

No. 2003-51

AN ACT

HB 521

Amending the act of October 6, 1998 (P.L.705, No.92), entitled, as amended, "An act providing for the creation of keystone opportunity zones and keystone opportunity expansion zones to foster economic opportunities in this Commonwealth, to facilitate economic development, stimulate industrial, commercial and residential improvements and prevent physical and infrastructure deterioration of geographic areas within this Commonwealth; authorizing expenditures; providing tax exemptions, tax deductions, tax abatements and tax credits; creating additional obligations of the Commonwealth and local governmental units; and prescribing powers and duties of certain State and local departments, agencies and officials," further providing for short title, for definitions, for keystone opportunity zones, for keystone opportunity expansion zones, for keystone opportunity improvement zones, for application, for review, for criteria, for authorization of keystone opportunity zone, for residency, for qualified businesses and for corporate net income tax.

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

Section 1. Section 101 of the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act, amended December 20, 2000 (P.L.841, No.119), is amended to read:

Section 101. Short title.

This act shall be known and may be cited as the Keystone Opportunity Zone **[and]**, Keystone Opportunity Expansion Zone *and* **Keystone Opportunity Improvement Zone Act.**

Section 2. The definitions of "deteriorated property," "qualified business," "qualified political subdivision" and "resident" in section 103 of the act, amended December 20, 2000 (P.L.841, No.119), are amended to read:

Section 103. Definitions.

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

* * *

"Deteriorated property." Any blighted, impoverished area containing residential, industrial, commercial or other real property that is abandoned, unsafe, vacant, undervalued, underutilized, overgrown, defective, condemned, demolished or which contains economically undesirable land use. The term includes property adjacent to deteriorated property that is significantly undervalued and underutilized due to the proximity of the deteriorated property *and property which has been designated as deteriorated property in accordance with any other act.*

* * *

“Qualified business.” A business authorized to do business in this Commonwealth [that] *which* is located or partially located within a subzone [or], expansion subzone *or improvement subzone* and is engaged in the active conduct of a trade or business in accordance with the requirements of section 307 for the taxable year. An agent, broker or representative of a business is not engaged in the active conduct of trade or business for the business.

“Qualified political subdivision.” A political subdivision [that] *which* has real property within its jurisdiction which has been designated by the department as a subzone [or], expansion subzone *or improvement subzone*.

“Resident.” A person who is domiciled and resides in an area that is designated a subzone [or], expansion subzone *or improvement subzone* and who meets the requirements of section 306.

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Section 3. Sections 301(f), 301.1(e), 301.2(c), 302(a.1) and (c), 303(a), (b), (c) and (d) and 304(c) of the act, amended or added December 9, 2002 (P.L.1727, No.217), are amended to read:

Section 301. Keystone opportunity zones.

* * *

(f) Authorization to enhance [existing] subzones.—Unless as a result of a request the limitation on size established in subsection (a) would be exceeded, a subzone [of a keystone opportunity zone] may request to enhance its size. The request to enhance a subzone must be made on a subzone-by-subzone basis. A qualified political subdivision [having an approved] *which is seeking a* subzone within its jurisdiction [which is seeking to enhance its size] must pass the required ordinances, resolutions or other required action of the qualified political subdivision for the necessary exemptions, deductions, abatements or credits pursuant to this act for the period beginning on [the date of designation and ending on the date the subzone expires and must submit copies] *January 1, 2004, and ending on December 31, 2010, or December 31, 2013. Copies* of the ordinance, resolution or other action *must be submitted* to the department by [June 1, 2003] *May 1, 2004*.

Section 301.1. Keystone opportunity expansion zones.

* * *

(e) Authorization to enhance [existing] expansion subzones.—Unless as a result of a request the limitation on size established in subsection (a) would be exceeded, an expansion subzone [of a keystone opportunity expansion zone] may request to enhance its size. The request to enhance [the] *an* expansion subzone must be made on a subzone-by-subzone basis. A qualified political subdivision [having an approved] *which is seeking an* expansion subzone within its jurisdiction [which is seeking to enhance its size] must pass the required ordinances, resolutions or other required action of the qualified political subdivision for the necessary exemptions, deductions, abatements or credits pursuant to this act for the period

beginning on [the date of designation and ending on the date the expansion subzone expires and must submit copies] *January 1, 2004, and ending on December 31, 2010, or on December 31, 2013. Copies of the ordinance, resolution or other action must be submitted to the department by [June 1, 2003] May 1, 2004.*

Section 301.2. Keystone opportunity improvement zones.

