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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 622 Session of  
2019

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INTRODUCED BY SABATINA, STREET, FONTANA, TARTAGLIONE, SCHWANK,  
SANTARSIERO, HUGHES, FARNESE, BREWSTER, COSTA, BAKER AND  
BROWNE, MAY 13, 2019

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REFERRED TO AGRICULTURE AND RURAL AFFAIRS, MAY 13, 2019

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AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated  
2 Statutes, providing for resource enhancement and protection  
3 tax credits; and making related repeals.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 3 of the Pennsylvania Consolidated Statutes  
7 is amended by adding a part to read:

8 PART XI

9 INVESTMENT PROGRAMS

10 Chapter

11 123. Resource Enhancement and Protection Tax Credits

12 CHAPTER 123

13 RESOURCE ENHANCEMENT AND PROTECTION TAX CREDITS

14 Sec.

15 12301. Scope of chapter.

16 12302. Definitions.

17 12303. Resource Enhancement and Protection Tax Credit Program.

18 12304. Tax credits.

- 1 12305. Project certification.  
2 12306. Project maintenance and life expectancy.  
3 12307. Application, review and authorization by commission.  
4 12308. Grant of tax credit.  
5 12309. Annual tax credits.  
6 12310. Report and public information.  
7 § 12301. Scope of chapter.

8 This chapter relates to resource enhancement and protection  
9 tax credits.

10 § 12302. Definitions.

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

14 "Agricultural erosion and sedimentation control plan." A  
15 site-specific plan that:

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

20 (2) identifies best management practices to minimize  
21 accelerated erosion and sediment from an agricultural  
22 operation.

23 "Agricultural operation." Property on which occurs the  
24 management and use of farming resources for the production of  
25 crops, livestock or poultry or for equine activity.

26 "Animal concentration area." An exterior area of an  
27 agricultural operation subject to rainfall where livestock  
28 congregate. The term includes a barnyard, feedlot, loafing area,  
29 exercise lot or other similar animal confinement area that does  
30 not maintain a growing crop or where deposited manure nutrients

1 are in excess of crop needs. The term does not include an area  
2 managed as a pasture or other cropland and pasture accessway if  
3 the area does not cause direct flow of nutrients to surface  
4 water or groundwater.

5 "Best management practice." A practice or combination of  
6 practices determined by the commission or USDA-NRCS to be  
7 effective and practical, considering technological, economic and  
8 institutional factors, to manage nutrients and sediment to  
9 protect surface water and groundwater.

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

14 "Commission." The State Conservation Commission.

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

18 "Conservation plan." A plan, including a schedule for  
19 implementation, that identifies site-specific conservation best  
20 management practices on an agricultural operation.

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

22 "Eligible applicant." A business firm or an individual who  
23 is subject to the taxes imposed by Article III, IV, VI, VII,  
24 VIII, IX or XV of the Tax Reform Code of 1971.

25 "Equine activity." As follows:

26 (1) The term includes the following:

27 (i) The boarding of equines.

28 (ii) The training of equines.

29 (iii) The instruction of people in handling, driving  
30 or riding equines.

1           (iv) The use of equines for riding or driving  
2           purposes.

3           (v) The pasturing of equines.

4           (2) The term does not include activity licensed under  
5           former Article XXVIII-D of the act of April 9, 1929 (P.L.177,  
6           No.175), known as The Administrative Code of 1929.

7           "Legacy sediment." Sediment that meets all of the following  
8           conditions:

9           (1) Was eroded from upland areas after the arrival of  
10           early Pennsylvania settlers and during centuries of intensive  
11           land use.

12           (2) Was deposited in valley bottoms along stream  
13           corridors, burying presettlement streams, floodplains,  
14           wetlands and valley bottoms.

15           (3) Altered and continues to impair the hydrologic,  
16           biologic, aquatic, riparian and water quality functions of  
17           presettlement and modern environments.

18           "Manure management plan." A written site-specific plan that:

19           (1) outlines agreed-upon and acceptable practices for  
20           the land application of manure and agricultural process  
21           wastewaters; and

22           (2) is developed to meet the requirements of 25 Pa. Code  
23           § 91.36(b) (relating to pollution control and prevention at  
24           agricultural operations).

