

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 1100** Session of  
2019

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INTRODUCED BY KAUFER, TURZAI, MIHALEK, KAIL, FRITZ, TOOHL,  
NELSON, PUSKARIC, O'NEAL, GILLESPIE, GREINER, ROTHMAN,  
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EVERETT, RADER, SANKEY, WARNER, RYAN, BOBACK, DIAMOND,  
MARSHALL, PICKETT, COOK, MASSER, HEFFLEY, DOWLING, REESE,  
GABLER, TOBASH AND DUSH, APRIL 29, 2019

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AS AMENDED ON THIRD CONSIDERATION, IN SENATE, FEBRUARY 3, 2020

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## 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 energy and fertilizer manufacturing  
11 tax credit.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as  
15 the Tax Reform Code of 1971, is amended by adding an article to  
16 read:

17 ARTICLE XVII-L

18 ENERGY AND FERTILIZER MANUFACTURING TAX CREDIT

19 Section 1701-L. Scope of article.

1 This article establishes an energy and fertilizer  
2 manufacturing tax credit.

3 Section 1702-L. Definitions.

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

7 "Ammonia." A compound of nitrogen and hydrogen, NH<sub>3</sub>, that is <--  
8 a colorless gas with a characteristic pungent smell that  
9 dissolves in water and gives a strongly alkaline solution.

10 "Company." A corporation, partnership, limited liability  
11 company, limited liability partnership, business trust,  
12 affiliate, unincorporated joint venture or other business entity  
13 doing business in this Commonwealth.

14 "Department." The Department of Revenue of the Commonwealth.

15 "Downstream company." Includes a company that uses chemical  
16 products or chemical compounds manufactured or processed by a  
17 qualified taxpayer as a raw material in the company's production  
18 process in this Commonwealth.

19 "Gallon." A United States liquid gallon equal to a volume of <--  
20 231 cubic inches and equal to 3.785411784 liters or 0.13368  
21 cubic feet, where volumetric measurements made at ambient  
22 flowing conditions are typically adjusted for composition and to  
23 standard conditions using established industry standard  
24 practices.

25 "Methane." A colorless, odorless flammable gas that is the  
26 product of biological decomposition of organic matter.

27 "Methanol." A toxic, colorless flammable liquid alcohol,  
28 CH<sub>3</sub>OH, made by oxidizing methane.

29 "FERTILIZER." A CHEMICAL PRODUCT DERIVED FROM PETROCHEMICALS <--  
30 WHICH IS ADDED TO SOIL OR LAND TO INCREASE FERTILITY.

1 "NATURAL GAS." AS DEFINED IN 58 PA.C.S. § 2301 (RELATING TO  
2 DEFINITIONS).

3 "Pass-through entity." Any of the following:

4 (1) A partnership as defined in section 301(n.0).

5 (2) A Pennsylvania S corporation as defined in section  
6 301(n.1).

7 (3) An unincorporated entity subject to section 307.21.

8 "Qualified product." Methane used in creation of ammonia, <--  
9 methanol and urea.

10 "PETROCHEMICAL." CHEMICAL PRODUCTS OBTAINED FROM REFINING <--  
11 AND PROCESSING NATURAL GAS.

12 "Qualified tax liability." The liability for taxes imposed  
13 under Articles III, IV, ~~VI~~, VII, VIII, IX, XI and XV. The term <--  
14 does not include tax withheld under section 316.1.

15 "Qualified taxpayer." A company that satisfies all of the  
16 following:

17 (1) Purchases and uses Pennsylvania ~~methane~~ NATURAL GAS <--  
18 in the manufacture of petrochemicals or fertilizers at a  
19 facility in this Commonwealth that has been placed in service  
20 on or after the effective date of this article.

21 (2) ~~Had~~ HAS made a capital investment of at least <--  
22 ~~\$1,000,000,000~~ \$450,000,000 in order to construct the <--  
23 facility and place the facility into service in this  
24 Commonwealth.

