

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 832 Session of 2021

INTRODUCED BY YAW, MARTIN, LAUGHLIN, BARTOLOTTA, SCAVELLO, YUDICHAK, GORDNER, COSTA, PITTMAN, BAKER, A. WILLIAMS AND COMITTA, AUGUST 11, 2021

SENATOR YAW, ENVIRONMENTAL RESOURCES AND ENERGY, AS AMENDED, SEPTEMBER 28, 2021

AN ACT

1 Amending Titles 3 (Agriculture) and 27 (Environmental Resources)
2 of the Pennsylvania Consolidated Statutes, in Conservation
3 Excellence Grant Program, further providing for criteria for
4 evaluation of applications; providing for nonpoint source
5 pollution reduction and establishing the Agriculture
6 Conservation Assistance Program, the Pennsylvania Clean Water
7 Procurement Program and the Municipal Storm Water Assistance
8 Program.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 3107(2) of Title 3 of the Pennsylvania
12 Consolidated Statutes is amended to read:

13 § 3107. Criteria for evaluation of applications.

14 In approving applications for eligible projects under the
15 program, the commission shall give priority to complete
16 applications based upon the following criteria:

17 \* \* \*

18 (2) Priority practices as follows:

19 (i) Livestock exclusion fencing.

20 (ii) Stream-side buffers.

- 1 (iii) Streambank restoration.
- 2 (iv) Barnyard and feedlot runoff abatement.
- 3 (v) Stream crossings.
- 4 (vi) Off-stream watering.
- 5 (vii) Manure storage facilities.
- 6 (viii) Nutrient management plans and manure  
7 management plans.
- 8 (ix) Conservation plans or agricultural erosion and  
9 sedimentation plans.
- 10 (x) Cover crops.
- 11 (xi) Remediation of legacy sediment that was:
- 12 (A) eroded from upland areas after the arrival  
13 of early Pennsylvania settlers and during centuries  
14 of intensive land use;
- 15 (B) deposited in valley bottoms along stream  
16 corridors, burying presettlement streams,  
17 floodplains, wetlands and valley bottoms; and
- 18 (C) altered and continues to impair the  
19 hydrologic, biologic, aquatic, riparian and water  
20 quality functions of presettlement and modern  
21 environments.
- 22 (xii) Any other priority practices approved by the  
23 commission.

24 \* \* \*

25 Section 2. Title 27 is amended by adding a chapter to read:

26 CHAPTER 33

27 NONPOINT SOURCE POLLUTION REDUCTION

28 Sec.

29 3301. Scope of chapter.

30 3302. Findings and declarations.

1 3303. Definitions.

2 3304. Clean Streams Fund.

3 3305. Agriculture Conservation Assistance Program.

4 3306. Pennsylvania Clean Water Procurement Program.

5 3307. Municipal Storm Water Assistance Program.

6 § 3301. Scope of chapter.

7 This chapter relates to nonpoint source pollution reduction.

8 § 3302. Findings and declarations.

9 The General Assembly finds and declares that:

10 (1) The rivers and streams in this Commonwealth provide  
11 an abundance of fresh water that support the settlement,  
12 growth and industrialization of this Commonwealth.

13 (2) Almost one-third of those waters do not meet safety  
14 standards for humans or fish.

15 (3) Poor water quality in this Commonwealth adversely  
16 impacts Pennsylvania's environment, human health, drinking  
17 water supplies, recreational enjoyment and opportunities, and  
18 economic and commercial businesses and jobs that depend on  
19 good water quality.

20 (4) Poor water quality in Pennsylvania also adversely  
21 impacts downstream waters in neighboring states, prompting  
22 Federal scrutiny, oversight and litigation.

23 (5) The leading causes of local water quality impairment  
24 are historic mining and agricultural activity.

25 (6) Best management practices are available to cost-  
26 effectively mitigate the impacts of nonpoint source  
27 pollution, but the cost to meaningfully implement them far  
28 exceeds currently available public and private funds.

29 (7) Introduction of pay-for-success approaches will spur  
30 further innovation and private investment.

1           (8) Improving water quality will improve drinking water  
2 supplies and recreational and related commercial  
3 opportunities as well as create jobs and promote economic  
4 growth in this Commonwealth.

5 § 3303. Definitions.