25           "Nutrient management plan." As defined under Chapter 5  
26           (relating to nutrient management and odor management).

27           "Nutrient management specialist." As defined under Chapter  
28           5.

29           "Pass-through entity." A partnership as defined in section  
30           301(n.0) of the Tax Reform Code of 1971, or a Pennsylvania S

1 corporation as defined in section 301(n.1) of the Tax Reform  
2 Code of 1971.

3 "Program." The Resource Enhancement and Protection Tax  
4 Credit Program established in this chapter.

5 "Qualified tax liability." The liability for taxes imposed  
6 upon an eligible applicant under Article III, IV, VI, VII, VIII,  
7 IX or XV of the Tax Reform Code of 1971. The term shall not  
8 include tax withheld by an employer from an employee under  
9 Article III of the Tax Reform Code of 1971.

10 "Riparian forest buffer." An area of mostly trees or shrubs  
11 that is adjacent to and up-gradient from watercourses or water  
12 bodies and meets standards established or adopted by the  
13 commission.

14 "Tax credit." The resource enhancement tax credit  
15 established in this chapter.

16 "Technical service provider." An individual, entity or  
17 public agency certified by the USDA-NRCS and placed on the  
18 approved list to provide technical services to program  
19 participants or to the United States Department of Agriculture  
20 program participants.

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

23 § 12303. Resource Enhancement and Protection Tax Credit  
24 Program.

25 (a) Establishment.--The Resource Enhancement and Protection  
26 Tax Credit Program is established to encourage private  
27 investment in the implementation of best management practices on  
28 agricultural operations, the planting of riparian forest buffers  
29 and the remediation of legacy sediment.

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

1       (1) Except as specified in paragraph (5), an eligible  
2 applicant may be granted a maximum of \$250,000 in tax credits  
3 in any consecutive seven-year period, calculated from the  
4 date the tax credit is issued.

5       (2) An agricultural operation may be granted a maximum  
6 of \$250,000 in tax credits in any consecutive seven-year  
7 period, calculated from the date the tax credit is issued.

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) Notwithstanding paragraph (1), there shall be no  
15 limit on the amount of tax credits granted to a sponsor under  
16 subsection (e), except the commission may establish annual  
17 aggregate limits on tax credits awarded to sponsors to ensure  
18 fair and equitable distribution of tax benefits to eligible  
19 applicants.

20       (6) (Reserved).

21       (c) Carryover.--

22       (1) If an eligible applicant cannot use the entire  
23 amount of the tax credit for the taxable year in which the  
24 tax credit is first granted, then the excess may be carried  
25 over to succeeding taxable years and used as a credit against  
26 the qualified tax liability of the eligible applicant for  
27 those taxable years. Each time that the tax credit is carried  
28 over to a succeeding taxable year, it shall be reduced by the  
29 amount that was used as a credit during the immediately  
30 preceding taxable year. The tax credit may be carried over

1 and applied to succeeding taxable years for no more than 15  
2 taxable years following the first taxable year for which the  
3 eligible applicant was entitled to claim the tax credit.

4 (2) A tax credit granted by the department shall be  
5 applied against the taxpayer's qualified tax liability for  
6 the current taxable year as of the date on which the tax  
7 credit was granted before the tax credit is applied against  
8 any tax liability under paragraph (1).

9 (3) A tax credit may not be carried back or refunded.

10 (d) Sale or assignment of credit.--

11 (1) An eligible applicant, upon application to and  
12 approval by the commission, may sell or assign, in whole or  
13 in part, a tax credit granted to the eligible applicant under  
14 this chapter if no claim for allowance of the tax credit is  
15 filed within one year from the date the tax credit is granted  
16 under section 12308 (relating to grant of tax credit). The  
17 commission, in consultation with the department, shall  
18 establish guidelines for the approval of applications under  
19 this subsection.

