

## AMENDMENTS TO SENATE BILL NO. 97

Sponsor: REPRESENTATIVE STERN

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1 Amend Title, page 1, line 19, by inserting after

2 "DEVELOPMENT"

3 and for a resource enhancement and protection tax  
4 credit

5 Amend Sec. 4, page 10, line 11, by striking out "AN ARTICLE"

6 and inserting

7 articles

8 Amend Sec. 4, page 17, by inserting between lines 24 and 25

9 ARTICLE XVII-E

10 RESOURCE ENHANCEMENT AND PROTECTION TAX CREDITS

11 Section 1701-E. Scope of article.

12 This article relates to resource enhancement and protection  
13 tax credits.

14 Section 1702-E. Legislative findings.

15 The General Assembly determines, finds and declares that:

16 (1) Best management practices installed on agricultural  
17 lands and riparian forest buffers are among the most  
18 effective tools to reduce nutrients, sediment and other  
19 pollutants carried by storm water.

20 (2) Statewide, 13,400 miles of streams do not meet water  
21 quality standards.

22 (3) Financial assistance to support the adoption of  
23 conservation practices must be increased substantially to  
24 achieve acceptable water quality in this Commonwealth. Within  
25 the Pennsylvania portion of the Chesapeake Bay watershed it  
26 is estimated that an increase of \$175 million per year in  
27 conservation funding is needed to achieve nutrient and  
28 sediment pollution reduction goals under the Chesapeake 2000  
29 Agreement.

30 (4) As Pennsylvania develops Total Maximum Daily Loads  
31 for impaired waters required by the Federal Water Pollution  
32 Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.),  
33 hundreds of millions of dollars will be necessary to  
34 implement the nonpoint source components.

35 (5) There is considerable unmet demand on the part of  
36 agricultural producers for financial assistance to support  
37 the adoption of conservation practices, with \$37,500,000 of

1 unfunded conservation support from the United States  
2 Department of Agriculture Natural Resource Conservation  
3 Service requested by Pennsylvania producers in 2004.

4 (6) Encouraging private investment in the implementation  
5 of best management practices, planting of forested riparian  
6 buffers and remediation of legacy sediment will provide an  
7 expanded source of funding that increases the private  
8 sector's involvement in cleaning up our waterways.

9 (7) Section 27 of Article I of the Constitution of  
10 Pennsylvania declares, "The people have a right to clean air,  
11 pure water, and to the preservation of the natural, scenic,  
12 historic and esthetic values of the environment.  
13 Pennsylvania's public natural resources are the common  
14 property of all the people, including generations yet to  
15 come. As trustee of these resources, the Commonwealth shall  
16 conserve and maintain them for the benefit of all the  
17 people."

18 (8) The Commonwealth has adopted tax credit programs to  
19 encourage private funding of educational programs and  
20 research and development efforts which are critical to the  
21 future and economic health of Pennsylvania.

22 (9) Providing tax credits for the design and  
23 implementation of practices that are necessary to protect and  
24 restore our waterways is equally critical to the quality of  
25 life in this Commonwealth and its economic future.

26 Section 1703-E. Definitions.

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

30 "Agricultural erosion and sedimentation control plan." A  
31 site-specific plan that:

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

35 (2) Identifies best management practices to minimize  
36 accelerated erosion and sediment from an agricultural  
37 operation.

38 "Agricultural operation." The management and use of farming  
39 resources for the production of crops, livestock or poultry or  
40 for equine activity.

41 "Animal concentration areas." An exterior area of an  
42 agricultural operation subject to rainfall where livestock  
43 congregate, including a barnyard, a feedlot, a loafing area, an  
44 exercise lot or other similar animal confinement area that will  
45 not maintain a growing crop, or where deposited manure nutrients  
46 are in excess of crop needs. The term does not include areas  
47 managed as a pasture or other cropland and pasture accessways if  
48 they do not cause direct flow of nutrients to surface water or  
49 groundwater.

50 "Best management practice." A practice or combination of  
51 practices determined by the State Conservation Commission or  
52 United States Department of Agriculture Natural Resources and  
53 Conservation Service to be effective and practical, considering  
54 technological, economic and institutional factors, to manage  
55 nutrients and sediment to protect surface water.

56 "Business firm." An entity authorized to do business in this  
57 Commonwealth and subject to the taxes imposed by Article III,  
58 IV, VI, VII, VIII, IX or XV.

59 "Commission." The State Conservation Commission.

1 "Conservation district." A county conservation district  
2 established under the act of May 15, 1945 (P.L.547, No.217),  
3 known as the Conservation District Law.

