

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1033 Session of 2013

INTRODUCED BY SCHWANK, BLAKE, WOZNIAK, TEPLITZ, ARGALL, FONTANA,
YUDICHAK AND HUGHES, JULY 19, 2013

REFERRED TO FINANCE, JULY 19, 2013

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,
 2 as amended, "An act relating to the finances of the State
 3 government; providing for the settlement, assessment,
 4 collection, and lien of taxes, bonus, and all other accounts
 5 due the Commonwealth, the collection and recovery of fees and
 6 other money or property due or belonging to the Commonwealth,
 7 or any agency thereof, including escheated property and the
 8 proceeds of its sale, the custody and disbursement or other
 9 disposition of funds and securities belonging to or in the
 10 possession of the Commonwealth, and the settlement of claims
 11 against the Commonwealth, the resettlement of accounts and
 12 appeals to the courts, refunds of moneys erroneously paid to
 13 the Commonwealth, auditing the accounts of the Commonwealth
 14 and all agencies thereof, of all public officers collecting
 15 moneys payable to the Commonwealth, or any agency thereof,
 16 and all receipts of appropriations from the Commonwealth,
 17 authorizing the Commonwealth to issue tax anticipation notes
 18 to defray current expenses, implementing the provisions of
 19 section 7(a) of Article VIII of the Constitution of
 20 Pennsylvania authorizing and restricting the incurring of
 21 certain debt and imposing penalties; affecting every
 22 department, board, commission, and officer of the State
 23 government, every political subdivision of the State, and
 24 certain officers of such subdivisions, every person,
 25 association, and corporation required to pay, assess, or
 26 collect taxes, or to make returns or reports under the laws
 27 imposing taxes for State purposes, or to pay license fees or
 28 other moneys to the Commonwealth, or any agency thereof,
 29 every State depository and every debtor or creditor of the
 30 Commonwealth," providing for city opportunity zones.

31 The General Assembly of the Commonwealth of Pennsylvania
 32 hereby enacts as follows:

1 Section 1. The act of April 9, 1929 (P.L.343, No.176), known
2 as The Fiscal Code, is amended by adding an article to read:

3 ARTICLE XVI-K

4 CITY OPPORTUNITY ZONES

5 Section 1601-K. Scope of article.

6 This article relates to city opportunity zones.

7 Section 1602-K. Definitions.

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

11 "City." A city of the second class A or third class.

12 "City opportunity zone." A revitalization improvement zone
13 designated by a contracting authority that demonstrably will
14 result in sustainable economic development and job creation
15 within a city.

16 "Contracting authority." An authority established under 53
17 Pa.C.S. Ch. 56 (relating to municipal authorities) for the
18 purpose of designating revitalization zones and constructing
19 facilities or other authority established under the laws of this
20 Commonwealth.

21 "Department." The Department of Community and Economic
22 Development of the Commonwealth.

23 "Earned income tax." A tax or portion of a tax imposed on
24 earned income within a neighborhood improvement zone under the
25 act of December 31, 1965 (P.L.1257, No.511), known as The Local
26 Tax Enabling Act, which a city, or a school district contained
27 entirely within the boundaries of or coterminous with the city,
28 is entitled to receive.

29 "Facility." A structure to be used for industrial,
30 commercial, exhibition, hospitality, conference, retail,

1 community, office, recreational or mixed-use purposes. The term
2 includes a park.

3 "Fund." The City Opportunity Zone Fund established under
4 section 1607-K.

5 "Qualified business." An entity which meets all of the
6 following:

7 (1) Is any of the following that conducts business or
8 provides services:

9 (i) A sole proprietorship.

10 (ii) A corporation.

11 (iii) A limited liability company.

12 (iv) A partnership.

13 (v) An association.

14 (2) Locates or partially locates in a zone.

15 (3) Meets the requirements of section 1606-K.

16 "Zone." A city opportunity zone.

17 Section 1603-K. City Opportunity Zone Pilot Program.

18 (a) Establishment.--The department shall establish and
19 administer a pilot City Opportunity Zone Pilot Program.

20 (b) Number.--Participation in the pilot program is open to:

21 (1) four cities with populations above 60,000;

22 (2) four cities with populations above 20,000, but not
23 more than 60,000; and

24 (3) four cities with populations up to 20,000.

25 No more than three additional cities may be selected when
26 openings for their population category have been filled if they
27 otherwise meet program criteria established by the department.

28 (c) Selection.--The department shall develop a scoring tool
29 for selection that considers:

30 (1) The following factors:

1 (i) significance of the city, including its
2 importance to the State, regional and local economies;

3 (ii) whether it:

4 (A) is a county seat;

5 (B) has a disproportionate share of tax-exempt
6 properties;

7 (C) is or has been historically a local or
8 regional center of commerce and industry;

9 (iii) the historical importance of the city; and

10 (iv) whether it provides municipal services to other
11 municipalities.

