

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 799 Session of 2017

INTRODUCED BY ALLOWAY, BARTOLOTTA, RESCHENTHALER, WHITE AND STEFANO, JUNE 23, 2017

SENATOR YAW, ENVIRONMENTAL RESOURCES AND ENERGY, AS AMENDED, OCTOBER 17, 2017

AN ACT

1 Establishing the Pennsylvania Clean Water Procurement Program;  
2 providing for powers and duties of the State Conservation  
3 Commission; and establishing the Watershed Improvement Fund.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Pennsylvania  
8 Clean Water Procurement Program Act.

9 Section 2. Definitions.

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

13 "Authority." The Pennsylvania Infrastructure Investment  
14 Authority.

15 "BMP." Pennsylvania Stormwater Best Management Practices  
16 Manual.

17 "Commission." The State Conservation Commission.

18 "Department." The Department of Environmental Protection of

1 the Commonwealth.

2 "Entity." An entity that generates and sells certified  
3 nutrient credits.

4 "Fund." The Watershed Improvement Fund established under  
5 section 5.

6 "Local environmental benefits." Environmental benefits that  
7 can be directly measured and quantified or modeled, including,  
8 but not limited to, carbon reductions, pathogens, nutrients and  
9 sediment to local freshwater and drinking water resources.

10 "Nutrient pollutant." Nitrogen or phosphorous.

11 "Permittee." A municipality or public storm water authority  
12 that discharges or releases a TMDL nutrient to surface or ground  
13 waters of this Commonwealth. The term does not include a person  
14 engaged in agricultural production as defined in section 3 of  
15 the act of June 30, 1981 (P.L.128, No.43), known as the  
16 Agricultural Area Security Law.

17 "Program." The Pennsylvania Clean Water Procurement Program  
18 established under section 3.

19 "Request for proposal" or "RFP." A request for proposal  
20 which defines contract terms, future delivery dates and  
21 technical specifications issued by the authority in conjunction  
22 with the department to procure verified TMDL nutrient credits  
23 from a certified load reduction activity that meets the  
24 requirements of any applicable offset program in force regarding  
25 the Chesapeake Bay.

26 "Sediment." Soils or other erodible materials transported by  
27 storm water as a product of erosion.

28 "TMDL." Total maximum daily load.

29 "TMDL nutrient pollutant." A nutrient pollutant that has  
30 been identified as a cause of nonattainment of water quality

1 standards and for which a TMDL has been developed to set  
2 allowable annual loading targets.

3 "Transfer payment." Payment required of each permittee under  
4 section 4.

5 "Unmet nutrient pollutant TMDL." Total outstanding Federal  
6 requirements going forward three years.

7 "Verified TMDL nutrient credit." A unit of TMDL nutrient  
8 pollutant load reduction achieved through department  
9 verification of a certified reduction activity based upon an  
10 approved verification plan, including modeled BMP reductions  
11 with approved uncertainty factors as defined by the United  
12 States Environmental Protection Agency.

13 "Water year." The 12-month period beginning October 1 of  
14 each calendar year.

15 Section 3. Pennsylvania Clean Water Procurement Program.

16 (a) Establishment.--The Pennsylvania Clean Water Procurement  
17 Program is established and shall provide for the purchase of  
18 verified TMDL nutrient credits from certified nutrient credit  
19 generators through a competitive bidding process consistent with  
20 62 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code) and  
21 any other competitive process determined to be appropriate by  
22 the department and the commission.

23 (b) Powers and duties.--The commission shall administer the  
24 program and take any action necessary to effectuate the purposes  
25 of this act.

26 (c) Contracts with verified TMDL nutrient credit sellers.--

27 (1) The following shall apply:

28 (i) The commission shall, beginning with the water  
29 year in which this subsection takes effect and the

30 following two water years, publish a notice of the unmet

1 nutrient pollutant TMDL requirements in the Pennsylvania  
2 Bulletin.

3 (ii) No later than 60 days following publication of  
4 the notice under subparagraph (i), the authority shall  
5 issue, in consultation with the department, a request for  
6 proposals from certified nutrient credit entities under  
7 62 Pa.C.S. Pt. I for the supply of long-term verified  
8 TMDL nutrient credits for future delivery in order to  
9 fulfill the unmet Federal Chesapeake Bay TMDL parameter  
10 requirement for those water years included in the notice.