4 "Conservation plan." A plan, including a schedule for  
5 implementation, that identifies site specific conservation best  
6 management practices on an agricultural operation.

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

8 "Eligible applicants." A business firm or an individual who  
9 is subject to taxation under Article III.

10 "Equine activity." The term includes the following  
11 activities:

12 (1) The boarding of equines.

13 (2) The training of equines.

14 (3) The instruction of people in handling, driving or  
15 riding equines.

16 (4) The use of equines for riding or driving purposes.

17 (5) The pasturing of equines.

18 The term does not include activity licensed under the act of  
19 December 17, 1981 (P.L.435, No.135), known as the Race Horse  
20 Industry Reform Act.

21 "Individual." A natural person.

22 "Legacy sediment." Sediment that meets all of the following  
23 conditions:

24 (1) Was eroded from upland areas after the arrival of  
25 early Pennsylvania settlers and during centuries of intensive  
26 land use.

27 (2) Was deposited in valley bottoms along stream  
28 corridors, burying presettlement streams, floodplains,  
29 wetlands and valley bottoms.

30 (3) Was altered and continues to impair the hydrologic,  
31 biologic, aquatic, riparian and water quality functions of  
32 presettlement and modern environments.

33 "Nutrient management plan." As defined under 3 Pa.C.S. Ch. 5  
34 (relating to nutrient management and odor management).

35 "Nutrient management specialist." As defined under 3 Pa.C.S.  
36 Ch. 5 (relating to nutrient management and odor management).

37 "Pass-through entity." A partnership or Pennsylvania S  
38 corporation as defined in section 301(n.0) and (s.2).

39 "Qualified tax liability." The liability for taxes imposed  
40 upon an eligible applicant under Article III, IV, VI, VII, VIII,  
41 IX or XV.

42 "Riparian forest buffer." An area of mostly trees or shrubs  
43 which is adjacent to and up-gradient from watercourses or water  
44 bodies and which meets standards established by the United  
45 States Department of Agriculture-Natural Resources and  
46 Conservation Service.

47 "Technical service provider." An individual, entity or  
48 public agency certified by the United States Department of  
49 Agriculture Natural Resources Conservation Service and placed on  
50 the approved list to provide technical services to program  
51 participants or to the United States Department of Agriculture  
52 program participants.

53 "USDA-NRCS." The United States Department of Agriculture  
54 Natural Resources and Conservation Service.  
55 Section 1704-E. Resource Enhancement and Protection Tax Credit  
56 Program.

57 (a) Establishment.--The Resource Enhancement and Protection  
58 Tax Credit Program is established to encourage private  
59 investment in the implementation of best management practices on

1 agricultural operations, the planting of riparian forest buffers  
2 and the remediation of legacy sediment.

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

4 (1) An eligible applicant may be granted a maximum of  
5 \$150,000 in tax credits under this program.

6 (2) No more than \$150,000 in tax credits shall be  
7 granted toward projects on an agricultural operation.

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

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

14 (5) There shall be no limit on the amount of tax credits  
15 granted to a sponsor under subsection (f).

16 (c) Carryover.--

17 (1) If the eligible applicant cannot use the entire  
18 amount of the tax credit for the taxable year in which the  
19 tax credit is first granted, then the excess may be carried  
20 over to succeeding taxable years and used as a credit against  
21 the qualified tax liability of the eligible applicant for  
22 those taxable years. Each time that the tax credit is carried  
23 over to a succeeding taxable year, it is to be reduced by the  
24 amount that was used as a credit during the immediately  
25 preceding taxable year. The tax credit provided by this  
26 article may be carried over and applied to succeeding taxable  
27 years for no more than 15 taxable years following the first  
28 taxable year for which the eligible applicant was entitled to  
29 claim the credit.

30 (2) A tax credit granted by the department shall be  
31 applied against the taxpayer's qualified tax liability for  
32 the current taxable year as of the date on which the credit  
33 was granted before the tax credit is applied against any tax  
34 liability under paragraph (1).

35 (d) Assignment of credit.--

36 (1) An eligible applicant, upon application to and  
37 approval by the department, may sell or assign, in whole or  
38 in part, a tax credit granted to the eligible applicant under  
39 this article if no claim for allowance of the credit is filed  
40 within one year from the date the credit is granted by the  
41 department under this section. The department shall establish  
42 guidelines for the approval of applications under this  
43 subsection.