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(c) Application.—By June 1, [2003] 2004, a political subdivision may apply to the department for approval of the designation of the deteriorated property as an improvement subzone for the period designated under subsection (b). The application must be on a form provided by the department and must include a copy of an ordinance, resolution or other required action from the governing body of the political subdivision exempting or providing the deductions, abatement or credits required by Chapter 7 to qualified persons and qualified businesses within the proposed improvement subzone. Except as provided in section [309] 1309, all appropriate ordinances and resolutions must be effective for the period specified in the executive order, and must be binding and nonrevocable on the political subdivision.

* * *

Section 302. Application.

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(a.1) Enhancement application.—One or more political subdivisions within [an existing] a keystone opportunity zone or keystone opportunity expansion zone, or a designee of one or more political subdivisions within [an existing] a keystone opportunity zone or keystone opportunity expansion zone, may apply to the department to designate deteriorated property within the political subdivision or portions of the political subdivision as enhancements to a subzone or an expansion subzone. The application must satisfy the requirements of subsection (a)(1), (2), (3), (5) and (6).

* * *

(c) Application limitation.—A political subdivision may submit only one application to the department for authorization as a keystone opportunity zone. A political subdivision may submit only one application to the department for authorization as a keystone opportunity expansion zone. A political subdivision may submit only one application to the department for designation of enhancements to [existing] keystone opportunity zones and keystone opportunity expansion zones. If a political subdivision seeks to enhance its [existing keystone opportunity zone] *subzone* under section 301(f) or its [existing keystone opportunity expansion zone] *expansion subzone* under section 301.1(e) and the Governor has designated an improvement subzone located within the political subdivision under section 301.2(b), the political subdivision [shall]

must submit one application containing both the request required by section 301(f) or 301.1(e) and the application required by section 301.2(c).

Section 303. Review.

(a) Action of department.—The department, in consultation with the Department of Revenue, shall review all completed applications submitted under this act. An application for authorization as a keystone opportunity zone and designation of subzones **[shall] *must*** be received by the department on or before September 30, 1998, in order to be considered by the department. An application for authorization as a keystone opportunity expansion zone and designation of expansion subzones **[shall] *must*** be received by the department on or before February 28, 2001, in order to be considered by the department. An application for enhancement of **[an existing] a** keystone opportunity zone or of **[an existing] a** keystone opportunity expansion zone *and designation of enhancements to subzones and to expansion subzones* must be received by the department on or before June 1, **[2003] 2004**.

(b) Process.—The department shall authorize up to 12 keystone opportunity zones from applications meeting the criteria in section 304 based upon need and likelihood of success. The department shall authorize up to 12 keystone opportunity expansion zones from applications meeting the criteria in section 304 based upon need and likelihood of success. Additionally, the department shall not alter the geographic boundaries of a subzone or expansion subzone or the duration of a subzone or expansion subzone described in an application. The department shall **[designate] *authorize*** additional enhancements to **[existing]** keystone opportunity zones and keystone opportunity expansion zones from applications meeting the criteria in section 304 based upon need and likelihood of success *as determined by the department*.

(c) Authorizations.—The department shall authorize all keystone opportunity zones by November 30, 1998. The department shall authorize all keystone opportunity expansion zones by March 30, 2001. The department shall **[designate] *authorize*** all enhancements to **[existing]** keystone opportunity zones and keystone opportunity expansion zones by **[October 1, 2003] June 30, 2004**.

(d) Effective date of designation.—The designation of a subzone under this act shall take effect on January 1, 1999. The designation of an expansion subzone under this act shall take effect on January 1, 2001. The designation of enhancements to **[existing keystone opportunity zones and keystone opportunity expansion zones] *subzones and expansion subzones*** under this act shall take effect January 1, 2004. *The designation of an improvement subzone under this act shall take effect on the date the property is designated an improvement subzone.*

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Section 304. Criteria for authorization of keystone opportunity zone.

