

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2654 Session of  
2008

INTRODUCED BY HANNA, HERSHEY, STURLA, BARRAR, BELFANTI, BUXTON,  
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READSHAW, ROCK, SIPTROTH, STERN, SWANGER AND THOMAS,  
JUNE 18, 2008

REFERRED TO COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
JUNE 18, 2008

AN ACT

1 Establishing the Fair Share Nutrient Reduction Program;  
2 providing funding for wastewater treatment plants and  
3 agricultural operations to meet nutrient reduction mandates;  
4 creating a Nutrient Reduction Trading Board and Program and  
5 providing for its power and duties; providing for an increase  
6 in the Resource Enhancement and Protection Program; and  
7 providing supplemental funding for the Department of  
8 Agriculture and the State 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 Fair Share  
13 Nutrient Reduction Plan Act.

14 Section 2. Legislative findings.

15 The General Assembly finds and declares as follows:

16 (1) The Federal Water Pollution Control Act (62 Stat.  
17 1155, 33 U.S.C. § 1251 et seq.), Chesapeake Bay 2000  
18 Agreement and total maximum daily load watershed water

1 quality plans are mandating wastewater treatment facilities  
2 and farmers reduce nitrogen and phosphorus discharges going  
3 into Commonwealth streams and rivers.

4 (2) In the Chesapeake Bay Watershed alone, 184  
5 wastewater treatment facilities will be required to upgrade  
6 treatment systems at an estimated cost of more than  
7 \$1,000,000,000, and the Department of Environmental  
8 Protection has estimated the cost to farmers of complying  
9 with reduction mandates to be nearly \$600,000,000.

10 (3) In order to meet the mandates, local wastewater  
11 treatment facilities will have to dramatically increase their  
12 cost of service to ratepayers. If no help is provided by  
13 State government, rate increases, will exceed 100% in some  
14 communities. Farmers, who cannot pass along costs through  
15 increased prices for farm commodities, will face crippling  
16 increases in operating costs.

17 (4) Technical assistance provided to farmers by county  
18 conservation districts, the State Conservation Commission and  
19 the Department of Agriculture is vital to the success of  
20 reducing nutrient and sediment losses from agricultural  
21 sources. State budget allocations to these agencies have  
22 fallen well behind maintenance level, at a time when their  
23 services are most needed by farmers.

24 (5) One promising tool to reduce the cost of compliance  
25 with these mandates for both wastewater treatment facility  
26 operators and farmers is the Nutrient Credit Trading Program.  
27 However, potential users of the program have identified flaws  
28 that present significant risks for participation by buyers  
29 and sellers of credit alike, which have had the effect of  
30 inhibiting the level of credit generation needed to make the

1 program a viable nutrient reduction option while allowing for  
2 future growth and development.

3 (6) Federal and State Government, local wastewater  
4 system ratepayers and farmers must all do their fair share to  
5 finance the costs of measures necessary to meet nutrient  
6 reduction mandates and support their successful  
7 implementation, because the environmental and economic  
8 benefits of clean water will accrue to all citizens of this  
9 Commonwealth.

#### 10 Section 3. Definitions.

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

14 "Agricultural nutrient and sediment reduction project." A  
15 project undertaken in conjunction with an agricultural operation  
16 to establish, implement or improve a best management practice  
17 recognized by the Environmental Protection Agency or the  
18 Department of Environmental Protection to reduce the levels of  
19 nitrogen, phosphorus or sediment entering surface water or  
20 groundwater from farms in this Commonwealth. The term includes  
21 design, construction, reconstruction, erection, equipping,  
22 expansion, improvement, installation, rehabilitation, renovation  
23 or repair of infrastructure, buildings, structures, equipment  
24 and fixtures to facilitate nutrient or sediment reduction.

25 "Authority." The Pennsylvania Infrastructure Investment  
26 Authority.

27 "Best management practice." A practice or combination of  
28 practices recognized as effective and practical in the  
29 management or reduction of nutrients or sediment to protect  
30 surface water or groundwater, considering technological,

1 economic and institutional factors.

2 "Board." The Nutrient Reduction Credit Trading Board.

3 "Commission." The State Conservation Commission.