44 (2) The purchaser or assignee of a portion of a tax  
45 credit under this subsection shall immediately claim the  
46 credit in the taxable year in which the purchase or  
47 assignment is made. The amount of the credit that a purchaser  
48 or assignee may use against a qualified tax liability may not  
49 exceed 75% of the qualified tax liability for the taxable  
50 year. The purchaser or assignee may not carry over, carry  
51 back, obtain a refund of or assign the tax credit. The  
52 purchaser or assignee shall notify the department of the  
53 seller or assignor of the tax credit in compliance with  
54 procedures specified by the department.

55 (e) Sponsorship.--An eligible applicant may be a sponsor by  
56 applying for a tax credit for a project authorized under section  
57 1708-E if a written agreement between the eligible applicant and  
58 the owner of property on which the project will be completed is  
59 submitted to the commission, certifying that the property owner

1 will comply with all the provisions of this article.

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

3 (1) If a pass-through entity has any unused tax credit,  
4 it may elect in writing, according to procedures established  
5 by the department, to transfer all or a portion of the credit  
6 to shareholders, members or partners in proportion to the  
7 share of its distributive income to which the shareholder,  
8 member or partner is entitled.

9 (2) The credit provided under paragraph (1) is in  
10 addition to any tax credit to which the shareholder, member  
11 or partner is otherwise entitled under this article.

12 (3) A pass-through entity and its partners or  
13 shareholders shall not claim a tax credit under this article  
14 for the same project authorized under section 1708-E.

15 Section 1705-E. Tax credits.

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

18 (1) Only best management practices completed after the  
19 effective date of this article shall be eligible for a tax  
20 credit.

21 (2) An agricultural operation shall have in place a  
22 current conservation plan, a current agricultural erosion and  
23 sediment control plan if engaged in plowing and tilling, and  
24 a current nutrient management plan if required, or the  
25 development of such plans shall be included in an application  
26 for a tax credit.

27 (3) An agricultural operation with an animal  
28 concentration area shall have implemented best management  
29 practices necessary to abate storm water runoff, loss of  
30 sediment, loss of nutrients and runoff of other pollutants  
31 from the animal concentration area, or the implementation of  
32 such best management practices shall be included in an  
33 application for a tax credit.

34 (4) An agricultural operation with an uncompleted best  
35 management practice of either an agricultural erosion and  
36 sediment control plan if engaged in plowing and tilling or a  
37 nutrient management plan if required, shall first include the  
38 remaining best management practices included in such plans in  
39 an application for a tax credit.

40 (5) A project shall meet the design and construction  
41 standards established by the commission or USDA-NRCS. If  
42 standards do not exist for a best management practice  
43 approved by the commission, the commission may establish or  
44 approve design, construction and certification standards for  
45 such a best management practice.

46 (b) Amount of tax credit.--

47 (1) A tax credit equal to 75% of the eligible costs  
48 under subsection (c) of a project authorized under section  
49 1708-E shall be granted for any of the following:

50 (i) Development of a voluntary or mandatory nutrient  
51 management plan.

52 (ii) Development of an agricultural erosion and  
53 sediment control plan or a conservation plan.

54 (iii) For an animal concentration area, design and  
55 implementation of best management practices necessary to  
56 abate storm water runoff, loss of sediment, loss of  
57 nutrients and runoff of other pollutants.

58 (iv) Design and implementation of best management  
59 practices necessary to restrict livestock access to

1 streams if there is established and maintained a riparian  
2 forest buffer with a minimum width of 35 feet.

3 (v) Establishment of a riparian forest buffer with a  
4 minimum width of 35 feet.

5 (2) A tax credit equal to 50% of the eligible costs  
6 under subsection (c) of a project authorized under section  
7 1708-E shall be granted for any of the following:

8 (i) For an agricultural operation, design and  
9 implementation of agricultural best management practices  
10 or the installation and use of equipment, provided that  
11 the best management practice or equipment is necessary to  
12 reduce existing sediment and nutrient pollution to  
13 surface waters. Such best management practices and  
14 equipment shall be identified by the commission and may  
15 include manure storage systems, alternative uses for  
16 manure, filter strips, grassed waterways, management  
17 intensive grazing systems and no-till planting equipment.

18 (ii) Design and implementation of best management  
19 practices necessary to restrict livestock access to  
20 streams through fencing, stabilized crossings and  
21 improved watering systems, if there is established and  
22 maintained a riparian forest buffer with a minimum width  
23 of 20 feet.

24 (3) A tax credit equal to 25% of the eligible costs  
25 under subsection (c) of a project authorized under section  
26 1708-E shall be granted for the remediation of legacy  
27 sediment if the legacy sediment is exposed and is discharging  
28 or threatens to discharge into surface waters as a result of  
29 acute stream bank erosion. The project shall meet standards  
30 established by the commission as being effective in  
31 mitigating or eliminating the harmful effects of legacy  
32 sediment.

