

AMENDMENTS TO HOUSE BILL NO. 732

Sponsor: SENATOR YUDICHAK

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1 Amend Bill, page 1, line 11, by striking out the period after
2 "transactions" and inserting
3 ; and providing for local resource manufacturing tax credit and
4 for a penalty.

5 Amend Bill, page 2, by inserting between lines 8 and 9

6 Section 1.1. The act is amended by adding an article to
7 read:

8 ARTICLE XVII-L

9 LOCAL RESOURCE MANUFACTURING TAX CREDIT

10 Section 1701-L. Scope of article.

11 This article establishes a local resource manufacturing tax
12 credit.

13 Section 1702-L. Definitions.

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

17 "Company." A corporation, partnership, limited liability
18 company, limited liability partnership, business trust,
19 affiliate, unincorporated joint venture or other business entity
20 doing business in this Commonwealth.

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

22 "Downstream company." The term includes a company that
23 purchases chemical products or chemical compounds manufactured
24 or processed by a qualified taxpayer.

25 "Dry natural gas." Natural gas in which there are no
26 appreciable natural gas liquids recoverable by separation at the
27 wellhead.

28 "Fertilizer." A chemical product derived from petrochemicals
29 which is added to soil or land to increase fertility.

30 "Natural gas." As defined in 58 Pa.C.S. § 2301 (relating to
31 definitions).

32 "Natural gas liquids." As defined in 58 Pa.C.S. § 2301.

33 "New job." A full-time equivalent job created during the
34 construction of the project facility and paying the prevailing
35 minimum wage and benefit rates for each craft or classification
36 as determined by the Department of Labor and Industry under the
37 Prevailing Wage Act.

1 "Pass-through entity." Any of the following:

2 (1) A partnership as defined in section 301(n.0).

3 (2) A Pennsylvania S corporation as defined in section
4 301(n.1).

5 (3) An unincorporated entity subject to section 307.21.

6 "Permanent job." A full-time equivalent job created to
7 support the ongoing operation of the project facility.

8 "Petrochemical." Chemical products obtained from refining
9 and processing natural gas. The term does not include
10 liquefaction or other processing of natural gas for the purpose
11 of transport.

12 "Prevailing Wage Act." The act of August 15, 1961 (P.L.987,
13 No.442), known as the Pennsylvania Prevailing Wage Act.

14 "Project facility." A facility located in this Commonwealth
15 which manufactures petrochemicals or fertilizers using dry
16 natural gas and which required a capital investment of at least
17 \$400,000,000 to construct and place into service.

18 "Qualified tax liability." The liability for taxes imposed
19 under Articles III, IV, VII, VIII, IX, XI and XV. The term does
20 not include tax withheld under section 316.1.

21 "Qualified taxpayer." A company that satisfies all of the
22 following:

23 (1) Purchases and uses dry natural gas produced in this
24 Commonwealth in the manufacture of petrochemicals or
25 fertilizers at a project facility in this Commonwealth that
26 has been placed in service on or after the effective date of
27 this section.

28 (2) Has made a capital investment of at least
29 \$400,000,000 in order to construct the project facility and
30 place the project facility into service in this Commonwealth.

31 (3) Has created a minimum aggregate total of 800 new
32 jobs and permanent jobs.

33 (4) Has made good faith efforts to recruit and employ,
34 and to encourage any contractors or subcontractors to recruit
35 and employ, workers from the local labor market for
36 employment during the construction of the project facility.

37 (5) Has demonstrated that the new jobs created at the
38 project facility or for work covered by section 1713-L are
39 paid at least the prevailing minimum wage and benefit rates
40 for each craft or classification as determined by the
41 Department of Labor and Industry.

42 "Tax credit." The local resource manufacturing tax credit
43 provided under this article.

