
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1642 Session of
2019

INTRODUCED BY EVERETT, WHEELAND, SCHMITT, RYAN, DeLUCA, PICKETT,
ZIMMERMAN AND MOUL, JUNE 18, 2019

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 18, 2019

AN ACT

1 Establishing the Pennsylvania Clean Water Procurement Program
2 and the Watershed Innovation and Improvement Fund; and making
3 an appropriation.

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 "Aggregator." A person that arranges for the sale of
14 nutrient and sediment reductions generated by another person.
15 The term includes an agricultural business acting on behalf of
16 farmers via a production contract or cooperative membership.

17 "Authority." The Pennsylvania Infrastructure Investment
18 Authority.

1 "Chesapeake Bay TMDL." The Chesapeake Bay TMDL for nitrogen,
2 phosphorus and sediment as established by the United States
3 Environmental Protection Agency on December 29, 2010.

4 "Department." The Department of Environmental Protection of
5 the Commonwealth.

6 "Fund." The Watershed Innovation and Improvement Fund
7 established under section 3.

8 "Nutrient." Nitrogen or phosphorous.

9 "Nutrient or sediment reductions." Nitrogen, phosphorus and
10 sediment pollution load reductions to surface water and
11 groundwater resources that can be directly measured and
12 quantified or modeled by any of the following:

13 (1) The Chesapeake Bay Program Watershed Model.

14 (2) Any other model approved by the United States
15 Environmental Protection Agency or the department, including,
16 but not limited to, nonpoint source phosphorous, nitrogen and
17 sediment loads to surface water and groundwater resources and
18 pathogens using quantification methodologies and modeling
19 tools.

20 "Program." The Pennsylvania Clean Water Procurement Program
21 established under section 4.

22 "Qualified bidder." A bidder with an approved verification
23 plan.

24 "Request for proposals." A request for competitive sealed
25 proposals that define contract terms, future delivery dates and
26 technical specifications that is issued by the authority, in
27 conjunction with the department, to procure verified nutrient
28 and sediment reductions that count toward achievement of the
29 Chesapeake Bay TMDL nutrient and sediment pollutant reduction
30 requirements.

1 "Sediment." Soils or other erodible materials transported by
2 water as a product of erosion.

3 "Small farm." An agricultural operation that is not large
4 enough to meet the definition of CAFO as set forth in 25 Pa.
5 Code § 92a.2 (relating to definitions).

6 "TMDL." Total maximum daily load.

7 "Verification plan." As follows:

8 (1) A plan that details the method that a qualified
9 bidder will use to produce verified nutrient or sediment
10 reductions, including mass balance calculation.

11 (2) In the case of an aggregator, a plan as specified
12 under paragraph (1) that describes the process that the
13 aggregator will use to certify verified nutrient or sediment
14 reductions from approved contracting parties under section
15 4(b)(4), including the aggregator's contract farmers,
16 cooperative members or other similar entities.

17 "Verified nutrient and sediment reductions." Nutrient or
18 sediment reductions measured in pounds created by an action,
19 activity or technology pursuant to a verification plan and
20 approved by the department.

21 Section 3. Watershed Innovation and Improvement Fund.

22 (a) Establishment.--The Watershed Innovation and Improvement
23 Fund is established in the State Treasury.

24 (b) Source of funding.--The fund shall consist of
25 appropriations made to the fund and interest earned on money in
26 the fund.

27 (c) Appropriation.--The sum of \$20,000,000 is hereby
28 appropriated from the General Fund to the fund for the purposes
29 specified under subsection (d).

30 (d) Use of fund.--The following apply:

1 (1) Except as provided under paragraph (2), money in the
2 fund shall be used by the authority for the purchase of
3 verified nutrient and sediment reductions under section 4.

4 (2) No more than 5% of the money in the fund may be used
5 by the department and the authority to implement the program.

6 Section 4. Pennsylvania Clean Water Procurement Program.

7 (a) Establishment.--The Pennsylvania Clean Water Procurement
8 Program is established and shall provide for the purchase of
9 verified nutrient and sediment reductions from approved
10 contracting parties through a competitive sealed proposal
11 procurement procedure consistent with 62 Pa.C.S. Pt. I (relating
12 to Commonwealth Procurement Code) or any other competitive
13 bidding process determined to be appropriate by the authority.