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(c) Tax exemption ordinances.—An area shall not be authorized as a keystone opportunity zone or a keystone opportunity expansion zone unless, as a part of the application, each political subdivision in which the proposed subzone or proposed expansion subzone is to be located adopts and provides a copy of an ordinance, resolution or other required action from the governing body of each political subdivision that exempts or provides deductions, abatements or credits to qualified persons and qualified businesses from local taxes upon designation of the area as a subzone or expansion subzone. All appropriate ordinances and resolutions shall be effective on or before January 1, 1999, if designation as a subzone is granted. All appropriate ordinances and resolutions shall be effective on January 1, 2001, if designation as an expansion subzone is granted. All appropriate ordinances and resolutions shall be effective January 1, 2004, if designation of enhancements to **[an existing keystone opportunity zone or keystone opportunity expansion zone]** *a subzone or expansion subzone* are granted. Except as provided in section 309, the resolution, ordinance or other required action shall be binding and nonrevocable on the qualified political subdivisions for the duration of the opportunity plan.

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Section 4. Section 306 of the act, amended December 20, 2000 (P.L.841, No.119), is amended to read:

Section 306. Residency.

In order to qualify each year for a tax exemption, deduction, abatement or credit under this act, a person shall be domiciled and shall reside in a subzone **[or]**, expansion subzone *or improvement subzone* for a period of 184 consecutive days during each taxable year, which may begin on the date of designation by the department or on the date the person first resides within the subzone **[or]**, expansion subzone *or improvement subzone*.

Section 5. Sections 307(b) and 515(d)(3) of the act, amended December 9, 2002 (P.L.1727, No.217), are amended to read:

Section 307. Qualified businesses.

* * *

(b) Relocation.—Any business that relocates from outside a subzone, improvement subzone or expansion subzone into a subzone, improvement subzone or expansion subzone shall not receive any of the exemptions, deductions, abatements or credits set forth in this act unless that business **[either]** *does one of the following*:

(1) increases full-time employment by at least 20% in the first full year of operation within the subzone, improvement subzone or expansion subzone; **[or]**

(2) makes a capital investment in the property located within **[a]** *the* subzone, improvement subzone or expansion subzone *at least* equivalent to 10% of the gross revenues of that business in the immediately preceding calendar or fiscal year**[-]**; *or*

(3) enters into a lease agreement for property located within the subzone, improvement subzone or expansion subzone:

(i) for a term at least equivalent to the duration of the subzone, improvement subzone or expansion subzone; and

(ii) with aggregate payment under the lease agreement at least equivalent to 5% of the gross revenues of that business in the immediately preceding calendar or fiscal year.

The department, in consultation with the Department of Revenue, may waive or modify the requirements of this subsection, as appropriate.

Section 515. Corporate net income tax.

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(d) Income apportionment.—The taxable income of a corporation that is a qualified business shall be apportioned to the subzone, improvement subzone or expansion subzone by multiplying the Pennsylvania taxable income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three, in accordance with the following:

* * *

(3) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in the subzone, improvement subzone or expansion subzone during the tax period and the denominator of which is the total sales of the taxpayer in this Commonwealth during the tax period.

(i) Sales of tangible personal property are in the subzone, improvement subzone or expansion subzone if the property is delivered or shipped to a purchaser *that takes possession* within the subzone, improvement subzone or expansion subzone regardless of the F.O.B. point or other conditions of the sale.

(ii) Sales other than sales of tangible personal property are in the subzone, improvement subzone or expansion subzone if:

(A) the income-producing activity is performed in the subzone, improvement subzone or expansion subzone; or

(B) the income-producing activity is performed both within and without the subzone, improvement subzone or expansion subzone and a greater proportion of the income-producing activity is performed in the subzone, improvement subzone or expansion subzone than in any other location, based on costs of performance.

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Section 6. This act shall take effect immediately.

APPROVED—The 23rd day of December, A.D. 2003.

EDWARD G. RENDELL