6           The following words and phrases when used in this chapter  
7 shall have the meanings given to them in this section unless the  
8 context clearly indicates otherwise:

9           "Aggregator." A person or entity that facilitates or  
10 coordinates a best management practice implemented by another  
11 person for nutrient or sediment reduction. The term includes an  
12 agricultural or conservation business, educational institution  
13 or nonprofit agricultural or conservation organization that:

14           (1) acts on behalf of farmers through a production  
15 contract or cooperative membership; or

16           (2) administers a publicly or privately supported system  
17 for implementation of a best management practice to reduce  
18 nutrient or sediment pollution on a farm.

19           "Agricultural erosion and sediment control plan." A site-  
20 specific plan identifying best management practices to minimize  
21 accelerated erosion and sedimentation from agricultural runoff  
22 required by 25 Pa. Code Ch. 102 (relating to erosion and  
23 sediment control).

24           "Agricultural operation." The management and use of farming  
25 resources for production of crops, livestock or poultry.

26           "Agriculturally impaired stream miles." Stream miles that  
27 are designated impaired due to the identified source being  
28 agriculture as defined by the most recent Pennsylvania  
29 Integrated Water Quality Monitoring and Assessment Report by the  
30 department.

1 "Animal concentration area." The following:

2 (1) A barnyard, feedlot, loafing area, exercise lot or  
3 other similar animal confinement area that will not maintain  
4 a growing crop or where deposited manure nitrogen is in  
5 excess of crop needs.

6 (2) The term does not include:

7 (i) An area managed as pastures or other cropland.

8 (ii) Pasture access ways, if they do not cause  
9 direct flow of nutrients to surface water or groundwater.

10 "Best management practice" or "BMP." A practice or  
11 combination of practices determined by the commission or by the  
12 Natural Resources Conservation Service of the United States  
13 Department of Agriculture to be effective and practical,  
14 considering technological, economic and institutional factors,  
15 to manage nutrient and sediment to protect surface water and  
16 groundwater.

17 "Chesapeake Bay Total Maximum Daily Load." The most current  
18 Chesapeake Bay Total Maximum Daily Load for nitrogen, phosphorus  
19 and sediment as established by the United States Environmental  
20 Protection Agency.

21 "Commission." The State Conservation Commission established  
22 under the act of May 15, 1945 (P.L.547, No.217), known as the  
23 Conservation District Law.

24 "Conservation district." A county conservation district  
25 established under the Conservation District Law.

26 "Conservation plan." A plan that identifies conservation  
27 practices and includes site-specific BMPs for agricultural  
28 plowing or tilling activities and animal heavy-use areas.

29 "Cropland acres." The acres of land used to produce adapted  
30 crops for harvest, which includes both cultivated and

1 noncultivated crops and areas managed for forage production that  
2 are harvested by livestock or a combination of livestock and  
3 mechanical harvesting.

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

6 "Erosion." The natural process by which the surface of the  
7 land is worn away by water, wind or chemical action.

8 "Fund." The Clean Streams Fund established under section  
9 3304 (relating to Clean Streams Fund).

10 "Groundwater." Water that is located within the saturated  
11 zone below the water table and is available to supply wells and  
12 springs.

13 "Livestock." Animals raised, stabled, fed or maintained on  
14 an agricultural operation with the purpose of generating income  
15 or providing work, recreation or transportation. The term does  
16 not include aquatic species.

17 "Locally impaired watershed." The land area, corresponding  
18 to a watershed not larger than a 12-digit Hydrologic Unit Code  
19 as designated by the United States Geological Survey, that  
20 includes a body of water on the Commonwealth's list of impaired  
21 waters under section 303(d) of the Federal Water Pollution  
22 Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.).

23 "Manure management plan." A plan developed and implemented  
24 in accordance with 25 Pa. Code Ch. 91 (relating to general  
25 provisions).

26 "Nonpoint source pollution." Waterborne pollution which does  
27 not have a discernible or confined discrete conveyance and  
28 includes, but is not limited to, pollution caused by storm water  
29 runoff across the land or infiltration into the groundwater such  
30 as pollution from agriculture, abandoned mining activities and

1 urban runoff. The term does not include activities subject to a  
2 National Pollutant Discharge Elimination System permit under the  
3 Federal Water Pollution Control Act.

4 "Nutrient." Nitrogen or phosphorous.

5 "Nutrient management plan." A written site-specific plan  
6 which incorporates BMPs to manage the use of plant nutrients for  
7 crop production and water quality protection consistent with the  
8 criteria established in 3 Pa.C.S. §§ 504 (relating to powers and  
9 duties of commission) and 506 (relating to nutrient management  
10 plans).

