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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2949 Session of  
2020

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INTRODUCED BY RABB, BROOKS, HOWARD, PASHINSKI, MURT,  
CALTAGIRONE, McNEILL, HOHENSTEIN, KENYATTA, WILLIAMS, HILL-  
EVANS, SCHLOSSBERG, LEE, WEBSTER, GREEN AND DRISCOLL,  
OCTOBER 20, 2020

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REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
OCTOBER 20, 2020

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AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, in development, marketing and promotion, providing  
3 for food security initiative; establishing the Food Security  
4 Initiative Grant Program and the Food Security Initiative Tax  
5 Credit Program; imposing duties on the Department of  
6 Agriculture; and making an appropriation.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Title 3 of the Pennsylvania Consolidated Statutes  
10 is amended by adding a chapter to read:

11 CHAPTER 49

12 FOOD SECURITY INITIATIVE

13 Subchapter

14 A. Preliminary Provisions

15 B. Grant Program

16 C. Tax Credit Program

17 D. Miscellaneous Provisions

18 SUBCHAPTER A

1 PRELIMINARY PROVISIONS

2 Sec.

3 4901. Short title of chapter.

4 4902. Definitions.

5 § 4901. Short title of chapter.

6 This chapter shall be known and may be cited as the Food  
7 Security Initiative Program Act.

8 § 4902. Definitions.

9 The following words and phrases when used in this chapter  
10 shall have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Credit period." A five-year period that begins with the  
13 taxable year in which a taxpayer is awarded a tax credit  
14 certificate in accordance with Subchapter C (relating to tax  
15 credit program).

16 "Department." The Department of Agriculture of the  
17 Commonwealth.

18 "Food desert." A low-income census tract where a substantial  
19 number or share of residents has low access to a supermarket or  
20 large grocery store.

21 "Grant." A grant awarded under the program.

22 "Low access." Access to a supermarket or large grocery store  
23 by an individual who resides more than:

24 (1) one mile from the supermarket or large grocery store  
25 in an urban area; or

26 (2) ten miles from the supermarket or large grocery  
27 store in a rural area.

28 "Low-income census tract." A census tract where:

29 (1) the poverty rate is at least 20%;

30 (2) for a tract not located within a metropolitan area,

1 the median family income for the tract does not exceed 80% of  
2 the Statewide median family income; or

3 (3) for a tract located within a metropolitan area, the  
4 median family income for the tract does not exceed 80% of the  
5 greater of the Statewide median family income and the median  
6 family income for the metropolitan area.

7 "NAICS." A classification within the North American Industry  
8 Classification System developed for use by Federal statistical  
9 agencies for the collection, analysis and publication of  
10 statistical data related to the United States economy.

11 "Pass-through entity." Any of the following:

12 (1) A partnership as defined in section 301(n.0) of the  
13 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
14 Code of 1971.

15 (2) A Pennsylvania S Corporation as defined in section  
16 301(n.1) of the Tax Reform Code of 1971.

17 (3) An unincorporated entity subject to section 307.21  
18 of the Tax Reform Code of 1971.

19 "Program." The Food Security Initiative Program established  
20 under Subchapter B (relating to grant program).

21 "Qualified tax liability." The tax liability imposed on a  
22 taxpayer under Article III, IV, VII, VIII, IX, XI or XV of the  
23 Tax Reform Code of 1971, excluding any tax withheld by an  
24 employer under Article III of the Tax Reform Code of 1971.

25 "Restaurant." As follows:

26 (1) A place within this Commonwealth that receives a  
27 NAICS designation of 72241 or 72251 from the United States  
28 Census Bureau and where food or drink is served to or  
29 provided for the public, with or without charge.

30 (2) The term does not include a dining car operated by a

1 railroad company in interstate commerce or a bed and  
2 breakfast homestead or inn.

3 "Tax credit." A tax credit awarded under the Food Security  
4 Initiative Tax Credit Program under Subchapter C.

5 "Taxable year." The term shall have the same meaning as  
6 provided under section 441(b) of the Internal Revenue Code of  
7 1986 (Public Law 99-514, 26 U.S.C. § 441(b)).

