

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2633 Session of 2012

INTRODUCED BY KAMPF, HACKETT, REED, ADOLPH, BARRAR, BEAR,
CALTAGIRONE, DALEY, DENLINGER, EVERETT, GEIST, GINGRICH,
GROVE, HESS, KAUFFMAN, LONGIETTI, MANN, MURT, PAYTON, PETRI,
QUINN, ROSS, SAYLOR, SONNEY, TURZAI, WATSON AND YOUNGBLOOD,
SEPTEMBER 27, 2012

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 27, 2012

AN ACT

1 Providing for establishment of Innovate Pennsylvania Program,
2 for sale of premium tax credits, for yearly payments, for
3 premium tax credit certificate, for default, for annual
4 limitation, for duties of the General Assembly, for
5 carryover, carryback, refund and assignment, for repayment,
6 for guidelines and for reports.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Innovate
11 Pennsylvania Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Authority." As defined in section 2 of the act of June 22,
17 2001 (P.L.569, No.38), known as the Ben Franklin Technology
18 Development Authority Act.

1 "Ben Franklin Technology Partner" or "partner." As defined
2 in section 2 of the act of June 22, 2001 (P.L.569, No.38), known
3 as the Ben Franklin Technology Development Authority Act.

4 "Board." As defined in section 2 of the act of June 22, 2001
5 (P.L.569, No.38), known as the Ben Franklin Technology
6 Development Authority Act.

7 "Department." The Department of Revenue of the Commonwealth.

8 "Fund." The Ben Franklin Technology Development Authority
9 Fund established in section 10 the act of June 22, 2001
10 (P.L.569, No.38), known as the Ben Franklin Technology
11 Development Authority Act.

12 "Insurance premium tax liability." The liability for taxes
13 imposed under section 902 of the act of March 4, 1971 (P.L.6,
14 No.2), known as the Tax Reform Code of 1971.

15 "Premium tax credit." The tax credit established under
16 section 3.

17 "Program." The Innovate Pennsylvania Program.

18 "Regional biotechnology research center." A regional
19 biotechnology center as established under Chapter 17 of the act
20 of June 26, 2001 (P.L.755, No.77), known as the Tobacco
21 Settlement Act.

22 "Secretary." The Secretary of Revenue of the Commonwealth.

23 "Taxpayer." An entity subject to the taxation under section
24 902 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
25 Reform Code of 1971. The term includes the shareholder, owner or
26 member of a pass-through entity that receives a premium tax
27 credit.

28 "Venture investment program." A program employed under the
29 statutory authority of the Ben Franklin Technology Development
30 Authority.

1 Section 3. Establishment of Innovate Pennsylvania Program.

2 There is established within the department a tax credit
3 program to be known as the Innovate Pennsylvania Program. The
4 program shall provide a source of funds for venture capital
5 investment through the authority and regional biotechnology
6 research centers.

7 Section 4. Sale of premium tax credits.

8 (a) Securing capital commitments.--The department may
9 contract with an independent third party or develop guidelines
10 to conduct a bidding process in order to secure capital
11 commitments from taxpayers for the program.

12 (b) Duty of applicant.--Each applicant shall make a timely
13 and irrevocable offer subject only to the department's approval
14 consistent with the following:

15 (1) The amount of premium tax credits sought by the
16 taxpayer, which may not be less than \$500,000.

17 (2) The applicant's specified contribution for each
18 premium tax credit dollar requested, which may not be less
19 than the greater of:

20 (i) eighty percent of the requested dollar amount of
21 premium tax credits; or

22 (ii) the percentage of the requested dollar amount
23 of premium tax credits that the secretary determines to
24 be consistent with market conditions as of the offer
25 date.

26 (3) Any other information the department requires.

27 (c) Duties of department.--The department shall review the
28 offers and award the premium tax credits to the applicant with
29 the highest percentage of contribution of requested credits
30 until all premium tax credits are allocated.

1 (d) Limitation.--The maximum amount of premium tax credits
2 that may be awarded to a taxpayer under this act shall be
3 \$175,000,000.

