderate-income or living within the boundaries of a designated enterprise zone. While these changes do not directly impact the institution of the family or family stability, by providing clearer guidance on the procedures and process of applying for state tax credits, these changes will encourage businesses to employ individuals who are unemployed or underemployed. This will allow these individuals to increase their household income and, as a result, strengthen these families' economic self-sufficiency and self-pride.