
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 994 Session of
2013

INTRODUCED BY VOGEL, ALLOWAY, VANCE, SCARNATI, MENSCH, YUDICHAK,
SMUCKER, ARGALL, FOLMER, BROWNE AND GREENLEAF, JUNE 5, 2013

SENATOR VOGEL, AGRICULTURE AND RURAL AFFAIRS, AS AMENDED,
JUNE 11, 2013

AN ACT

1 Providing for the creation of a major watershed improvement
2 program, for establishment of a verified TMDL parameter
3 credit program, for the powers and duties of the Department
4 of Environmental Protection and the Pennsylvania
5 Infrastructure Investment Authority and for completion of a
6 study by the Legislative Budget and Finance Committee.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Major
11 Watershed Improvement Act.

12 Section 2. Definitions.

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

16 "Board." The Environmental Quality Board.

17 "Budget Office." The Governor's Office of the Budget.

18 "Department." The Department of Environmental Protection of
19 the Commonwealth.

1 "Fund." The Major Watershed Improvement Fund.

2 "Major watershed." As follows:

3 (1) The following watersheds located in this
4 Commonwealth and designated by the Department of
5 Environmental Protection as major watersheds:

6 (i) Delaware.

7 (ii) Genesee.

8 (iii) Lake Erie.

9 (iv) Ohio.

10 (v) Potomac.

11 (vi) Susquehanna.

12 (2) A watershed located in this Commonwealth that may be
13 designated as a major watershed on or after the effective
14 date of this section.

15 "Nutrient." Nitrogen or phosphorus.

16 "Participating authority." A water, sewer, water and sewer
17 or storm water management authority that serves a participating
18 municipality.

19 "Participating municipality." A city, borough, incorporated
20 town, township or home rule municipality identified by the
21 Department of Environmental Protection as being wholly or
22 partially located within a major watershed. The term does not
23 include a county.

24 "PENNVEST." The Pennsylvania Infrastructure Investment
25 Authority.

26 "Program." The Major Watershed Improvement Program.

27 "SEDIMENT." SOILS OR OTHER ERODIBLE MATERIALS TRANSPORTED BY <--
28 STORM WATER AS A PRODUCT OF EROSION.

29 ~~"TMDL." Total maximum daily load.~~ <--

30 "TMDL parameter." Nutrient or sediment for which a ~~TMDL~~ <--

1 TOTAL MAXIMUM DAILY LOAD (TMDL) has been established or approved <--
2 by the United States Environmental Protection Agency under
3 section 303 of the Water Pollution Control Act (62 Stat. 1155,
4 33 U.S.C. § 1313) and made applicable to a major watershed.

5 "TMDL parameter credit." The unit of compliance that
6 corresponds with a verified pound of reduction of a ~~TMDL~~ TOTAL <--
7 MAXIMUM DAILY LOAD (TMDL) parameter.

8 "UNMET TMDL PARAMETER." THE DIFFERENCE BETWEEN A TOTAL <--
9 MAXIMUM DAILY LOAD (TMDL) IMPLEMENTATION GOAL AND PROGRESS THAT
10 HAS BEEN ACHIEVED OR IS REASONABLY EXPECTED TO BE ACHIEVED
11 THROUGH EXISTING REGULATORY OR INCENTIVE-BASED PROGRAMS.

12 "Verified TMDL parameter credit." The unit of compliance
13 that corresponds with a verified pound of reduction of a ~~TMDL~~ <--
14 TOTAL MAXIMUM DAILY LOAD (TMDL) parameter as determined by the <--
15 department.

16 "Water year." The 12-month period beginning October 1 of
17 each calendar year.

18 Section 3. Major Watershed Improvement Program.

19 (a) Establishment.--There is established a Major Watershed
20 Improvement Program which shall consist of the purchase of
21 verified TMDL parameter credits by PENNVEST through a program
22 administered by the department and PENNVEST.

23 (b) Contracts with TMDL parameter credit sellers.--

24 (1) The following shall apply:

25 (i) No later than 30 days following the publication
26 of ~~temporary~~ regulations by the board under section 5 and <--
27 no later than June 1 of each year thereafter when
28 required or necessary to meet an unmet TMDL parameter,
29 the department shall publish in the Pennsylvania Bulletin
30 a notice containing an updated forecast of the unmet TMDL

1 parameter planning targets for future water years
2 commencing the year after the date of publication.

