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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2930 Session of  
2020

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INTRODUCED BY SHUSTERMAN, HILL-EVANS, MURT, KINSEY, KIRKLAND,  
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HANBIDGE AND DEASY, OCTOBER 14, 2020

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REFERRED TO COMMITTEE ON FINANCE, OCTOBER 14, 2020

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AN ACT

1 Providing for food desert opportunity zones and for food desert  
2 opportunity zone tax credits and imposing powers and duties  
3 on the Department of Community and Economic Development and  
4 the Department of Revenue.

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

16 CHAPTER 1

17 PRELIMINARY PROVISIONS

18 Section 101. Short title.

19 This act shall be known and may be cited as the Food Desert  
20 Opportunity Zone Act.

21 Section 102. Definitions.

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

25 "Department." The Department of Community and Economic  
26 Development of the Commonwealth.

27 "Food desert." A low-income census tract where a substantial  
28 number or share of residents have low access to a healthy food  
29 retail outlet.

30 "Healthy food retail outlet." A supermarket or large grocery

1 store.

2 "Low access to a healthy food retail outlet." The following:

3 (1) More than one mile from a supermarket or large  
4 grocery store in urban areas.

5 (2) More than 10 miles from a supermarket or large  
6 grocery store in rural areas.

7 "Low-income census tract." A census tract where:

8 (1) the poverty rate for that tract is at least 20%;

9 (2) for tracts not located within a metropolitan area,  
10 the median family income for the tract does not exceed 80% of  
11 Statewide median family income; or

12 (3) for tracts located within a metropolitan area, the  
13 median family income for the tract does not exceed 80% of the  
14 greater of Statewide median family income or the metropolitan  
15 area median family income.

16 "Tax credit." A food desert opportunity tax credit under  
17 section 501.

18 "Zone." A food desert opportunity zone established under  
19 section 301(a).

20 CHAPTER 3  
21 FOOD DESERT OPPORTUNITY ZONES

22 Section 301. Food desert opportunity zones.

23 (a) Establishment.--A program providing for food desert  
24 opportunity zones is established within the department.

25 (b) Criteria for zone.--A zone shall be comprised of a low-  
26 income census tract where at least 33% of the tract's population  
27 or a minimum of 500 people in the tract have low access to a  
28 healthy food retail outlet.

29 (c) Zone authorization.--The department shall authorize not  
30 more than 12 zones in this Commonwealth. Healthy food retail

1 outlets within a zone that are qualified under this act shall be  
2 entitled to a tax credit for a period not to exceed five years  
3 beginning January 1, 2022, and ending on or before December 31,  
4 2026.

5 Section 302. Application.

6 (a) Initial application.--One or more political subdivisions  
7 in a low-income census tract, or a designee of one or more  
8 political subdivisions, may apply to the department to designate  
9 the low-income census tract as a zone.

10 (b) Participation limitation.--A political subdivision shall  
11 not be a part of more than one proposed zone, unless the  
12 department agrees that two zones will bring additional benefit  
13 to the residents of the political subdivision.

14 (c) Application limitation.--A political subdivision may  
15 submit only one application to the department for the  
16 authorization of a zone.

17 (d) Form and manner.--The application shall be in a form and  
18 manner as prescribed by the department.

19 Section 303. Review.

20 (a) Action of department.--The department, in consultation  
21 with the Department of Revenue, shall review all completed  
22 applications submitted under section 302. An application for  
23 authorization of a zone must be received by the department on or  
24 before September 30, 2021, in order to be considered by the  
25 department.

26 (b) Process.--The department shall authorize up to 12 zones  
27 from applications meeting the criteria in section 301(b) based  
28 upon need and likelihood of success. The department may not  
29 alter the geographic boundaries of a zone.

30 (c) Authorizations.--The department shall authorize all

1 zones by November 30, 2021.

2 (d) Effective date of designation.--The designation of a  
3 zone under this section shall take effect January 1, 2022.