44 "Unit." One thousand cubic feet of natural gas at a
45 temperature of 60 degrees Fahrenheit and an absolute pressure of
46 14.73 pounds per square inch, in accordance with American Gas
47 Association standards and according to Boyle's law for the
48 measurement of gas under varying pressures with deviations
49 therefrom as follows:

50 (1) The average absolute atmospheric pressure shall be
51 assumed to be 14.4 pounds to the square inch, notwithstanding

1 the actual elevation or location of point of delivery above
2 sea level or variations in the atmospheric pressure.

3 (2) The temperature of the gas passing the meters shall
4 be determined by the continuous use of a recording
5 thermometer installed so that the thermometer may properly
6 record the temperature of the gas flowing through the meters.
7 The arithmetic average of the temperature recorded each 24-
8 hour day shall be used in computing gas volumes. If a
9 recording thermometer is not installed, or if installed and
10 not operating properly, an average flowing temperature of 60
11 degrees Fahrenheit shall be used in computing gas volume.

12 (3) The specific gravity of the gas shall be determined
13 by tests made by the use of an Edwards or Acme gravity
14 balance annually or at intervals as are found necessary in
15 practice. Specific gravity shall be used in computing gas
16 volumes.

17 (4) The deviation of the natural gas from Boyle's law
18 shall be determined by tests annually or at other shorter
19 intervals as are found necessary in practice. The apparatus
20 and the method to be used in making the tests shall be in
21 accordance with recommendations of the National Bureau of
22 Standards of the Department of Commerce or Report No. 3 of
23 the Gas Measurement Committee of the American Gas Association
24 on the effective date of this section. The results of the
25 tests shall be used in computing the volume of gas delivered.
26 "Upstream company." The term includes a company that is
27 engaged in the exploration, development, production, processing,
28 refining or transportation of dry natural gas in this
29 Commonwealth.
30 Section 1703-L. Eligibility.

31 In order to be eligible to receive a tax credit, a company
32 shall demonstrate the following:

33 (1) The company meets the requirements of a qualified
34 taxpayer.

35 (2) The use of carbon capture and sequestration
36 technology, or similar technologies, at the project facility
37 to the extent it is cost effective and feasible at the
38 discretion of the qualified taxpayer.

39 (3) Confirmation that the company has filed all required
40 State tax reports and returns for all applicable taxable
41 years and paid any balance of State tax due as determined by
42 assessment or determination by the department and not under
43 timely appeal.

44 Section 1704-L. Application and approval of tax credit.

45 (a) Rate.--The tax credit shall be equal to \$0.47 per unit
46 of dry natural gas that is purchased and used in the
47 manufacturing of petrochemicals or fertilizers at the project
48 facility by a qualified taxpayer.

49 (b) Application.--

50 (1) A qualified taxpayer may apply to the department for
51 a tax credit under this section.

1 (2) The application must be submitted to the department
2 by March 1 for the tax credit claimed for dry natural gas
3 purchased and used in manufacturing of petrochemicals or
4 fertilizers by the qualified taxpayer at the project facility
5 during the prior calendar year.

6 (3) The application must be on the form required by the
7 department which shall include the following:

8 (i) information required by the department to
9 document the amount of dry natural gas purchased and used
10 in the manufacture of petrochemicals or fertilizers at
11 the project facility;

12 (ii) information required by the department to
13 verify that the applicant is a qualified taxpayer; and

14 (iii) any other information as the department deems
15 appropriate.

16 (c) Review and approval.--

17 (1) The department shall review the applications and
18 shall issue an approval or disapproval by May 1.

19 (2) Upon approval, the department shall issue a
20 certificate stating the amount of tax credit granted for dry
21 natural gas purchased and used in the manufacture of
22 petrochemicals or fertilizers at the project facility in the
23 prior calendar year.

24 (d) Availability of tax credits.--

25 (1) Each fiscal year, \$26,666,668 in tax credits shall
26 be made available to the department in accordance with this
27 article.

28 (2) No more than four qualified taxpayers shall receive
29 a tax credit annually, for a maximum credit of \$6,666,667
30 each.