20 (2) The purchaser or assignee of a portion of a tax  
21 credit shall immediately claim the tax credit in the taxable  
22 year in which the purchase or assignment is made. The amount  
23 of the tax credit that a purchaser or assignee may use  
24 against a qualified tax liability may not exceed 75% of the  
25 qualified tax liability for the taxable year. The purchaser  
26 or assignee may not carry over, carry back, obtain a refund  
27 of or sell or assign the tax credit. The purchaser or  
28 assignee shall notify the department of the seller or  
29 assignor of the tax credit in compliance with procedures  
30 specified by the department.

1           (3) Before an application is approved, the department  
2 must make a finding that the applicant has filed all required  
3 State tax reports and returns for all applicable taxable  
4 years and paid any balance of State tax due as determined at  
5 settlement, assessment or determination by the department.

6           (4) Notwithstanding any other provision of law, the  
7 department shall settle, assess or determine the tax of an  
8 applicant under this subsection within 90 days of the filing  
9 of all required final returns or reports in accordance with  
10 section 806.1(a) (5) of the act of April 9, 1929 (P.L.343,  
11 No.176), known as The Fiscal Code.

12       (e) Sponsorship.--An eligible applicant may be a sponsor by  
13 applying for a tax credit for a project authorized under section  
14 12307 (relating to application, review and authorization by  
15 commission) if a written agreement between the eligible  
16 applicant and the owner of property on which the project will be  
17 completed is submitted to the commission and certifies that the  
18 property owner will comply with all the provisions of this  
19 chapter.

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

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

27           (2) The tax credit provided under paragraph (1) is in  
28 addition to any tax credit to which the shareholder, member  
29 or partner is otherwise entitled under this chapter. However,  
30 a pass-through entity and its shareholders, members or



1 partners may not claim a tax credit under this chapter for  
2 the same project authorized under section 12307.

3 (3) A shareholder, member or partner of a pass-through  
4 entity to whom a tax credit is transferred under paragraph  
5 (1) shall immediately claim the credit in the taxable year in  
6 which the transfer is made. The shareholder, member or  
7 partner may not carry forward, carryback, obtain a refund of  
8 or sell or assign the tax credit.

9 § 12304. Tax credits.

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

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

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

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

28 (4) An agricultural operation with an uncompleted best  
29 management practice of either an agricultural erosion and  
30 sediment control plan, if engaged in plowing and tilling, or

1 a nutrient management plan or manure management plan, if  
2 required, shall first include the remaining best management  
3 practices included in such plans in an application for a tax  
4 credit.

5 (5) A project shall meet the planning, design and  
6 construction standards established by the commission. If  
7 standards do not exist for a best management practice  
8 approved by the commission, the commission may establish or  
9 approve design, construction and certification standards for  
10 such a best management practice.

11 (b) Amount of tax credit.--

12 (1) A tax credit equal to 75% of the eligible costs  
13 under subsection (c) of a project authorized under section  
14 12307 (relating to application, review and authorization by  
15 commission) shall be granted for any of the following:

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

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

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

24 (iv) Design and implementation of best management  
25 practices necessary to restrict livestock access to  
26 streams if there is established and maintained a riparian  
27 forest buffer with a minimum width of 50 feet.

28 (v) Establishment of a riparian forest buffer with a  
29 minimum width of 50 feet.

30 (2) A tax credit equal to 50% of the eligible costs

1 under subsection (c) of a project authorized under section  
2 12307 shall be granted for any of the following:

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

13 (ii) The design and implementation of best  
14 management practices necessary to exclude livestock  
15 access to streams through fencing, stabilized crossings  
16 and improved watering systems, if there is established  
17 and maintained a vegetated riparian or riparian forest  
18 buffer with a minimum width of 35 feet.

19 (iii) The remediation of legacy sediment, if the  
20 legacy sediment is exposed and discharges or threatens to  
21 discharge into surface waters as a result of acute stream  
22 bank erosion. The project shall meet standards  
23 established by the commission as being effective in  
24 mitigating or eliminating the harmful effects of legacy  
25 sediment.

26 (c) Costs of project.--

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

29 (i) Project design, engineering and associated  
30 planning.

1           (ii) Project management costs, including  
2           contracting, document preparation and applications.

3           (iii) Project construction or installation.

