

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 690 Session of 2007

INTRODUCED BY WAUGH, PUNT, STOUT, McILHINNEY, MADIGAN, ORIE, CORMAN, ROBBINS, RAFFERTY, MUSTO, ERICKSON, O'PAKE, RHOADES, FOLMER, BROWNE, ARMSTRONG, BOSCOLA, EICHELBERGER, DINNIMAN AND WASHINGTON, MAY 11, 2007

SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS AMENDED, JULY 10, 2007

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 Act.

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 other
19 pollutants carried by storm water.

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

3           (3) Financial assistance to support the adoption of  
4 conservation practices must be increased substantially to  
5 achieve acceptable water quality in this Commonwealth. Within  
6 the Pennsylvania portion of the Chesapeake Bay watershed it  
7 is estimated that an increase of \$175 million per year in  
8 conservation funding is needed to achieve nutrient and  
9 sediment pollution reduction goals under the Chesapeake 2000  
10 Agreement.

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

16           (5) There is considerable unmet demand on the part of  
17 agricultural producers for financial assistance to support  
18 the adoption of conservation practices, with \$37,500,000 of  
19 unfunded conservation support from the United States  
20 Department of Agriculture Natural Resource Conservation  
21 Service requested by Pennsylvania producers in 2004.

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

27           (7) Section 27 of Article I of the Constitution of  
28 Pennsylvania declares, "The people have a right to clean air,  
29 pure water, and to the preservation of the natural, scenic,  
30 historic and esthetic values of the environment.

1 Pennsylvania's public natural resources are the common  
2 property of all the people, including generations yet to  
3 come. As trustee of these resources, the Commonwealth shall  
4 conserve and maintain them for the benefit of all the  
5 people."

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

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

14 Section 3. Definitions.

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

18 "Agricultural erosion and sedimentation control plan." A  
19 site-specific plan that:

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

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

26 "Agricultural operation." The management and use of farming  
27 resources for the production of crops, livestock or poultry or  
28 for equine activity.

29 "Animal concentration areas." An exterior area of an  
30 agricultural operation subject to rainfall where livestock

1 congregate, including a barnyard, a feedlot, a loafing area, an  
2 exercise lot or other similar animal confinement area that will  
3 not maintain a growing crop, or where deposited manure nutrients  
4 are in excess of crop needs. The term does not include areas  
5 managed as a pasture or other cropland and pasture accessways if  
6 they do not cause direct flow of nutrients to surface water or  
7 groundwater.

8 "Best management practice." A practice or combination of  
9 practices determined by the State Conservation Commission or  
10 United States Department of Agriculture Natural Resources and  
11 Conservation Service to be effective and practical, considering  
12 technological, economic and institutional factors, to manage  
13 nutrients and sediment to protect surface water.

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

18 "Commission." The State Conservation Commission.

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

22 "Conservation plan." A plan, including a schedule for  
23 implementation, that identifies site specific conservation best  
24 management practices on an agricultural operation.

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

26 "Eligible applicants." A business firm or an individual who  
27 is subject to ~~taxation under Article III~~ THE TAXES IMPOSED BY <—  
28 ARTICLE III, IV, VI, VII, VIII, IX OR XV of the act of March 4,  
29 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

30 "Equine activity." The term includes the following

1 activities:

2 (1) The boarding of equines.

3 (2) The training of equines.

4 (3) The instruction of people in handling, driving or  
5 riding equines.

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

7 (5) The pasturing of equines.

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

11 "Individual." A natural person.

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

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

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

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

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

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

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

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

5 "Riparian forest buffer." An area of mostly trees or shrubs  
6 which is adjacent to and up-gradient from watercourses or water  
7 bodies and which meets standards established by the United  
8 States Department of Agriculture-Natural Resources and  
9 Conservation Service.

10 "Technical service provider." An individual, entity or  
11 public agency certified by the United States Department of  
12 Agriculture Natural Resources Conservation Service and placed on  
13 the approved list to provide technical services to program  
14 participants or to the United States Department of Agriculture  
15 program participants.