8 "Taxpayer." An individual, business firm, corporation,  
9 business trust, limited liability company, partnership, limited  
10 liability partnership, association or any other form of legal  
11 business entity.

12 SUBCHAPTER B

13 GRANT PROGRAM

14 Sec.

15 4911. Establishment.

16 4912. Eligibility.

17 4913. Application.

18 4914. Review and approval.

19 4915. Agreement.

20 4916. Program guidelines.

21 § 4911. Establishment.

22 The Food Security Initiative Grant Program is established  
23 within the department for the purpose of providing financial  
24 assistance to restaurants in this Commonwealth that open or are  
25 operating in a food desert.

26 § 4912. Eligibility.

27 To be considered eligible for a grant, a restaurant must meet  
28 all of the following:

29 (1) Operate or prepare to operate in a food desert.

30 (2) Employ no more than 20 full-time equivalent

1 employees per restaurant location.

2 (3) Be organized as a co-op, employee ownership trust,  
3 low-profit limited liability corporation or B corporation. An  
4 entity organized as a corporation must offer employee stock  
5 option programs to be eligible under this section.

6 § 4913. Application.

7 A restaurant may submit an application to the department on a  
8 form and in a manner prescribed by the department. In addition  
9 to the application, the department may require information as  
10 necessary to determine the eligibility of a restaurant for a  
11 grant.

12 § 4914. Review and approval.

13 (a) Time period.--Within 30 days of the effective date of  
14 this subsection, the department shall establish a time period of  
15 not less than 30 days for restaurants to submit an application  
16 for a grant.

17 (b) Distribution.--Upon closure of the time period  
18 established in subsection (a), the department shall distribute  
19 all money made available to the department for the purpose of  
20 making grants to restaurants considered eligible in an amount  
21 equal to the quotient resulting from dividing the total amount  
22 of money made available for grants under this subchapter by the  
23 total number of eligible restaurants.

24 (c) Limitation.--The department may not award a grant under  
25 the program that exceeds \$50,000 to an eligible restaurant.

26 § 4915. Agreement.

27 (a) Use of grant money.--Each eligible restaurant and the  
28 department shall enter into an agreement of the use of an  
29 awarded grant. The agreement shall state that the grant shall be  
30 used for costs incurred and payments made for any of the

1 following:

2 (1) Payroll costs.

3 (2) Payment of interest on a mortgage obligation, which  
4 shall not include any prepayment of or payment of principal  
5 on a covered mortgage obligation.

6 (3) Payment on a rent obligation.

7 (4) Payment for utilities.

8 (5) Other costs incurred by the restaurant for the  
9 acquisition of raw materials to sustain the operations of the  
10 restaurant.

11 (b) Failure to comply.--A restaurant that receives a grant  
12 and fails to comply with subsection (a) shall repay the amount  
13 of the grant to the department, in addition to a fee that  
14 amounts to 10% of the grant amount.

15 § 4916. Program guidelines.

16 The department shall develop and issue guidelines for the  
17 program, which shall be posted on the publicly accessible  
18 Internet website of the department.

19 SUBCHAPTER C

20 TAX CREDIT PROGRAM

21 Sec.

22 4921. Establishment.

23 4922. Availability.

24 4923. Application.

25 4924. Review of application by department.

26 4925. Tax credit certificates.

27 4926. Use of tax credits.

28 4927. Carryover, carryback and refund.

29 4928. Sale or assignment.

30 4929. Pass-through entity.

1 4930. Purchasers and assignees.

2 4931. Administration.

3 4932. Annual report.

4 § 4921. Establishment.

5 The Food Security Initiative Tax Credit Program is  
6 established to encourage the development of qualified  
7 restaurants in this Commonwealth that operate in a food desert.  
8 The department and the Department of Revenue shall administer  
9 the tax credit as provided in this subchapter.

10 § 4922. Availability.

11 (a) Awards.--Beginning in fiscal year 2021-2022 and each  
12 fiscal year thereafter, the department may award a total of  
13 \$10,000,000 in tax credits per fiscal year in accordance with  
14 this subchapter.

15 (b) Unallocated tax credits.--In addition to the amount  
16 available under subsection (a), the department may award  
17 unallocated tax credits from the preceding fiscal year.