11 "Nutrient or sediment reduction." A reduction in a nitrogen,  
12 phosphorus or sediment pollution load discharged to surface  
13 water or groundwater that can be directly quantified or modeled  
14 using any model approved or accepted by the department or the  
15 United States Environmental Protection Agency for the purpose of  
16 determining the amount of nutrient or sediment pollution  
17 reduction, in pounds per year, achieved by implementing a best  
18 management practice.

19 "PENNVEST." The Pennsylvania Infrastructure Investment  
20 Authority.

21 "Poultry." Birds raised, fed or maintained on an  
22 agricultural operation with the purpose of generating income.

23 "Qualified bidder." A person or aggregator with a  
24 verification plan approved by the department.

25 "Sediment." Soil or another erodible material transported by  
26 water, wind or other means as a product of erosion.

27 "Small farm." An agricultural operation, except for a  
28 concentrated animal feeding operation or "CAFO" as defined under  
29 25 Pa. Code § 92a.2 (relating to definitions).

30 "Storm water." Drainage runoff from the surface of the land

1 resulting from precipitation or snow or ice melt.

2 "Surface water." Perennial and intermittent streams, rivers,  
3 lakes, reservoirs, ponds, wetlands, springs, natural seeps and  
4 estuaries. The term does not include water at facilities  
5 approved for wastewater treatment such as wastewater treatment  
6 impoundments, cooling water ponds and constructed wetlands used  
7 as part of a wastewater treatment process.

8 "Technical assistance." Advice, technical expertise,  
9 information, training and tools provided to a landowner,  
10 commission, conservation district or others regarding program  
11 implementation, including, but not limited to, the proper  
12 planning, design and installation of best management practices.

13 "Verification plan." A written plan that describes the  
14 method that a qualified bidder will use to verify performance of  
15 a best management practice for nutrient or sediment reduction in  
16 accordance with a protocol approved or accepted by the  
17 department.

18 "Verified nutrient or sediment reduction." Nutrient or  
19 sediment reduction measured in pounds created by a best  
20 management practice in accordance to a verification plan and  
21 approved by the department.

22 "Watershed implementation plan." A plan created to achieve  
23 water quality improvement goals within a watershed of this  
24 Commonwealth, including, but not limited to, Chesapeake Bay  
25 Watershed implementation plans, county action plans or other  
26 watershed-based restoration and implementation plans.

27 § 3304. Clean Streams Fund.

28 (a) Establishment.--The Clean Streams Fund is established in  
29 the State Treasury.

30 (b) Deposits.--

1           (1) The following shall be deposited into the fund under  
2 subsection (a):

3           (i) Money appropriated for purposes of the fund.

4           (ii) Federal money appropriated or authorized for  
5 purposes of the fund.

6           (iii) Money received from another governmental  
7 agency through an interagency agreement or memorandum of  
8 understanding.

9           (iv) A gift or other contribution from a public or  
10 private source.

11           (v) Return on money dedicated for the fund,  
12 including, but not limited to, interest on loans,  
13 investment interest or refunds.

14           (2) For fiscal year 2021-2022, at least \$250,000,000 is  
15 appropriated to the fund.

16           (c) Distribution.--The deposits made to the fund under  
17 subsection (b) shall be distributed annually as follows:

18           (1) Fifty percent to the commission to implement the  
19 program under section 3305 (relating to Agriculture  
20 Conservation Assistance Program).

21           (2) Twenty percent to the department for the Acid Mine  
22 Drainage Abatement and Treatment Fund.

23           (3) Ten percent to PENNVEST for implementation of the  
24 Pennsylvania Clean Water Procurement Program established in  
25 section 3306 (relating to Pennsylvania Clean Water  
26 Procurement Program).

27           (4) Ten percent to the department for Municipal Storm  
28 Water Assistance Program established in section 3307  
29 (relating to Municipal Storm Water Assistance Program).

30           (5) Two and one-half percent to the Department of

1 Conservation and Natural Resources for the Keystone Tree  
2 Restricted Account as established under section 6602  
3 (relating to establishment).

4 (6) Seven and one-half percent to the Nutrient  
5 Management Fund established in 3 Pa.C.S. § 512 (relating to  
6 Nutrient Management Fund).

7 (d) Nonreversion.--Any money remaining in the fund,  
8 including interest at the end of each fiscal year, shall not  
9 revert to the General Fund but shall remain in the fund.