31 (3) The department, at its discretion, may issue
32 unallocated credits to a qualified taxpayer, notwithstanding
33 the maximum credit limit under paragraph (2).

34 Section 1705-L. Use of tax credits.

35 (a) Initial use.--Prior to sale or assignment of a tax
36 credit under section 1707-L, a qualified taxpayer must first use
37 a tax credit against the qualified tax liability incurred in the
38 taxable year for which the tax credit was approved.

39 (b) Eligibility.--The tax credit may be applied against up
40 to 20% of the qualified taxpayer's qualified tax liabilities
41 incurred in the taxable year for which the tax credit was
42 approved.

43 (c) Limit.--A qualified taxpayer that has been granted a tax
44 credit under this article shall be ineligible for any other tax
45 credit provided under this act.

46 Section 1706-L. Carryover, carryback and refund.

47 A tax credit cannot be carried back, carried forward or be
48 used to obtain a refund.

49 Section 1707-L. Sale or assignment.

50 (a) Authorization.--If the qualified taxpayer holds a tax
51 credit through the end of the calendar year in which the tax

1 credit was granted, the qualified taxpayer may sell or assign a
2 tax credit, in whole or in part, provided the sale is effective
3 by the close of the following calendar year.

4 (b) Application.--

5 (1) To sell or assign a tax credit, a qualified taxpayer
6 must file an application for the sale or assignment of the
7 tax credit with the department. The application must be on a
8 form required by the department.

9 (2) To approve an application, the department must
10 receive:

11 (i) a finding from the department that the applicant
12 has:

13 (A) filed all required State tax reports and
14 returns for all applicable taxable years; and

15 (B) paid any balance of State tax due as
16 determined by assessment or determination by the
17 department and not under timely appeal; and

18 (ii) for a sale or assignment to a company that is
19 not an upstream company or downstream company, a
20 certification from the qualified taxpayer that the
21 qualified taxpayer has offered to sell or assign the tax
22 credit:

23 (A) exclusively to a downstream company for a
24 period of 30 days following approval of the tax
25 credit under section 1704-L(c); and

26 (B) to an upstream company or downstream company
27 for a period of 30 days following expiration of the
28 period under clause (A).

29 (c) Approval.--Upon approval by the department, a qualified
30 taxpayer may sell or assign, in whole or in part, a tax credit.
31 Section 1708-L. Purchasers and assignees.

32 (a) Time.--The purchaser or assignee under section 1707-L
33 must claim the tax credit in the calendar year in which the
34 purchase or assignment is made.

35 (b) Amount.--The amount of the tax credit that a purchaser
36 or assignee under section 1707-L may use against any one
37 qualified tax liability may not exceed 50% of any of the
38 qualified tax liabilities of the purchaser or assignee for the
39 taxable year.

40 (c) Resale and assignment.--

41 (1) A purchaser under section 1707-L may not sell or
42 assign the purchased tax credit.

43 (2) An assignee under section 1707-L may not sell or
44 assign the assigned tax credit.

45 (d) Notice.--The purchaser or assignee under section 1707-L
46 shall notify the department of the seller or assignor of the tax
47 credit in compliance with procedures specified by the
48 department.

49 Section 1709-L. Pass-through entity.

50 (a) Election.--If a pass-through entity has an unused tax
51 credit, the pass-through entity may elect, in writing, according

1 to procedures established by the department, to transfer all or
2 a portion of the credit to shareholders, members or partners in
3 proportion to the share of the entity's distributive income to
4 which the shareholders, members or partners are entitled.

5 (b) Limitation.--The same unused tax credit under subsection
6 (a) may not be claimed by:

7 (1) the pass-through entity; and

8 (2) a shareholder, member or partner of the pass-through
9 entity.

10 (c) Amount.--The amount of the tax credit that a transferee
11 under subsection (a) may use against any one qualified tax
12 liability may not exceed 20% of any qualified tax liabilities
13 for the taxable year.

