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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1486 Session of  
2008

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INTRODUCED BY MADIGAN, BRUBAKER, PUNT, STOUT, ORIE, WONDERLING,  
RAFFERTY, BAKER, BOSCOLA, KITCHEN, WAUGH, WOZNIAK, BROWNE,  
M. WHITE AND O'PAKE, JUNE 11, 2008

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REFERRED TO FINANCE, JUNE 11, 2008

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AN ACT

1 Establishing the Dairy-Max Tax Credit Program for the  
2 modernization and expansion of dairy operations in this  
3 Commonwealth; establishing a sponsorship program; authorizing  
4 the transferability of tax credits; and imposing powers and  
5 duties on the Department of Agriculture.

6 The General Assembly finds and declares as follows:

7 (1) The Commonwealth is home to the second largest  
8 number of dairy farms of any state in the United States.

9 (2) Pennsylvania dairy farms produce the fifth largest  
10 amount of milk of all states.

11 (3) Milk income generates 42% of the total agriculture  
12 income in this Commonwealth.

13 (4) Encouraging modernization and expansion of dairy  
14 operations in this Commonwealth will do all of the following:

15 (i) Position producers to adopt new technology and  
16 increase efficiency, thereby increasing milk production  
17 and sales revenue.

18 (ii) Encourage the next generation of farm families  
19 to transition to dairy production.

1           (iii) Increase the overall economic health of this  
2           Commonwealth.

3           (5) The Commonwealth has adopted tax credit programs to  
4           encourage private funding of educational programs, research  
5           and development efforts, film production and conservation  
6           practices, which are critical to the future and economic  
7           health of this Commonwealth.

8           (6) Providing tax credits for the modernization and  
9           expansion of dairy farms is equally critical to the economic  
10          future of this Commonwealth.

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

13         Section 1. Short Title.

14         This act shall be known and may be cited as the Dairy-Max Tax  
15         Credit Program Act.

16         Section 2. Definitions.

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

20         "Agricultural erosion and sediment control plan." A site-  
21         specific plan that does all of the following:

22                 (1) Meets the requirements of the act of June 22, 1937  
23                 (P.L.1987, No.394), known as The Clean Streams Law, and 25  
24                 Pa. Code Ch. 102 (relating to erosion and sediment control).

25                 (2) Identifies best management practices to minimize  
26                 accelerated erosion and sediment from an agricultural  
27                 operation.

28         "Agricultural operation." A normal agricultural operation as  
29         defined under section 2 of the act of June 10, 1982 (P.L.454,  
30         No.133), referred to as the Right-to-Farm Law.

1 "Business development plan." A comprehensive document that  
2 summarizes the operational and financial objectives of a  
3 business and contains the detailed plans and budgets showing how  
4 the objectives are to be realized.

5 "Business firm." An entity authorized to do business in this  
6 Commonwealth and subject to the taxes imposed under Article III,  
7 IV, VI, VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6,  
8 No.2), known as the Tax Reform Code of 1971.

9 "Conservation plan." A plan, including a schedule for  
10 implementation, that identifies site-specific conservation best  
11 management practices on an agricultural operation.

12 "Dairy farm." An agricultural operation where the management  
13 and use of farming resources is dedicated to the production of  
14 milk.

15 "Dairy farm modernization or expansion." Any of the  
16 following:

17 (1) The construction, improvement or acquisition of  
18 buildings or facilities on a dairy farm if used exclusively  
19 for dairy animals.

20 (2) The acquisition of equipment for dairy animal  
21 housing, confinement, animal feeding, milk production  
22 ventilation or animal comfort and well-being, if related  
23 exclusively to dairy animals and if acquired and placed in  
24 service in this Commonwealth.

25 "Department." The Department of Agriculture of the  
26 Commonwealth.

27 "Eligible applicant." A business firm or an individual who  
28 is subject to taxation under Article III of the act of March 4,  
29 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

30 "Individual." A natural person.

1 "Nutrient management plan." As the term is defined under 3  
2 Pa.C.S. Ch. 5 (relating to nutrient management and odor  
3 management).

4 "Pass-through entity." A partnership or Pennsylvania S  
5 corporation as defined under section 301(n.0) and (s.2) of the  
6 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
7 of 1971.

8 "Program." The Dairy-Max Tax Credit Program.

9 "Project." All components of a dairy farm modernization or  
10 expansion plan included in an application for tax credits under  
11 this act.

12 "Qualified tax liability." The liability for taxes imposed  
13 upon an eligible applicant under Article III, IV, VI, VII, VIII,  
14 IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the  
15 Tax Reform Code of 1971.