4 (e) Extension.--The department may extend the deadline for  
5 the receipt of applications for zones until December 31, 2021,  
6 if all 12 zones have not been authorized and the extension is  
7 necessary to allow eligible political subdivisions to apply. The  
8 department shall authorize additional zones under this  
9 subsection by February 28, 2022. The authorization shall take  
10 effect January 1, 2022, or if the authorization occurs after  
11 January 1, 2022, that subsequent authorization shall for all  
12 purposes be retroactive to January 1, 2022. The zone  
13 authorization shall end as provided in section 301(c).

14 Section 304. Qualified healthy food retail outlet.

15 (a) Qualifications.--In order to qualify each year for a tax  
16 credit under Chapter 5, a healthy food retail outlet shall own  
17 or lease real property in a zone from which the healthy food  
18 retail outlet actively conducts business. The qualified healthy  
19 food retail outlet shall receive certification from the  
20 department that the healthy food retail outlet is located and is  
21 in the active conduct of business within the zone. The healthy  
22 food retail outlet shall obtain annual renewal of the  
23 certification from the department to continue to qualify under  
24 this section.

25 (b) Relocation.--Any healthy food retail outlet that  
26 relocates from outside a zone shall not receive a tax credit  
27 provided under Chapter 5 unless the healthy food retail outlet  
28 does one of the following:

29 (1) increases full-time employment by at least 20% in  
30 the first full year of operation within the zone;

1 (2) makes a capital investment in the property located  
2 within the zone equivalent to at least 10% of the gross  
3 revenues of that healthy food retail outlet in the  
4 immediately preceding calendar or fiscal year; or

5 (3) enters into a lease agreement for property located  
6 within the zone:

7 (i) for a term equivalent to at least the duration  
8 of the zone; and

9 (ii) with aggregate payment under the lease  
10 agreement equivalent to at least 5% of the gross revenues  
11 of that healthy food retail outlet in the immediately  
12 preceding calendar or fiscal year.

13 (c) Waiver of requirements.--The department, in consultation  
14 with the Department of Revenue, may waive or modify the  
15 requirements under subsection (b), as appropriate.

16 Section 305. Desertification.

17 (a) Application.--One or more political subdivisions, or a  
18 designee of one or more political subdivisions, may apply to the  
19 department to decertify and remove the designation of a zone.  
20 The application shall be in a form and manner prescribed by the  
21 department.

22 (b) Process.--The department may grant the request to  
23 decertify and remove the designation of a zone after completed  
24 applications have been submitted by all qualified political  
25 subdivisions in which the zone is located.

26 CHAPTER 5

27 TAX CREDIT

28 Section 501. Food desert opportunity tax credit.

29 (a) Credits.--For tax years beginning on and after January  
30 1, 2022, a qualified healthy food retail outlet may apply to the

1 Department of Revenue for a tax credit against the tax imposed  
2 by Article III of the act of March 4, 1971 (P.L.6, No.2), known  
3 as the Tax Reform Code of 1971, for the taxable year. The  
4 Department of Revenue shall prescribe the form and manner to  
5 obtain the tax credit.

6 (b) Application of credit.--A qualified healthy food retail  
7 outlet shall apply for a tax credit by January 15 for the  
8 previous calendar year.

9 (c) Apportionment.--The Department of Revenue shall  
10 apportion a tax credit for a qualified healthy food retail  
11 outlet that has not operated in a zone for a full fiscal year.

12 (d) Tax credit determinations.--The tax credit shall be  
13 determined by multiplying the monthly average of all full-time  
14 jobs at a qualified healthy food retail outlet by the allowance.  
15 The allowance for purposes of the tax credit shall be \$1,250 per  
16 job.

17 (e) Notification of credit.--By March 15, the Department of  
18 Revenue shall notify a qualified healthy food retail outlet of  
19 the amount of the qualified healthy food retail outlet's tax  
20 credit approved.

21 (f) Limitation on amount of credit.--The tax credit shall  
22 not exceed 50% of the tax liability of the qualified healthy  
23 food retail outlet under Article III of the Tax Reform Code of  
24 1971 for the taxable year. A qualified healthy food retail  
25 outlet may not carry back or carry forward a tax credit received  
26 under this section.

27 (g) Allocation.--The total amount of tax credits approved by  
28 the Department of Revenue shall not exceed \$1,000,000 annually.  
29 If the tax credits exceed the \$1,000,000 cap in a given year,  
30 the tax credits will be allocated on a pro rata basis.