18 (c) Maximum amount.--A taxpayer may not be awarded a tax  
19 credit in an amount that exceeds \$100,000 for a qualified  
20 restaurant.

21 § 4923. Application.

22 (a) Submittal.--A taxpayer may apply to the department for a  
23 tax credit under this section by submitting an application on a  
24 form required by the department.

25 (b) Verification.--The department may require information on  
26 the application as necessary to verify compliance with this  
27 subchapter.

28 (c) Other requirements.--Except as otherwise provided by  
29 law, before the tax credit may be awarded, the Department of  
30 Revenue must find that the taxpayer has filed all required State

1 tax reports and returns for all applicable tax years and paid  
2 any balance of State tax due as determined at settlement or  
3 assessment by the Department of Revenue, unless the tax due is  
4 currently under appeal.

5 § 4924. Review of application by department.

6 (a) Duties of department.--The department shall review  
7 applications submitted for a tax credit and, in accordance with  
8 the procedures established by the department under section 4931  
9 (relating to administration), conditionally reserve tax credits  
10 for a qualified restaurant operating in a food desert.

11 (b) Conditional reservation.--The department shall  
12 conditionally reserve tax credits in a manner that the  
13 department, at the time of conditional reservation, reasonably  
14 believes will result in funding of a restaurant that operates in  
15 a food desert.

16 (c) Merits.--The department shall determine the amount of  
17 tax credits conditionally reserved to a taxpayer based on the  
18 merits of the qualified restaurant project.

19 § 4925. Tax credit certificates.

20 (a) Determination of compliance.--Upon notification that a  
21 qualified restaurant project receiving a conditional reservation  
22 of tax credits has been completed, the department shall  
23 determine compliance with this subchapter.

24 (b) Amount.--Following verification of compliance, the  
25 department shall issue the tax credit certificates in an amount  
26 not to exceed 20% of the conditional reservation for each  
27 taxable year in the tax credit period.

28 § 4926. Use of tax credits.

29 (a) Claiming tax credit.--Upon presentation of a tax credit  
30 certificate to the Department of Revenue, the taxpayer may claim

1 a tax credit against the qualified tax liability.

2 (b) Amount.--The tax credit may be claimed at an amount not  
3 to exceed 50% of the taxpayer's qualified tax liability for a  
4 single taxable year.

5 § 4927. Carryover, carryback and refund.

6 (a) General rule.--A taxpayer shall be entitled to carry  
7 forward a tax credit for a period not to exceed five taxable  
8 years from the taxable year in which the tax credit was awarded.  
9 Each time the tax credit is carried over to a succeeding taxable  
10 year, the tax credit shall be reduced by the amount that was  
11 used as a credit during the immediately preceding taxable year.

12 (b) Application.--A tax credit certificate received by the  
13 Department of Revenue in a taxable year shall first be applied  
14 against the taxpayer's qualified tax liability for the current  
15 taxable year as of the date on which the credit was issued  
16 before the tax credit can be applied against a qualified tax  
17 liability under subsection (a).

18 (c) No carryback or refund.--A taxpayer may not carry back  
19 or obtain a refund of all or any portion of an unused tax credit  
20 granted to the taxpayer under this subchapter.

21 § 4928. Sale or assignment.

22 (a) Application.--A taxpayer, 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 taxpayer under  
25 this subchapter.

26 (b) Compliance.--Before an application under subsection (a)  
27 is approved, the Department of Revenue must find that the  
28 applicant has filed all required State tax reports and returns  
29 for all applicable taxable years and paid any balance of State  
30 tax due as determined at settlement, assessment or determination

1 by the Department of Revenue.

2 § 4929. Pass-through entity.

3 (a) General rule.--If a pass-through entity has any unused  
4 tax credit under section 4926 (relating to use of tax credits),  
5 the taxpayer may elect in writing, according to procedures  
6 established by the Department of Revenue, to transfer all or a  
7 portion of the tax credit to shareholders, members or partners  
8 in proportion to the share of the entity's distributive income  
9 to which the shareholder, member or partner is entitled.