3 (ii) No later than 60 days following publication of
4 the notice under subparagraph (i), PENNVEST shall issue,
5 in consultation with the department, a request for
6 proposals under 62 Pa.C.S. Pt. I (relating to
7 Commonwealth Procurement Code) for long-term purchase of
8 verified TMDL parameter credits from interested parties,
9 including private entities, participating authorities and
10 participating municipalities, in order to meet the unmet
11 TMDL parameter planning targets for those water years
12 included in the notice, as projected by the department
13 and contained in impaired surface waters listings and
14 Total Maximum Daily Load amounts in any watershed
15 implementation plan required on or after the effective
16 date of this section by the United States Environmental
17 Protection Agency under the Water Pollution Control Act
18 (62 Stat. 1155, 33 U.S.C. § 1251 et seq.).

19 (iii) A request for proposal under subparagraph (ii)
20 shall be for a minimum term of 10 years and shall allow
21 sufficient time for the delivery of verified reductions
22 of TMDL parameters consistent with the time frame
23 necessary for the permitting and development of public or
24 private projects.

25 (2) Factors to be considered as part of the criteria for
26 evaluation of responses received to a request for proposals
27 and the weighted percentage to be applied to each factor
28 shall be included by the department in ~~temporary~~ regulations <--
29 published under section 5 ~~and in final regulations~~ and shall <--
30 include:

1 (i) Cost.

2 (ii) Environmental and recreational benefits
3 resulting from the TMDL parameter to this Commonwealth
4 and local communities, including verified TMDL parameter
5 reductions to freshwater resources of this Commonwealth
6 and the applicable major watershed.

7 (III) RESPONSES ADDRESSING THE GENERATION OF <--
8 VERIFIED CREDITS FOR NUTRIENTS OR REDUCTIONS IN SEDIMENT
9 WHICH ADDRESS MULTIPLE TMDL PARAMETERS.

10 ~~(iii)~~(IV) Additional criteria determined relevant by <--
11 the department.

12 (3) IN ESTABLISHING THE PROGRAM, THE DEPARTMENT SHALL <--
13 DEDICATE 25% OF ANY REQUEST FOR PROPOSAL TO ANY FARMS OR
14 ENTITIES REPRESENTING ANY FARMS WHERE SUCH FARMS' GROSS
15 RECEIPTS ARE LESS THAN \$750,000, SO THAT THESE FARMS MAY
16 COMPETITIVELY BID FOR TMDL PARAMETER REDUCTIONS THROUGH
17 IMPLEMENTATION OF BEST MANAGEMENT PRACTICES THAT ALSO ADDRESS
18 REDUCTIONS IN TMDL PARAMETERS TO FRESHWATER RESOURCES AS
19 NOTED IN PARAGRAPH (2)(II).

20 (c) Participation in program.--

21 (1) Nutrients, which have been identified as a TMDL
22 parameter where significant cost savings can be achieved
23 pursuant to a Legislative Budget and Finance Committee study
24 released in January 2013 and titled "A Cost Effective
25 Alternative Approach to Meeting Pennsylvania's Chesapeake Bay
26 Nutrient Reduction Targets," shall be included in the
27 program.

28 (2) Additional major watersheds and TMDL parameters may
29 be added to the program by the department upon publication in
30 the Pennsylvania Bulletin of a notice which includes a

1 statement by the department of the rationale for each
2 addition and, for TMDL parameters, an analysis indicating
3 that the inclusion of TMDL parameters in the program will
4 result in cost savings as a result of competitive bidding.

5 Section 4. Major Watershed Improvement Fund.

6 (a) Establishment.--There is created within the State
7 Treasury a special fund to be known as the Major Watershed
8 Improvement Fund.

9 (b) Deposits.--The following shall be deposited into the
10 fund:

11 (1) any appropriation made to the program; and

12 (2) Any other existing or future Federal or State
13 appropriation or other money determined by the department, in
14 consultation with the Budget Office, to be available for the
15 program.