4 (e) Notification.--The department shall notify the taxpayer
5 of the amount of the taxpayer's premium tax credit approved by
6 the department by January 15, 2013.

7 Section 5. Yearly payments.

8 (a) Requirements.--Upon approval of an offer under section
9 4, a taxpayer approved for a premium tax credit shall make
10 payments to the department totaling the amount of capital bid
11 for the premium tax credits for which the taxpayer was approved.
12 Payments shall be due on the dates specified by the department
13 at the time the taxpayer is approved.

14 (b) Deposit of funds.--Upon receipt of payments under
15 subsection (a), the department shall deposit the funds as
16 follows:

17 (1) Ninety-three percent of each payment must be
18 deposited in the fund. The funds must be allocated by the
19 board as follows:

20 (i) Forty percent of the amount deposited to the
21 partners.

22 (ii) Sixty percent of the amount deposited to the
23 venture investment program being operated by the board.

24 (2) Seven percent of each payment must be deposited in
25 the health account established under section 303(b) of the
26 act of June 26, 2001 (P.L.755, No.77), known as the Tobacco
27 Settlement Act, for distribution in equal proportions to each
28 regional biotechnology research center.

29 Section 6. Premium tax credit certificate.

30 (a) Issuance.--On receipt of each payment under section 5,

1 the department shall issue to the taxpayer a premium tax credit
2 certificate representing a credit equal to the total premium tax
3 credits awarded to the taxpayer to be used against the
4 taxpayer's insurance premium tax liability in the tax years
5 specified by the purchase agreement.

6 (b) Contents.--The premium tax credit certificate shall
7 state:

8 (1) The amount of premium tax credits that the taxpayer
9 may claim.

10 (2) The amount of capital that the taxpayer has
11 contributed in return for the issuance of the premium tax
12 credit certificate.

13 (3) The dates on which the premium tax credits will be
14 available for use by the taxpayer.

15 (4) A penalty or other remedy for noncompliance.

16 (5) The procedure to be used for transferring the
17 premium tax credits to another taxpayer.

18 (6) Other requirements the department considers to be
19 necessary.

20 Section 7. Default.

21 (a) Prohibition.--A premium tax credit certificate may not
22 be issued to a taxpayer which fails to make a payment within the
23 time specified by the department.

24 (b) Failure to make timely payment.--A taxpayer which fails
25 to make a payment within the time specified by the department is
26 subject to a penalty equal to 10% of the amount of payment that
27 remains unpaid, payable to the department within 30 days after
28 demand by the department.

29 (c) Reallocation.--The department may reallocate the tax
30 credits from the defaulted pledged capital to other taxpayers.

1 (d) Waiver.--If the reallocation of pledged capital results
2 in a payment by another taxpayer, the department may waive part
3 or all of the penalty provided under subsection (b).

4 (e) Penalty avoidance.--A taxpayer which anticipates an
5 inability to make a payment within the time specified by the
6 department may, with consent of the department, avoid the
7 imposition of the penalty by transferring the allocation of
8 premium tax credits to a new or existing taxpayer at least 30
9 days prior to the due date of the defaulted installment.

10 (f) Requirement.--A transferee of an allocation of premium
11 tax credits of a defaulting taxpayer under this section shall
12 make the payment by the date originally specified by the
13 department prior to the transfer.

14 Section 8. Annual limitation.

15 The department shall ensure that the cumulative amount of tax
16 credits claimed by taxpayers for the taxpayers' liability under
17 section 902 of the act of March 4, 1971 (P.L.6, No.2), known as
18 the Tax Reform Code of 1971, does not exceed \$35,000,000 in a
19 single tax year beginning after June 30, 2015, except to the
20 extent that taxpayers have claimed unused tax credits carried
21 forward from prior years.