12 (2) Need, including population trends, stability and
13 strength of the tax base, real estate tax levels, poverty and
14 unemployment rates, potential for economic growth without
15 participation in the program and whether the city is
16 distressed within the meaning of the act of July 10, 1987
17 (P.L.246, No.47), known as the Municipalities Financial
18 Recovery Act.

19 (3) Viability and impact, including the ability to raise
20 sufficient bond revenue and the projected effects of the
21 program on the needs criteria and the financial situation of
22 the city at two years and seven years following establishment
23 of the city opportunity zone.

24 (d) Eligibility.--A city participating in a substantially
25 similar program is not eligible to participate in the City
26 Opportunity Zone Pilot Program.

27 (e) Report.--No later than March 31, the department shall
28 annually report to the Senate and to the House of
29 Representatives on the status and effectiveness of each city
30 opportunity zone operating during the previous year, along with

1 any recommendations for improvements to the program, including
2 the advisability of making the program universally available.
3 Section 1604-K. Approval.

4 (a) Submission.--Prior to the designation of a zone, a
5 contracting authority shall apply to the department for approval
6 of a city opportunity zone plan. The plan shall include:

7 (1) A plan to establish one or more facilities.

8 (2) An economic development plan.

9 (3) Specific information relating to a facility which
10 will be constructed or renovated as part of the plan.

11 (4) Other information as required by the department.

12 (b) Approval.--The zone may be designated under section
13 1605-K upon approval of the plan under subsection (a)(1). If the
14 plan is not approved by the department within 180 days, the plan
15 shall be deemed approved.

16 Section 1605-K. Facility.

17 The contracting authority may do the following:

18 (1) Designate one or more zones within the city of not
19 greater than 100 acres in total in which a facility may be
20 constructed or redeveloped.

21 (2) Provide for or borrow funds for the purpose of:

22 (i) improvement and development within the zone;

23 (ii) construction or improvement of a facility
24 within the zone; or

25 (iii) redevelopment of a deteriorated facility in
26 existence prior to the designation of the zone.

27 Section 1606-K. Qualified business.

28 (a) Qualifications.--In order to qualify under this article,
29 a business must own or lease real property in the zone from
30 which the business actively conducts a trade, profession or

1 business. The qualified business must receive certification from
2 the Department of Revenue that the business is located and is in
3 the active conduct of a trade, profession or business within the
4 zone.

5 (b) Relocation.--A business that relocates into the zone
6 shall be a qualified business if it:

7 (1) increases full-time employment of the qualified
8 business in the first full year of operation within the zone
9 by at least 20%; or

10 (2) makes a capital investment in the property located
11 within a zone in the immediately preceding calendar or fiscal
12 year of at least \$2,500,000.

13 Section 1607-K. Fund.

14 (a) Establishment.--The contracting authority shall notify
15 the State Treasurer within ten days of the designation of a
16 zone. Thereafter, the State Treasurer shall establish a special
17 fund for the benefit of the contracting authority to be known as
18 the City Opportunity Zone Fund. Interest income derived from
19 investment of the money in a fund shall be credited by the
20 Treasury Department to the fund.

21 (b) Certification.--

22 (1) Within 30 days of the end of each calendar year,
23 each qualified business shall file a report with the
24 Department of Revenue which complies with all of the
25 following:

26 (i) States each State tax, calculated in accordance
27 with subsection (c), which was paid by the qualified
28 business in the prior calendar year.

29 (ii) Lists each State tax refund which complies with
30 all of the following:

1 (A) The refund is for a tax:

2 (I) set forth in subsection (c); and

3 (II) certified as paid under subsection (c).

4 (B) The refund was received in the prior
5 calendar year by the qualified business.

6 (iii) Is in a form and manner required by the
7 Department of Revenue.

8 (2) In addition to any penalties imposed under the act
9 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
10 of 1971, for failure to timely pay State taxes, failure to
11 file a timely and complete report under paragraph (1) shall
12 result in the imposition of a penalty of 10% of all State
13 taxes, calculated in accordance with subsection (c), which
14 were payable by the qualified business in the prior calendar
15 year.

16 (3) Any penalty imposed under this subsection shall be
17 imposed, assessed and collected by the Department of Revenue
18 under the provisions for imposing, assessing and collecting
19 penalties under Article II of the Tax Reform Code of 1971.
20 When the penalty is received, the money shall be transferred
21 from the General Fund to the fund of the contracting
22 authority that designated the zone in which the qualifying
23 business is located.