4 "Conservation district." A public body as defined in and  
5 created under the act of May 15, 1945 (P.L.547, No.217), known  
6 as the Conservation District Law.

7 "Department." The Department of Environmental Protection of  
8 the Commonwealth.

9 "NPDES." The National Pollutant Discharge Elimination System  
10 established under the Federal Water Pollution Control Act (62  
11 Stat. 1155, 33 U.S.C. § 1251 et seq.)

12 Section 4. Agricultural Nutrient Reduction Program.

13 (a) Establishment.--The Agricultural Nutrient Reduction  
14 Program is established to provide financial assistance in the  
15 form of single-year or multiyear grants or tax credits for  
16 agricultural nutrient and sediment reduction projects and to  
17 provide tax credits for legacy sediment remediation projects in  
18 this Commonwealth.

19 (b) Dedication to Conservation District Fund.--In addition  
20 to any appropriations annually made, a total of \$10,000,000  
21 annually shall be deposited in the Conservation District Fund  
22 from funds transferred under subsection (f). Money to be  
23 deposited under this section shall be distributed by the  
24 commission to conservation districts for their use in  
25 undertaking activities as defined in the act of May 15, 1945  
26 (P.L.547, No.217), known as the Conservation District Law. The  
27 commission shall adopt criteria and procedures for allocation of  
28 money deposited under this subsection to conservation districts.

29 (c) Financial assistance for agricultural nutrient and  
30 sediment reduction projects.--For fiscal years 2008-2009 through

1 and including fiscal year 2012-2013, a nonlapsing appropriation  
2 of \$15,000,000 annually shall be made to the commission for the  
3 purpose of awarding grants to farmers for agricultural nutrient  
4 and sediment reduction projects. Grants to be provided by the  
5 commission for any agricultural nutrient and sediment reduction  
6 project shall not exceed 50% of the cost of the project, except  
7 that no more than \$150,000 in total grants may be awarded to a  
8 single agricultural operation.

9 (d) Resource enhancement and protection tax credit.--For  
10 fiscal years 2008-2009 through and including fiscal year 2012-  
11 2013, a total of \$35,000,000 in tax credits annually shall be  
12 made available to eligible applicants in accordance with the  
13 provisions of Article XVII-E of the act of March 4, 1971 (P.L.6,  
14 No.2), known as the Tax Reform Code of 1971, for agricultural  
15 nutrient and sediment reduction projects and for legacy sediment  
16 remediation projects. Authorization for tax credits and the  
17 extent and limitation of eligibility, receipt and transfer of  
18 tax credits shall be as provided in Article XVII-E of the Tax  
19 Reform Code of 1971.

20 (e) Administrative expenses.--The commission may annually  
21 dedicate not more than \$350,000 of funds provided under  
22 subsection (c) for administrative expenses incurred by the  
23 commission in awarding grants and authorizing tax credits under  
24 subsections (c) and (d).

25 Section 5. Wastewater treatment plant nutrient reduction  
26 program.

27 (a) Establishment.--The Wastewater Treatment Plant Nutrient  
28 Reduction Program is established to provide financial assistance  
29 in the form of single-year or multiyear grants to municipalities  
30 or municipal authorities to construct, expand or improve the

1 nutrient reduction capabilities of wastewater infrastructure and  
2 which are subject to new nitrogen and phosphorus limits imposed  
3 in NPDES permits issued after January 1, 2008.

4 (b) Application.--A municipality or municipal authority may  
5 submit an application to the authority requesting financial  
6 assistance for a nutrient reduction project. The nutrient  
7 reduction project may be a proposed project, a project currently  
8 under construction or a project completed within three years  
9 prior to the effective date of this section. The application  
10 shall be on the form required by the authority and include or  
11 demonstrate all of the following:

12 (1) The name and address of the applicant.

13 (2) A statement of the type and amount of financial  
14 assistance sought, provided that the amount does not exceed  
15 50% of the cost of the nutrient reduction project.

16 (3) A statement describing the nutrient reduction  
17 project, including a detailed statement of the cost of the  
18 nutrient reduction project.