33 (c) Costs of project.--

34 (1) The following shall be considered eligible costs of  
35 a project to which a tax credit may be applied:

36 (i) Project design, engineering and associated  
37 planning, including that which may be provided by a  
38 conservation district.

39 (ii) Project management costs, including  
40 contracting, document preparation and applications.

41 (iii) Project construction or installation.

42 (iv) Equipment, materials and all other components  
43 of projects eligible under subsection (a).

44 (v) Postconstruction inspections.

45 (vi) Interest payments on loans for project  
46 implementation for up to one year prior to the award of  
47 the tax credit.

48 (2) A tax credit shall not be applied to that portion of  
49 a project cost under this subsection for which public funding  
50 was received.

51 Section 1706-E. Project certification.

52 A project shall be certified as meeting standards under  
53 section 1705-E(a)(5) by the following:

54 (1) a best management practice that currently requires  
55 review and certification by a registered professional  
56 engineer under current law or applicable regulation:  
57 registered professional engineer;

58 (2) riparian forest buffer: technical service provider  
59 or staff from a conservation district or USDA-NRCS;

1       (3) nutrient management plan: nutrient management  
2       specialist; and

3       (4) agricultural erosion and sediment control plan or  
4       conservation plan: any person trained and experienced in  
5       erosion and sediment control or conservation methods and  
6       techniques and whose qualifications are determined acceptable  
7       by the commission.

8       Section 1707-E. Project maintenance and life expectancy.

9       (a) Best management practice.--An agricultural operation  
10       shall maintain a best management practice for the life of the  
11       practice as established by the commission or USDA-NRCS. A  
12       riparian forest buffer shall be maintained for a minimum of 15  
13       years.

14       (b) Failure.--If a best management practice is not  
15       maintained for the period required under subsection (a), the  
16       owner of the property upon which the project exists shall return  
17       to the department the amount of the tax credit originally  
18       granted. Additional penalties may be determined by the  
19       department.

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

27       Section 1708-E. Application, review and authorization by  
28       commission.

29       (a) Application process.--An eligible applicant shall apply  
30       to the commission for authorization that a project is eligible  
31       for a tax credit under this program. An application shall be  
32       developed by the commission and shall include:

33       (1) Type and location of project under section 1705-  
34       E(b).

35       (2) Total cost of project as outlined in section 1705-  
36       E(c).

37       (3) Verification of eligibility under section 1705-E(a).

38       (b) Review, notification and authorization.--The commission  
39       shall within 30 days of receipt review each application and  
40       notify an eligible applicant whether or not the eligible  
41       applicant meets the requirements and is authorized to receive a  
42       tax credit under this article.

43       (c) Authorization of tax credit.--The commission shall not  
44       authorize tax credits that exceed the limits under sections  
45       1704-E(b) and 1710-E. The commission shall authorize tax credits  
46       on a first-come, first-served basis.

47       (d) Completion of project.--Upon completion of a project  
48       authorized under this section, an eligible applicant shall  
49       submit to the commission written notice of project completion.  
50       Such notice shall include:

51       (1) Proof of certification as required by section 1706-E  
52       that the project is complete.

53       (2) A maintenance plan as required by section 1707-E(a)  
54       for each best management practice, if applicable to the  
55       project.

56       (3) Any other documents as may be required by the  
57       commission.

58       (e) Notification to department.--Upon determination that a  
59       project authorized under this section is complete, the

1 commission shall provide notification to the department:

2 (1) that the eligible applicant has completed a project  
3 which meets the criteria for a tax credit under this article;  
4 and

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

6 (f) Inspection.--Projects authorized under this section may  
7 be subject to inspection by the commission or its designated  
8 agent.

9 Section 1709-E. Grant of tax credit.

10 The department shall grant a tax credit authorized under  
11 section 1708-E. The department shall within 60 days of receipt  
12 of notice under section 1708-E(e), issue a notice of grant of a  
13 tax credit to the eligible applicant.

14 Section 1710-E. Annual cap of tax credits.

15 Tax credits shall be granted to the extent that funds are  
16 appropriated by the General Assembly. The total amount of tax  
17 credits granted by the department shall not exceed \$10,000,000  
18 in any fiscal year.

19 Section 1711-E. Report.

20 The commission, in consultation with the department, shall  
21 annually report to the General Assembly on the Resource  
22 Enhancement and Protection Tax Credit Program as follows:

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

24 (2) The types and locations of projects.

25 (3) The estimated benefits of the projects.