24 (4) Within 30 days of the end of each calendar year,
25 each qualified business shall file a report with the local
26 taxing authority reporting all local taxes, calculated in
27 accordance with subsection (c), which were paid by the
28 qualified business in the prior calendar year. The report
29 from each qualified business shall also list any local tax
30 refunds of taxes set forth in subsection (c) received in the

1 prior calendar year by the qualified business and any refunds
2 related to the local taxes as calculated in accordance with
3 subsection (c). The report shall be in a form and manner
4 required by the Department of Revenue.

5 (c) Calculation.--

6 (1) Within 60 days of the end of each calendar year, the
7 Department of Revenue shall certify separately for each zone
8 the amounts of State taxes paid, less any State tax refunds
9 received, by the qualified businesses filing reports under
10 subsection (a) to the Office of the Budget. Beginning in the
11 first full calendar year following the designation of a zone
12 and in each calendar year thereafter, the Department of
13 Revenue shall calculate amounts of State taxes actually
14 received by the Commonwealth from each qualified business
15 that filed a report under subsection (b) in the prior year
16 and certify the amounts received to the office.

17 (2) The contracting authority shall provide good faith
18 estimates of quarterly amounts to be calculated in a form and
19 manner prescribed by the Department of Revenue.

20 (3) The Department of Revenue shall estimate the
21 quarterly amounts, subject to an annual reconciliation, and
22 shall certify the amounts to the Office of the Budget within
23 90 days of the end of each fiscal quarter.

24 (4) An entity collecting a local tax within the zone
25 shall, within 30 days of the end of a fiscal quarter, submit
26 all of the local taxes collected that are to be calculated
27 under this subsection to the State Treasurer for transfer to
28 the fund under subsection (e).

29 (5) The following shall be the amounts calculated:

30 (i) An amount equal to all corporate net income tax,

1 capital stock and franchise tax, personal income tax,
2 business privilege tax, business privilege licensing fees
3 and earned income tax related to the ownership and
4 operation of a facility or qualified business in the
5 zone.

6 (ii) An amount equal to all of the following:

7 (A) All personal income tax, earned income tax
8 and local services tax withheld from its employees by
9 a facility or qualified business in the zone.

10 (B) All personal income tax, earned income tax
11 and local services tax withheld from the employees of
12 any facility or qualified business in the zone.

13 (iii) An amount equal to all sales and use tax
14 related to the operation of a facility in the zone. This
15 subparagraph shall include sales and use tax paid by any
16 provider of events or activities at or services to a
17 facility, including sales and use tax paid by vendors and
18 concessionaires and contractors at a facility.

19 (iv) An amount equal to all tax paid to the
20 Commonwealth related to the sale of any liquor, wine or
21 malt or brewed beverage in a facility.

22 (v) An amount equal to all personal income tax,
23 earned income tax and local services tax withheld from
24 personnel by a contractor or other entity involved in the
25 construction of a facility.

26 (vi) An amount equal to all of the following:

27 (A) All corporate net income tax, capital stock
28 and franchise tax, personal income tax, business
29 privilege tax, business privilege licensing fees and
30 earned income tax related to the ownership and

1 operation of any qualified business within the zone.

2 (B) All personal income tax, earned income tax
3 and local services tax withheld from its employees by
4 a qualified business within the zone.

5 (C) All personal income tax, earned income tax
6 and local services tax withheld from the employees of
7 a qualified business that provides events, activities
8 or services in the zone.

9 (D) All personal income tax, earned income tax
10 and local services tax to which the Commonwealth
11 would be entitled from performers or other
12 participants at an event or activity in the zone.

13 (E) All sales and use tax related to the
14 operation of a qualified business within the zone.
15 This clause shall include sales and use tax paid by a
16 qualified business that provides events, activities
17 or services in the zone.

18 (F) All tax paid by a qualified business to the
19 Commonwealth related to the sale of any liquor, wine
20 or malt or brewed beverage within the zone.

21 (G) The amount paid a qualified business within
22 the zone of any new tax enacted by the Commonwealth
23 following the effective date of this section.

24 (H) All personal income tax, earned income tax
25 and local services tax withheld from personnel by a
26 qualified business involved in the improvement,
27 development or construction of the zone.

28 (I) All sales and use tax paid on materials and
29 other construction costs, directly related to the
30 improvement, development or construction of a

1 facility in the zone.

2 (J) An amount equal to any amusement tax paid by
3 a facility or a qualified business operating in the
4 zone. No political subdivision or other entity
5 authorized to collect amusement taxes may impose or
6 increase the rate of any tax on admissions to places
7 of entertainment, exhibition, amusement or upon
8 athletic events in the zone which are not in effect
9 on the date the zone is designated by the contracting
10 authority.

11 (vii) Except for a tax levied against real property,
12 an amount equal to any tax imposed by the Commonwealth or
13 any of its political subdivisions on a qualified business
14 engaged in an activity within a zone or directly or
15 indirectly on any sale or purchase of goods or services
16 if the point of sale or purchase is within the zone.

