

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 282 Session of  
2015

INTRODUCED BY VULAKOVICH, COSTA, SCARNATI, BLAKE, BOSCOLA,  
BREWSTER, FARNESE, FONTANA, HUGHES, LEACH, PILEGGI, SCHWANK,  
SMITH, STEFANO, TEPLITZ, VOGEL, WARD, WILEY, BARTOLOTTA,  
McGARRIGLE, YAW, ALLOWAY, GREENLEAF, RAFFERTY AND BROWNE,  
JANUARY 16, 2015

SENATOR EICHELBERGER, FINANCE, AS AMENDED, JUNE 3, 2015

## AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," providing for a waterfront development tax  
11 credit.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as  
15 the Tax Reform Code of 1971, is amended by adding an article to  
16 read:

ARTICLE XVII-JWATERFRONT DEVELOPMENT TAX CREDIT

19 Section 1701-J. Scope of article.

20 This article establishes the waterfront development tax  
21 credit.

1 Section 1702-J. Definitions.

2 The following words and phrases when used in this article  
3 shall have the meanings given to them in this section unless the  
4 context clearly indicates otherwise:

5 "Business firm." An entity authorized to do business in this  
6 Commonwealth and subject to taxes imposed under Article III, IV,  
7 VI, VII, VIII, IX or XV or the tax under Article XVI of the act  
8 of May 17, 1921 (P.L.682, No.284), known as The Insurance  
9 Company Law of 1921. The term includes a pass-through entity.

10 "Contribution." A donation of cash or personal property made  
11 under this article.

12 "Department." The Department of Community and Economic  
13 Development of the Commonwealth.

14 "Eligible applicant." A business firm or individual meeting  
15 all of the following:

16 (1) Has contributed to a waterfront development  
17 organization.

18 (2) Is subject to a tax imposed by Article III, IV, VI,  
19 VII, VIII, IX or XV or Article XVI of the act of May 17, 1921  
20 (P.L.682, No.284), known as The Insurance Company Law of  
21 1921.

22 "Pass-through entity." A partnership as defined in section  
23 301(n.0), a single-member limited liability company treated as a  
24 disregarded entity for Federal income tax purposes or a  
25 Pennsylvania S corporation as defined in section 301(n.1).

26 "Waterfront." A site which is directly adjacent to a body of  
27 water.

28 "Waterfront development organization." An authority  
29 established under the act of December 6, 1972 (P.L.1392,  
30 No.298), known as the Third Class City Port Authority Act, or a

1 nonprofit entity which meets all of the following:

2       (1) For a nonprofit entity, is exempt from Federal  
3 taxation under section 501(c)(3) of the Internal Revenue Code  
4 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

5       (2) Has been in existence for a minimum of five years.

6       (3) Has a board of directors which meets at least once  
7 annually.

8       (4) Has completed a waterfront development plan.

9       (5) Uses at least 95% of its annual contributions from  
10 eligible applicants for projects authorized under this  
11 article. For purposes of this definition, an authority or a  
12 nonprofit entity "uses" its annual contributions when it  
13 expends or otherwise encumbers those funds for expenditure  
14 during the then current fiscal year of the authority or  
15 nonprofit entity or during the next succeeding fiscal year of  
16 the authority or nonprofit entity.

17 "Waterfront development plan." A plan approved by the  
18 Department of Community and Economic Development which meets all  
19 of the following:

20       (1) Provides for the development or enhancement of  
21 waterfront property which creates public access to the water,  
22 increases property values, restores ecology and catalyzes  
23 further financial investment and job creation to incentivize  
24 future economic development.

25       (2) Adheres to current environmental practices.

26       (3) Considers and integrates approaches that support  
27 natural and native habitat.

28       (4) Considers and integrates architectural and landscape  
29 design elements and standards.

30 "Waterfront development project." A project to develop a

waterfront site or area or a project which creates or improves  
public access and connections to the waterfront. The term may  
include:

(1) Streets and public rights-of-way.

(2) Waterfront parks, gardens and open spaces.

(3) Enhancement of access to public utilities.