19 (4) A financial commitment from a responsible source for  
20 any cost of the nutrient reduction project in excess of the  
21 amount requested. The financial commitment may not be in the  
22 form of a grant from a Commonwealth agency.

23 (5) Proof that the wastewater system is required to  
24 reduce nutrient discharges and that the wastewater system has  
25 a current NPDES permit limiting pounds of nitrogen or  
26 phosphorus in its discharge.

27 (6) Confirmation through plans certified by a  
28 professional engineer registered in this Commonwealth that  
29 the nutrient reduction project is designed for the necessary  
30 upgrades to remove nutrients.

1           (7) Information regarding current user rates and a  
2 projection of how rates may be impacted as a result of the  
3 addition of the nutrient reduction project.

4           (8) Any other information required by the authority.

5       (c) Review and approval of grant application.--

6           (1) The authority, in conjunction with the department,  
7 shall review the application to determine all of the  
8 conditions under the subsection (b) are met.

9           (2) The authority shall conduct, as part of the  
10 application review, an affordability analysis to determine if  
11 current and future user rates meet affordability criteria  
12 established by the authority.

13          (3) Upon being satisfied that all program requirements  
14 have been met, the authority may approve the application  
15 consistent with all of the following:

16               (i) The grant may not exceed \$10,000,000 per  
17 nutrient reduction project.

18               (ii) The aggregate amount of grants awarded under  
19 this subsection shall not exceed \$500,000,000 over a  
20 seven-year period.

21               (iii) The authority has received notice from the  
22 Secretary of the Budget that the nutrient reduction  
23 project satisfies the Federal tax status requirements of  
24 any bonds used to fund the grant.

25          (4) The authority shall make a determination of the  
26 completeness of an application within 30 days of its receipt.  
27 If the authority deems the application complete, it shall  
28 render a decision on funding the application within 60 days  
29 of the receipt of the completed application.

30          (5) An applicant shall, within 30 days of a

determination by the authority that the application was deficient, provide to the authority the necessary information to complete the application. The authority shall not be required to make a determination under paragraph (3) if the applicant fails to provide the required information.

(6) If the authority approves the application, the authority shall notify the applicant of the amount approved and enter into a contract with the applicant.

Section 6. Implementation schedule for Chesapeake Bay Watershed.

(a) Establishment.--The department shall establish a multiphased nutrient reduction compliance schedule for wastewater treatment facilities required to reduce nutrient levels within the Chesapeake Bay Watershed that meets the following requirements:

(1) All plants identified by the department with flows over 400,000 gallons per day which are not presently under annual nutrient load limits as part of their operating permit shall be given annual nutrient load limits based upon an average of 6 mg/l total nitrogen and 0.8 mg/l total phosphorous at the annual average design flow of each wastewater treatment facility.

(2) In an effort to achieve nutrient reduction compliance levels, a three-tiered compliance schedule shall be used. Wastewater treatment facilities shall be placed in one of three tiers to ensure all facilities will be deemed in compliance over a seven-year period beginning on July 1, 2008, and ending June 31, 2015.

(b) New construction.--

(1) A new wastewater treatment facility, where

1 construction commences on or after January 1, 2008, shall  
2 meet nutrient load limits based upon an average of 4 mg/l  
3 total nitrogen and 0.3 mg/l total phosphorus at the annual  
4 average design flow. A new system constructed to the limits  
5 in this section shall make a one-time monetary assessment to  
6 the nutrient reduction credit bank as established under  
7 section 7(d)(3). The assessment contribution shall be  
8 determined by the board. The assessment shall, at a minimum,  
9 be based upon the difference in the treatment level between 4  
10 mg/l of nitrogen and 0.3 mg/l of phosphorus and the zero net  
11 discharge limit applied to new facilities through the  
12 department under the strategy.

13 (2) The purchase of nutrient credits shall be recognized  
14 as an alternative method to meet the zero net discharge limit  
15 applied to new facilities that do not meet the criteria of  
16 this section. The purchase of nutrient credits shall also be  
17 recognized as an alternative method to meet the zero net  
18 discharge limit applied to expansion of existing plants.

19 (3) In the event of an addition, expansion or  
20 modification to a wastewater treatment facility, the mass  
21 discharge limits contained in this subsection shall apply  
22 only to the increase in the annual average design flow,  
23 resulting from the addition, expansion or modification.

