

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1286 Session of
2006

INTRODUCED BY WENGER, WAUGH, PUNT, COSTA, ERICKSON, LEMMOND,
ORIE, RHOADES, MUSTO, PILEGGI, ROBBINS, BROWNE AND REGOLA,
JULY 13, 2006

REFERRED TO FINANCE, JULY 13, 2006

AN ACT

1 Establishing the Resource Enhancement and Protection Tax Credit
2 Program for the stewardship of agricultural lands and
3 riparian corridors; creating opportunities for private
4 investment in best management practices and riparian
5 corridors; establishing a sponsorship program; authorizing
6 the transferability of the tax credits; and imposing powers
7 and duties on the Department of Revenue and the State
8 Conservation Commission.

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

11 Section 1. Short title.

12 This act shall be known and may be cited as the Resource
13 Enhancement and Protection Tax Credit Program.

14 Section 2. 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 pollutants
19 carried by storm water.

20 (2) There is considerable unmet demand on the part of

1 agricultural producers for financial assistance to support
2 the adoption of conservation practices, with \$37.5 million of
3 unfunded conservation support from the United States
4 Department of Agriculture-Natural Resource Conservation
5 Service requested by Pennsylvania producers in 2004.

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

11 (4) Section 27 of Article I of the Constitution of
12 Pennsylvania declares, "The people have a right to clean air,
13 pure water, and to the preservation of the natural, scenic,
14 historic and esthetic values of the environment.

15 Pennsylvania's public natural resources are the common
16 property of all the people, including generations yet to
17 come. As trustee of these resources, the Commonwealth shall
18 conserve and maintain them for the benefit of all the
19 people."

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

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

28 Section 3. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Agricultural erosion and sedimentation control plan." A
3 site-specific plan that:

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

7 (2) Identifies best management practices to minimize
8 accelerated erosion and sedimentation from agricultural
9 runoff.

10 "Agricultural operation." The management and use of farming
11 resources for the production of crops, livestock or poultry.

12 "Animal concentration areas." The term includes barnyards,
13 feedlots, loafing areas, exercise lots or other similar animal
14 confinement areas that will not maintain a growing crop, or
15 where deposited manure nutrients are in excess of crop needs.
16 The term does not include areas managed as pastures or other
17 cropland and pasture accessways if they do not cause direct flow
18 of nutrients to surface water or groundwater.

19 "Best management practice." A practice or combination of
20 practices determined by the commission to be effective and
21 practical, considering technological, economic and institutional
22 factors, to manage nutrients and sediment to protect surface
23 water, considering applicable nutrient requirements for crop
24 utilization.

25 "Business firm." An entity authorized to do business in this
26 Commonwealth and subject to the taxes imposed by Article III,
27 IV, VI, VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6,
28 No.2), known as the Tax Reform Code of 1971. The term also
29 includes a natural person as such or as a member of a
30 partnership or a shareholder in a Pennsylvania S corporation and

1 estates and trusts receiving income.

2 "Commission." The State Conservation Commission.

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

6 "Eligible applicants." Any of the following:

7 (1) A business firm which is subject to taxation under
8 Article IV, VI, VII, VII-A, VIII, VIII-A, IX or XV of the act
9 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
10 of 1971.

11 (2) An individual who is subject to taxation under
12 Article III of the Tax Reform Code of 1971.

13 "Legacy sediment." Sediment that meets all of the following
14 conditions:

15 (1) Was eroded from upland areas after the arrival of
16 early Pennsylvania settlers and during centuries of intensive
17 land use.

18 (2) Was deposited in valley bottoms along stream
19 corridors, burying presettlement streams, floodplains,
20 wetlands and valley bottoms.

21 (3) Was altered and continues to impair the hydrologic,
22 biologic, aquatic, riparian and water quality functions of
23 presettlement and modern environments.

24 "Nutrient management specialist." An individual certified to
25 prepare nutrient management plans consistent with the
26 requirements of 3 Pa.C.S. § 506 (relating to nutrient management
27 plans).

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

1 1971.

2 "Riparian forest buffer." An area of mostly trees or shrubs
3 which is adjacent to and up-gradient from watercourses or water
4 bodies.