16 "USDA-NRCS." The United States Department of Agriculture  
17 Natural Resources and Conservation Service.

18 Section 4. Resource Enhancement and Protection Tax Credit  
19 Program.

20 (a) Establishment.--The Resource Enhancement and Protection  
21 Tax Credit Program is established to encourage private  
22 investment in the implementation of best management practices on  
23 agricultural operations, the planting of riparian forest buffers  
24 and the remediation of legacy sediment.

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

26 (1) An eligible applicant may be granted a maximum of  
27 \$150,000 in tax credits under this program.

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

30 (3) An eligible applicant may submit an application for

1 a single project or multiple applications for multiple  
2 projects within the limits of this section.

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

6 (5) There shall be no limit on the amount of tax credits  
7 granted to a sponsor under subsection ~~(F)~~ (E). ←

8 (c) Carryover.--

9 (1) If the eligible applicant cannot use the entire  
10 amount of the tax credit for the taxable year in which the  
11 tax credit is first granted, then the excess may be carried  
12 over to succeeding taxable years and used as a credit against  
13 the qualified tax liability of the ~~eligible~~ ELIGIBLE ←  
14 applicant for those taxable years. Each time that the tax  
15 credit is carried over to a succeeding taxable year, it is to  
16 be reduced by the amount that was used as a credit during the  
17 immediately preceding taxable year. The tax credit provided  
18 by this act may be carried over and applied to succeeding  
19 taxable years for no more than 15 taxable years following the  
20 first taxable year for which the eligible applicant was  
21 entitled to claim the credit.

22 (2) A tax credit granted by the department shall be  
23 applied against the taxpayer's qualified tax liability for  
24 the current taxable year as of the date on which the credit  
25 was granted before the tax credit is applied against any tax  
26 liability under paragraph (1).

27 (d) Assignment of credit.--

28 (1) An eligible applicant, upon application to and  
29 approval by the department, may sell or assign, in whole or  
30 in part, a tax credit granted to the eligible applicant under

1 this act if no claim for allowance of the credit is filed  
2 within one year from the date the credit is granted by the  
3 department under this section. The department shall establish  
4 guidelines for the approval of applications under this  
5 subsection.

6 (2) The purchaser or assignee of a portion of a tax  
7 credit under this subsection shall immediately claim the  
8 credit in the taxable year in which the purchase or  
9 assignment is made. The amount of the credit that a purchaser  
10 or assignee may use against a qualified tax liability may not  
11 exceed 75% of the qualified tax liability for the taxable  
12 year. The purchaser or assignee may not carry over, carry  
13 back, obtain a refund of or assign the tax credit. The  
14 purchaser or assignee shall notify the department of the  
15 seller or assignor of the tax credit in compliance with  
16 procedures specified by the department.

17 (e) Sponsorship.--An eligible applicant may be a sponsor by  
18 applying for a tax credit for a project authorized under section  
19 8 if a written agreement between the eligible applicant and the  
20 owner of property on which the project will be completed is  
21 submitted to the commission, certifying that the property owner  
22 will comply with all the provisions of this act.

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

24 (1) If a pass-through entity has any unused tax credit,  
25 it may elect in writing, according to procedures established  
26 by the department, to transfer all or a portion of the credit  
27 to shareholders, members or partners in proportion to the  
28 share of its distributive income to which the shareholder,  
29 member or partner is entitled.

30 (2) The credit provided under paragraph (1) is in

1 addition to any tax credit to which the shareholder, member  
2 or partner is otherwise entitled under this act.

3 (3) A pass-through entity and its partners or  
4 shareholders shall not claim a tax credit under this act for  
5 the same project authorized under section 8.

6 Section 5. Tax credits.

7 (a) General ~~eligibility~~ ELIGIBILITY.--Projects shall be ←  
8 eligible for a tax credit as follows:

9 (1) Only best management practices completed after the  
10 effective date of this act shall be eligible for a tax  
11 credit.

