

No. 2012-16

AN ACT

SB 1237

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," in keystone opportunity zones, further providing for extension for unoccupied parcels and for additional expansion zones; providing for expansion for new job creation; further providing for application, for qualified businesses, for corporate net income tax and for capital stock franchise tax; and, in tax administration, further providing for application time; providing for monitoring data; and repealing expiration provision.

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

Section 1. Sections 301.3 and 301.4 of the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act, added July 10, 2008 (P.L.1014, No.79), are amended to read:

Section 301.3. Extension for unoccupied parcels.

(a) Extension.—The department may approve an application to extend the exemptions, deductions, abatements and credits under this act as follows:

(1) One of the following:

(i) For a parcel in a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone that is an unoccupied parcel on the effective date of this section, for a period of seven years from the expiration date of the zone.

(ii) For a parcel in a keystone opportunity zone or keystone opportunity expansion zone that is an unoccupied parcel on the effective date of this section, for a period of ten years from the date of occupancy, provided that the parcel is occupied on or before December 31, 2015.

(iii) For a parcel in a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone or subzone that expires in 2013 or any year thereafter, for an additional period of no less than seven years but no more than ten years from the date of occupancy or from the expiration date of the zone as determined by the department. For a zone that expires in 2013, the extension shall apply to parcels that are unoccupied on the effective date of this subparagraph. For a zone that expires after 2013, the extension shall apply to parcels that are unoccupied on a date determined by the department.

(2) The extension of exemptions, deductions, abatement or credits authorized under this section, except exemptions for sales and use tax under section 511(a) or 705(a), shall take effect only upon occupancy.

(b) Real estate tax abatement.—The owner of an unoccupied parcel in a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone that has expired but that receives an extension of tax abatement eligibility following the original expiration date of the keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone under subsection (a) shall not receive an abatement of real property tax until the parcel becomes occupied or developed.

(c) Application.—Except as provided in subsection (d), in order to extend the tax benefits for unoccupied parcels under subsection (a), the department must receive an application from a political subdivision or its designee no later than June 30, 2009. The application must contain the information required under section 302(a)(1), (2), (3), (5) and (6). The application must include all ordinances, resolutions or other required action adopted by all political subdivisions in which the unoccupied parcel is located adopting the extension of all tax exemptions, deductions, abatements and credits authorized under Chapter 7. The department, in consultation with the Department of Revenue, shall review the application and, if approved, issue a certification of all tax exemptions, deductions, abatements or credits under this part for the unoccupied parcel within three months of receipt of the application. The certification shall be effective on the day following the expiration date of the existing subzone. *For a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone or subzone that expires in 2013 or any year thereafter, in order to extend the tax benefits under subsection (a)(1)(iii), the department must receive an application no later than three months prior to the expiration date of the zone.*

(d) Applications for certain zones.—For a keystone opportunity zone that expires December 31, 2008, an application may be submitted to the department to temporarily delay the expiration of the exemptions, deductions, abatements and credits for the zone until June 30, 2009. The application must be submitted by November 30, 2008, and include all ordinances, resolutions or other required action from all affected political subdivisions approving the requested delay in the expiration of the keystone opportunity zone. The department shall certify the delay in the expiration by December 31, 2008. If the expiration of a keystone opportunity zone is delayed under this subsection, a political subdivision or its designee may apply for an extension pursuant to subsection (c), provided that the application shall be submitted by May 1, 2009, and approved by the department no later than June 30, 2009. If an extension is granted under subsection (c), the extension shall be deemed to be effective January 1, 2009.

(e) Expiration.—All extensions of an unoccupied parcel certified under subsection (a)(1)(i) shall expire no later than seven years following the expiration date of the existing keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone. All extensions of an unoccupied parcel certified under subsection (a)(1)(ii) shall

expire no later than ten years following the date of occupancy of the unoccupied parcel. *All extensions of tax benefits under subsection (a)(1)(iii) for a zone that expires on January 1, 2013, shall expire no later than ten years following the approval of the extension of the existing keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone or subzone. An extension of tax benefits under subsection (a)(1)(iii) shall expire no sooner than seven years but no later than ten years following approval of the extension or the expiration date of the zone as determined by the department.*

Section 301.4. Additional keystone opportunity expansion zones.