10 (e) Status of fund.--The fund shall not be subject to 42  
11 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system).  
12 § 3305. Agriculture Conservation Assistance Program.

13 (a) Establishment.--The Agriculture Conservation Assistance  
14 Program is established in the commission.

15 (b) Sources of funding.--Funding for the program may be  
16 provided through any of the following:

17 (1) Money allocated from the fund under section 3304(c)  
18 (relating to Clean Streams Fund).

19 (2) Other money appropriated for the purposes of the  
20 program.

21 (3) Federal money appropriated or authorized for  
22 purposes of the program.

23 (4) Money received from another governmental agency  
24 through an interagency agreement or memorandum of  
25 understanding.

26 (5) A gift or other contribution from a public or  
27 private source.

28 (6) Return on money dedicated for the program, including  
29 interest on loans, investment interest or refunds.

30 (c) Powers and duties of commission.--The commission shall:

1       (1) Adopt performance standards for the administration  
2 and oversight of the program, including best management  
3 practices to be implemented and receive funding under the  
4 program.

5       (2) Provide a system of program evaluation and quality  
6 control.

7       (3) Annually assess the program and report the  
8 assessment to:

9           (i) The chairperson and minority chairperson of the  
10 Agriculture and Rural Affairs Committee of the Senate.

11           (ii) The chairperson and minority chairperson of the  
12 Agriculture and Rural Affairs Committee of the House of  
13 Representatives.

14           (iii) The chairperson and minority chairperson of  
15 the Environmental Resources and Energy Committee of the  
16 Senate.

17           (iv) The chairperson and minority chairperson of the  
18 Environmental Resources and Energy Committee of the House  
19 of Representatives.

20       (4) Develop a training, education and technical  
21 assistance program for technicians, engineers and other  
22 individuals performing work under the program.

23       (5) Create a system for collecting and reporting of  
24 collected data on funded practices to governmental agencies,  
25 in a manner consistent with criteria established under  
26 Federal and State laws.

27       (d) Delegation of powers and duties.--In performance of its  
28 powers and duties, the commission may delegate to The  
29 Pennsylvania State University or other entity determined  
30 appropriate by the commission to execute specific administrative

1 tasks and activities. Up to ~~4%~~ 2% of the funds provided under <--  
2 subsection (b) may be committed by the commission to compensate  
3 the entities performing the administrative tasks and activities.

4 (e) Administration expenses.--The commission may dedicate up  
5 to ~~4%~~ 2% of the funds allocated under subsection (b) for <--  
6 expenses incurred in administration of the program.

7 (f) Apportionment criteria.--The commission shall apportion  
8 the funds under subsection (b) to participating conservation  
9 districts based on written apportionment criteria developed by  
10 the commission to establish priorities based on preventing  
11 nutrient and sediment pollution. The following shall apply:

12 (1) The apportionment criteria shall consider:

13 (i) Agriculturally impaired stream miles.

14 (ii) The number of cropland acres.

15 (iii) The number of farms.

16 (iv) The number of livestock and poultry.

17 (v) Other criteria as established by the commission.

18 (2) Any apportioned funds that are not used in any  
19 fiscal year may roll over for the following fiscal year. Any  
20 unused apportioned funds after two years shall be  
21 reapportioned to participating conservation districts in the  
22 following year, consistent with the apportionment criteria  
23 prescribed under this section.

24 (g) Powers and duties of participating conservation  
25 districts.--The following shall apply:

26 (1) Each conservation district participating in the  
27 program shall manage and administer funds apportioned by the  
28 commission in a manner consistent with this section and the  
29 guidelines established by the commission. Each participating  
30 conservation district shall enter into an agreement with the

1 commission to establish the administrative responsibilities  
2 and activities to be performed by the conservation district.

3 (2) Funds apportioned to a participating conservation  
4 district shall be used for:

5 (i) Approving and providing financial assistance to  
6 the person who received approval for the project to  
7 install and implement BMPs, consistent with the criteria  
8 for approval of projects provided under subsection (j).

9 (ii) Costs for technical training and education and  
10 technical assistance in administration of projects  
11 approved by the conservation district, including  
12 technical assistance provided by third parties in  
13 accordance with the provisions of subsection (c)(4).

14 (iii) Establishment of procedures for submission and  
15 approval of applications for financial assistance for  
16 BMPs that minimize, to the extent feasible, procedural  
17 tasks and obligations for applicants.

18 (iv) Adoption of written criteria for ranking of  
19 applications for financial assistance and determination  
20 of proposed projects to be given priority.