12 (2) An agricultural operation shall have in place a  
13 current conservation plan, a current agricultural erosion and  
14 sediment control plan if engaged in plowing and tilling, and  
15 a current nutrient management plan if required, or the  
16 development of such plans shall be included in an application  
17 for a tax credit.

18 (3) An agricultural operation with an animal  
19 concentration area shall have implemented best management  
20 practices necessary to abate storm water runoff, loss of  
21 sediment, loss of nutrients and runoff of other pollutants  
22 from the animal concentration area, or the implementation of  
23 such best management practices shall be included in an  
24 application for a tax credit.

25 (4) An agricultural operation with an uncompleted best  
26 management practice of either an agricultural erosion and  
27 sediment control plan if engaged in plowing and tilling or a  
28 nutrient management plan if required, shall first include the  
29 remaining best management practices included in such plans in  
30 an application for a tax credit.

1 (5) A project shall meet the design and construction  
2 standards established by the commission or USDA-NRCS. If  
3 standards do not exist for a best management practice  
4 approved by the commission, the commission may establish or  
5 approve design, construction and certification standards for  
6 such a best management practice.

7 (b) Amount of tax credit.--

8 (1) A tax credit equal to 75% of the eligible costs  
9 under subsection (c) of a project authorized under section 8  
10 shall be granted for any of the following:

11 (i) Development of a voluntary or mandatory nutrient  
12 management plan.

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

15 (iii) For an animal concentration area, design and  
16 implementation of best management practices necessary to  
17 abate storm water runoff, loss of sediment, loss of  
18 nutrients and runoff of other pollutants.

19 (iv) Design and implementation of best management  
20 practices necessary to restrict livestock access to  
21 streams if there is established and maintained a riparian  
22 forest buffer with a minimum width of 35 feet.

23 (v) Establishment of a riparian forest buffer with a  
24 minimum width of 35 feet.

25 (2) A tax credit equal to 50% of the eligible costs  
26 under subsection (c) of a project authorized under section 8  
27 shall be granted for any of the following:

28 (i) For an agricultural operation, design and  
29 implementation of agricultural best management practices  
30 or the installation and use of equipment, provided that

1 the best management practice or equipment is necessary to  
2 reduce existing sediment and nutrient pollution to  
3 surface waters. Such best management practices and  
4 equipment shall be identified by the commission and may  
5 include manure storage systems, alternative uses for  
6 manure, filter strips, grassed waterways, management  
7 intensive grazing systems and no-till planting equipment.

8 (ii) Design and implementation of best management  
9 practices necessary to restrict livestock access to  
10 streams through fencing, stabilized crossings and  
11 improved watering systems, if there is established and  
12 maintained a riparian forest buffer with a minimum width  
13 of 20 feet.

14 (3) A tax credit equal to 25% of the eligible costs  
15 under subsection (c) of a project authorized under section 8  
16 shall be granted for the remediation of legacy sediment if  
17 the legacy sediment is exposed and is discharging or  
18 threatens to discharge into surface waters as a result of  
19 acute stream bank erosion. The project shall meet standards  
20 established by the commission as being effective in  
21 mitigating or eliminating the harmful effects of legacy  
22 sediment.

23 (c) Costs of project.--

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

26 (i) Project design, engineering and associated  
27 ~~planning, including that which may be provided by a~~ <—  
28 ~~conservation district.~~ PLANNING. <—

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

- 1 (iii) Project construction or installation.
- 2 (iv) Equipment, materials and all other components
- 3 of projects eligible under subsection (a).
- 4 (v) Postconstruction inspections.
- 5 (vi) Interest payments on loans for project
- 6 implementation for up to one year prior to the award of
- 7 the tax credit.

8 (2) A tax credit shall not be applied to that portion of  
9 a project cost under subsection (c) for which public funding  
10 was received.

11 (3) ELIGIBLE COSTS OF A PROJECT SHALL INCLUDE ANY OF THE ←  
12 SERVICES LISTED IN PARAGRAPH (1) THAT MAY BE PROVIDED BY A  
13 CONSERVATION DISTRICT.

