

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 AND
DINNIMAN, MAY 11, 2007

SENATOR BROWNE, FINANCE, AS AMENDED, JUNE 13, 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.

20 (2) Statewide, 13,400 miles of streams do not meet water

1 quality standards.

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

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

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

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

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

30 Pennsylvania's public natural resources are the common

1 property of all the people, including generations yet to
2 come. As trustee of these resources, the Commonwealth shall
3 conserve and maintain them for the benefit of all the
4 people."

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

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

13 Section 3. Definitions.

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

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

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

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

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

28 "Animal concentration areas." An exterior area of an
29 agricultural operation subject to rainfall where livestock
30 congregate, including a barnyard, a feedlot, a loafing area, an

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

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

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

17 "Commission." The State Conservation Commission.

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

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

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

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

28 "Equine activity." The term includes the following
29 activities:

30 (1) The boarding of equines.

1 (2) The training of equines.

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

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

5 (5) The pasturing of equines.

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

9 "Individual." A natural person.

10 "Legacy sediment." Sediment that meets all of the following
11 conditions:

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

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

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

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

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

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

29 "Qualified tax liability." The liability for taxes imposed
30 upon an eligible applicant under Article III, IV, VI, VII, VIII,

1 IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the
2 Tax Reform Code of 1971.

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

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

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

16 Section 4. Resource Enhancement and Protection Tax Credit
17 Program.

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

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

24 (1) An eligible applicant may be granted a maximum of
25 \$150,000 in tax credits under this program.

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

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

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

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

6 (c) Carryover.--

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

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

25 (d) Assignment of credit.--

26 (1) An eligible applicant, upon application to and
27 approval by the department, may sell or assign, in whole or
28 in part, a tax credit granted to the eligible applicant under
29 this act if no claim for allowance of the credit is filed
30 within one year from the date the credit is granted by the

1 department under this section. The department shall establish
2 guidelines for the approval of applications under this
3 subsection.

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

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

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

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

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

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

Section 5. Tax credits.

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

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

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

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

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

(5) A project shall meet the design and construction standards established by the commission or USDA-NRCS. If

standards do not exist for a best management practice approved by the commission, the commission may establish or approve design, construction and certification standards for such a best management practice.

(b) Amount of tax credit.--

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

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

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

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

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

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

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

(i) For an agricultural operation, design and implementation of agricultural best management practices or the installation and use of equipment, provided that the best management practice or equipment is necessary to reduce existing sediment and nutrient pollution to

1 surface waters. Such best management practices and
2 equipment shall be identified by the commission and may
3 include manure storage systems, alternative uses for
4 manure, filter strips, grassed waterways, management
5 intensive grazing systems and no-till planting equipment.

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

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

21 (c) Costs of project.--

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

24 (i) Project design, engineering and associated
25 planning, including that which may be provided by a
26 conservation district.

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

29 (iii) Project construction or installation.

30 (iv) Equipment, materials and all other components

1 of projects eligible under subsection (a).

2 (v) Postconstruction inspections.

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

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

9 Section 6. Project certification.

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

12 (1) a best management practice that currently requires
13 review and certification by a registered professional
14 engineer under current law or applicable regulation:
15 registered professional engineer;

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

18 (3) nutrient management plan: nutrient management
19 specialist; and

20 (4) agricultural erosion and sediment control plan or
21 conservation plan: any person trained and experienced in
22 erosion and sediment control or conservation methods and
23 techniques and whose qualifications are determined acceptable
24 by the commission.

25 Section 7. Project maintenance and life expectancy.

26 (a) Best management practice.--An agricultural operation
27 shall maintain a best management practice for the life of the
28 practice as established by the commission or USDA-NRCS. A
29 riparian forest buffer shall be maintained for a minimum of 15
30 years.

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

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

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

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

19 (1) Type and location of project under section 5(b).

20 (2) Total cost of project as outlined in section 5(c).

21 (3) Verification of eligibility under section 5(a).

22 (b) Review, notification and authorization.--The commission
23 shall within 30 days of receipt review each application and
24 notify an eligible applicant whether or not the eligible
25 applicant meets the requirements and is authorized to receive a
26 tax credit under this act.

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

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

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

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

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

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

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

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

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

Section 9. Grant of tax credit.

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

Section 10. Annual cap of tax credits.

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

~~(1) For fiscal year 2007-2008, \$25,000,000.~~

~~(2) For fiscal year 2008-2009, \$25,000,000.~~

1 ~~(3) For fiscal years 2009-2010 through 2016-2017,~~
2 ~~\$50,000,000 per fiscal year.~~ UP TO A CAP ESTABLISHED BY THE <—
3 GENERAL ASSEMBLY IN THE ANNUAL BUDGET. FOR FISCAL YEAR 2007-
4 2008, THE CAP SHALL BE \$10 MILLION.

5 Section 11. Report.

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

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

10 (2) The types and locations of projects.

11 (3) The estimated benefits of the projects.

12 Section 20. Effective date.

13 This act shall take effect July 1, 2007.