21 (v) Entering into written agreements with recipients  
22 of approved funding.

23 (vi) Administration and procedures to ensure  
24 recipients of financial assistance timely complete  
25 projects in a manner that meets established design and  
26 construction standards.

27 (vii) Adoption of procedures to ensure that  
28 recipients of the approved funding will fully comply with  
29 requirements for future maintenance activities  
30 established under the terms of agreement.

1           (viii) Development of procedures to ensure proper  
2           performance of agreements executed under the program.

3           (3) A participating district may dedicate up to ~~12%~~ 6% <--  
4           of the annual amount apportioned by the commission under  
5           subsection (f) for expenses incurred in administration of the  
6           program.

7           (h) Advisory committee.--Within a conservation district, a  
8           committee may be appointed by the conservation district board to  
9           advise the program and identify local priorities and  
10           opportunities to complement other programs. The committee shall  
11           include, at a minimum, one staff member of the conservation  
12           district and one local representative of the United States  
13           Department of Agriculture Natural Resources Conservation Service  
14           and may include up to three other local representatives who are  
15           knowledgeable of agricultural operations and conservation.

16           (i) Applications and certifications.--The following shall  
17           apply:

18           (1) In a county with a participating conservation  
19           district, a person may apply to the person's applicable  
20           delegated conservation district for an eligible project under  
21           the program. In a county without a participating conservation  
22           district, a person may apply directly to the commission for  
23           an eligible project under the program. The conservation  
24           district and commission shall prescribe the respective form  
25           and manner of the application. The application, at a minimum,  
26           shall include:

27           (i) The location of the project.

28           (ii) The description of the project, including the  
29           planned BMPs.

30           (iii) If applicable, the amount and sources of

1 funding available for the project.

2 (iv) The total cost of the project.

3 (v) Any other information as required by the  
4 conservation district or commission, as applicable.

5 (vi) Relevance of the project to the development,  
6 improvement or implementation of the applicant's manure  
7 or nutrient management plan, conservation plan or  
8 agriculture erosion and sediment control plan.

9 (2) The conservation district or commission, as  
10 applicable, shall review complete applications based upon the  
11 criteria established under subsection (j) on an ongoing basis  
12 and in the order received. Within 90 days of receipt of a  
13 complete application, unless extenuating circumstances  
14 prevent the conservation district or commission from doing  
15 so, the conservation district or commission, as applicable,  
16 shall notify the applicant of:

17 (i) Whether the project is approved for funding  
18 under the program.

19 (ii) The total amount of funds approved for the  
20 project.

21 (iii) The amount of each type of funding approved  
22 for the project.

23 (3) Upon completion of a project funded under the  
24 program, the person who received the approval for the project  
25 shall notify the conservation district or commission, as  
26 applicable, of the completion of the project and shall submit  
27 all documents to certify the completion.

28 (4) Projects funded under the program may be subject to  
29 inspection by the commission, conservation district or a  
30 designated agent.

1           (5) The funds shall be distributed upon certification  
2           and verification that the funded project has been completed  
3           and design and construction standards have been met.

4           (j) Criteria for evaluation of applications.--In approving  
5           applications for eligible projects under the program, the  
6           applicable delegated conservation district or commission shall  
7           give priority to complete applications based upon the following  
8           criteria:

9           (1) The project meets the goals of any applicable  
10           watershed implementation plan.

11           (2) If applicable to the agricultural operation, the  
12           applicant has a conservation plan or agricultural erosion and  
13           sediment control plan and a manure management plan or  
14           nutrient management plan. Development of the plans shall be  
15           included in the application if not yet developed prior to the  
16           application.

17           (3) The project implements best management practices  
18           included in a conservation plan, agricultural erosion and  
19           sediment control plan, manure management plan or nutrient  
20           management plan. For purposes of this paragraph, the  
21           conservation district or commission shall give priority to  
22           projects that implement best management practices for control  
23           of nitrogen or phosphorus.

24           (4) An agricultural operation with an animal  
25           concentration area shall have implemented best management  
26           practices necessary to abate storm water runoff, loss of  
27           sediment, loss of nutrients and runoff of other pollutants  
28           from the animal concentration area or the implementation of  
29           best management practices shall be included in an application  
30           for funds.

1 (5) Proximity to surface waters, public drinking water  
2 sources or karst geology with underground drainage systems or  
3 open sinkholes.