22 Section 9. Duties of the General Assembly.

23 In a year that a tax credit is claimed under this act, the
24 secretary shall notify the State Treasurer to:

- 25 (1) Transfer an amount equal to the amount of a tax
26 credit claimed by the foreign fire insurance company against
27 taxes that otherwise would be distributed in accordance with
28 Chapter 7 of the act of December 18, 1984 (P.L.1005, No.205),
29 known as the Municipal Pension Plan Funding Standard and
30 Recovery Act, to the fund as defined in section 702 of the

1 Municipal Pension Plan Funding Standard and Recovery Act.

2 (2) Transfer an amount equal to the amount of a tax
3 credit claimed by a foreign casualty insurance company
4 against taxes that otherwise would be distributed and used
5 for police pension, retirement or disability purposes as
6 provided by the act of May 12, 1943 (P.L.259, No.120),
7 referred to as the Foreign Casualty Insurance Premium Tax
8 Allocation Law, for distribution in accordance with the
9 Foreign Casualty Insurance Premium Tax Allocation Law.

10 (3) Ensure that the programs under paragraphs (1) and
11 (2) do not experience a negative fiscal impact due to a
12 foreign fire insurance company claiming a tax credit
13 authorized under this act.

14 Section 10. Carryover, carryback, refund and assignment.

15 (a) Carryover.--If the taxpayer cannot use the entire amount
16 of the premium tax credit for the taxable year in which the
17 premium tax credit is first permitted to be claimed, the excess
18 may be carried over to succeeding taxable years and used as a
19 credit against the taxpayer's liability under section 902 of the
20 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
21 of 1971, for those taxable years. Each time that the premium tax
22 credit is carried over to a succeeding taxable year, it shall be
23 reduced by the amount of tax credits claimed during the
24 immediately preceding taxable year. The premium tax credits
25 expire June 30, 2026.

26 (b) Carryback or refund.--A taxpayer may not be entitled to
27 carry back or obtain a refund of an unused premium tax credit.

28 (c) Sale or assignment.--A taxpayer, upon application to and
29 approval by the department, may sell or assign, in whole or in
30 part, a premium tax credit granted to the taxpayer under this

1 act if the taxpayer does not have a tax liability under section
2 902 of the Tax Reform Code of 1971 against which the premium tax
3 credit may be applied in a taxable year in which the premium tax
4 credit is permitted to be claimed. The department shall
5 establish guidelines for the approval of an application under
6 this subsection. Before an application is approved, the
7 department shall make a finding that the taxpayer and its
8 assignee have filed the required State tax reports and returns
9 for the taxable years and paid any balance of State tax due as
10 determined by the department.

11 (d) Purchaser and assignee.--The purchaser or assignee of a
12 premium tax credit under subsection (c) shall immediately claim
13 the credit against its tax liability under section 902 of the
14 Tax Reform Code of 1971 in the taxable year in which the
15 purchase or assignment is made. The purchaser or assignee may
16 not carry back or obtain a refund of or sell or assign the
17 premium tax credit. The purchaser or assignee shall notify the
18 department of the seller or assignor of the premium tax credit
19 in compliance with procedures specified by the department.

20 Section 11. Repayment.

21 The department shall require a taxpayer to repay the premium
22 tax credit received under this act where the department
23 determines that either of the following conditions exist:

24 (1) the taxpayer did not satisfy the requirements of
25 this act; or

26 (2) the taxpayer received the premium tax credit as a
27 result of fraud.

28 Section 12. Guidelines.

29 The department shall develop written guidelines for the
30 implementation and administration of this act. The guidelines

1 shall be posted on the department's publicly accessible Internet
2 website.

3 Section 13. Reports.

4 (a) Duty of authority.--The authority shall include
5 information relating to projects funded by the program in the
6 report to the General Assembly required by section 12 of the act
7 of June 22, 2001 (P.L.569, No.38), known as the Ben Franklin
8 Technology Development Authority Act.

9 (b) Duty of regional biotechnology research center.--A
10 regional biotechnology research center shall include information
11 relating to projects funded by the program in the report to the
12 General Assembly required by section 1703(j)(2) of the act of
13 June 26, 2001 (P.L.755, No.77), known as the Tobacco Settlement
14 Act.

15 Section 20. Effective date.

16 This act shall take effect in 60 days.