(4) The promotion of erosion control, storm water  
management and other environmental projects which promote  
economic development.

(5) Water transportation facilities for use by the  
public, including water transit landings and boat docking.

(6) Amenities, including infrastructure and recreational  
projects.

Section 1703-J. Waterfront Development Tax Credit Program.

The Waterfront Development Tax Credit Program is established  
to encourage private investment in waterfront property which  
creates public access to the water, increases property values,  
restores ecology and catalyzes further financial investment and  
job creation.

Section 1704-J. Qualification of waterfront development  
organization.

(a) General rule.--The following shall apply:

(1) To qualify under this article, a waterfront  
development organization shall meet all of the following  
requirements:

(i) Submit information to the department which  
enables the department to confirm that the organization  
is exempt from Federal taxation under section 501(c)(3)  
of the Internal Revenue Code of 1986 (Public Law 99-514,  
26 U.S.C. § 1 et seq.), IF APPLICABLE.

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1           (ii) Certify to the department, on a form provided  
2 by the department, that the organization is eligible to  
3 participate in the program established under this article  
4 and agree to annually report by September 1 of each year  
5 all of the following information:

6           (A) The number of waterfront development  
7 projects funded, in total and by municipality, during  
8 the immediately preceding year.

9           (B) The amount expended for waterfront  
10 development projects, in total and by municipality,  
11 during the immediately preceding year.

12           (C) The number and nature of funding requests  
13 received, in total and by municipality, including a  
14 breakdown of waterfront development projects approved  
15 and rejected, during the immediately preceding year.

16           (D) The number of project applications  
17 processed, in total and by municipality, and the  
18 amount of any application fees charged per project  
19 application or in the aggregate through a third-party  
20 processor.

21           (E) The number of waterfront development  
22 projects completed, in total and by municipality,  
23 during the immediately preceding year.

24           (F) A copy of the Federal Form 990 or other  
25 Federal form of the waterfront development  
26 organization which indicates the tax status of the  
27 organization for Federal tax purposes, if any.

28           (G) A copy of a compilation, review or audit of  
29 the financial statements of the waterfront  
30 development organization conducted by a certified

1           public accounting firm.

2           (2) The department shall distribute sample forms,  
3           together with the forms on which the information under  
4           paragraph (1)(ii) is to be certified, to each waterfront  
5           development organization not later than May 1 of each year.

6           ~~(3) The department may not require any additional~~           <--  
7           ~~information from a waterfront development organization to~~  
8           ~~meet the requirements of this section than is expressly~~  
9           ~~authorized under this subsection.~~

10          (b) Notification.--The department shall notify a waterfront  
11          development organization if the organization meets the  
12          requirements of this section for the current fiscal year not  
13          later than 60 days after the waterfront development organization  
14          has submitted the information required under this section.

15          (c) Publication.--The department shall annually publish a  
16          list of each waterfront development organization approved under  
17          this section in the Pennsylvania Bulletin. The list shall also  
18          be posted and updated as necessary on the publicly accessible  
19          Internet website of the department.

20          Section 1705-J. Waterfront development projects.

21          (a) General rule.--To qualify for a tax credit under this  
22          article, contributions made to a waterfront development  
23          organization shall be used by the organization for a waterfront  
24          development project approved under this section.

25          (b) Approval.--The following shall apply:

26               (1) A waterfront development organization shall apply to  
27               the department for approval of a waterfront development  
28               project as eligible for a waterfront development tax credit  
29               by submission to the department of an application including  
30               all of the following information:

1           (i) The location of the waterfront development  
2 project.

3           (ii) The type of waterfront development project.

4           (iii) A detailed description of the waterfront  
5 development project, including any architectural and  
6 engineering drawings.

7           (iv) The status of the waterfront development  
8 project.

9           (v) The anticipated start date and completion date  
10 for the waterfront development project.

11           (vi) The life expectancy of the waterfront  
12 development project and a plan for project maintenance  
13 following completion.

