

3281

2017-2018 Regular Sessions

I N A S S E M B L Y

January 27, 2017

Introduced by M. of A. BARRETT -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, the environmental conservation law and the tax law, in relation to enacting the carbon farming act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "carbon
2 farming act".
3 S 2. Legislative intent. The legislature hereby finds and declares
4 that soil and vegetation management can significantly enhance soil and
5 carbon sequestration, resulting in a wide range of environmental and
6 agricultural benefits to New York farmers and residents, including:
7 increased yields; soil health; improved water quality; and reductions in
8 greenhouse gases. The legislature further declares that enhancing carbon
9 sequestration, the long term storage of carbon in plants, soils, geolog-
10 ic formations and the ocean, through farming is in the best interest of
11 New Yorkers. It is therefore the intent of the legislature and the
12 purpose of this act to encourage farmers to further sequester and miti-
13 gate carbon in this state by establishing carbon farming tax credit to
14 reward and incentivize farmers to maintain or adopt practices that help
15 maximize New York's carbon sequestration potential.
16 S 3. Section 150 of the agriculture and markets law is amended by
17 adding a new subdivision 5 to read as follows:
18 5. "CARBON FARMING" MEANS THE IMPLEMENTATION OF A LAND MANAGEMENT
19 STRATEGY FOR THE PURPOSES OF REDUCING, SEQUESTERING, AND MITIGATING
20 GREENHOUSE GAS EMISSIONS ON LAND USED IN SUPPORT OF A FARM OPERATION AND
21 QUANTIFYING THOSE GREENHOUSE GAS BENEFITS USING THE UNITED STATES
22 DEPARTMENT OF AGRICULTURE'S COMET-PLANNER, COMET-FARM, AND OTHER QUANTI-
23 FICATION TOOLS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 S 4. Section 210-B of the tax law is amended by adding a new subdivi-
2 sion 52 to read as follows:

3 52. CARBON FARMING CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT IS
4 AN AGRICULTURAL BUSINESS THAT PRODUCES FARM PRODUCTS SHALL BE ALLOWED A
5 CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE PRACTICE OF
6 CARBON FARMING.

7 (B) DEFINITIONS. FOR PURPOSES OF THIS SECTION THE FOLLOWING TERMS
8 SHALL HAVE THE FOLLOWING MEANINGS:

9 (I) "CARBON FARMING" SHALL HAVE THE SAME MEANING AS SET FORTH IN
10 SUBDIVISION FIVE OF SECTION ONE HUNDRED FIFTY OF THE AGRICULTURE AND
11 MARKETS LAW;

12 (II) "FARM PRODUCTS" SHALL HAVE THE SAME MEANING AS SET FORTH IN
13 SUBDIVISION FIVE OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW; AND

14 (III) "CARBON SEQUESTRATION" SHALL MEAN THE LONG TERM STORAGE OF
15 CARBON IN PLANTS AND SOILS.

16 (C) SUCH CREDIT SHALL BE CALCULATED BASED ON THE ECONOMIC VALUE OF
17 CARBON FARMING AS DETERMINED BY THE COMMISSIONER OF ENVIRONMENTAL
18 CONSERVATION, IN CONSULTATION WITH THE COMMISSIONER OF AGRICULTURE AND
19 MARKETS AND THE COMMISSIONER PURSUANT TO PARAGRAPH CCC OF SUBDIVISION
20 TWO OF SECTION 3-0301 OF THE ENVIRONMENTAL CONSERVATION LAW.

21 (D) THE TAXPAYER SHALL ATTACH TO ITS TAX RETURN ITS FINAL CERTIFICATE
22 OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION
23 PURSUANT TO SECTION 19-0309 OF THE ENVIRONMENTAL CONSERVATION LAW. IN NO
24 EVENT SHALL THE TAXPAYER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF
25 THE CREDIT LISTED ON THE FINAL CERTIFICATE VERIFYING THE EMISSIONS
26 REDUCTIONS TO BE CREDITED TO THE TAXPAYER.

27 (E) IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SUBDIVISION FOR
28 ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH YEAR, ANY
29 AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER
30 TO THE FOLLOWING THREE YEARS, AND MAY BE DEDUCTED FOR THE TAXPAYER FOR
31 SUCH YEAR.

32 S 5. Section 606 of the tax law is amended by adding a new subsection
33 (hhh) to read as follows:

34 (HHH) CARBON FARMING CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER WHO
35 PROVIDES FARM PRODUCTS AND WHO PRACTICES CARBON FARMING SHALL BE ALLOWED
36 A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE.

37 (2) DEFINITIONS. FOR THE PURPOSES OF THIS SUBSECTION, THE FOLLOWING
38 DEFINITIONS SHALL APPLY:

39 (A) "FARM PRODUCTS" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDI-
40 VISION FIVE OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW.

41 (B) "CARBON FARMING" SHALL HAVE THE SAME MEANING AS SET FORTH IN
42 SUBDIVISION FIVE OF SECTION ONE HUNDRED FIFTY OF THE AGRICULTURE AND
43 MARKETS LAW.