11 (iii) An RFP under subparagraph (ii) shall be for a  
12 minimum term of 10 years and shall allow sufficient time  
13 for the delivery of verified reductions of TMDL  
14 parameters consistent with the time frame necessary for  
15 the permitting and development of public or private  
16 credit generator facilities.

17 (2) Factors to be considered as part of the criteria for  
18 evaluation of responses received to an RFP and the weighted  
19 percentage to be applied to each factor shall be included by  
20 the commission in temporary regulations published under  
21 section 6 and in final regulations and shall include:

22 (i) Environmental and recreational benefits to this  
23 Commonwealth and local communities resulting from the  
24 TMDL nutrient pollutant reduction activities, including  
25 verified and modeled green infrastructure benefits and  
26 other TMDL parameter reductions to freshwater resources  
27 of this Commonwealth and the applicable major watershed.

28 (ii) Additional criteria determined relevant by the  
29 commission.

30 (3) The award granted for an RFP shall determine the

1 adjusted cost of verified TMDL nutrient credits less the  
2 value of the local environmental benefit or green  
3 infrastructure reductions.

4 (4) The authority will allocate the cost consistent with  
5 the revenue source adopted under this act based on each  
6 permittee's percentage of the total nutrient reduction  
7 mandate sufficient to cover the cost of the program.

8 Section 4. Replacement of sector allocation with competitive  
9 bidding program.

10 (a) General rule.--The department shall transfer the  
11 nutrient reduction mandates of a permittee to a competitive  
12 bidding program to enable all certified nutrient credit entities  
13 that can generate verified TMDL nutrient credits to participate  
14 in an RFP on a voluntary basis.

15 (b) Transfer payment.--In return for being absolved from the  
16 TMDL nutrient reduction mandate, the aggregate number of  
17 permittees ~~shall~~ MAY pay into the program \$50,000,000 annually <--  
18 for 10 years subject to subsection (c).

19 (c) Payment amounts.--Payment amounts under subsection (b)  
20 shall be adjusted annually based on the cost determination made  
21 under section 3(c)(2) and (4) as published in the Pennsylvania  
22 Bulletin.

23 (d) Payment in arrears.--Consistent with 62 Pa.C.S. Pt. I  
24 (relating to Commonwealth Procurement Code), Federal policy  
25 recommendations regarding the procurement of results in lieu of  
26 funding solutions and any applicable State statute, payments to  
27 entities will be made after the department has verified the  
28 nutrient pollutant reductions. These verifications will be  
29 performed monthly based upon required data submissions from  
30 nutrient credit generators certified by the department.

1 (e) Certainty.--Upon transfer of the nutrient reduction  
2 mandates under subsection (a), a permittee shall have no ongoing  
3 liability for the mandated nutrient pollutant reductions.

4 (f) Risk factor reduction.--The department shall attempt to  
5 reduce risk factors imbedded in legacy policy issues that cannot  
6 be otherwise mitigated and do not represent environmental  
7 backsliding by modifying policies consistent with the  
8 requirements of private sector financing requirements.

9 (g) Offset.--Verified TMDL nutrient credits obtained under  
10 subsection (a) shall be deemed by the department to satisfy  
11 applicable wastewater and storm water TMDL nutrient pollutant  
12 permitting requirements.

13 Section 5. Watershed Improvement Fund.

14 (a) Establishment.--The Watershed Improvement Fund is  
15 established within the authority as a special fund.

16 (b) Deposits.--The following shall be deposited into the  
17 fund:

18 (1) Any appropriation made to the fund.

19 (2) Transfer payments from permittees in accordance with  
20 section 4.

21 (c) Use.--The following shall apply:

22 (1) Money in the fund shall be used by the commission  
23 for the purchase of verified TMDL nutrient credits under  
24 section 3.

25 (2) Winning bids will offer 20% of total nutrient  
26 reduction allotment to be available for participation for 30  
27 days by small sources that did not participate in the bidding  
28 process so that a small producer who installs a BMP can  
29 subscribe to sell their credits into this pool and receive  
30 the winning bid price absent the need to participate in the

1 bidding process.

2 Section 6. Regulations.

3 The commission may promulgate regulations to carry out the  
4 provisions of this act.

5 Section 7. Effective date.

6 This act shall take effect in 30 days.