14           (vii) The estimated cost of the waterfront  
15 development project, the total amount of contributions  
16 received which have been designated for the waterfront  
17 development project and the funding source to be used for  
18 payment of unfunded costs, if any.

19           (viii) Analysis of the direct current and future  
20 economic benefits derived from the waterfront development  
21 project, including indirect and direct job creation  
22 projections.

23           (ix) The manner in which the organization will do  
24 all of the following:

25               (A) Verify eligibility of costs.

26               (B) Monitor progress of the waterfront  
27 development project.

28               (C) Assure that contributions received are used  
29 for the waterfront development project for which they  
30 have been designated.

1           (x) Any other information required by the  
2           department.

3           (2) The department, in conjunction with the Department  
4           of Conservation and Natural Resources, shall review  
5           applications received from waterfront development  
6           organizations under paragraph (1).

7           (3) Within 60 days after receipt of an application, the  
8           department shall notify the waterfront development  
9           organization of its approval or disapproval of a waterfront  
10          development project. If the application is disapproved, the  
11          notice of disapproval shall include the reasons for  
12          disapproval. A waterfront development organization shall have  
13          30 days after receipt of a notice of disapproval to resubmit  
14          the application.

15          (c) Completion.--Upon completion of a waterfront development  
16          project approved under subsection (b), the waterfront  
17          development organization shall submit written notice of project  
18          completion to the department. The notice shall include all of  
19          the following information:

20               (1) Certification that the waterfront development  
21               project is complete.

22               (2) An upkeep and maintenance plan, if applicable to the  
23               waterfront development project.

24               (3) Any other information required by the department.

25          (d) Inspection.--Waterfront development projects approved  
26          under subsection (b) may be subject to inspection by the  
27          department or its designated agent.

28          Section 1706-J. Application for tax credit.

29          (a) General rule.--An eligible applicant shall apply to the  
30          department for a tax credit under this article. An eligible

1 applicant shall receive a tax credit under this article if the  
2 waterfront development organization that receives the  
3 contribution from the eligible applicant appears on the list  
4 established under section 1704-J and the department has approved  
5 the waterfront development project for which the contribution is  
6 to be used under section 1705-J(b).

7 (b) Time.--The following shall apply:

8 (1) Except as otherwise provided in paragraph (2), the  
9 department may accept applications for tax credits under this  
10 article not earlier than July 1 of each fiscal year.

11 (2) The application of any eligible applicant for tax  
12 credits available during a fiscal year as part of the second  
13 year of a two-year commitment or as a renewal of a two-year  
14 commitment which was fulfilled in the previous fiscal year  
15 may be accepted not earlier than May 15 preceding the start  
16 of the fiscal year.

17 (c) Availability of tax credits.--Tax credits under this  
18 article shall be made available by the department on a first-  
19 come, first-served basis within the limitation established under  
20 section 1708-J.

21 (d) Contribution.--A contribution by an eligible applicant  
22 shall be made not later than 60 days following the approval of  
23 an application under this section.

24 (e) Compliance provisions.--Before an application is  
25 approved, the Department of Revenue must make a finding that the  
26 applicant has filed all required State tax reports and returns  
27 for all applicable tax years and paid any balance of State tax  
28 due as determined at settlement, assessment or determination by  
29 the Department of Revenue.

30 Section 1707-J. Grant of tax credit and amount.

1     (a) General rule.--In accordance with section 1708-J(a), the  
2     Department of Revenue shall grant a tax credit against any tax  
3     due under Article III, IV, VI, VII, VIII, IX or XV or under  
4     Article XVI of the act of May 17, 1921 (P.L.682, No.284), known  
5     as The Insurance Company Law of 1921, to an eligible applicant  
6     providing proof of a contribution to a waterfront development  
7     organization in the taxable year in which the contribution is  
8     made. The tax credit shall not exceed 75% of the total amount  
9     contributed by the eligible applicant during the taxable year.

10    (b) Additional amount.--The Department of Revenue shall  
11    grant a tax credit of up to 90% of the total amount contributed  
12    during the taxable year if the eligible applicant provides a  
13    written commitment to provide the waterfront development  
14    organization with the same amount of contribution for two  
15    consecutive tax years. The eligible applicant shall provide the  
16    written commitment to the department at the time of application  
17    for the tax credit.

