

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 456 Session of 2013

INTRODUCED BY BLAKE, STACK, GORDNER, YUDICHAK, TARTAGLIONE,  
 KASUNIC, FONTANA, ERICKSON, TEPLITZ, FARNESE, SMITH,  
 BREWSTER, PILEGGI, SOLOBAY, BROWNE, COSTA, WASHINGTON,  
 MENSCH, HUGHES AND FERLO, APRIL 1, 2013

REFERRED TO FINANCE, APRIL 1, 2013

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 the Innovate in PA Program.

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

13 Section 1. The heading of Article XVIII-C of the act of  
 14 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
 15 1971, added July 9, 2008 (P.L.922, No.66), is amended to read:

ARTICLE XVIII-C

[(RESERVED)]

INNOVATE IN PA TAX CREDIT

19 Section 2. The act is amended by adding sections to read:

20 Section 1801-C. Scope of article.

21 This article relates to the Innovate in PA Tax Credit.

1 Section 1802-C. Legislative intent.

2 It is the intent of this article to invest in innovation as a  
3 catalyst for economic growth. Investment, in the Ben Franklin  
4 Technology Development Authority, the Ben Franklin Technology  
5 Partners, the Partnerships for Regional Economic Performance,  
6 the department and venture capital funds will advance the  
7 competitiveness of this Commonwealth's companies in the global  
8 economy. It is the goal of this article to maximize the  
9 available funding from a minimum amount of \$157,500,000 and up  
10 to and exceeding \$190,000,000.

11 Section 1803-C. Definitions.

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

15 "Allocation amount." The total amount of tax credits  
16 purchased by a qualified taxpayer.

17 "Authority." The Ben Franklin Technology Development  
18 Authority established to manage and fund programs in this  
19 Commonwealth that support the development of technology as  
20 described in the act of June 22, 2001 (P.L.569, No.38), known as  
21 The Ben Franklin Technology Development Authority Act.

22 "Ben Franklin Technology Partners Program." A program under  
23 the Ben Franklin Technology Development Authority that funds  
24 four regionally based economic development organizations  
25 dedicated to a common mission of technology commercialization.

26 "Capital." The amount of money that a purchaser invests  
27 under the Innovate in PA Program.

28 "Department." The Department of Community and Economic  
29 Development of the Commonwealth.

30 "Fund." The Innovate in PA Fund.

1 "Impact investment." An investment intended to solve social  
2 or environmental challenges while generating financial profit.  
3 Impact investing recognizes that investments have social and  
4 environmental returns in addition to financial returns and  
5 attempts to maximize the three returns rather than one at the  
6 expense of others.

7 "Insurance premium tax liability." Any liability incurred by  
8 an insurance company under Article IX.

9 "Program." The Innovate in PA Program.

10 "Qualified taxpayer." Any of the following that has  
11 insurance premium tax liability and contributes capital to  
12 purchase premium tax credits under this article:

13 (1) An insurance company authorized to do business in  
14 this Commonwealth.

15 (2) A holding company that has at least one insurance  
16 company subsidiary authorized to do business in this  
17 Commonwealth.

18 "Recipient." An entity that receives a distribution of funds  
19 under section 1811-C(c).

20 "Tax credit." A credit against insurance premium tax  
21 liability offered to or held by a qualified taxpayer under this  
22 article.

23 "Venture Investment Program." A program under the Ben  
24 Franklin Technology Development Authority dedicated to  
25 increasing the availability of venture capital in this  
26 Commonwealth.

27 Section 1804-C. Tax credit.

28 A qualified taxpayer may purchase tax credits from the  
29 department and may apply the tax credits against its insurance  
30 premium tax liability in accordance with this article.

1 Section 1805-C. Duties.

2 (a) Sale of tax credits.--The department, shall have the  
3 authority to sell up to \$225,000,000 in tax credits to qualified  
4 taxpayers. The sale of the tax credits shall be in accordance  
5 with section 1808-C.

6 (b) Time of sale.--The sale authorized under subsection (a)  
7 may not occur before October 1, 2013.