14 (d) Time.--A transferee under subsection (a) must claim the
15 tax credit in the calendar year in which the transfer is made.

16 (e) Sale and assignment.--A transferee under subsection (a)
17 may not sell or assign the tax credit.

18 Section 1710-L. (Reserved).

19 Section 1711-L. Administration.

20 (a) Audits and assessments.--

21 (1) The department may audit a taxpayer awarded a tax
22 credit to ascertain the validity of the amount awarded.

23 (2) The department may issue an assessment against a
24 taxpayer for an improperly issued tax credit. The procedures,
25 collection, enforcement and appeals of an assessment made
26 under this section shall be governed by Article II.

27 (b) Guidelines and regulations.--The department shall
28 develop written guidelines for the implementation of this
29 article. The guidelines shall be in effect until the department
30 promulgates regulations for the implementation of the provisions
31 of this article.

32 Section 1712-L. Reports to General Assembly.

33 (a) Annual report.--No later than the year after which tax
34 credits are first awarded under this article, and each October 1
35 thereafter, the department shall submit a report on the tax
36 credit provided under this article to the chairperson and
37 minority chairperson of the Appropriations Committee of the
38 Senate, the chairperson and minority chairperson of the
39 Appropriations Committee of the House of Representatives, the
40 chairperson and minority chairperson of the Finance Committee of
41 the Senate and the chairperson and minority chairperson of the
42 Finance Committee of the House of Representatives. The report
43 must include the names of the qualified taxpayers utilizing the
44 tax credit as of the date of the report and the amount of tax
45 credits approved for, utilized by or sold or assigned by a
46 qualified taxpayer.

47 (b) Reconciliation report.--On May 1 of the year which is 10
48 years after the year in which tax credits are first awarded
49 under this article, the department shall submit to the Secretary
50 of the Senate and the Chief Clerk of the House of
51 Representatives a reconciliation report on the effectiveness of

1 this article. The report shall include, to the extent possible,
2 the following information for the preceding 10 years:

3 (1) The name and business address of all qualified
4 taxpayers who have been granted tax credits under this
5 article.

6 (2) The amount of tax credits granted to each qualified
7 taxpayer.

8 (3) The total number of jobs created by the qualified
9 taxpayer, upstream company and downstream company and any
10 companies that provide goods, utilities or other services
11 that support the business operations of the qualified
12 taxpayer, upstream company and downstream company. This
13 paragraph includes the average annual salary and hourly wage
14 information.

15 (4) The amount of taxes paid under Article II by the
16 qualified taxpayer, upstream company and downstream company
17 and any companies that provide goods, utilities or other
18 services that support the business operations of the
19 qualified taxpayer, upstream company and downstream company.

20 (5) The amount of taxes withheld from employees or paid
21 by members, partners or shareholders of the pass-through
22 entities under Article III of the qualified taxpayer,
23 upstream company and downstream company and any companies
24 that provide goods, utilities or other services that support
25 the business operations of the qualified taxpayer, upstream
26 company and downstream company.

27 (6) The amount of taxes paid under Article IV by the
28 qualified taxpayer, upstream company and downstream company
29 and any companies that provide goods, utilities or other
30 services that support the business operations of the
31 qualified taxpayer, upstream company and downstream company.

32 (7) The amount of taxes paid under Article XI by the
33 qualified taxpayer, upstream company and downstream company
34 and any companies that provide goods, utilities or other
35 services that support the business operations of the
36 qualified taxpayer, upstream company and downstream company.

37 (8) The amount of any other State or local taxes paid by
38 the qualified taxpayer, upstream company and downstream
39 company and any companies that provide goods, utilities or
40 other services that support the business operations of the
41 qualified taxpayer, upstream company and downstream company.

42 (9) Any other information pertaining to the economic
43 impact of this article on this Commonwealth.