18    (c) Combination of tax credits.--An eligible applicant may  
19    receive tax credits from the Department of Revenue in any tax  
20    year for any combination of contributions under subsection (a)  
21    or (b).

22    (d) Pass-through entity.--The following shall apply:

23        (1) If a pass-through entity does not intend to use all  
24        approved tax credits under this article, it may elect in  
25        writing to transfer all or a portion of the tax credit to its  
26        shareholders, members or partners, in proportion to the share  
27        of the entity's distributive income to which the shareholder,  
28        member or partner is entitled, for use in the taxable year in  
29        which the contribution is made or in the taxable year  
30        immediately following the year in which the contribution is

1 made. The election shall designate the year in which the  
2 transferred credits are to be used and shall be made  
3 according to procedures established by the Department of  
4 Revenue.

5 (2) A pass-through entity and a shareholder, member or  
6 partner of a pass-through entity shall not claim the tax  
7 credit under this article for the same contribution.

8 (3) The shareholder, member or partner of a pass-through  
9 entity may not carry forward, carry back, obtain a refund of  
10 or sell or assign the tax credit.

11 (e) Restriction on applicability of credits.--No tax credits  
12 granted under this article shall be applied against any tax  
13 withheld by an employer from an employee under Article III.

14 Section 1708-J. Limitations.

15 (a) Aggregate amount.--The total aggregate amount of all tax  
16 credits under this article shall not exceed \$10,000,000 in any  
17 fiscal year.

18 (b) Activities.--No tax credit shall be granted for  
19 activities that are a part of an eligible applicant's normal  
20 course of business.

21 (c) Tax liability.--The following shall apply:

22 (1) Except as provided in paragraph (2), a tax credit  
23 granted under this article for any one taxable year may not  
24 exceed the tax liability of an eligible applicant.

25 (2) In the case of a credit granted to a pass-through  
26 entity which elects to transfer the tax credit according to  
27 section 1707-J(d), a tax credit granted for any one taxable  
28 year and transferred to a shareholder, member or partner may  
29 not exceed the tax liability of the shareholder, member or  
30 partner.

1 (d) Use.--A tax credit not used by the eligible applicant in  
2 the taxable year the contribution was made or in the year  
3 designated by the shareholder, member or partner to whom the  
4 credit was transferred under section 1707-J(d) may not be  
5 carried forward or carried back and is not refundable or  
6 transferable.

7 Section 1709-J. Lists.

8 The Department of Revenue shall provide a list of all  
9 waterfront development organizations receiving contributions  
10 from eligible applicants granted a tax credit under this article  
11 to the General Assembly not later than June 30 of each year.

12 Section 1710-J. Recapture of tax credits.

13 (a) Repayment.--If a waterfront development organization  
14 fails to complete a waterfront development project under section  
15 1705-J, the waterfront development organization shall repay to  
16 the Commonwealth any tax credits granted under this article for  
17 any contributions to the waterfront development organization.

18 (b) Assessment and collection.--If the waterfront  
19 development organization fails to repay the amount due under  
20 subsection (a) within 30 days of the date of a demand letter  
21 from the department, the department shall notify the Department  
22 of Revenue within 60 days of the date of the demand letter from  
23 the department. The Department of Revenue may issue an  
24 assessment against the waterfront development organization for  
25 the amount not repaid. The assessment and collection of this  
26 amount shall be made under the provisions of Article II. If the  
27 waterfront development organization fails to pay the assessment,  
28 the board of directors may be held jointly and severably liable  
29 for the unpaid amount.

30 SECTION 1711-J. GUIDELINES.

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1        WITHIN 180 DAYS, THE DEPARTMENT, IN CONSULTATION WITH THE  
2        DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, SHALL DEVELOP  
3        GUIDELINES TO IMPLEMENT THIS ARTICLE.

4        Section 2. This act shall take effect in 60 days.