8 Section 1806-C. Use of tax credits by qualified taxpayers.

9 (a) Use against insurance premium tax liability.--A  
10 qualified taxpayer that purchases tax credits under section  
11 1805-C may claim the credits beginning in calendar year 2017  
12 against insurance premium tax liability incurred for a taxable  
13 year that begins on or after January 1, 2016.

14 (b) Application to department.--A qualified taxpayer seeking  
15 to use purchased tax credits may submit an application to the  
16 department in a manner prescribed by the department.

17 (c) Construction.--The following shall apply:

18 (1) A qualified taxpayer may not be required to reduce  
19 the amount of insurance premium tax included by the taxpayer  
20 in connection with rate-making for any insurance contract  
21 written in this Commonwealth because of a reduction of the  
22 taxpayer's insurance premium tax liability derived from the  
23 tax credit purchased under this article.

24 (2) If, under the insurance laws of this Commonwealth,  
25 the assets of the qualified taxpayer are examined or  
26 considered, the taxpayer's balance of tax credits shall be  
27 treated as an admitted asset subject to the same financial  
28 rating as held by the Commonwealth.

29 (d) Limitations.--The following shall apply:

30 (1) The total amount of tax credits applied against

1 insurance premium tax liability by all qualified taxpayers in  
2 a fiscal year may not exceed \$45,000,000 per year beginning  
3 in calendar year 2017.

4 (2) The credit to be applied in any one year may not  
5 exceed the insurance premium tax liability of the qualified  
6 taxpayer for that taxable year.

7 (e) Hold-harmless provision.--In any year that a tax credit  
8 is claimed under this article, the General Assembly shall do all  
9 of the following:

10 (1) Transfer an amount equal to the amount of any tax  
11 credit claimed by a foreign fire insurance company against  
12 taxes that otherwise would be distributed in accordance with  
13 Chapter 7 of the act of December 18, 1984 (P.L.1005, No.205),  
14 known as the Municipal Pension Plan Funding Standard and  
15 Recovery Act, to the fund as defined in section 702 of the  
16 Municipal Pension Plan Funding Standard and Recovery Act.

17 (2) Transfer an amount equal to the amount of any tax  
18 credit claimed by a foreign casualty insurance company  
19 against taxes that otherwise would be distributed and used  
20 for police pension, retirement or disability purposes as  
21 provided by the act of May 12, 1943 (P.L.259, No.120),  
22 referred to as the Foreign Casualty Insurance Premium Tax  
23 Allocation Law, for distribution in accordance with the  
24 Foreign Casualty Insurance Premium Tax Allocation Law.

25 (3) Ensure that the programs under paragraphs (1) and  
26 (2) do not experience a negative fiscal impact due to a  
27 foreign fire insurance company or a foreign casualty  
28 insurance company claiming a tax credit authorized under this  
29 article.

30 Section 1807-C. Sale, carryover and carryback.

1 (a) Carryover.--If the qualified taxpayer cannot use the  
2 entire amount of the tax credit for the taxable year in which  
3 the taxpayer is eligible for the credit, the excess may be  
4 carried over to succeeding taxable years and used as a credit  
5 against the qualified tax liability of the taxpayer for those  
6 taxable years, provided that the credit may not be carried over  
7 to any taxable year that begins after December 31, 2025.

8 (b) Sale.--No sooner than 30 days after providing the  
9 Insurance Department and the department written notice of the  
10 intent to transfer tax credits, a qualified taxpayer may  
11 transfer tax credits held without restriction to any entity that  
12 is a qualified taxpayer in good standing with the Insurance  
13 Department and that agrees to assume all of the transferor's  
14 obligations with respect to the tax credit.

15 (c) Carryback.--A qualified taxpayer may not carry back a  
16 tax credit.

17 Section 1808-C. Sale of tax credits to qualified taxpayers.

18 (a) Conduct of sale.--The sale of tax credits authorized  
19 under section 1805-C(a) shall be conducted in accordance with  
20 this section.

21 (b) Process.--The department may sell the tax credits  
22 authorized under this article or may contract with an  
23 independent third party to conduct a bidding process among  
24 qualified taxpayers to purchase the credits. In raising capital  
25 for the program, the department shall have the discretion to  
26 distribute credits using a market-driven approach or any  
27 approach that maximizes the yield to the Commonwealth.