5 "Technical service provider." An individual, entity or
6 public agency certified by the United States Department of
7 Agriculture Natural Resources Conservation Service and placed on
8 the approved list to provide technical services to program
9 participants or to the United States Department of Agriculture.
10 Section 4. Resource Enhancement and Protection Tax Credit
11 Program.

12 The Resource Enhancement and Protection Tax Credit Program is
13 established to encourage private investment in the
14 implementation of best management practices on agricultural
15 lands, planting of riparian forest buffers and remediation of
16 legacy sediment.

17 Section 5. Tax credit.

18 (a) Grant.--The Department of Revenue shall grant a tax
19 credit to eligible applicants for approved projects on property
20 owned by the applicant for any of the following:

21 (1) Taxes of a business firm due under Article IV, VI,
22 VII, VII-A, VIII, VIII-A, IX or XV of the act of March 4,
23 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971.

24 (2) Taxes of an individual due under Article III of the
25 Tax Reform Code of 1971.

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

27 (1) Eligible applicants may receive total tax credits of
28 up to \$150,000 under this program.

29 (2) The Department of Revenue may approve applications
30 for a tax credit of up to \$150,000 for a single project or

1 for multiple projects from the same eligible applicant.

2 (3) There shall be no limit on the amount of tax credits
3 an individual or business may purchase or on the amount of
4 tax credits for which a sponsoring individual or business may
5 apply.

6 (c) Eligible projects.--The following projects shall be
7 eligible for a tax credit as follows:

8 (1) A tax credit equal to 75% of the project cost shall
9 be granted for any of the following:

10 (i) Development of a voluntary or mandatory nutrient
11 management plan that meets the requirements of 3 Pa.C.S.
12 Ch. 5 (relating to nutrient management and odor
13 management).

14 (ii) Design and implementation of best management
15 practices necessary to abate storm water runoff and loss
16 of sediment, nutrients and other pollutants from animal
17 concentration areas.

18 (iii) Restriction of livestock access to streams
19 through fencing, stabilized crossings and improved
20 watering systems, if the system establishes and maintains
21 a riparian forest buffer predominantly comprised of trees
22 or shrubs and has at least 35 feet minimum width that
23 meets the standards established by the United States
24 Department of Agriculture Natural Resources Conservation
25 Service.

26 (iv) Establishment of riparian forest buffers of at
27 least 35 feet on agricultural or nonagricultural lands
28 that meets the standards established by the United States
29 Department of Agriculture Natural Resources Conservation
30 Service.

1 (2) A tax credit equal to 50% of the project cost shall
2 be granted for any of the following:

3 (i) The design and implementation of agricultural
4 best management practices other than those under
5 paragraph (1)(ii) or the purchase of equipment necessary
6 to reduce sediment and nutrient pollution to surface
7 waters. Eligible best management practices shall be
8 determined by the commission and may include manure
9 storage systems, filter strips, grassed waterways,
10 management intensive grazing systems and shared no-till
11 planting equipment.

12 (ii) Restriction of livestock access to streams
13 through fencing, stabilized crossings and improved
14 watering systems, if the system establishes and maintains
15 a buffer predominantly comprised of trees or shrubs and
16 is of at least 20 feet minimum width that meets the
17 standards established by the United States Department of
18 Agriculture Natural Resources Conservation Service.

19 (3) A tax credit equal to 25% of the project shall be
20 granted for the remediation of legacy sediment, if the legacy
21 sediment is causing acute streambank erosion and if the
22 commission adopts or endorses practices deemed to be
23 effective in mitigating or eliminating the harmful effects of
24 legacy sediment.

25 (d) Other criteria.--In addition to any other criteria under
26 this section, the following shall apply:

27 (1) Only business firms, engaged in agricultural
28 operations, having a current agricultural erosion and
29 sedimentation control plan shall be eligible applicants.

30 (2) Any public funding received by an eligible applicant

1 for a project under this program shall not be considered part
2 of the eligible costs under this program.

3 (3) Only projects completed after the effective date of
4 this section shall be eligible.

5 (4) Applicants shall submit a copy of final project
6 designs, inspection reports and other documents verifying the
7 completion of a best management practice to the conservation
8 district of the county in which the project was completed.