25 (3) Has created at least ~~1,000~~ A COMBINED 800 full-time <--  
26 equivalent jobs during the construction phase AND PERMANENT <--  
27 JOBS in order to construct the facility and place it into  
28 service AND OPERATE in this Commonwealth. <--

29 (4) HAS MADE GOOD FAITH EFFORTS TO RECRUIT AND EMPLOY, <--  
30 AND TO ENCOURAGE ANY CONTRACTORS OR SUBCONTRACTORS TO RECRUIT

1 AND EMPLOY, WORKERS FROM THE LOCAL LABOR MARKET FOR  
2 EMPLOYMENT DURING THE CONSTRUCTION PHASE.

3 (5) HAS DEMONSTRATED THAT INDIVIDUALS EMPLOYED BY THE  
4 TAXPAYER OR ANY CONTRACTOR OR SUBCONTRACTOR FOR THE  
5 CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION OR  
6 REPAIR OF THE FACILITY HAVE BEEN PAID THE PREVAILING MINIMUM  
7 WAGE RATE FOR EACH CRAFT OR CLASSIFICATION AS DETERMINED BY  
8 THE DEPARTMENT OF LABOR AND INDUSTRY UNDER THE ACT OF AUGUST  
9 15, 1961 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA  
10 PREVAILING WAGE ACT.

11 "Tax credit." The energy and fertilizer manufacturing tax  
12 credit provided under this article.

13 "UNIT." ONE THOUSAND CUBIC FEET OF NATURAL GAS AT A <--  
14 TEMPERATURE OF 60 DEGREES FAHRENHEIT AND AN ABSOLUTE PRESSURE OF  
15 14.73 POUNDS PER SQUARE INCH, IN ACCORDANCE WITH AMERICAN GAS  
16 ASSOCIATION STANDARDS AND ACCORDING TO BOYLE'S LAW FOR THE  
17 MEASUREMENT OF GAS UNDER VARYING PRESSURES WITH DEVIATIONS  
18 THEREFROM AS FOLLOWS:

19 (1) THE AVERAGE ABSOLUTE ATMOSPHERIC PRESSURE SHALL BE  
20 ASSUMED TO BE 14.4 POUNDS TO THE SQUARE INCH, NOTWITHSTANDING  
21 THE ACTUAL ELEVATION OR LOCATION OF POINT OF DELIVERY ABOVE  
22 SEA LEVEL OR VARIATIONS IN THE ATMOSPHERIC PRESSURE.

23 (2) THE TEMPERATURE OF THE GAS PASSING THE METERS SHALL  
24 BE DETERMINED BY THE CONTINUOUS USE OF A RECORDING  
25 THERMOMETER INSTALLED SO THAT THE THERMOMETER MAY PROPERLY  
26 RECORD THE TEMPERATURE OF THE GAS FLOWING THROUGH THE METERS.  
27 THE ARITHMETIC AVERAGE OF THE TEMPERATURE RECORDED EACH 24-  
28 HOUR DAY SHALL BE USED IN COMPUTING GAS VOLUMES. IF A  
29 RECORDING THERMOMETER IS NOT INSTALLED, OR IF INSTALLED AND  
30 NOT OPERATING PROPERLY, AN AVERAGE FLOWING TEMPERATURE OF 60

1 DEGREES FAHRENHEIT SHALL BE USED IN COMPUTING GAS VOLUME.

2 (3) THE SPECIFIC GRAVITY OF THE GAS SHALL BE DETERMINED  
3 BY TESTS MADE BY THE USE OF AN EDWARDS OR ACME GRAVITY  
4 BALANCE ANNUALLY OR AT INTERVALS AS ARE FOUND NECESSARY IN  
5 PRACTICE. SPECIFIC GRAVITY SHALL BE USED IN COMPUTING GAS  
6 VOLUMES.