10 (b) Limitation.--A pass-through entity and a shareholder,  
11 member or partner of a pass-through entity may not claim the  
12 credit under subsection (a) for the same qualified project.

13 (c) Application.--A shareholder, member or partner of a  
14 pass-through entity to whom a credit is transferred under  
15 subsection (a) shall immediately claim the credit in the taxable  
16 year in which the transfer is made. The shareholder, member or  
17 partner may not carry forward, carry back, obtain a refund of or  
18 sell or assign the tax credit.

19 § 4930. Purchasers and assignees.

20 The purchaser or assignee of all or a portion of the tax  
21 credit under section 4928 (relating to sale or assignment) shall  
22 immediately claim the tax credit in the taxable year in which  
23 the purchase or assignment is made, subject to the following:

24 (1) If a purchaser or assignee of all or a portion of  
25 the tax credit obtained under section 4928 cannot use the  
26 entire amount of the tax credit for the taxable year in which  
27 the tax credit was purchased or assigned, the excess may be  
28 carried over to succeeding taxable years and used as a credit  
29 against the qualified tax liability of the purchaser or  
30 assignee for those taxable years.

1           (2) Each time a tax credit is carried over to a  
2 succeeding taxable year, the tax credit shall be reduced by  
3 the amount that was used as a credit during the immediately  
4 preceding taxable year.

5           (3) The tax credit may be carried over and applied to  
6 succeeding taxable years for the remainder of the  
7 carryforward period from the original tax credit certificate.

8           (4) The purchaser or assignee may not carry back the  
9 credit or obtain a refund.

10 § 4931. Administration.

11           (a) Department guidelines and procedures.--The department  
12 shall issue guidelines and procedures for the administration of  
13 the tax credit.

14           (b) Recapture.--The Department of Revenue, in consultation  
15 with the department, shall establish guidelines that include  
16 procedures for recapture of tax credits during the credit period  
17 that are similar in structure and effect to events of  
18 noncompliance under section 42 of the Internal Revenue Code of  
19 1986 (Public Law 99-514, 26 U.S.C. § 42). The guidelines shall  
20 provide for the mechanism and formula that the tax credit may be  
21 recaptured over the remaining credit period.

22           (c) Fraud or misrepresentation.--If a taxpayer engages in  
23 fraud or intentional misrepresentation of information required  
24 to be provided to the department or the Department of Revenue  
25 under this subchapter or the department's guidelines, the  
26 Department of Revenue may:

27           (1) Recapture all or a portion of the tax credit.

28           (2) Deem ineligible the applicant or taxpayer from  
29 future tax credits.

30           (3) Impose other penalties as specified in the

1 department's guidelines.

2 (d) Fee.--The department may charge a taxpayer applying for  
3 a tax credit a reasonable fee not to exceed 5% of the tax credit  
4 awarded for the administrative expenses of the department for  
5 processing applications under this subchapter.

6 § 4932. Annual report.

7 (a) Submittal.--By June 30, 2022, and each June 30  
8 thereafter, the department shall submit a report on the tax  
9 credit to:

10 (1) The chairperson and minority chairperson of the  
11 Agriculture and Rural Affairs Committee of the Senate.

12 (2) The chairperson and minority chairperson of the  
13 Agriculture and Rural Affairs Committee of the House of  
14 Representatives.

15 (3) The chairperson and minority chairperson of the  
16 Appropriations Committee of the Senate.

17 (4) The chairperson and minority chairperson of the  
18 Appropriations Committee of the House of Representatives.

19 (b) Contents.--The report under subsection (a) shall  
20 include:

21 (1) The number and amount of tax credits awarded.

22 (2) The taxpayers that were awarded tax credits.

23 (3) The amount of tax credits issued to each taxpayer.

24 (c) Public posting.--The department shall make the report  
25 identified in subsection (a) available on the department's  
26 publicly accessible Internet website.

27 SUBCHAPTER D

28 MISCELLANEOUS PROVISIONS

29 Sec.

30 4941. Funding.

1 § 4941. Funding.

2 The sum of \$20,000,000 shall be appropriated from the General  
3 Fund for the purpose of making grants and tax credits under this  
4 chapter.

5 Section 2. This act shall take effect immediately.