9 (e) Project standards.--

10 (1) All eligible projects must meet the design and
11 construction standards established by the United States
12 Department of Agriculture Natural Resource Conservation
13 Service or the commission or be certified by a registered
14 professional engineer.

15 (2) Project design and construction must be certified as
16 meeting applicable standards by one of the following:

17 (i) Technical service provider.

18 (ii) Nutrient management specialist.

19 (iii) Registered professional engineer.

20 (iv) United States Department of Agriculture Natural
21 Resource Conservation Service staff.

22 (v) County Conservation District staff.

23 (3) If standards do not exist, the commission may
24 establish design, construction and certification standards.

25 (f) Project maintenance and life expectancy.--

26 (1) All practices, facilities and equipment included in
27 eligible projects shall be maintained for the life of the
28 practice as specified by the United States Department of
29 Agriculture Natural Resources Conservation Service or the
30 commission. Riparian forest buffers shall be maintained for a

1 minimum of 15 years.

2 (2) If the practices, facilities and equipment are not
3 properly maintained for the period required under paragraph
4 (1), the individual or business receiving the tax credit must
5 return to the Department of Revenue the amount of the tax
6 credit originally granted. Additional penalties may be
7 determined by the Department of Revenue.

8 (g) Carryover.--Tax credits not used by the individual or
9 business to which the credits were initially issued, and not
10 transferred to another taxpayer, may be carried over for a
11 maximum of 15 taxable years.

12 (h) Transferability.--

13 (1) If an eligible applicant does not have sufficient
14 eligible tax liability against which the tax credit under
15 this section may be applied, the credit may be transferred to
16 another taxpayer if a written agreement between the eligible
17 applicant and the other taxpayer certifying that the property
18 owner is complying with all the provisions of this act is
19 submitted to the Department of Revenue.

20 (2) An eligible applicant may apply for a tax credit for
21 an eligible project on property not owned by the applicant if
22 a written agreement is submitted to the Department of Revenue
23 between the sponsoring business or individual and the
24 property owner on which the project will be completed
25 certifying that the property owner will comply with all the
26 provisions of this act.

27 (i) Intent to award notice.--The Department of Revenue may
28 issue a notice of intent to award a tax credit for an eligible
29 project that has not been completed if it otherwise meets design
30 and other requirements of this act. The tax credit award shall

1 not become final until the project is certified as complete and
2 as meeting the standards under subsections (d) and (e) to the
3 Department of Revenue.

4 Section 6. Application and award process.

5 (a) Application.--The Department of Revenue shall establish
6 an annual application process for determining the eligibility of
7 individuals and businesses for the tax credit provided under
8 this act on a form approved by the department. Eligibility shall
9 be based on the most recently completed tax year's tax
10 liability.

11 (b) Notice of decision.--The Department of Revenue shall
12 issue a notice of award or denial or intent to award a tax
13 credit within 30 days of application.

14 (c) Annual limits.--The Department of Revenue shall award
15 tax credits on a first-come-first-served basis on the following
16 schedule:

17 (1) For fiscal year 2006-2007, the total amount of
18 credits awarded shall not exceed \$50,000,000.

19 (2) For fiscal years 2007-2008 through 2010-2011, the
20 total amount of credits awarded shall not exceed \$100,000,000
21 for each year.

22 Section 7. Report and evaluation.

23 (a) Report.--The commission, in consultation with the
24 Department of Revenue, shall annually report to the General
25 Assembly on the Resource Enhancement and Protection Tax Credit
26 Program detailing the tax credit awards made under the program,
27 the types and locations of projects included and the estimated
28 environmental benefits of those projects, including the
29 reductions in nutrients, sediments and other pollution as well
30 as habitat created.

1 (b) Evaluation.--The commission, in consultation with the
2 Department of Revenue, shall conduct a review and evaluation of
3 the effectiveness of the Resource Enhancement and Protection Tax
4 Credit Program in reducing pollution and creating habitat to be
5 submitted within one year after the end of the program. The
6 evaluation shall include a recommendation on whether the program
7 should continue.

8 Section 20. Effective date.

9 This act shall take effect immediately.