7 (4) THE DEVIATION OF THE NATURAL GAS FROM BOYLE'S LAW  
8 SHALL BE DETERMINED BY TESTS ANNUALLY OR AT OTHER SHORTER  
9 INTERVALS AS ARE FOUND NECESSARY IN PRACTICE. THE APPARATUS  
10 AND THE METHOD TO BE USED IN MAKING THE TESTS SHALL BE IN  
11 ACCORDANCE WITH RECOMMENDATIONS OF THE NATIONAL BUREAU OF  
12 STANDARDS OF THE DEPARTMENT OF COMMERCE OR REPORT NO. 3 OF  
13 THE GAS MEASUREMENT COMMITTEE OF THE AMERICAN GAS  
14 ASSOCIATION, OR ANY AMENDMENTS THEREOF. THE RESULTS OF THE  
15 TESTS SHALL BE USED IN COMPUTING THE VOLUME OF GAS DELIVERED.

16 "Upstream company." Includes a company that is engaged in  
17 the exploration, development, production, processing, refining  
18 or transportation of natural gas, natural gas liquids or  
19 petroleum in this Commonwealth.

20 "Urea." A colorless crystalline compound, H<sub>2</sub>NCONH<sub>2</sub>, that is <--  
21 the main nitrogenous breakdown product of protein metabolism in  
22 mammals and is excreted in urine.

23 Section 1703-L. Application and approval of tax credit.

24 (a) Rate.--The tax credit shall be equal to \$0.05 per gallon <--  
25 of qualified product \$0.47 PER UNIT OF NATURAL GAS that is <--  
26 purchased and used in the manufacturing of petrochemicals or  
27 fertilizers in this Commonwealth by a qualified taxpayer.

28 (b) Application.--

29 (1) A qualified taxpayer may apply to the department for  
30 a tax credit under this section.

1           (2) The application must be submitted to the department  
2 by March 1 for the tax credit claimed for ~~qualified products~~ <--  
3 NATURAL GAS purchased and used in manufacturing of <--  
4 petrochemicals or fertilizers by the qualified taxpayer  
5 during the prior calendar year. The application must be on  
6 the form required by the department.

7           (3) The department may require information necessary to  
8 document the amount of ~~qualified products~~ NATURAL GAS <--  
9 purchased and used in the manufacture of petrochemicals or  
10 fertilizers.

11 (c) Review and approval.--

12           (1) The department shall review and approve or  
13 disapprove the applications by March 20.

14           (2) Upon approval, the department shall issue a  
15 certificate stating the amount of tax credit granted for  
16 ~~qualified products~~ NATURAL GAS purchased and used in the <--  
17 manufacture of petrochemicals or fertilizers in the prior  
18 calendar year.

19 Section 1704-L. Use of tax credits.

20           (a) Initial use.--Prior to sale or assignment of a tax  
21 credit under section 1706-L, a qualified taxpayer must first use  
22 a tax credit against the qualified tax liability incurred in the  
23 taxable year for which the tax credit was approved.

24           (b) Eligibility.--The tax credit may be applied against up  
25 to 20% of the qualified taxpayer's qualified tax liabilities  
26 incurred in the taxable year for which the tax credit was  
27 approved.

28           (c) Application.--The tax credit shall be applied against  
29 the qualified taxpayer's liability only after all other  
30 statutory tax credits and deductions available to the qualified

1 taxpayer have been used.

2 (d) Limit.--A qualified taxpayer that has been granted a tax  
3 credit under this article shall be ineligible for any other tax  
4 credit provided under this act.

5 Section 1705-L. Carryover, carryback and refund.

6 A tax credit cannot be carried back, carried forward or be  
7 used to obtain a refund.

8 Section 1706-L. Sale or assignment.

9 (a) Authorization.--If a qualified taxpayer holds a tax  
10 credit through the end of the calendar year in which the tax  
11 credit was granted, the qualified taxpayer may sell or assign a  
12 tax credit, in whole or in part.