24 (c) Limitation.--Nothing in this section shall be construed  
25 to prohibit the right of appeal to NPDES permit conditions by a  
26 permittee.

## 27 Section 7. Nutrient Reduction Credit Trading Program.

28 (a) Establishment.--The Nutrient Reduction Credit Trading  
29 Program is established within the authority and is designed to  
30 enhance the nutrient reduction credit trading program

1 established by the department by adding an alternative method of  
2 nutrient credit trading.

3 (b) Board.--The following shall apply:

4 (1) The Nutrient Reduction Credit Trading Program Board  
5 is established. The purpose of the board shall be to manage  
6 and provide oversight to the Nutrient Reduction Credit  
7 Trading Program.

8 (2) The board shall consist of the following:

9 (i) The Secretary of Environmental Protection, or a  
10 designee.

11 (ii) The Secretary of Agriculture, or a designee.

12 (iii) The executive director of the authority, or a  
13 designee.

14 (iv) One representative from county conservation  
15 districts appointed by the commission.

16 (v) One representative from municipal authorities  
17 representing wastewater treatment facilities chosen by  
18 the Pennsylvania Municipal Authorities Association.

19 (vi) One representative of the housing industry  
20 chosen by the Secretary of Environmental Protection from  
21 a list submitted by the Pennsylvania Builders  
22 Association.

23 (vii) One water quality engineer appointed by the  
24 chair of the Joint Legislative Air and Water Pollution  
25 Control and Conservation Committee.

26 (viii) One representative from the agricultural  
27 sector appointed by the Secretary of Agriculture.

28 (ix) One representative from an environmental  
29 organization representing an environmental organization  
30 appointed by the Secretary of Environmental Protection.

1           (x) Three representatives of local government; one  
2           representing boroughs, one representing townships and one  
3           representing cities. These representatives shall be  
4           chosen by their respective Statewide organizations.

5           (xi) One representative from the Pennsylvania  
6           delegation to the Chesapeake Bay Commission appointed by  
7           members of the Pennsylvania delegation to the commission.

8           (xii) One representative from the United States  
9           Department of Agriculture's Natural Resources  
10          Conservation Service appointed by the State  
11          Conservationist of this Commonwealth.

12       (c) Chairperson.--The board shall elect a chairperson from  
13       among its members.

14       (d) Powers and duties.--The board shall adopt policies and  
15       implement programs necessary to manage the Nutrient Reduction  
16       Credit Trading Program and shall have the following specific  
17       duties and responsibilities:

18           (1) The board shall purchase nutrient reduction credits  
19           from wastewater treatment facilities, agricultural or other  
20           sources. Credits shall be available for purchase only after  
21           department certification that nutrient and sediment  
22           reductions have occurred or will occur upon implementation of  
23           the proposed nutrient reduction project. The board shall  
24           cooperate with the department and the Department of  
25           Agriculture, or their agents, to verify credits from  
26           wastewater treatment facilities, agricultural and other  
27           sources.

28           (2) The board shall offer for sale nutrient reduction  
29           credits to wastewater treatment facilities, developers,  
30           municipalities, nonpoint source entities and others required

1 to meet nutrient reductions.

2 (3) The board shall establish a nutrient reduction  
3 credit bank to provide for the purchase and sale of credits  
4 within the Nutrient Reduction Credit Trading Program. The  
5 board shall establish procedures and set monetary assessments  
6 to generate a system of nutrient credits that can be used by  
7 wastewater treatment facilities and others to reach  
8 compliance with nutrient reduction requirements identified by  
9 the department and to allow for new growth. Nothing within  
10 this paragraph prohibits the private purchase and sale of  
11 credits within the trading market.