44 (c) Reduction.--If the reconciliation report issued under
45 subsection (b) reveals that the total amount of the tax credits
46 granted under this article exceeds the total amount of tax
47 revenue reported under subsection (b) (4), (5), (6), (7), (8) and
48 (9), the report must include any recommendation for changes in
49 the calculation of the credit.

50 (d) Publication.--The reports required by this section shall
51 be a public record as defined under section 102 of the act of

1 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law
2 and shall be available electronically on the publicly accessible
3 Internet website of the department. The reports required under
4 this section may not contain "confidential proprietary
5 information" as defined in section 102 of the Right-to-Know Law.
6 Section 1713-L. Prevailing wage.

7 (a) Application.--A project facility for which a tax credit
8 is sought and awarded under this article is deemed to meet each
9 of the minimum requirements necessary to apply the wage and
10 benefit rates, and related certification of payroll records,
11 required by the Prevailing Wage Act. A qualified taxpayer, or
12 the qualified taxpayer's agent, and all contractors and
13 subcontractors, of every tier, engaged to perform on the project
14 facility must comply with all provisions and requirements of the
15 Prevailing Wage Act for all new jobs and for all crafts or
16 classifications performing construction, reconstruction,
17 demolition, alteration and/or repair work, other than
18 maintenance work, undertaken at the project facility during the
19 initial construction and during any period in which tax credits
20 are sought and awarded for the project facility.

21 (b) Compliance.--The Department of Labor and Industry shall
22 enforce this section and shall apply the same administration and
23 enforcement applicable to any project of construction,
24 reconstruction, demolition, alteration and/or repair work, other
25 than maintenance work, undertaken pursuant to the requirements
26 of the Prevailing Wage Act to ensure compliance.

27 (c) Notification.--Prior to the solicitation of bids or
28 proposals of any contract or subcontract covered under
29 subsection (a), the qualified taxpayer, or the qualified
30 taxpayer's agent, shall notify the Department of Labor and
31 Industry of the solicitation and request the issuance of a wage
32 and benefit rate determination for all crafts and
33 classifications anticipated to perform at the project facility.
34 Rate requests shall be in conformity with the procedures of the
35 Prevailing Wage Act, and the Department of Labor and Industry
36 shall issue rates upon request as required pursuant to this
37 section and the provisions of the Prevailing Wage Act.

38 (d) Violation.--In addition to enforcement authorized under
39 the Prevailing Wage Act and subsection (b), if, after notice and
40 hearing, the Department of Labor and Industry determines that
41 the qualified taxpayer intentionally failed to pay or
42 intentionally caused another to fail to pay prevailing wage
43 rates or benefit rates as set forth under section 11(h) of the
44 Prevailing Wage Act for work covered under subsection (a), or
45 ratified any such intentional failure by any contractors or
46 subcontractors of the qualified taxpayer, the qualified taxpayer
47 shall be required to refund 10% of the amount of the tax credits
48 awarded to the qualified taxpayer for the first fiscal year for
49 which tax credits are awarded, in the case of initial
50 construction, or the fiscal year in which the intentional
51 noncompliance occurred as determined by the department.

1 (e) Appeal.--A finding of a violation under subsection (d)
2 shall be appealable under section 2.2(e)(1) of the Prevailing
3 Wage Act and 34 Pa. Code § 213.3 (relating to appeals from
4 determinations of the secretary). Any final determination by the
5 appeals board under the Prevailing Wage Act may be appealed
6 pursuant to 2 Pa.C.S. (relating to administrative law and
7 procedure).

8 Section 1714-L. Applicability.

9 This article shall apply to the purchase of dry natural gas
10 produced in this Commonwealth for the period beginning January
11 1, 2024, and ending December 31, 2049.

12 Section 1715-L. Expiration.

13 This article shall expire December 31, 2050.

14 Amend Bill, page 2, line 11, by striking out all of said line
15 and inserting

16 Section 3. This act shall take effect as follows:

17 (1) The addition of Article XVII-L of the act shall take
18 effect in 60 days.

19 (2) The remainder of this act shall take effect
20 immediately.