13 (b) Application.--

14 (1) To sell or assign a tax credit, a qualified taxpayer  
15 must file an application for the sale or assignment of the  
16 tax credit with the Department of Community and Economic  
17 Development. The application must be on a form required by  
18 the Department of Community and Economic Development.

19 (2) To approve an application, the Department of  
20 Community and Economic Development must receive:

21 (i) a finding from the department that the applicant  
22 has:

23 (A) filed all required State tax reports and  
24 returns for all applicable taxable years; and

25 (B) paid any balance of State tax due as  
26 determined by assessment or determination by the  
27 department and not under timely appeal; and

28 (ii) in the case of a sale or assignment to a  
29 company that is not an upstream company or downstream  
30 company, a certification from the qualified taxpayer that

1 the qualified taxpayer has offered to sell or assign the  
2 tax credit:

3 (A) exclusively to a downstream company for a  
4 period of 30 days following approval of the tax  
5 credit under section 1703-L(c); and

6 (B) to an upstream company or downstream company  
7 for a period of 30 days following expiration of the  
8 period under clause (A).

9 (c) Approval.--Upon approval by the Department of Community  
10 and Economic Development, a qualified taxpayer may sell or  
11 assign, in whole or in part, a tax credit.

12 Section 1707-L. Purchasers and assignees.

13 (a) Time.--The purchaser or assignee under section 1706-L  
14 must claim the tax credit in the calendar year in which the  
15 purchase or assignment is made.

16 (b) Amount.--The amount of the tax credit that a purchaser  
17 or assignee under section 1706-L may use against any one  
18 qualified tax liability may not exceed 50% of any of the  
19 qualified tax liabilities for the taxable year.

20 (c) Resale and assignment.--

21 (1) A purchaser under section 1706-L may not sell or  
22 assign the purchased tax credit.

23 (2) An assignee under section 1706-L may not sell or  
24 assign the assigned tax credit.

25 (d) Notice.--The purchaser or assignee under section 1706-L  
26 shall notify the department of the seller or assignor of the tax  
27 credit in compliance with procedures specified by the  
28 department.

29 Section 1708-L. Pass-through entity.

30 (a) Election.--If a pass-through entity has an unused tax



1 credit, the pass-through entity may elect, in writing, according  
2 to procedures established by the department, to transfer all or  
3 a portion of the credit to shareholders, members or partners in  
4 proportion to the share of the entity's distributive income to  
5 which the shareholders, members or partners are entitled.

6 (b) Limitation.--The same unused tax credit under subsection  
7 (a) may not be claimed by:

8 (1) the pass-through entity; and

9 (2) a shareholder, member or partner of the pass-through  
10 entity.

11 (c) Amount.--The amount of the tax credit that a transferee  
12 under subsection (a) may use against any one qualified tax  
13 liability may not exceed 20% of any qualified tax liabilities  
14 for the taxable year.

15 (d) Time.--A transferee under subsection (a) must claim the  
16 tax credit in the calendar year in which the transfer is made.

17 (e) Sale and assignment.--A transferee under subsection (a)  
18 may not sell or assign the tax credit.

19 Section 1709-L. Administration.

20 (a) Audits and assessments.--The department has the  
21 following powers:

22 (1) To audit a qualified taxpayer claiming a tax credit  
23 to ascertain the validity of the amount claimed.

24 (2) To issue an assessment against a qualified taxpayer  
25 for an improperly issued tax credit. The procedures,  
26 collection, enforcement and appeals of an assessment made  
27 under this section shall be governed by Article II.

28 (b) Guidelines and regulations.--The department shall  
29 develop written guidelines for the implementation of this  
30 article. The guidelines shall be in effect until the department

1 promulgates regulations for the implementation of the provisions  
2 of this article.