(a) Establishment.—

(1) In addition to any designations under section 301.1, the department may designate up to 15 additional keystone opportunity expansion zones in accordance with this section. Each additional keystone opportunity expansion zone shall:

(i) Not be less than ten acres in size, unless contiguous to an existing zone.

(ii) Not exceed, in the aggregate, a total of 350 acres.

(iii) Be comprised of parcels that meet any of the following criteria:

(A) Are deteriorated, underutilized or unoccupied on the effective date of this clause.

(B) Are occupied by a business that:

(I) Creates or retains at least 1,400 full-time jobs in this Commonwealth within three years of the designation of the keystone opportunity expansion zone; and

(II) Makes a capital investment of at least \$750,000,000 in the additional keystone opportunity enhancement zone within three years of the designation of the keystone opportunity expansion zone.

(2) *[The department shall immediately notify political subdivisions located within the area designated.] In addition to any designations under section 301.1 and paragraph (1), the department may designate up to 15 additional keystone opportunity expansion zones in accordance with this subsection. Each additional keystone opportunity expansion zone shall:*

(i) Not be less than ten acres in size unless contiguous to an existing zone.

(ii) Not exceed, in the aggregate, a total of 350 acres.

(iii) Be comprised of parcels that meet any of the following criteria:

(A) Are deteriorated, underutilized or unoccupied on the effective date of this clause.

(B) Are occupied by a qualified business that:

(I) creates or retains at least 1,000 full-time jobs in this Commonwealth within three years of the designation of the keystone opportunity expansion zone; and

(II) makes a capital investment of at least \$500,000,000 in the additional keystone opportunity expansion zone

within three years of the designation of the keystone opportunity expansion zone.

(3) If a qualified business in a keystone opportunity expansion zone designated under paragraph (2) makes an investment of at least \$1,000,000,000 and the business and its affiliates, as determined by the department, create at least 400 new permanent full-time jobs in one or more zones within seven years of the date of designation by the department, the department shall grant to the business and its affiliates in each of the designated zones exemptions, deductions, abatements and credits under this act for a period of 15 years from the date of occupancy. If the qualified business and its affiliates fail to comply with the provisions of this paragraph, the period of the zone shall revert to ten years.

(b) Authorization.—Persons and businesses within an additional keystone opportunity expansion zone authorized under subsection [(a)] (a)(1) or (2) shall be entitled to all tax exemptions, deductions, abatements or credits set forth under this act, except exemptions for sales and use tax under section 511(a) or 705(a), for a period of ten years [beginning January 1, 2010, and ending on December 31, 2020]. *For a keystone opportunity expansion zone established under subsection (a)(1), the ten-year period shall begin on January 1, 2010, and end on December 31, 2020. For a keystone opportunity expansion zone established under subsection (a)(2), the ten-year period shall begin on January 1, 2014, and end on December 31, 2023.* Exemptions for sales and use taxes under sections 511 and 705 shall commence upon designation of the zone by the department.

(c) Application.—In order to receive a designation under subsection [(a)] (a)(1), the department must receive an application from a political subdivision or its designee no later than May 1, 2009, *and no later than October 1, 2013, for a keystone opportunity expansion zone established under subsection (a)(2).* The application must contain the information required under section 302(a)(1), (2)(i) and (ix) and (6). The application must include all ordinances, resolutions or other required action adopted by all political subdivisions in which the keystone opportunity expansion zone is located providing the tax exemptions, deductions, abatements and credits authorized under Chapter 7. The department, in consultation with the Department of Revenue, shall review the application and, if approved, issue a certification of all tax exemptions, deductions, abatements or credits under this [part] act for the additional keystone opportunity expansion zone within three months of receipt of the application. The department shall act on an application *for a designation* under [this] subsection (a)(1) by June 30, 2009, *and on an application for a designation under subsection (a)(2) by November 30, 2013. The department may make designations under this section on a rolling basis during the application period. The department may make designations under subsection (a)(2) that meet the requirements of this act, provided that at least three keystone opportunity expansion zones are reserved for counties of the fifth through eighth classes. If the department receives less than three applications that meet the requirements of this act from counties of the fifth through eighth classes by the application deadline under this subsection, the number of zones reserved*

under this subsection, minus the number of such applications for zones the department has approved, shall be available for designation in any county.