4 (6) The project meets the design and construction  
5 standards established by the commission. If standards do not  
6 exist for a best management practice approved by the  
7 commission, the commission may establish or approve design,  
8 construction and certification standards for a best  
9 management practice.

10 (7) Any other criteria considered by the conservation  
11 district, as applicable, and approved by the commission.

12 (k) Liability for failure of performance.--A person  
13 receiving funds under an approved project who fails to  
14 adequately perform any term of the agreement executed for the  
15 project shall be liable for repayment of money provided to the  
16 recipient related to adequate performance of the agreement term.  
17 The commission or conservation district may initiate any legal  
18 action in law or equity to compel adequate performance of a  
19 project agreement or recoup funds provided under an approved  
20 project for which the recipient is liable for repayment under  
21 this subsection. Any funds repaid to the commission as a result  
22 of failure of performance of a project agreement may be provided  
23 to the conservation district that was party to that project  
24 agreement for use in other project agreements.

25 (l) Definition.--As used in this section, the term "program"  
26 shall mean the Agricultural Conservation Assistance Program  
27 established under this section.

28 § 3306. Pennsylvania Clean Water Procurement Program.

29 (a) Establishment.--The Pennsylvania Clean Water Procurement  
30 Program is established and shall provide for the purchase of a

1 verified nutrient or sediment reduction through a competitive  
2 bidding process consistent with 62 Pa.C.S. Pt. I (relating to  
3 Commonwealth Procurement Code).

4 (b) Funding.--

5 (1) Funding for the program may be provided through any  
6 of the following:

7 (i) Money allocated under section 3304(c) (relating  
8 to Clean Streams Fund).

9 (ii) Any other money appropriated for the program  
10 that is not transferred from money available to the  
11 department or another agency for a similar program.

12 (iii) Federal money appropriated or authorized for  
13 purposes of the program.

14 (iv) Money received from another governmental agency  
15 through an interagency agreement or memorandum of  
16 understanding.

17 (v) A gift or other contribution from a public or  
18 private source.

19 (vi) Return on money dedicated to the program,  
20 including, but not limited to interest on loans,  
21 investment interest or refunds.

22 (2) No more than 4% of the money dedicated to the  
23 program may be used by the department to perform its duties  
24 under subsection (g).

25 (c) Duties of PENNVEST.--PENNVEST shall:

26 (1) Issue a request for proposals or initiate  
27 competitive bidding process under 62 Pa.C.S. Pt. I for the  
28 supply of a verified nutrient or sediment reduction toward  
29 the achievement of the Chesapeake Bay Total Maximum Daily  
30 Load. PENNVEST shall require that a response to the request

1 for proposals or competitive bidding process shall include:

2 (i) The legal name, address and contact information,  
3 including where available a telephone number and email  
4 address of the person submitting the proposal.

5 (ii) A description of the project or practices to be  
6 used or implemented to achieve the proposed nutrient or  
7 sediment reduction, including an estimate of the amount  
8 of reduction in pounds per year for each year of the  
9 contract and the basis for estimates.

10 (iii) The location where the projects or practices  
11 will be used or implemented.

12 (iv) The expected life of each reduction that will  
13 be achieved as a result of the proposed projects or  
14 practices.

15 (v) A description of the ownership, or written  
16 agreement with the owner, of each parcel of land or  
17 facility that will be used in implementing the projects  
18 or practices.

19 (vi) A description of the measures to be used to  
20 quantify, by measurement or modeling, the amounts of the  
21 reductions of nutrients or sediment resulting from the  
22 proposed projects or practices, and a "verification plan"  
23 to verify the reductions, at such times or intervals as  
24 PENNVEST or the department shall specify.

25 (vii) A suggested payment schedule.

26 (viii) A statement of the qualified bidder's  
27 qualification, experience and resources.

28 (ix) A statement of the qualified bidder's proposed  
29 surety and other financial assurances.

30 (2) Evaluate, in consultation with the department and

1 the commission, the responses to the request for proposals or  
2 competitive bidding process under paragraph (1).

3 (3) Execute a contract with a qualified bidder. A  
4 contract under this paragraph:

5 (i) May not be for a term of more than 10 years.

6 (ii) Shall require periodic submissions from the  
7 qualified bidder, which may be required in conjunction  
8 with specified performance targets, in accordance with a  
9 verification plan approved by the department.

10 (iii) Shall require that payment be conditioned on  
11 the achievement of specific outcomes based on defined  
12 performance targets in accordance with a verification  
13 plan approved by the department.