3 Section 1710-L. Reports to General Assembly.

4 (a) Annual report.--By October 1, 2020 2021, and each <--  
5 October 1 thereafter, the department shall submit a report on  
6 the tax credit provided under this article to the chairperson  
7 and minority chairperson of the Appropriations Committee of the  
8 Senate, the chairperson and minority chairperson of the  
9 Appropriations Committee of the House of Representatives, the  
10 chairperson and minority chairperson of the Finance Committee of  
11 the Senate and the chairperson and minority chairperson of the  
12 Finance Committee of the House of Representatives. The report  
13 must include the names of the qualified taxpayers utilizing the  
14 tax credit as of the date of the report and the amount of tax  
15 credits approved for, utilized by or sold or assigned by a  
16 qualified taxpayer.

17 (b) Reconciliation report.--On May 1, 2030, the Department  
18 of Community and Economic Development shall submit to the  
19 Secretary of the Senate and the Chief Clerk of the House of  
20 Representatives a reconciliation report on the effectiveness of  
21 this article. The report shall include, at a minimum, the  
22 following information for the preceding 10 years:

23 (1) The name and business address of all qualified  
24 taxpayers who have been granted tax credits under this  
25 article.

26 (2) The amount of tax credits granted to each qualified  
27 taxpayer.

28 (3) The total number of jobs created by the qualified  
29 taxpayer, upstream company and downstream company and any  
30 companies that provide goods, utilities or other services

1 that support the business operations of the qualified  
2 taxpayer, upstream company and downstream company. This  
3 paragraph includes the average annual salary and hourly wage  
4 information.

5 (4) The amount of taxes paid under Article II by the  
6 qualified taxpayer, upstream company and downstream company  
7 and any companies that provide goods, utilities or other  
8 services that support the business operations of the  
9 qualified taxpayer, upstream company and downstream company.

10 (5) The amount of taxes withheld from employees or paid  
11 by members, partners or shareholders of the pass-through  
12 entities under Article III of the qualified taxpayer,  
13 upstream company and downstream company and any companies  
14 that provide goods, utilities or other services that support  
15 the business operations of the qualified taxpayer, upstream  
16 company and downstream company.

17 (6) The amount of taxes paid under Article IV by the  
18 qualified taxpayer, upstream company and downstream company  
19 and any companies that provide goods, utilities or other  
20 services that support the business operations of the  
21 qualified taxpayer, upstream company and downstream company.

22 ~~(7) The amount of taxes paid under Article VI by the~~ <--  
23 ~~qualified taxpayer, upstream company and downstream company~~  
24 ~~and any companies that provide goods, utilities or other~~  
25 ~~services that support the business operations of the~~  
26 ~~qualified taxpayer, upstream company and downstream company.~~

27 ~~(8)~~ (7) The amount of taxes paid under Article XI by the <--  
28 qualified taxpayer, upstream company and downstream company  
29 and any companies that provide goods, utilities or other  
30 services that support the business operations of the

1 qualified taxpayer, upstream company and downstream company.

2 ~~(9)~~ (8) The amount of any other State or local taxes <--  
3 paid by the qualified taxpayer, upstream company and  
4 downstream company and any companies that provide goods,  
5 utilities or other services that support the business  
6 operations of the qualified taxpayer, upstream company and  
7 downstream company.

8 ~~(10)~~ (9) Any other information pertaining to the <--  
9 economic impact of this article on this Commonwealth.

10 (c) Reduction.--If the reconciliation report issued under  
11 subsection (b) reveals that the total amount of the tax credits  
12 granted under this article exceeds the total amount of tax  
13 revenue reported under subsection (b) (4), (5), (6), (7), (8) and  
14 (9), the report must include any recommendation for changes in  
15 the calculation of the credit.

16 (d) Publication.--The reports required by this section shall  
17 be public records and shall be available electronically on the  
18 publicly accessible Internet website of either the department or  
19 the Department of Community and Economic Development. The  
20 reports required under this section shall not contain  
21 "confidential proprietary information" as the term is defined in  
22 section 102 of the act of February 14, 2008 (P.L.6, No.3), known  
23 as the Right-to-Know Law.

24 Section 1711-L. Expiration.

25 This article shall expire December 31, 2050.

26 Section 2. This act shall take effect in 60 days.