(d) Unused keystone opportunity expansion zones.—

(1) The department may designate any of the 15 remaining keystone opportunity expansion zones established under subsection (a)(1) for which there was no designation by the department as of the effective date of this subsection. To receive a designation of a remaining keystone opportunity expansion zone under this subsection, the department must receive an application from a political subdivision or its designee by June 1, 2012. The application must comply with subsection (c) except for the application deadline. The department, in consultation with the Department of Revenue, shall review the application and, if approved, shall issue a certification of all tax exemptions, deductions, abatements or credits under this act for the additional keystone opportunity expansion zone within three months of receipt of the application.

(2) Persons and qualified businesses within an additional keystone opportunity expansion zone authorized under paragraph (1) shall be entitled to all tax exemptions, deductions, abatements or credits set forth under this act, except exemptions for sales and use tax under section 511(a) or 705(a), for a period of ten years beginning January 1, 2013, and ending December 31, 2022. Exemptions for sales and use taxes under sections 511 and 705 shall commence upon designation of the zone by the department.

(e) Notice.—Upon designation under this section, the department shall immediately notify political subdivisions located within the area designated.

Section 2. The act is amended by adding a section to read:

Section 301.7. Expansion for new job creation.

(a) Expansion.—The department may approve an application to expand the area of a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone or subzone to include additional parcels that are deteriorated, underutilized or unoccupied on the effective date of this section and which are contiguous to the existing zone, not to exceed 15 acres, if the expansion approval is expected to increase job creation or capital investment. All exemptions, deductions, abatements and credits under this act shall be extended to the new parcels for a period of ten years following approval of the expansion of the keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone.

(b) Application.—The following shall apply:

(1) In order to extend the tax exemptions, deductions, abatements and credits under this act to additional parcels under subsection (a), the department must receive an application from a political subdivision or its designee by October 1, 2012.

(2) The application under paragraph (1) must:

(i) Contain the information required under section 302(a)(1), (2), (3), (5) and (6).

(ii) *Include all ordinances, resolutions or other required action adopted by all political subdivisions in which the unoccupied, deteriorated or underutilized parcel is located adopting the expansion of the zone and the extension of all tax exemptions, deductions, abatements and credits authorized under Chapter 7.*

(3) *The department, in consultation with the Department of Revenue, shall review the application and, if approved, issue a certification of all tax exemptions, deductions, abatements or credits under this chapter for the unoccupied parcel within three months of receipt of the application.*

(4) *The certification under paragraph (3) shall be effective ten days following designation of the expansion by the department.*

(c) *Expiration.—All expansions of an unoccupied parcel certified under subsection (b) shall expire no later than ten years following the effective date of certification by the department.*

Section 3. Sections 302(b), 307(a), 515(g), 516(f) and 907 of the act, amended December 9, 2002 (P.L.1727, No.217), are amended to read:

Section 302. Application.

* * *

(b) Participation limitation.—A political subdivision shall not be a part of more than one proposed keystone opportunity zone or proposed keystone opportunity expansion zone, *unless the department agrees that two zones will bring additional economic benefit to the political subdivision.* A proposed expansion subzone may not overlap the boundaries of a subzone.

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Section 307. Qualified businesses.

(a) Qualifications.—In order to qualify each year for a tax exemption, deduction, abatement or credit under this act, a business shall own or lease real property in a subzone, improvement subzone or expansion subzone from which the business actively conducts a trade, profession or business. The qualified business shall receive certification from the department that the business is located and is in the active conduct of a trade, profession or business, within the subzone, improvement subzone or expansion subzone. The business shall obtain annual renewal of the certification from the department to continue to qualify under this section. *The certification form shall include, but not be limited to, all of the following:*

(1) *The type and duration of the zone designation.*

(2) *The number of jobs created.*

(3) *The number of jobs retained.*

(4) *The amount of capital investment.*

(5) *Any other information, conditions or requirements reasonably required by the department.*

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Section 515. Corporate net income tax.