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

6           (v) Postconstruction inspections.

7           (vi) Interest payments on loans for project  
8           implementation for up to one year prior to the award of  
9           the tax credit.

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

12          (3) Eligible costs of a project shall include any of the  
13          services listed in paragraph (1) that may be provided by a  
14          conservation district.

15          (4) Notwithstanding any other provision of this chapter,  
16          tax credits for annual maintenance best management practices  
17          such as cover crops, buffer maintenance and other annual  
18          practices approved by the commission shall be awarded based  
19          on fixed rates or schedules established by the commission in  
20          annual program guidelines.

21 § 12305. Project certification.

22          A project shall be certified by the commission as meeting  
23          standards under section 12304(a)(5) (relating to tax credits) by  
24          the following:

25                (1) For a best management practice that currently  
26                requires review and certification by a registered  
27                professional engineer under current law or applicable  
28                regulation, a registered professional engineer.

29                (2) For a riparian forest buffer, a technical service  
30                provider or staff from a conservation district or USDA-NRCS

1 approved by the commission.

2 (3) For a nutrient management plan or manure management  
3 plan, a nutrient management specialist or any person trained  
4 and experienced in manure and nutrient management planning  
5 techniques and whose qualifications are acceptable to the  
6 commission.

7 (4) For an agricultural erosion and sediment control  
8 plan or conservation plan, a person trained and experienced  
9 in erosion and sediment control or conservation methods and  
10 techniques and whose qualifications are determined acceptable  
11 by the commission.

12 § 12306. Project maintenance and life expectancy.

13 (a) Best management practice.--

14 (1) An agricultural operation shall maintain a best  
15 management practice for the life of the practice as  
16 established by the commission.

17 (2) A riparian forest buffer shall be maintained for a  
18 minimum of 15 years.

19 (b) Failure.--If the commission determines that a best  
20 management practice is not maintained for the period required  
21 under subsection (a), the owner of the property upon which the  
22 project exists shall return to the department the amount of the  
23 tax credit originally granted. Any amount paid to the department  
24 under this subsection shall be deposited in the General Fund.

25 (c) Exception.--If the recipient of a tax credit provides  
26 prior written notification to the commission that the recipient  
27 will be unable to maintain a best management practice due to  
28 sale of the property, cessation of an agricultural operation or  
29 other factors, the commission may direct the department to  
30 prorate the amount of the tax credit that shall be returned

1 based on the remaining lifespan of the best management practice  
2 in question.

3 § 12307. Application, review and authorization by commission.

4 (a) Application process.--An eligible applicant shall apply  
5 to the commission for authorization that a project is eligible  
6 for a tax credit. An application shall be developed by the  
7 commission and shall include:

8 (1) Type and location of project under section 12304(b)  
9 (relating to tax credits).

10 (2) Total cost of project as outlined in section  
11 12304(c).

12 (3) Verification of eligibility under section 12304(a).

13 (b) Review, notification and authorization.--The commission  
14 shall, within 60 days of receipt, review each application and  
15 notify an eligible applicant whether or not the eligible  
16 applicant meets the requirements and is authorized to receive a  
17 tax credit.

18 (c) Authorization of tax credit.--The commission may not  
19 authorize tax credits that exceed the limits under sections  
20 12303(b) (relating to Resource Enhancement and Protection Tax  
21 Credit Program) and 12309 (relating to annual tax credits). The  
22 commission shall authorize tax credits on a first-come, first-  
23 served basis.

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

28 (1) Proof of certification as required by section 12305  
29 (relating to project certification) that the project is  
30 complete.

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

3 (3) Any other document that may be required by the  
4 commission.

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

8 (1) that the eligible applicant has completed a project  
9 which meets the criteria for a tax credit; and

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

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

14 § 12308. Grant of tax credit.

15 (a) General rule.--The department shall grant a tax credit  
16 authorized under section 12307 (relating to application, review  
17 and authorization by commission). The department shall, within  
18 60 days of receipt of notice under section 12307(e), issue a  
19 notice of grant of a tax credit to the eligible applicant.