14 (iv) Shall specify measures that PENNVEST will take  
15 in the event of a failure by the qualified bidder to meet  
16 or satisfy any performance obligation, or otherwise fail  
17 to comply with any term or condition of the contract,  
18 including the withholding of payments or portions of  
19 payments that would otherwise be made, the use of payment  
20 adjustments and time schedules, including the extension  
21 of any target date, if performance targets or schedules  
22 are not met, cancellation of the contract in the event of  
23 a substantial failure of performance that cannot be  
24 readily corrected or mitigated, and such other measures  
25 as may be appropriate.

26 (4) After the department has verified a nutrient or  
27 sediment reduction, purchase a verified nutrient or sediment  
28 reduction in accordance with the terms of a contract under  
29 paragraph (3).

30 (d) Publicly funded reductions.--A verified nutrient or

1 sediment reduction funded entirely by public funding may not be  
2 eligible to be purchased under the program. If a percentage of a  
3 verified nutrient or sediment reduction is funded by public  
4 funding, the percentage of the remaining verified nutrient or  
5 sediment reduction that is eligible to be purchased shall be  
6 commensurate with the percentage of the verified nutrient or  
7 sediment reduction that is not provided by public funding.

8 (e) Criteria.--The criteria for the evaluation of responses  
9 to the request for proposals or competitive bidding process  
10 under subsection (c) (1) and the weighted percentage to be  
11 applied to each factor in the evaluation of the responses shall  
12 be determined by PENNVEST in consultation with the department  
13 and commission and be published as part of the request for  
14 proposals or competitive bidding process under subsection (c)  
15 (1). The criteria to be considered must include all of the  
16 following:

17 (1) The quantity of nutrient or sediment loads  
18 anticipated to be reduced.

19 (2) The dollar cost per pound of nutrient or sediment  
20 removed.

21 (3) A verified nutrient or sediment reduction in a  
22 locally impaired watershed.

23 (4) A verified nutrient or sediment reduction in a  
24 county designated by the department as a Tier 1 Chesapeake  
25 Bay county.

26 (5) The extent to which the project includes small  
27 farms.

28 (6) The extent to which the project would provide  
29 additional community and environmental benefits, including  
30 mitigation of flooding, human exposure to toxic substances

1 and climate change.

2 (7) Any additional criteria determined relevant and  
3 necessary by PENNVEST, the department and commission.

4 (f) Annual report.--PENNVEST shall publish and make  
5 available to the public an annual report on the program  
6 detailing all of following for the prior year:

7 (1) The total cost of the program.

8 (2) The best management practices implemented which  
9 resulted in nutrient or sediment reductions.

10 (3) The verified nutrient or sediment reductions  
11 achieved toward the satisfaction of the Chesapeake Bay Total  
12 Maximum Daily Load.

13 (4) The total cost for each verified nutrient or  
14 sediment reduction.

15 (5) The participation of small farms in the program.

16 (g) Duties of department.--The department shall:

17 (1) Advise PENNVEST as it establishes criteria under  
18 subsection (e).

19 (2) Review and approve a verification plan submitted  
20 with a response to a request for proposals or competitive  
21 bidding process under subsection (c)(1) and advise PENNVEST  
22 regarding the acceptability of a verification plan, including  
23 what changes, if any, must be made in order for it to be  
24 acceptable. To be approved, a verification plan must describe  
25 the procedures that can be easily used by the bidder, the  
26 department or a technically qualified inspection contractor  
27 engaged by the department, to inspect any projects or  
28 practices utilized by a bidder and determine the amount of  
29 any reduction of nutrients or sediment being achieved under  
30 the terms of the contract.

1       (3) Evaluate the responses to the request for proposals  
2 or competitive bidding process based on the criteria under  
3 subsection (e) and advise PENNVEST regarding the  
4 acceptability of the responses.

5       (4) In accordance with a contract under subsection (c)  
6 (3), ensure, through inspections, compliance audits or other  
7 means, that a qualified bidder is in compliance with an  
8 approved verification plan. The department may enter into an  
9 agreement with a third party to perform the duty under this  
10 paragraph.

11 (h) Duties of commission.--The commission shall:

12       (1) Advise PENNVEST as criteria is established under  
13 subsection (e).

14       (2) Review a response to a request for proposals or  
15 competitive bidding process under subsection (c)(1) and  
16 advise PENNVEST accordingly.