1 Section 502. Transferability.

2 A tax credit awarded to a qualified healthy food retail  
3 outlet is nontransferable and cannot be applied, used or  
4 assigned to any other person, business or tax account.

5 Section 503. Recapture.

6 (a) General rule.--If a qualified healthy food retail outlet  
7 located within a zone received a tax credit and subsequently  
8 relocates outside of the zone within the first five years of  
9 locating in the zone, the qualified healthy food retail outlet  
10 shall refund the Commonwealth in accordance with the following:

11 (1) If the qualified healthy food retail outlet  
12 relocates within three years from the date of first locating  
13 in a zone, 66% of the tax credits awarded to the qualified  
14 healthy food retail outlet shall be refunded to the  
15 Commonwealth.

16 (2) If the qualified healthy food retail outlet  
17 relocates within three to five years from the date of first  
18 locating in a zone, 33% of the tax credits awarded to the  
19 qualified healthy food retail outlet shall be refunded to the  
20 Commonwealth.

21 (3) If the qualified healthy food retail outlet was  
22 located within a facility operated by a nonprofit  
23 organization to assist in the creation and development of a  
24 start-up business, no tax credit shall be refunded.

25 (b) Waiver.--The department, in consultation with the  
26 Department of Revenue, may waive or modify recapture  
27 requirements under subsection (a) if the department determines  
28 that the relocation was due to circumstances beyond the control  
29 of the qualified healthy food retail outlet, including, but not  
30 limited to:



- 1 (1) natural disaster;
- 2 (2) unforeseen industry trends; or
- 3 (3) loss of a major supplier or market.

4 Section 504. Delinquent or deficient State or local taxes.

5 (a) General rule.--The following shall apply:

6 (1) A qualified healthy food retail outlet may not claim  
7 or receive a tax credit unless the qualified healthy food  
8 retail outlet is in full compliance with all State and local  
9 tax laws, ordinances and resolutions.

10 (2) A qualified healthy food retail outlet may not claim  
11 or receive a tax credit if any person or business with a 20%  
12 or greater interest in the qualified healthy food retail  
13 outlet is not in full compliance with all State and local tax  
14 laws, ordinances and resolutions.

15 (b) Later compliance and eligibility.--A qualified healthy  
16 food retail outlet that is not eligible to claim a tax credit  
17 due to noncompliance with any State or local tax law may become  
18 eligible if the qualified healthy food retail outlet  
19 subsequently comes into full compliance with all State and local  
20 tax laws to the satisfaction of the Department of Revenue or the  
21 political subdivision within the calendar year in which the  
22 noncompliance first occurred. If full compliance is not attained  
23 by February 5 of the calendar year following the calendar year  
24 during which noncompliance first occurred, the qualified healthy  
25 food retail outlet is precluded from claiming a tax credit for  
26 that calendar year, whether or not full compliance is achieved  
27 subsequently.

28 Section 505. Code compliance.

29 (a) General rule.--A qualified healthy food retail outlet  
30 shall be precluded from claiming a tax credit if the qualified

1 healthy food retail outlet owns real property in a zone and the  
2 real property is not in compliance with all applicable State and  
3 local zoning, building and housing laws, ordinances or codes.

4 (b) Opportunity to achieve compliance.--A qualified healthy  
5 food retail outlet that is not in compliance under subsection  
6 (a) shall have until December 31 of the calendar year following  
7 designation of the real property as part of a zone, to be in  
8 compliance in order to claim a tax credit for that year. If full  
9 compliance is not attained by December 31 of that calendar year,  
10 the qualified healthy food retail outlet is precluded from  
11 claiming a tax credit for that calendar year, whether or not  
12 compliance is achieved in a subsequent calendar year. The  
13 Department of Revenue may extend the time period in which a  
14 qualified healthy food retail outlet must come into compliance  
15 with a local ordinance or building code for a period not to  
16 exceed one year if the Department of Revenue determines that the  
17 qualified healthy food retail outlet has made and shall continue  
18 to make a good faith effort to come into compliance and that an  
19 extension will enable the qualified healthy food retail outlet  
20 to achieve full compliance. Political subdivisions in a zone  
21 shall notify the Department of Revenue in writing of all  
22 qualified healthy food retail outlets not in compliance with  
23 this subsection within 30 days following the end of each  
24 calendar year.

