

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1326 Session of  
1989

INTRODUCED BY MADIGAN, MUSTO, HELFRICK, STAPLETON, TILGHMAN,  
LINCOLN, PETERSON, REGOLI, WENGER, AFFLERBACH, ROCKS, O'PAKE,  
BRIGHTBILL, SALVATORE, MELLOW, STOUT, PUNT, WILLIAMS, WILT,  
SCANLON, RHOADES, ROSS, BAKER, STEWART, LEMMOND, ANDREZESKI,  
HOPPER AND SHUMAKER, OCTOBER 30, 1989

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, OCTOBER 30, 1989

AN ACT

1 Amending the act of November 26, 1978 (P.L.1375, No.325),  
2 entitled, as amended, "An act providing for the regulation  
3 and safety of dams and reservoirs, water obstructions and  
4 encroachments; consolidating and clarifying the programs of  
5 the Department of Environmental Resources and Navigation  
6 Commission for the Delaware River; establishing penalties and  
7 repealing certain acts," further providing for the  
8 conservation of wetlands.

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

11 Section 1. Section 2 of the act of November 26, 1978  
12 (P.L.1375, No.325), known as the Dam Safety and Encroachments  
13 Act, is amended by adding paragraphs to read:

14 Section 2. Purposes.

15 The purposes of this act are to:

16 \* \* \*

17 (5) Provide for the conservation of wetlands through a  
18 consistent and efficient program for the regulation of water  
19 obstructions and encroachments.

1       (6) Establish more effective mechanisms (including  
2       coordinated public and private efforts) to mitigate and  
3       compensate for the loss or impact on wetland resources, with  
4       the objective of assuring, on a Statewide and regional basis,  
5       no net loss of wetland areas and values as a result of the  
6       construction, operation and maintenance of dams, water  
7       obstructions and encroachments.

8       Section 2. Section 3 of the act is amended by adding  
9       definitions to read:

10      Section 3. Definitions.

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

14      \* \* \*

15      "Committee." The Wetlands Conservation Advisory Committee  
16      created pursuant to section 5.1.

17      \* \* \*

18      "Critical habitat." A critical habitat for threatened or  
19      endangered species as defined in the Federal Endangered Species  
20      Act (16 U.S.C. § 1532 et seq.). For a threatened or endangered  
21      species, the term includes the following:

22           (1) The specific areas within the geographical area  
23           which are occupied by the species at the time the species is  
24           listed in accordance with the Federal Endangered Species Act,  
25           30 Pa.C.S. § 2305 (relating to threatened and endangered  
26           species) or 34 Pa.C.S. § 2167 (relating to endangered or  
27           threatened species) and on which are found those physical or  
28           biological features:

29               (i) which are essential to the conservation of the  
30               species; and

1           (ii) which may require special management  
2           considerations or protection.

3           (2) The specific areas outside the geographical area  
4           which are occupied by the species at the time it is listed  
5           and which have been specifically determined by the Secretary  
6           of the Interior, the Pennsylvania Game Commission or the  
7           Pennsylvania Fish Commission as areas essential to the  
8           conservation of the species.

9           \* \* \*

10          "Exceptional value wetland." A wetland designated by the  
11          Environmental Quality Board pursuant to the procedures of  
12          section 5(d).

13          "Fund." The Pennsylvania Wetlands Conservation Fund created  
14          under section 26.1.

15          \* \* \*

16          "Hydrologically connected." A direct and substantial  
17          connection between two bodies of water, through surface water  
18          drainage or clearly identifiable groundwater flow, such that the  
19          impact upon the hydrologic regime or water quality in one body  
20          of water is likely to have a material and significant impact  
21          upon the hydrologic regime or water quality of the connected  
22          body of water.

23          "Land" or "lands." Includes any interest in surface or  
24          subsurface estates, including mineral rights.

25          "Limited value wetland." Any manmade or artificially created  
26          wetland (except any wetland created or improved as mitigation or  
27          compensation for prior or future activities), including, but not  
28          limited to, any storm water detention basin, drainage ditch,  
29          mine drainage pit, waste lagoon or impoundment, or treatment  
30          wetland; and any natural wetland which does not perform any of

the following functions:

(1) Important natural biological functions, including significant food chain production or general habitat and/or significant nesting, spawning, rearing and resting sites for aquatic or land species.

