

No. 1998-90

AN ACT

SB 1423

Amending the act of December 12, 1994 (P.L.900, No.130), entitled "An act providing for the implementation of a loan program for farmers adopting certain specialized agricultural practices," further providing for legislative intent, for definitions, for the nature and implementation of the program and for liability.

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

Section 1. Sections 2, 3, 4 and 5 of the act of December 12, 1994 (P.L.900, No.130), known as the Agriculture-Linked Investment Program Act, are amended to read:

Section 2. Legislative intent.

It is the intent of the General Assembly that farmers be offered an incentive to [**encourage the adoption of**] *use* agricultural best management practices as a part of [**a**] *an approved* nutrient management plan, to prevent nutrients from washing off [**fields**] *farm fields and animal concentration areas* and entering [**streams**] *surface water and groundwater* and to prevent soil erosion. These incentives shall take the form of low-interest capital in exchange for the [**adoption of a**] *implementation of an approved* nutrient management plan.

Section 3. Definitions.

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

"Best management practices." A practice or combination of practices determined by the State Conservation Commission pursuant to the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface *water* and groundwater, taking into account applicable nutrient requirements for crop utilization. Best management practices shall include, but not be limited to:

- (1) Conservation tillage.
- (2) Crop rotation.
- (3) Soil testing.
- (4) Manure testing.
- (5) Diversions.
- (6) Manure storage facilities.
- (7) Storm water management practices.
- (8) Nutrient application.

“Commission.” *The State Conservation Commission established by the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.*

“Eligible borrower.” Any person, *partnership, corporation or legal entity* who [is domiciled] *has an interest in property* in this Commonwealth, who engages in agricultural operation in this Commonwealth [and who is a concentrated animal operation pursuant to], *who has legal and financial responsibility for the agricultural operation and who has developed an approved nutrient management plan under the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, as long as that agricultural operation is in existence on or before October 1, 1997.*

“Lending institution.” Any financial institution that is authorized to issue commercial loans, is a State depository approved by the Board of Finance and Revenue and enters into an agreement with the Treasury Department for participation in the Agriculture-Linked Investment Program. *The term shall also include any agricultural credit association affiliated with the Farm Credit Bank, a federally chartered instrumentality pursuant to the Federal Farm Credit Act of 1971 (Public Law 92-181, 12 U.S.C. §§ 2001 - 2023), as amended, that enters into an agreement with the Treasury Department for participation in the Agriculture-Linked Investment Program.*

“Nutrient management plan.” A written site-specific plan *approved by the State Conservation Commission or its delegated agent* which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established pursuant to the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

Section 4. Agriculture-Linked Investment Program[; **eligibility and implementation**].

(a) Eligibility.—[Operators of concentrated animal operations which are required to develop and implement nutrient management plans pursuant to section 6 of the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act, shall be eligible for an Agriculture-Linked Investment Loan under this act. Documentation that a nutrient management plan has been approved for implementation shall be submitted with an application for an Agriculture-Linked Investment Loan. In no case shall the State Treasurer approve an application for a loan under this act until the documentation required under this subsection is received.] *An operator who desires to receive an Agriculture-Linked Investment Loan shall submit a loan application to a lending institution. The application shall contain information demonstrating all of the following:*

(1) *The applicant is an eligible borrower.*

(2) *The applicant has a nutrient management plan approved by the commission or its delegated agent for implementation.*

(3) Reasonable estimated costs for implementation of best management practices listed in the approved nutrient management plan have been provided by a project designer and concurred in by the commission or its delegated agent.

(b) Implementation of program.—The procedures applicable to the Agriculture-Linked Investment Program are as follows:

(1) **[Lending institutions] A lending institution** wishing to participate in this program shall enter into an investment agreement with the Commonwealth.

(2) A lending institution shall accept and review applications for loans from eligible borrowers.

(3) **[The] A lending institution** shall apply all usual lending standards, *practices and forms* to determine the creditworthiness of each eligible borrower.

(4) Upon its approval of an eligible borrower's loan application, the lending institution shall submit **[the loan application and approval]** to the State Treasurer~~.]~~ *a request for the transfer of Agriculture-Linked Investment Loan funds in an amount equivalent to the amount of the loan approved, along with the application and any supporting documents filed in accordance with subsection (a).*

(5) The State Treasurer shall review the **[application to verify the borrower's eligibility.]** *submitted request for the transfer of funds and any supporting documentation for completeness prior to the transfer of Agriculture-Linked Investment Loan funds to the financial institution.*

(6) Upon determination of **[borrower eligibility]** *the completeness of the request for funds and supporting documentation,* the State Treasurer shall **[deposit, with]** *transfer to* the lending institution **[in a collateralized certificate of deposit in the name of the Commonwealth,]** funds **[sufficient to cover]** *equivalent to* the amount of the loan **[requested.]** *approved as follows:*

(i) if the lending institution is a State depository, the State Treasurer shall deposit the funds in a collateralized certificate of deposit in the name of the Commonwealth which, except as provided in this act, conforms to the legal requirements for deposits in State depositories; or

(ii) if the lending institution is an agricultural credit association affiliated with the Farm Credit Bank, the State Treasurer shall invest the funds in bonds, notes, debentures or other obligations or securities issued by the Farm Credit Bank.

(7) **[The lending institution shall credit the Commonwealth's account with appropriate interest earnings at appropriate periods in accordance with rates established by the Board of Finance and Revenue.]** *The interest rate payable by lending institutions with respect to Agriculture-Linked Investment Loan funds shall be the interest rate on deposits in State depositories as established by the Board of Finance*

and Revenue from time to time, as otherwise provided by law, reduced by any subsidy that the commission may agree to pay under this act.