25 Section 506. Appeals.

26 A qualified healthy food retail outlet shall be deemed to be  
27 in compliance with any State or local tax for purposes of this  
28 chapter if the qualified healthy food retail outlet has made a  
29 timely administrative or judicial appeal for that particular tax  
30 or has entered into and is in compliance with a duly authorized

1 deferred payment plan with the Department of Revenue or  
2 political subdivision for that particular tax.

3 Section 507. Notice requirements.

4 (a) Requirement.--After compliance reviews have been  
5 conducted by appropriate Commonwealth and local authorities, the  
6 department shall notify each zone applicant by regular mail each  
7 year of the department's approval or denial of the zone  
8 application. No qualified healthy food retail outlet zone is  
9 entitled a tax credit unless the zone receives approval from the  
10 department.

11 (b) Notice.--The department shall provide a one-time  
12 notification to every current zone real property owner by June  
13 1, 2021. Failure to receive departmental notification under this  
14 section shall not extend or restrict any benefits or rights real  
15 property owners possess under this act.

16 (c) Transmittal.--The department or its designated official  
17 shall, within 15 business days of receipt of a zone application  
18 made under this act, forward a copy of the application to  
19 appropriate Commonwealth and local authorities for review and  
20 processing.

21 Section 508. Application time.

22 (a) General rule.--Except as provided under subsection (b),  
23 an applicant for a tax credit must file an application in a  
24 manner prescribed by the department by December 31 of each  
25 calendar year for which the applicant claims a tax.

26 (b) Extension or waiver.--Upon request of the applicant, the  
27 department may extend or waive the application deadline for good  
28 cause shown.

29 (c) Approval.--A tax credit may not be claimed or received  
30 for that calendar year until approval has been granted by the

1 department.

2 CHAPTER 7

3 MISCELLANEOUS PROVISIONS

4 Section 701. Illegal activity.

5 Any funds or other forms of consideration received by a  
6 qualified healthy food retail outlet conducting any type of  
7 illegal activity shall not be eligible for a tax credit or any  
8 other benefits that are created under this act.

9 Section 702. Rules and regulations.

10 The following shall apply:

11 (1) The Department of Revenue may promulgate regulations  
12 necessary to effectuate the provisions of this act.

13 (2) The department may promulgate regulations necessary  
14 to effectuate the provisions of this act.

15 Section 703. Compliance.

16 A qualified healthy food retail outlet eligible for a tax  
17 credit shall comply with all reporting, filing and compliance  
18 requirements under the act of March 4, 1971 (P.L.6, No.2), known  
19 as the Tax Reform Code of 1971, unless otherwise provided for in  
20 this act.

21 Section 704. Penalties.

22 (a) Civil penalty.--The following shall apply:

23 (1) In addition to any penalties authorized by the act  
24 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
25 of 1971, for violations of that act, the Department of  
26 Revenue may impose an additional administrative penalty not  
27 to exceed \$10,000 for any act or violation of this act,  
28 including the filing of any false statement, return or  
29 document.

30 (2) The department may impose a civil penalty not to

1 exceed \$10,000 for a violation of this act, including the  
2 filing of any false statement, return or document.

3 (b) Criminal penalty.--In addition to any criminal penalty  
4 under the Tax Reform Code of 1971, a qualified healthy food  
5 retail outlet that knowingly violates any of the provisions of  
6 this act commits a misdemeanor of the third degree.

7 Section 705. Construction.

8 This act shall be interpreted to ensure that all provisions  
9 relating to tax credits are strictly construed in favor of the  
10 Commonwealth.

11 Section 706. Applicability.

12 The provisions of this act shall be applied prospectively. A  
13 qualified healthy food retail outlet may not claim a tax credit  
14 until the qualified healthy food retail outlet becomes qualified  
15 under this act.

16 Section 707. Effective date.

17 This act shall take effect in 60 days.