17 (i) Regulations.--The department may promulgate regulations  
18 necessary to administer the provisions of this section. A lack  
19 of regulations promulgated under this section shall not preclude  
20 the department, the commission or PENNVEST from administering  
21 and implementing the provisions of this section.

22 (j) Definition.--As used in this section, the term "program"  
23 means the Pennsylvania Clean Water Procurement Program  
24 established under this section.

25 (k) Expiration.--This section shall expire 10 years after  
26 the effective date of this section.

27 § 3307. Municipal Storm Water Assistance Program.

28 (a) Establishment.--The Municipal Storm Water Assistance  
29 Program is established in the department.

30 (b) Sources of funding.--Funding for the program may be

1 provided through any of the following:

2 (1) Money allocated from the fund under section 3304(c)  
3 (relating to Clean Streams Fund).

4 (2) Any other money appropriated for the program.

5 (3) Federal money appropriated or authorized for  
6 purposes of the program.

7 (4) Money received from another governmental agency  
8 through an interagency agreement or memorandum of  
9 understanding and directed to the program.

10 (5) A gift or other contribution from a public or  
11 private source and directed to the program.

12 (6) Return on money dedicated for the program, including  
13 interest on loans, investment interest or refunds.

14 (c) Powers and duties of department.--The department shall:

15 (1) Provide a system of financial assistance to  
16 counties, municipalities or municipal authorities for the:

17 (i) Planning for storm water management under the  
18 act of October 4, 1978 (P.L.864, No.167), known as the  
19 Storm Water Management Act.

20 (ii) Implementation of projects pursuant to a  
21 Pollution Reduction Plan as part of a National Pollutant  
22 Discharge Elimination System (NPDES) Permit for  
23 Stormwater Discharges from Municipal Separate Storm Sewer  
24 Systems (MS4s).

25 (2) Adopt performance standards for administration and  
26 oversight of the program and procedures for public  
27 participation in the development and revision of the project  
28 ranking criteria established in this section.

29 (3) Establish a system of program evaluation and quality  
30 control.

1           (4) Adopt written and publicly available criteria for  
2 ranking of applications for financial assistance and  
3 determination of proposed projects to be given priority,  
4 including:

5           (i) Projects that are part of a multimunicipal  
6 regional storm water plan or integrated water resources  
7 plan.

8           (ii) Projects with a perpetual easement protecting  
9 the implemented practice, where applicable.

10          (iii) Projects with a contract for long term  
11 maintenance of the implemented project.

12          (iv) Projects that utilize geographic information  
13 systems or other targeting techniques to identify cost-  
14 effective practice choices and siting.

15          (v) projects that leverage a greater ratio of  
16 matching funds based on fiscal need of the applicant.

17          (vi) Location of projects in an environmental  
18 justice area as designated by the department; and

19          (vii) Projects that will provide multiple benefits,  
20 such as filtering toxic pollutants or mitigating  
21 flooding.

22          (5) Annually assess the program and produce a report  
23 that describes the numbers and types of projects funded, the  
24 names and locations of projects and description of each  
25 project and the amount of funding provided, the number of  
26 applications received, the benefits that have resulted and  
27 are expected to result, other measures taken by the  
28 department to implement the program, a financial accounting  
29 of funds received and expended and any other information that  
30 the department determines would be appropriate. Copies of the

1 report shall be provided to the following:

2 (i) The chairperson and minority chairperson of the  
3 Environmental Resources and Energy Committee of the  
4 Senate.

5 (ii) The chairperson and minority chairperson of the  
6 Environmental Resources and Energy Committee of the House  
7 of Representatives.

8 (iii) The chairperson and minority chairperson of  
9 the Urban Affairs and Housing Committee of the Senate.

10 (iv) The chairperson and minority chairperson of the  
11 Urban Affairs Committee of the House of Representatives.

12 (v) The chairperson and minority chairperson of the  
13 Local Government Committee of the Senate.

14 (vi) The chairperson and minority chairperson of the  
15 Local Government Committee of the House of  
16 Representatives.

17 (6) Create a system for collecting and reporting of  
18 collected data on funded practices to governmental agencies,  
19 in a manner consistent with criteria established under  
20 Federal and State law.

21 (d) Administration expenses.--The department may dedicate no  
22 more than 5% of the funds allocated in subsection (b) for  
23 expenses incurred in administration of the program by the  
24 department.

25 (e) Definition.--For purposes of this section, the term  
26 "program" means the Municipal Storm Water Assistance Program  
27 established under this section.

28 Section 3. This act shall take effect in 60 days.