[(8) Funds loaned to an eligible borrower under this program shall be charged an interest rate no higher than 3% above the rate established pursuant to paragraph (7).

(9) Under the terms of this act, lending institutions which accept eligible borrowers shall allow borrowers to borrow the entire amount of the loan at the outset or to establish a line of credit with periodic withdrawals up to the amount of the original loan.

(10) Loans shall not exceed \$75,000 and shall be placed for a maximum of a seven-year period, but nothing herein shall preclude the State Treasurer and a participating lending institution from negotiating a loan period for less than seven years.

(11) At the conclusion of the period of the eligible borrower's loan, the initial deposit, together with interest earned, shall be returned to the State Treasurer.]

(8) *Principal balances of Agriculture-Linked Investment Loan funds with each lending institution shall be adjusted periodically as follows:*

(i) *If the lending institution is a State depository, the principal amount of the certificate of deposit shall be adjusted not less than semiannually to reflect the reduction of the principal outstanding on the loan. The interest earned plus an amount equal to the principal repaid by the borrower shall be remitted not less than semiannually by the lending institution to the Treasury Department.*

(ii) *If the lending institution is an agricultural credit association in conjunction with the Farm Credit Bank, the face value of the bonds, notes, debentures or other obligations or securities outstanding shall, at the option of the State Treasurer, be periodically reduced by payment or redemption to match as nearly as possible the amount of principal outstanding on program loans, and the interest earned shall be payable to the Treasury Department as due in accordance with the terms of the bonds, notes, debentures or other obligations or securities.*

(c) *Terms of loan for borrowers.—The terms of the loans for borrowers shall be:*

(1) *Loans shall not exceed \$75,000.*

(2) *Loans shall be amortized over a term not to exceed seven years.*

(3) *The interest rate shall be established at or prior to the approval of the eligible borrower's loan application.*

(4) *The interest rate charged by a lending institution to an eligible borrower shall reflect a percentage rate reduction below the prevailing market loan interest rate otherwise applicable to the borrower that is equal to the percentage rate reduction, if any, below the rate set by the Board of Finance and Revenue at which the certificates of deposit associated with the loan are placed or at which the investment in bonds,*

notes, debentures or other obligations or securities of the Farm Credit Bank associated with the loan are made.

(5) The interest rate charged by a lending institution to an eligible borrower may be either a fixed rate for the entire term of the loan or a variable rate which shall be adjusted semiannually to reflect changes in the interest rate established by the Board of Finance and Revenue for deposits in State depositories as otherwise provided by law.

(6) Except as modified by the requirements of this act, a lending institution may apply its usual policies and practices with respect to the administration, collection and enforcement of loans issued pursuant to this act.

(d) Interest subsidy.—

(1) The commission, at its discretion, may enter into an agreement with the State Treasurer to subsidize the interest rate charged to eligible borrowers under this program with funds provided to the commission under section 10 of the act of May 20, 1993 (P.L.12, No.6), known as the Nutrient Management Act.

(2) Under the agreement, the commission may designate from time to time a block of loans of a certain aggregate dollar amount which it wishes to subsidize and shall deposit in advance into a restricted escrow account in the State Treasury an amount estimated by the Treasury Department to be sufficient to make the yield over a seven-year term on the Agriculture-Linked Investment Loan funds to be transferred to lending institutions in connection with each designated block of subsidized loans equivalent to the yield the funds otherwise would have earned at interest rates established from time to time by the Board of Finance and Revenue for deposits in State depositories as otherwise provided by law. Withdrawals from the restricted escrow account shall be made by the Treasury Department at the times when interest becomes due and payable from lending institutions on Agriculture-Linked Investment Loan funds associated with subsidized loans.

(3) Among its terms the agreement shall contain provisions:

(i) To require the deposit of additional funds into the restricted escrow account when the parties agree that the account balance has become insufficient to fully fund the subsidy.

(ii) To permit the withdrawal of funds from the escrow account when the parties agree that the account balance exceeds the amount needed to fully fund the subsidy.

(4) The amount to be deposited in the restricted escrow account as to each block of loans designated by the commission shall be determined by calculating that the loans will be amortized over seven years at a fixed rate of interest which is a number of percentage points below the prevailing market interest rate for such loans, to be designated by the commission.

Section 5. Liability.

(a) *Immunity.*—The Commonwealth [and], the State Treasurer *and the commission* shall not be liable to a lending institution in any manner for payment of the principal or interest on the loan made to an eligible borrower. [Any delay in payments or default on the part of the eligible borrower shall not in any manner affect the deposit agreement between the lending institution and the State Treasurer.]

(b) *Loss of subsidy upon default.*—A default by an eligible borrower in repayment of an Agriculture-Linked Investment Loan shall result in the loss of the subsidy provided under this act, in which case the interest rate payable by the lending institution shall revert to the interest rate on deposits as established by the Board of Finance and Revenue from time to time as otherwise established by law. For the purposes of this subsection, the term “default” shall mean a loan which is more than 90 days in arrears on payments.

(c) *Availability of funding as an essential element.*—The subsidy provided by this act shall continue only so long as the commission furnishes the funds to pay for it. In the event funding is exhausted or otherwise unavailable, the interest rate payable by lending institutions shall revert to the interest rate on deposits in State depositories as established from time to time by the Board of Finance and Revenue as otherwise provided by law.

Section 2. This act shall take effect immediately.

APPROVED—The 18th day of June, A.D. 1998.

THOMAS J. RIDGE