12 (4) (i) For wastewater treatment facilities, the board  
13 is authorized to establish phased payment schedules,  
14 provided the payment amounts will fund all annual  
15 reductions that are necessary to meet nutrient reduction  
16 requirements identified by the department. For new  
17 facilities, the payment amounts shall be sufficient to  
18 fund all necessary annual reductions, given the  
19 facility's design flow and connection schedule, so that  
20 zero net discharge requirements are met. The bank shall  
21 use these funds to provide grants to the agricultural  
22 sector to support projects that will implement the  
23 highest value nutrient reduction best management  
24 practices. Preference will be given to those nutrient  
25 reduction best management practices that provide the  
26 greatest nutrient reductions for the least amount of cost  
27 and that, once implemented, generate credits on a  
28 continual annual basis.

29 (ii) Excess credits generated from the transactions  
30 shall be made available for purchase by wastewater

1 treatment facilities, upon request, if needed, to meet  
2 nutrient effluent limits.

3 (5) The board shall offer for sale excess credits held  
4 by the bank as set forth under paragraph (3), but shall hold  
5 a minimum percentage of credits as a reserve balance to  
6 offset any failures or loss of nutrient reduction credits  
7 within the bank. In addition to this reserve, the board shall  
8 hold a minimum percentage of credits in reserve for new  
9 growth. The board shall set these reserves at percentages it  
10 deems necessary, but in no instance shall the reserve for new  
11 growth be lower than 5% of all credits held by the bank.

12 (6) The board shall process credits on a continual  
13 basis. The board shall establish and update, as necessary,  
14 the selling price of nutrient reduction credits and post the  
15 information regarding cost and methods of purchasing and  
16 selling credits on the Internet website. The board shall post  
17 on the Internet website a list of those projects that have  
18 been certified to generate credits by the department.

19 (7) The board shall establish overall time frames for  
20 the use of nutrient reduction credits purchased through the  
21 bank necessary to meet the compliance requirements  
22 established by the department. The board shall develop and  
23 implement a process that allows credits to be purchased in  
24 advance of when they may be needed to ensure compliance with  
25 the requirements established by the department.

26 (8) The board shall establish a technical subcommittee  
27 to provide technical assistance to entities proposing credit  
28 generating projects. Members of the subcommittee shall be  
29 appointed by the board and shall have appropriate technical  
30 training and experience. One of the members of the

1 subcommittee shall be a representative from the Water  
2 Planning Office in the department who has demonstrated  
3 familiarity with the department's nutrient reduction credit  
4 trading program. The subcommittee shall conduct a technical  
5 review of such proposals consistent with the department's  
6 existing guidance on credit proposal reviews, and make a  
7 recommendation regarding credit certification. Proposals that  
8 have undergone technical review by the subcommittee and are  
9 recommended by the subcommittee for certification shall be  
10 submitted by the board to the department for review. For such  
11 proposals, the department shall render a decision on the  
12 proposal within 60 days of receipt of the submission from the  
13 board. Proposals on which the department fails to act within  
14 this time period are deemed approved.

15 (9) The board shall establish procedures to allow the  
16 nutrient reduction credit bank to act as a clearinghouse and  
17 make available information on the availability of nutrient  
18 reduction credits from public and private sector  
19 organizations other than the nutrient reduction credit bank.

20 (e) Regulations.--The authority, the department and the  
21 Department of Agriculture may jointly develop regulations as  
22 necessary to implement the provisions of this act. The  
23 regulations shall be promulgated in accordance with the act of  
24 June 25, 1982 (P.L.633, No.181), known as the Regulatory Review  
25 Act.

26 (f) Administration.--The authority shall provide all  
27 necessary administrative and technical support to the operation  
28 of the Nutrient Reduction Credit Trading Program and the board.  
29 The authority is authorized to acquire staff, enter into  
30 contracts to assist in administration of the bank, provide

1 technical assistance to entities proposing credit generating  
2 projects and provide other necessary technical and  
3 administrative support to the board.

4 Section 8. Funding sources.

5 Programs established under this act shall be funded through  
6 an interfund transfer from The State Stores Fund. The Secretary  
7 of the Budget shall transfer from The State Stores Fund an  
8 amount of \$170,000,000 annually for fiscal years 2008-2009  
9 through 2010-2011, \$120,000,000 annually for fiscal years 2011-  
10 2012 through 2012-2013, and \$70,000,000 annually for fiscal  
11 years 2013-2014 through 2014-2015.

12 Section 9. Effective date.

13 This act shall take effect immediately.