16 (B.1) LIMITATIONS ON FUNDING.--THE FUND SHALL NOT RECEIVE <--
17 MONEYS ALREADY APPROPRIATED FOR CONSERVATION PROGRAMS OR MONEYS
18 ALREADY APPROPRIATED FOR THE REDUCTION OF NUTRIENTS OR SEDIMENT
19 INTO WATER RESOURCES OF PENNSYLVANIA OR DOWNSTREAM OF
20 PENNSYLVANIA.

21 (c) Use.--Money in the fund shall be used by PENNVEST for
22 the purchase of verified TMDL parameter credits under section
23 3(b).

24 (d) Issuance of request for proposals.--Any request for a
25 proposal under section 3 may only be issued upon certification
26 by the department and the Budget Office that money has been
27 identified and is available to be deposited in the fund to pay
28 for costs associated with issuance of a request for proposals,
29 including payments for long-term purchase of verified TMDL
30 parameter credits. A notice containing the certification shall

1 be published by the department in the Pennsylvania Bulletin no
2 later than 30 days following issuance of the certification.

3 Section 5. ~~Temporary regulations~~ REGULATIONS. <--

4 (a) Promulgation.--~~In order to facilitate the prompt~~ <--
5 ~~implementation of this act, temporary regulations may be~~
6 ~~promulgated by the board under this section~~ THE BOARD SHALL HAVE <--
7 THE AUTHORITY TO PROMULGATE REGULATIONS TO CARRY OUT THE
8 PROVISIONS OF THIS ACT. Prior to adoption, a draft of the
9 ~~temporary~~ regulations shall be published in the Pennsylvania <--
10 Bulletin and subject to public comment ~~for a period of 30 days.~~ <--
11 Following completion of the public comment period and approval
12 by the board, ~~temporary~~ regulations shall be published in the <--
13 Pennsylvania Bulletin. ~~The temporary regulations shall expire no~~ <--
14 ~~later than two years following their publication. The temporary~~
15 ~~regulations shall not be subject to:~~

16 (1) ~~Sections 201, 202, 203, 204 and 205 of the act of~~
17 ~~July 31, 1968 (P.L.769, No.240), referred to as the~~
18 ~~Commonwealth Documents Law.~~

19 (2) ~~The act of June 25, 1982 (P.L.633, No.181), known as~~
20 ~~the Regulatory Review Act.~~

21 (3) ~~Sections 204(b) and 301(10) of the act of October~~
22 ~~15, 1980 (P.L.950, No.164), known as the Commonwealth~~
23 ~~Attorneys Act.~~

24 (b) ~~Expiration.~~ The authority of the board to adopt
25 ~~temporary regulations under subsection (a) shall expire two~~
26 ~~years after the effective date of this section. Regulations~~
27 ~~adopted after this period shall be promulgated as provided by~~
28 ~~law.~~

29 (e) (B) Draft.--The board shall publish draft ~~temporary~~ <--
30 regulations pursuant to subsection (a) in the Pennsylvania

1 Bulletin no later than 60 days following publication of the
2 notice required under section 4(d).

3 Section 6. Legislative Budget and Finance Committee funding
4 study.

5 (a) Scope.--The Legislative Budget and Finance Committee
6 shall conduct a study of possible sources of funding for the
7 program in addition to sources authorized to be deposited into
8 the fund under section 4(b). THE REPORT SHALL NOT INCLUDE <--
9 SOURCES OF FUNDING WHICH ARE CURRENTLY APPROPRIATED FOR
10 CONSERVATION PROGRAMS OR MONEYS ALREADY APPROPRIATED FOR THE
11 REDUCTION OF NUTRIENTS OR SEDIMENT INTO WATER RESOURCES OF
12 PENNSYLVANIA OR DOWNSTREAM OF PENNSYLVANIA.

13 (b) Report and recommendations.--A report and
14 recommendations shall be presented by the Legislative Budget and
15 Finance Committee to the department, PENNVEST, the Environmental
16 Resources and Energy Committee, Agriculture and Rural Affairs
17 Committee and Local Government Committee of the Senate and the
18 Environmental Resources and Energy Committee, Agriculture and
19 Rural Affairs Committee and Local Government Committee of the
20 House of Representatives within six months following the
21 effective date of this section.

22 Section 20. Effective date.

23 This act shall take effect in 30 days.