16 Section 3. Dairy-Max Tax Credit Program.

17 (a) Establishment.--The Dairy-Max Tax Credit Program is  
18 established to encourage private investment in the modernization  
19 of this Commonwealth's dairy industry.

20 (b) Limits.--The following limits shall apply:

21 (1) An eligible applicant may be granted a maximum of  
22 \$250,000 in tax credit under the program.

23 (2) No more than \$250,000 in tax credits shall be  
24 granted toward projects on a dairy farm under the program.

25 (3) An eligible applicant may submit an application for  
26 a single project or multiple applications for multiple  
27 projects within the limits of this section.

28 (4) There shall be no limit on the amount of tax credits  
29 that may be purchased or assigned from an eligible applicant.

30 (5) There shall be no limit on the amount of tax credits

1 granted to a sponsor under subsection (f).

2 (c) Carryover.--

3 (1) If an eligible applicant cannot use the entire  
4 amount of the tax credit for the taxable year in which the  
5 tax credit is first granted, the excess may be carried over  
6 to succeeding taxable years and used as a credit against the  
7 qualified tax liability of the eligible applicant for those  
8 taxable years. Each time that the tax credit is carried over  
9 to a succeeding taxable year, it is to be reduced by the  
10 amount that was used as a credit during the immediately  
11 preceding taxable year. The tax credit provided under this  
12 act may be carried over and applied to succeeding taxable  
13 years for no more than 15 taxable years following the first  
14 taxable year for which the eligible applicant was entitled to  
15 claim the credit.

16 (2) A tax credit granted by the Department of Revenue  
17 shall be applied against the taxpayer's qualified tax  
18 liability for the current taxable year as of the date on  
19 which the credit was granted before the tax credit is applied  
20 against any tax liability under paragraph (1).

21 (d) Assignment of credit.--

22 (1) An eligible applicant, upon application to and  
23 approval by the Department of Revenue, may sell or assign, in  
24 whole or in part, a tax credit granted to the eligible  
25 applicant under this act if no claim for allowance of the  
26 credit is filed within one year from the date the credit is  
27 granted by the Department of Revenue under this section. The  
28 Department of Revenue shall establish guidelines for the  
29 approval of applications under this subsection.

30 (2) The purchaser or assignee of a portion of a tax

1 credit under this subsection shall immediately claim the  
2 credit in the taxable year in which the purchase or  
3 assignment is made. The amount of the credit that a purchaser  
4 or assignee may use against a qualified tax liability may not  
5 exceed 75% of the qualified tax liability for the taxable  
6 year. The purchaser or assignee may not carry over, carry  
7 back, obtain a refund of or assign the tax credit. The  
8 purchaser or assignee shall notify the Department of Revenue  
9 of the seller or assignor of the tax credit in compliance  
10 with procedures specified by the Department of Revenue.

11 (e) Sponsorship.--An eligible applicant may become a sponsor  
12 by applying for a tax credit for a project authorized under  
13 section 6 if a written agreement between the eligible applicant  
14 and the owner of the dairy farm on which the project will be  
15 completed is submitted to the Department of Revenue, certifying  
16 that the owner of the dairy farm will comply with all of the  
17 provisions of this act.

18 (f) Tax credits for pass-through entities.--

19 (1) If a pass-through entity has any unused tax credit,  
20 it may elect in writing, according to procedures established  
21 by the Department of Revenue, to transfer all or a portion of  
22 the credit to shareholders, members or partners in proportion  
23 to the share of its distributive income to which the  
24 shareholder, member or partner is entitled.

25 (2) The credit provided under paragraph (1) is in  
26 addition to any tax credit to which the shareholder, member  
27 or partner is otherwise entitled under this act.

28 (3) A pass-through entity and its partners or  
29 shareholders may not claim a tax credit under this act for  
30 the same project authorized under section 6.

1 Section 4. Tax credits.

2 (a) General eligibility.--Projects shall be eligible for a  
3 tax credit as follows:

4 (1) Only eligible project costs incurred after the  
5 effective date of this section shall be eligible for a tax  
6 credit.

7 (2) A dairy operation shall have in place a current  
8 conservation plan, a current agricultural erosion and  
9 sediment control plan if engaged in plowing and tilling and a  
10 current nutrient management plan if required, or the  
11 development of such plans shall be included in the business  
12 development plan submitted with the application.

13 (3) A project shall meet the design and construction  
14 standards acceptable to the department.

15 (b) Amount of tax credit.--A tax credit equal to 25% of the  
16 eligible costs under subsection (c) of a project authorized  
17 under section 6 shall be granted.

18 (c) Eligible costs of a project.--

19 (1) All purchases of depreciable property related to  
20 dairy farm modernization and expansion shall be considered  
21 eligible costs of a project to which a tax credit may be  
22 applied.