17 (d) Income apportionment.--A business with locations inside
18 and outside the zone shall apportion taxes attributable to the
19 location within the zone or calculate the percentage of tax
20 payments attributable to the location within the zone.

21 (e) Transfers.--

22 (1) Within ten days of receiving notification under
23 subsection (a), the Secretary of the Budget shall direct the
24 State Treasurer to, notwithstanding any other law, transfer
25 the amounts calculated under subsection (c) from the General
26 Fund to each fund of the contracting authority. Beginning in
27 the second calendar year following the designation of a zone
28 and in each year thereafter, the amounts certified by the
29 department to the State Treasurer and the amounts transferred
30 by the State Treasurer to the fund of each contracting

1 authority shall be determined as follows:

2 (i) Add amounts certified by the department under
3 subsection (b) for the prior calendar year.

4 (ii) Subtract from the sum under subparagraph (i)
5 any State tax refunds paid as certified by the department
6 under subsection (b).

7 (iii) Add to the difference under subparagraph (ii)
8 any amounts certified under subsection (b) with respect
9 to the second prior calendar year.

10 (iv) Subtract from the sum under subparagraph (iii)
11 any amounts certified under subsection (b) which are less
12 than the amounts previously certified under subsection
13 (b) with respect to the second prior calendar year.

14 (2) The State Treasurer shall provide quarterly payments
15 to the contracting authority until the bonds issued or the
16 other debt incurred to finance the improvement and
17 development of the zone and the construction of a contracted
18 facility are retired. The payment in each quarter shall be
19 equal to the balance of the fund on the date of the last day
20 of the prior calendar quarter.

21 (f) Restriction on use of funds.--Funds transferred under
22 subsection (e):

23 (1) May only be utilized for:

24 (i) payment of debt service on bonds issued,
25 refinancing loans to repay bonds or for payment of other
26 debt incurred, for the improvement and development of all
27 or any part of the zone. Payments may be made directly or
28 indirectly through a multitiered ownership structure or
29 other structure authorized by the contracting authority
30 to facilitate financing;

1 (ii) construction of all or a part of a facility;
2 (iii) payment of debt service on bonds issued, or
3 payment of other debt incurred, for the development of a
4 facility in existence prior to the designation; or
5 (iv) replenishment of amounts in debt service
6 reserve funds established to pay debt service on bonds.

7 (2) May not be utilized for purposes of renovating or
8 repairing a facility, except for capital maintenance,
9 improvement projects and furniture, fixtures and equipment
10 reserve funds.

11 Section 1608-K. Keystone Opportunity Zone.

12 Within 30 days of the effective date of this section, the
13 contracting authority shall apply to the department to decertify
14 and remove the designation of all or part of any Keystone
15 Opportunity Zone that is coterminous with the city opportunity
16 zone in accordance with section 309 of the act of October 6,
17 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone,
18 Keystone Opportunity Expansion Zone and Keystone Opportunity
19 Improvement Zone Act. The department shall act on the
20 application within 30 days.

21 Section 1609-K. Duration.

22 The zone shall be in effect for a period equal to the length
23 of time for the repayment of debt incurred for the zone,
24 including the time of bonds initially issued. The term of bonds
25 initially issued may not exceed 20 years.

26 Section 1610-K. Commonwealth pledges.

27 (a) Pledge.--If and to the extent that the contracting
28 authority pledges amounts required to be transferred to the fund
29 of the contracting authority under section 1607-K for the
30 payment of bonds issued by the contracting authority, until all

1 bonds secured by the pledge of the contracting authority,
2 together with the interest on the bonds, are fully paid or
3 provided for, the Commonwealth pledges to and agrees with any
4 person, firm, corporation or government agency, whether in this
5 Commonwealth or elsewhere, and to and with any Federal agency
6 subscribing to or acquiring the bonds issued by the contracting
7 authority that the Commonwealth itself will not, nor will it
8 authorize any government entity to do any of the following:

9 (1) Abolish or reduce the size of the zone.

10 (2) Amend or repeal section 1607-K(b), (c) or (d).

11 (3) Limit or alter the rights vested in the contracting
12 authority in a manner inconsistent with the obligations of
13 the contracting authority with respect to the bonds issued by
14 the contracting authority.

15 (4) Impair revenues to be paid under this article to the
16 contracting authority necessary to pay debt service on bonds.

17 (b) Limitation.--Nothing in this section shall limit the
18 authority of the Commonwealth or any government entity to change
19 the rate, tax bases or any subject of any specific tax or to
20 repeal or enact any tax.

21 Section 1611-K. Regulations.

22 The Department of Revenue and the department shall develop
23 regulations necessary to implement this article. The department
24 shall include regulations to require annual reports relating to
25 the development of the zone.

26 Section 2. This act shall take effect immediately.