28 (c) Application.--A qualified taxpayer seeking to purchase  
29 tax credits may apply to the department in the manner prescribed  
30 by the department.

1 (d) Bidding process.--Using procedures adopted by the  
2 department or, if applicable, by an independent third party,  
3 each qualified taxpayer that submits an application shall make a  
4 timely and irrevocable offer, subject only to the department's  
5 issuance to the taxpayer of tax credit certificates, to make  
6 specified contributions of capital to the department on dates  
7 specified by the department.

8 (e) Contents of offer.--The offer under subsection (d) must  
9 include all of the following:

10 (1) The requested amount of tax credits, which may not  
11 be less than \$500,000.

12 (2) The qualified taxpayer's capital contribution for  
13 each tax credit dollar requested, which may not be less than  
14 the greater of either of the following:

15 (i) Seventy percent of the requested dollar amount  
16 of tax credits.

17 (ii) The percentage of the requested dollar amount  
18 of tax credits that the department and, if applicable,  
19 the independent third party, determines to be consistent  
20 with market conditions as of the offer date.

21 (3) Any other information the department or, if  
22 applicable, independent third party requires.

23 (f) Notice of approval.--Each qualified taxpayer that  
24 submits an application under this section shall receive a  
25 written notice from the department indicating whether or not it  
26 has been approved as a purchaser of tax credits and, if so, the  
27 amount of tax credits allocated.

28 (g) Limitation.--No tax credits may be sold if the bidding  
29 process, upon completion, has failed to yield at least  
30 \$50,000,000 in revenue.

1 Section 1809-C. Payment for tax credits purchased and  
2 certificates.

3 (a) Payment of capital.--Capital committed by a qualified  
4 taxpayer shall be paid to the department for deposit into the  
5 fund. Nothing under this section shall prohibit the department  
6 from establishing an installment payment schedule for capital  
7 payments to be made by the qualified taxpayer.

8 (b) Issuance of tax credit certificates.--On receipt of  
9 payment of capital, the department shall issue to each qualified  
10 taxpayer a tax credit certificate representing a fully vested  
11 credit against insurance premium tax liability.

12 (c) Certificate issued in accordance with bidding process.--  
13 The department shall issue tax credit certificates to qualified  
14 taxpayers in accordance with the bidding process selected by the  
15 department or the independent third party.

16 (d) Contents.--The tax credit certificate shall state all of  
17 the following:

18 (1) The total amount of premium tax credits that the  
19 qualified taxpayer may claim.

20 (2) The amount of capital that the qualified taxpayer  
21 has contributed or agreed to contribute in return for the  
22 issuance of the tax credit certificate.

23 (3) The dates on which the tax credits will be available  
24 for use by the qualified taxpayer.

25 (4) Any penalties or other remedies for noncompliance.

26 (5) The procedures to be used for transferring the tax  
27 credits.

28 (6) Any other requirements the department considers  
29 necessary.

30 Section 1810-C. Failure to make contribution of capital and



1           reallocation.

2       (a) Prohibition.--A tax credit certificate under section  
3 1809-C may not be issued to any qualified taxpayer that fails to  
4 make a contribution of capital within the time the department  
5 specifies.

6       (b) Penalty.--A qualified taxpayer that fails to make a  
7 contribution of capital within the time the department specifies  
8 shall be subject to a penalty equal to 10% of the amount of  
9 capital that remains unpaid. The penalty shall be paid to the  
10 department within 30 days after demand.

11       (c) Reallocation.--The department may offer to reallocate  
12 the defaulted capital among other qualified taxpayers, so that  
13 the result after reallocation is the same as if the initial  
14 allocation had been performed without considering the tax credit  
15 allocation to the defaulting qualified taxpayer.

16       (d) Contribution.--If the reallocation of capital under  
17 subsection (c) results in the contribution by another qualified  
18 taxpayer of the amount of capital not contributed by the  
19 defaulting qualified taxpayer, the department may waive the  
20 penalty provided under subsection (b).