14 Section 6. Project certification.

15 A project shall be certified as meeting standards under  
16 section 5(a)(5) by the following:

17 (1) a best management practice that currently requires  
18 review and certification by a registered professional  
19 engineer under current law or applicable regulation:  
20 registered professional engineer;

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

23 (3) nutrient management plan: nutrient management  
24 specialist; and

25 (4) agricultural erosion and sediment control plan or  
26 conservation plan: any person trained and experienced in  
27 erosion and sediment control or conservation methods and  
28 techniques and whose qualifications are determined acceptable  
29 by the commission.

30 Section 7. Project maintenance and life expectancy.

1 (a) Best management practice.--An agricultural operation  
2 shall maintain a best management practice for the life of the  
3 practice as established by the commission or USDA-NRCS. A  
4 riparian forest buffer shall be maintained for a minimum of 15  
5 years.

6 (b) Failure.--If a best management practice is not  
7 maintained for the period required under subsection (a), the  
8 owner of the property upon which the project exists shall return  
9 to the department the amount of the tax credit originally  
10 granted. Additional penalties may be determined by the  
11 department.

12 (c) Exception.--If the recipient of a tax credit provides  
13 prior written notification to the department that the recipient  
14 will be unable to maintain a best management practice due to  
15 sale of the property, cessation of an agricultural operation or  
16 other factors, the department may prorate the amount of the tax  
17 credit that shall be returned based on the remaining lifespan of  
18 the best management practice in question.

19 Section 8. Application, review and authorization by commission.

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

- 24 (1) Type and location of project under section 5(b).
- 25 (2) Total cost of project as outlined in section 5(c).
- 26 (3) Verification of eligibility under section 5(a).

27 (b) Review, notification and authorization.--The commission  
28 shall within ~~30~~ 60 days of receipt review each application and  
29 notify an eligible applicant whether or not the eligible  
30 applicant meets the requirements and is authorized to receive a

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1 tax credit under this act.

2 (c) Authorization of tax credit.--The commission shall not  
3 authorize tax credits that exceed the limits under sections 4(b)  
4 and 10. The commission shall authorize tax credits on a first-  
5 come, first-served basis.

6 (d) Completion of project.--Upon completion of a project  
7 authorized under this section, an eligible applicant shall  
8 submit to the commission written notice of project completion.

9 Such notice shall include:

10 (1) Proof of certification as required by section 6 that  
11 the project is complete.

12 (2) A maintenance plan as required by section 7(a) for  
13 each best management practice, if applicable to the project.

14 (3) Any other documents as may be required by the  
15 commission.

16 (e) Notification to department.--Upon determination that a  
17 project authorized under this section is complete, the  
18 commission shall provide notification to the department:

19 (1) that the eligible applicant has completed a project  
20 which meets the criteria for a tax credit under this act; and

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

22 (f) Inspection.--Projects authorized under this section may  
23 be subject to inspection by the commission or its designated  
24 agent.

25 Section 9. Grant of tax credit.

26 The department shall grant a tax credit authorized under  
27 section 8. The department shall within 60 days of receipt of  
28 notice under section 8(e), issue a notice of grant of a tax  
29 credit to the eligible applicant.

30 ~~Section 10. Annual cap of tax credits.~~

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1 ~~Tax credits shall be granted up to a cap established by the~~  
2 ~~General Assembly in the annual budget. For fiscal year 2007~~  
3 ~~2008, the cap shall be \$10 million.~~

4 SECTION 10. ANNUAL TAX CREDITS. ←

5 THE TOTAL AMOUNT OF TAX CREDITS GRANTED BY THE DEPARTMENT  
6 SHALL NOT EXCEED \$10,000,000 IN ANY FISCAL YEAR.

7 Section 11. Report.

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

- 11 (1) The number of tax credits granted under the program.
- 12 (2) The types and locations of projects.
- 13 (3) The estimated benefits of the projects.

14 Section 20. Effective date.

15 This act shall take effect July 1, 2007.