23 (2) In addition to the eligible costs under paragraph  
24 (1), the following shall be considered eligible costs to  
25 which a tax credit may be applied:

26 (i) Project design, engineering and associated  
27 planning.

28 (ii) Project management costs, including  
29 contracting, document preparation and applications.

30 (iii) Project construction or installation.

1 (iv) Required postconstruction inspections.

2 (v) Interest payments on loans for project  
3 implementation for up to one year prior to the award of  
4 the tax credit.

5 (3) A tax credit shall not be applied to that portion of  
6 a project cost under this section for which public funding  
7 was received.

8 Section 5. Project maintenance.

9 (a) Time period.--A dairy farm receiving a tax credit under  
10 this act shall maintain each component of a project receiving a  
11 tax credit for the depreciable life of the component.

12 (b) Failure.--If the project is not maintained for the time  
13 period required under subsection (a), the owner of the property  
14 upon which the project exists shall return to the Department of  
15 Revenue the amount of the tax credit originally granted. Any  
16 amount paid to the Department of Revenue under this subsection  
17 shall be deposited in the General Fund.

18 (c) Exception.--If the recipient of a tax credit provides  
19 prior written notification to the department that the recipient  
20 will be unable to maintain a dairy farm modernization or  
21 expansion due to sale of the property, cessation of an  
22 agricultural operation or other factors, the department may  
23 direct the Department of Revenue to prorate the amount of the  
24 tax credit that shall be returned based on the remaining  
25 lifespan of the dairy farm modernization or expansion in  
26 question.

27 Section 6. Application, review and authorization by department.

28 (a) Application process.--An eligible applicant shall apply  
29 to the department for authorization that a project is eligible  
30 for a tax credit under the program. An application shall be



1 developed by the department and shall include all of the  
2 following:

3 (1) A dairy business development plan and analysis  
4 acceptable to the department.

5 (2) A description and total cost of the components of  
6 the business development plan for which a tax credit is being  
7 applied.

8 (3) Verification of eligibility under section 4(a).

9 (b) Review, notification and authorization.--The department  
10 shall, within 30 days of receipt, review each application and  
11 notify an eligible applicant whether or not the eligible  
12 applicant meets the requirements and is authorized to receive a  
13 tax credit under this act.

14 (c) Authorization of tax credit.--The department shall not  
15 authorize tax credits that exceed the limits under sections 3(b)  
16 and 9. The department shall authorize tax credits on a first-  
17 come-first-serve basis.

18 (d) Completion of project.--Upon completion of a project  
19 authorized under this section, an eligible applicant shall  
20 submit to the department written notice of project completion.  
21 The notice shall include all of the following:

22 (1) Documentation satisfactory to the department that  
23 the project is complete.

24 (2) Documentation of the final eligible costs included  
25 in the initial application.

26 (3) Any other documentation as may be required by the  
27 department.

28 (4) At its discretion, the department or a designated  
29 agent may perform any site-specific inspections it deems  
30 necessary to verify that the project meets the requirements

1 of this act.

2 (e) Notification to Department of Revenue.--Upon  
3 determination that a project authorized under this section is  
4 complete, the department shall provide notification to the  
5 Department of Revenue of all of the following:

6 (1) That the eligible applicant has completed a project  
7 which meets the criteria for a tax credit under this act.

8 (2) The amount of tax credit for the eligible applicant.

9 (f) Inspection.--Projects authorized under this section may  
10 be subject to inspection by the department or an agent of the  
11 department.

12 Section 7. Grant of tax credit.

13 The Department of Revenue shall grant a tax credit authorized  
14 under section 6. The department shall, within 60 days of receipt  
15 of the notice under section 6(e), issue a notice of grant of a  
16 tax credit to the eligible applicant.

17 Section 8. Annual cap of tax credits.

18 Tax credits shall be granted to the extent that funds are  
19 appropriated by the General Assembly. The total amount of tax  
20 credits granted by the department shall not exceed the  
21 following:

22 (1) For fiscal year 2008-2009, \$50,000,000.

23 (2) For fiscal years 2009-2010, 2010-2011, 2011-2012 and  
24 2012-2013, \$50,000,000 per fiscal year.

25 Section 9. Report.

26 The department, in consultation with the Department of  
27 Revenue, shall annually report to the General Assembly on the  
28 program as follows:

29 (1) The number of tax credits granted under the program.

30 (2) The types and locations of projects.

1           (3) The estimated benefits of the projects.

2 Section 30. Effective date.

3       This act shall take effect July 1, 2008, or immediately,

4 whichever is later.