44 (3) APPLICATION OF CREDIT. SUCH CREDIT SHALL BE CALCULATED BASED ON
45 THE ECONOMIC VALUE OF CARBON FARMING AS DETERMINED BY THE COMMISSIONER
46 OF ENVIRONMENTAL CONSERVATION, IN CONSULTATION WITH THE COMMISSIONER OF
47 AGRICULTURE AND MARKETS PURSUANT TO PARAGRAPH CCC OF SUBDIVISION TWO OF
48 SECTION 3-0301 OF THE ENVIRONMENTAL CONSERVATION LAW.

49 (4) CERTIFICATION REQUIRED. THE TAXPAYER SHALL ATTACH TO ITS TAX
50 RETURN ITS FINAL CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER
51 OF ENVIRONMENTAL CONSERVATION PURSUANT TO SECTION 19-0309 OF THE ENVI-
52 RONMENTAL CONSERVATION LAW. IN NO EVENT SHALL THE TAXPAYER BE ALLOWED A
53 CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON THE FINAL CERTIF-
54 ICATE VERIFYING THE EMISSIONS REDUCTIONS TO BE CREDITED TO THE TAXPAYER.

55 (5) CARRYOVER OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWABLE UNDER
56 THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR

1 SUCH YEAR, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY
2 BE CARRIED OVER TO THE FOLLOWING THREE YEARS, AND MAY BE DEDUCTED FOR
3 THE TAXPAYER FOR SUCH YEAR.

4 S 6. Subdivision 2 of section 3-0301 of the environmental conservation
5 law is amended by adding a new paragraph ccc to read as follows:

6 CCC. COOPERATE WITH THE DEPARTMENT OF AGRICULTURE AND MARKETS TO
7 DEVELOP EDUCATIONAL MATERIALS TO PROMOTE AND ENCOURAGE CARBON FARMING.
8 SUCH MATERIALS SHALL PROMOTE FARMING PRACTICES WHICH REDUCE, SEQUESTER
9 AND MITIGATE GREENHOUSE GAS EMISSIONS THROUGH THE IMPLEMENTATION OF
10 CARBON FARMING STRATEGIES AND ON LAND USED IN SUPPORT OF A FARM OPERA-
11 TION; AND DEVELOP AND CODIFY A METRIC TO QUANTIFY THE STORAGE OF CARBON
12 USING THE UNITED STATES DEPARTMENT OF AGRICULTURE'S COMET-PLANNER,
13 COMET-FARM, AND OTHER QUANTIFICATION TOOLS. THE DEPARTMENT SHALL DEVELOP
14 AND DISTRIBUTE AN APPLICATION AND CERTIFICATION PROCEDURE WHICH VERIFIES
15 THE CARBON STORED TO BE CREDITED TO EACH FARM. THE DEPARTMENT MAY
16 PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THIS SECTION.

17 S 7. Subdivision 1 of section 19-0309 of the environmental conserva-
18 tion law, as amended by chapter 817 of the laws of 1987, is amended to
19 read as follows:

20 1. For the purposes of sections 208, 210, 606 and 612 of the Tax Law,
21 the commissioner or his designated representative is hereby authorized
22 to issue certificates of compliance concerning air pollution control
23 facilities [and], air pollution controlled process facilities AND CARBON
24 FARMING as defined in such law. No such certificate shall be issued
25 unless the facility to which it is applicable is in compliance with
26 applicable provisions of titles 1 to 11, inclusive, and title 19 of
27 article 17, article 19, and title 1 of article 27 of this chapter; of
28 the Public Health Law; of the state sanitary code and of codes, rules,
29 regulations, permits or orders issued pursuant thereto.

30 S 8. Section 16 of the agriculture and markets law is amended by
31 adding a new subdivision 49 to read as follow:

32 49. COOPERATE WITH THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO
33 DEVELOP EDUCATIONAL MATERIALS TO ENCOURAGE CARBON FARMING AND HOW TO
34 USE THE UNITED STATES DEPARTMENT OF AGRICULTURE'S COMET-PLANNER, COMET-
35 FARM, AND OTHER CARBON QUANTIFICATION TOOLS. THE PROGRAM SHALL PROMOTE
36 FARMING PRACTICES WHICH REDUCE, SEQUESTER AND MITIGATE GREENHOUSE GAS
37 EMISSIONS ON LAND USED IN SUPPORT OF A FARM OPERATION. THE DEPARTMENT
38 SHALL PROMOTE THE CARBON FARMING TAX CREDIT PROVIDED IN SECTIONS TWO
39 HUNDRED TEN-B AND SIX HUNDRED SIX OF THE TAX LAW.

40 S 9. This act shall take effect on the ninetieth day after it shall
41 have become a law; provided, however, that effective immediately, the
42 addition, amendment, and/or repeal of any rule or regulation necessary
43 for the implementation of this act on its effective date are authorized
44 and directed to be made and completed on or before such effective date.