20 (b) Finding required.--Before a tax credit may be granted,  
21 the department must make a finding that the applicant has filed  
22 all required State tax reports and returns for all applicable  
23 taxable years and paid any balance of State tax due as  
24 determined at settlement or assessment by the department.

25 § 12309. Annual tax credits.

26 (a) Cap.--The total amount of tax credits authorized by the  
27 commission shall not exceed \$13,000,000 in any fiscal year.

28 (b) Chesapeake Bay watershed prioritization.--  
29 Notwithstanding any provision of this chapter to the contrary,  
30 the commission may reserve and target up to \$3,000,000 of the

1 sum described in subsection (a) in any fiscal year for  
2 geographic areas and best management practices for nutrient and  
3 sediment reductions within the Chesapeake Bay watershed area.  
4 § 12310. Report and public information.

5 (a) General rule.--The commission, in consultation with the  
6 department, shall annually report to the General Assembly on the  
7 program as follows:

8 (1) The number of projects and the dollar amount of tax  
9 credits granted in the aggregate, by best management practice  
10 and per project.

11 (2) The types, locations and costs of projects.

12 (3) The estimated benefits of the projects, including  
13 pollution reduction.

14 (b) Identity of taxpayers.--The identity of each taxpayer  
15 utilizing a resource enhancement and protection tax credit under  
16 this chapter and the amount of credits approved and utilized by  
17 each taxpayer shall be made available annually within a year of  
18 when the tax credits were granted and shall constitute a public  
19 record, notwithstanding any law providing for the  
20 confidentiality of tax records. Information regarding taxpayer  
21 use of tax credits shall be made available in accordance with  
22 the laws applicable to public information and public records  
23 generally and need not be included in the annual report to the  
24 General Assembly.

25 Section 2. Repeals are as follows:

26 (1) The General Assembly declares that the repeal under  
27 paragraph (2) is necessary to effectuate the addition of 3  
28 Pa.C.S. Ch. 123.

29 (2) Article XVII-E of the act of March 4, 1971 (P.L.6,  
30 No.2), known as the Tax Reform Code of 1971, is repealed.



1 Section 3. Continuation is as follows:

2 The addition of 3 Pa.C.S. Ch. 123 is a continuation of  
3 Article XVII-E of the act of March 4, 1971 (P.L.128, No.43),  
4 known as the Tax Reform Code of 1971. The following apply:

5 (1) Except as otherwise provided in 3 Pa.C.S. Ch.  
6 123, all activities initiated under the Article XVII-E of  
7 the Tax Reform Code of 1971 shall continue and remain in  
8 full force and effect and may be completed under 3  
9 Pa.C.S. Ch. 123. Orders, regulations, rules and decisions  
10 which were made under Article XVII-E of the Tax Reform  
11 Code of 1971 and which are in effect on the effective  
12 date of section 16 of this act shall remain in full force  
13 and effect until revoked, vacated or modified under 3  
14 Pa.C.S. Ch. 123. Contracts, obligations and collective  
15 bargaining agreements entered into under Article XVII-E  
16 of the Tax Reform Code of 1971 are not affected nor  
17 impaired by the repeal of the Article XVII-E of the Tax  
18 Reform Code of 1971.

19 (2) Except as set forth in paragraph (3), any  
20 difference in language between 3 Pa.C.S. Ch. 123 and  
21 Article XVII-E of the Tax Reform Code of 1971 is intended  
22 only to conform to the style of the Pennsylvania  
23 Consolidated Statutes and is not intended to change or  
24 affect the legislative intent, judicial construction or  
25 administration and implementation of the Article XVII-E  
26 of the Tax Reform Code of 1971.

27 (3) Paragraph (2) does not apply to the addition of  
28 the following provisions:

29 (i) The definitions of "manure management plan"  
30 and "riparian forest buffer" in 3 Pa.C.S. § 12302.

1 (ii) 3 Pa.C.S. § 12303(b).

2 (iii) 3 Pa.C.S. § 12304.

3 (iv) 3 Pa.C.S. § 12305.

4 (v) 3 Pa.C.S. § 12309.

5 Section 4. This act shall take effect in 60 days.