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(g) Section not applicable to certain businesses.—[Any portion of the taxpayer's taxable income that is attributable to the operation of a railroad, truck, bus or airline company, pipeline or natural gas company, water transportation company, a corporation that qualifies as

a regulated investment company under Article IV of the Tax Reform Code of 1971 or holding company as defined in Article VI of the Tax Reform Code of 1971 shall not be used to calculate a credit under this section.] *The following shall apply:*

(1) Any portion of the taxpayer's taxable income that is attributable to the operation of any of the following may not be used to calculate a credit under this section:

(i) Any of the following that are required to use special apportionment under Article IV of the Tax Reform Code of 1971 or would be required to use special apportionment under Article IV of the Tax Reform Code of 1971 if the taxpayer had income from business activity taxable both within and without this Commonwealth:

(A) A railroad, truck, bus or airline company.

(B) A pipeline or natural gas company.

(C) A water transportation company.

(ii) A corporation that qualifies as a regulated investment company under Article IV of the Tax Reform Code of 1971.

(iii) A holding company as defined in Article VI of the Tax Reform Code of 1971.

(2) The prohibition under paragraph (1) shall not apply to the portion of a qualified business engaged in manufacturing or processing.

Section 516. Capital stock franchise tax.

* * *

(f) Credit not available.—[Any portion of the taxpayer's tax liability that is attributable to the capital employed in the operation of a railroad, truck, bus or airline company, pipeline or natural gas company, water transportation company, a corporation that qualifies as a regulated investment company under Article IV of the Tax Reform Code of 1971 or holding company as defined in Article VI of the Tax Reform Code of 1971 shall not be used to calculate a credit under this section.] *The following shall apply:*

(1) Any portion of the taxpayer's tax liability that is attributable to the capital employed in the operation of any of the following may not be used to calculate a credit under this section:

(i) Any of the following that are required to use special apportionment under Article IV of the Tax Reform Code of 1971 or would be required to use special apportionment under Article IV of the Tax Reform Code of 1971 if the taxpayer had income from business activity taxable both within and without this Commonwealth:

(A) A railroad, truck, bus or airline company.

(B) A pipeline or natural gas company.

(C) A water transportation company.

(ii) A corporation that qualifies as a regulated investment company under Article IV of the Tax Reform Code of 1971.

(iii) A holding company as defined in Article VI of the Tax Reform Code of 1971.

(2) The prohibition under paragraph (1) shall not apply to the portion of a qualified business engaged in manufacturing or processing.

Section 907. Application time.

[An] *(a) Requirement.—Except as set forth in subsection (b), an applicant must file an application in a manner prescribed by the department by December 31 of each calendar year for which the applicant claims any exemption, deduction, abatement or credit under this act.*

(b) Extension or waiver.—Upon request of the applicant, the department may extend or waive the application deadline for good cause shown if the political subdivision does not object to the waiver or extension.

(c) Approval.—No exemption, deduction, abatement or credit may be claimed or received for that calendar year until approval has been granted by the department.

Section 4. The act is amended by adding a section to read:

Section 1104. Monitoring data.

In addition to any other requirements of this act, the department shall monitor all of the following:

- (1) Verifiable job creation and job retention data.*
- (2) Information on the types of jobs created and average hourly wages.*
- (3) Number of years in the program.*
- (4) Annual, unduplicated public and private capital investment amounts.*
- (5) Business type and description.*
- (6) Types and amounts of other economic development assistance received from the department.*
- (7) Documentation that proper participants identified as relocations meet the increased full-time employment, increased capital investment or lease agreement requirements of this act.*

Section 5. Section 1309 of the act, amended December 9, 2002 (P.L.1727, No.217), is repealed:

[Section 1309. Expiration.

This act and all benefits associated with this act shall terminate December 31, 2018.]

Section 6. The amendment of section 907 of the act shall apply retroactively to January 1, 2009.

Section 7. This act shall take effect immediately.

APPROVED—The 14th day of February, A.D. 2012

TOM CORBETT