21       (e) Transfer.--A qualified taxpayer that fails to make a  
22 contribution of capital within the time specified may avoid the  
23 imposition of the penalty by transferring the allocation of tax  
24 credits to a new or existing qualified taxpayer within 30 days  
25 after the due date of the defaulted installment. Any transferee  
26 of an allocation of tax credits of a defaulting qualified  
27 taxpayer under this subsection shall agree to make the required  
28 contribution of capital within 30 days after the date of the  
29 transfer.

30 Section 1811-C. Innovate in PA Program.

1 (a) Establishment.--The Innovate in PA Program is  
2 established within the authority.

3 (b) Fund.--The authority shall have the power and duty to  
4 establish the Innovate in PA Fund within this authority.

5 (c) Distribution.--The department shall distribute the net  
6 proceeds received by the department as a result of the sale of  
7 tax credits under section 1805-C(a) as follows:

8 (1) Seventy percent of net proceeds received by the  
9 department shall be transferred to the authority for deposit  
10 into the fund for distribution as follows:

11 (i) Thirty-three and one-half percent shall be  
12 distributed to the Ben Franklin Technology Partners  
13 Program for use according to program guidelines.

14 (ii) Five and one-half percent shall be distributed  
15 by the authority for technology-based economic  
16 development programs designed to support  
17 entrepreneurship, including, but not limited to,  
18 university-based entrepreneurial programs and new or  
19 existing programs designed to support early stage  
20 technology companies through seed grants or programming.

21 (iii) Sixty percent shall be distributed to the  
22 Venture Investment Program for use according to program  
23 guidelines including traditional venture investments or  
24 impact investments. The authority may consider impact  
25 investments based on performance. Impact investments may  
26 not exceed 15% of the Venture Investment Program  
27 distribution under this subparagraph.

28 (iv) One percent shall be retained by the authority  
29 for administrative costs. At the end of the fiscal year,  
30 the funds distributed under this subparagraph that are

1 not expended by the authority shall be rededicated to the  
2 fund.

3 (2) Thirty percent of net proceeds shall be retained by  
4 the department in a restricted receipts account for  
5 distribution as follows:

6 (i) Ninety-five percent shall be distributed to the  
7 Partnerships for Regional Economic Performance Program in  
8 accordance with guidelines issued by the department.

9 (ii) Four percent shall be distributed by the  
10 department for initiatives related to:

11 (A) policy-development;

12 (B) program creation or enhancements; and

13 (C) strategic planning efforts in the  
14 advancement of the life sciences industry in this  
15 Commonwealth.

16 (iii) One percent shall be retained by the  
17 department for administrative costs.

18 Section 1812-C. Guidelines.

19 The department, in consultation with the authority, shall  
20 promulgate guidelines implementing this article.

21 Section 1813-C. Report.

22 (a) Duties.--On or before January 1, 2015, and January 1 of  
23 each subsequent year, the department, in consultation with the  
24 authority, shall do the following:

25 (1) Submit a report on the implementation of the program  
26 to all of the following:

27 (i) The Governor.

28 (ii) The chairman and minority chairman of the  
29 Appropriations Committee of the Senate.

30 (iii) The chairman and minority chairman of the

1 Appropriations Committee of the House of Representatives.

2 (2) Publish the report under paragraph (1) on the  
3 department's publicly accessible Internet website.

4 (b) Contents.--The report under subsection (a) shall include  
5 the following:

6 (1) The name of the purchaser of premium tax credits.

7 (2) The amount of premium tax credits allocated to the  
8 purchaser.

9 (3) The amount of capital the purchaser contributed for  
10 the issuance of the tax credit certificate.

11 (4) The amount of any tax credits that have been  
12 transferred under section 1810-C(e).

13 (5) The amount of funds received by the recipients  
14 during the previous year.

15 (6) The cumulative amount of capital received by the  
16 department in connection with the sale of the tax credits.

17 (7) The amount of capital remaining uninvested at the  
18 end of the preceding calendar year.

19 (8) The names and locations of businesses receiving  
20 capital from the recipients, the reason for the investment  
21 and the amount of the investment.

22 (9) The total number of jobs created in this  
23 Commonwealth by the investment and the average wages paid for  
24 the jobs.

25 (10) The total number of jobs retained in this  
26 Commonwealth as a result of the investment and the average  
27 wages paid for the jobs.

28 Section 3. This act shall take effect in 60 days.