14 (b) Duties of authority.--The authority shall have all of
15 the following duties:

16 (1) Within 60 days of an appropriation to the fund, in
17 consultation with the department, issue a request for
18 proposals or initiate a competitive bidding process under 62
19 Pa.C.S. Pt. I for the supply of long-term nutrient and
20 sediment reductions for future delivery to accelerate
21 progress towards the achievement of the Chesapeake Bay TMDL
22 nutrient and sediment pollutant reduction requirements.

23 (2) Administer the fund for the purpose of implementing
24 this act.

25 (3) Evaluate the responses to the request for proposals
26 or competitive bidding process under paragraph (1) and
27 execute contracts with verified nutrient and sediment
28 reduction producers or aggregators. Contracts under this
29 paragraph shall be for at least 10 years and shall provide
30 sufficient time for the construction and permitting of

1 facilities and the delivery of verified nutrient and
2 sediment reductions.

3 (4) Require a contracting party for the supply of long-
4 term nutrient and sediment reductions to make available 20%
5 of its total nutrient or sediment reduction allotment for
6 participation for 30 days by small farms or aggregators of
7 small farms. The purpose of this requirement is to enable
8 small farms or aggregators of small farms to sell their
9 credits from modeled reductions into the nutrient or
10 sediment reduction allotment and receive the winning bid
11 price without participating in the request for proposals or
12 competitive bidding process under paragraph (1).

13 (5) Purchase verified nutrient and sediment reductions
14 in accordance with the terms of the contracts under
15 paragraph (3) after the department has verified the nutrient
16 and sediment reductions. The verification of nutrient and
17 sediment reductions shall be performed monthly, based upon
18 required data submissions from nutrient credit generators
19 certified by the department.

20 (c) Publicly funded reductions.--Nutrient and sediment
21 reductions funded entirely by public grants are not eligible to
22 bid or respond to the request for proposals or competitive
23 bidding process under subsection (b)(1). If a percentage of
24 nutrient and sediment reductions are funded partially by public
25 grants, the percentage of the remaining nutrient and sediment
26 reductions that are eligible to bid or respond to a request for
27 proposals or competitive bidding process under subsection (b)(1)
28 shall be commensurate with the percentage of the reduction
29 activity that is not provided by public grants.

30 (d) Criteria.--The criteria for the evaluation of responses

1 to the request for proposals or competitive bidding process
2 under subsection (b) (1) and the weighted percentage to be
3 applied to each factor in the evaluation of the responses shall
4 be published by the department as part of the request for
5 proposals or competitive bidding process under subsection (b) (1)
6 and include, but not be limited to, all of the following:

7 (1) The environmental and recreational benefits to this
8 Commonwealth and local communities resulting from the
9 nutrient and sediment reduction activities.

10 (2) The cost effectiveness of the proposed nutrient and
11 sediment reduction activity.

12 (3) Any additional criteria determined relevant and
13 necessary by the department.

14 (e) Annual report.--The authority shall publish and make
15 available to the public an annual report on the program
16 detailing all of following information for the prior year:

17 (1) The total cost for the program.

18 (2) The nutrient and sediment reduction activities
19 implemented.

20 (3) The verified nutrient and sediment reductions
21 achieved towards the satisfaction of the Chesapeake Bay TMDL
22 nutrient and sediment pollutant reduction requirements.

23 (4) The total cost for each verified nutrient and
24 sediment reduction.

25 Section 5. Duties of department.

26 The department shall have all of the following duties:

27 (1) Administer the program and take any action necessary
28 to effectuate the purposes of this act.

29 (2) Verify the generated nutrient and sediment load
30 reductions achieved by a contracting party under section 4(b)

1 (4) .

2 (3) Review and approve the verification plans and mass
3 balance calculations submitted with the responses to the
4 request for proposals or competitive bidding process under
5 section 4(b)(1) and advise the authority regarding the
6 acceptability of the verification plans and mass balance
7 calculations.

8 (4) Evaluate the responses to the request for proposals
9 or competitive bidding process based on the criteria under
10 section 4(d), other than the price considerations, and advise
11 the authority regarding the acceptability of the responses.

12 Section 6. Regulations.

13 The department may promulgate regulations necessary to
14 administer the provisions of this act.

15 Section 7. Effective date.

16 This act shall take effect in 60 days.