(2) Significant hydrologic functions, including contribution to natural drainage patterns, sedimentation control, salinity distribution, flushing and natural water filtration.

(3) Shielding of other areas from wave action erosion or storm damage.

(4) Significant storage area for storm waters and flood waters.

(5) Significant natural recharge to groundwaters.

"Mitigation." The development or management of wetlands to replace or compensate for the values and functions of other wetlands affected as a result of unavoidable impacts of a project.

\* \* \*

"Permit action." A structure or activity authorized under a permit issued or proposed pursuant to this act.

\* \* \*

"Secretary." The Secretary of Environmental Resources of the Commonwealth.

"Trust." The Pennsylvania Wetlands Trust created pursuant to section 26.1.

\* \* \*

"Wetlands." Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do

1 support, a prevalence of vegetation typically adapted for life  
2 in saturated soil conditions, commonly known as hydrophytic  
3 vegetation. The department, in designating a wetland, shall use  
4 the three-parameter approach (considering hydrology, soils and  
5 vegetation) enumerated in the January 1989 "Federal Manual for  
6 Identifying and Delineating Jurisdictional Wetlands" adopted by  
7 the United States Army Corps of Engineers and the United States  
8 Environmental Protection Agency and any subsequent amendments  
9 thereto.

10 Section 3. Section 5(a) of the act is amended by adding  
11 paragraphs and the section is amended by adding subsections to  
12 read:

13 Section 5. Regulations and standards.

14 (a) The Environmental Quality Board shall have the power,  
15 and its duty shall be, to adopt such regulations and standards  
16 for the design, construction, operation, monitoring,  
17 maintenance, modification, repair and removal of dams and  
18 reservoirs, water obstructions and encroachments as are  
19 necessary and proper to carry out the purposes of this act. The  
20 regulations shall include, but are not limited to, rules  
21 establishing:

22 \* \* \*

23 (6) Criteria and procedures for the delineation and  
24 classification of wetlands. Any criteria, procedures, and  
25 related guidelines and manuals for the delineation and  
26 classification of wetlands shall incorporate and be  
27 consistent with those officially adopted and promulgated by  
28 the United States Army Corps of Engineers pursuant to section  
29 404 of the Federal Water Pollution Control Act (62 Stat.  
30 1155, 33 U.S.C. § 1344).

1       (7) Criteria and procedures for mitigation of wetland  
2       impacts which are reasonable and commensurate with the effect  
3       of a proposed project on the functions and values of the  
4       wetlands impacted by the project.

5       (8) Rules listing exceptional value wetlands designated  
6       pursuant to the procedures provided in subsection (d), and  
7       requirements consistent with subsection (e) governing the  
8       location, design, construction, operation and maintenance of  
9       dams, water obstructions and encroachments designed to  
10      protect and conserve such exceptional value wetlands.

11      \* \* \*

12      (d) Exceptional value wetlands shall be designated in the  
13      following manner:

14           (1) Following the procedures set forth in paragraphs (2)  
15           and (3), the Environmental Quality Board may, by regulation,  
16           designate a wetland as an exceptional value wetland if:

17                   (i) The wetland serves as known or critical habitat  
18                   of any plant or animal species currently listed as  
19                   endangered or threatened pursuant to the Federal  
20                   Endangered Species Act (16 U.S.C. § 1531 et seq.), 30  
21                   Pa.C.S. § 2305 (relating to threatened and endangered  
22                   species) or 34 Pa.C.S. § 2167 (relating to endangered or  
23                   threatened species).

24                   (ii) The wetland is hydrologically connected to and  
25                   located within one-half mile of wetlands that are  
26                   identified under subparagraph (i), that drain into or  
27                   otherwise directly impact wetland identified under  
28                   subparagraph (i), and that are necessary or important to  
29                   maintaining the habitat of the threatened or endangered  
30                   species within the wetland identified under subparagraph

1       (i).

2           (iii) The wetland is located within the corridor of  
3       a stream which has been designated as "wild" pursuant to  
4       the act of December 5, 1972 (P.L.1277, No.283), known as  
5       the "Pennsylvania Scenic Rivers Act," or the Wild and  
6       Scenic Rivers Act (Public Law 90-542, 16 U.S.C. § 1271 et  
7       seq.).

8           (iv) The wetland is adjacent and hydrologically  
9       connected to or forms the headwaters of a wilderness  
10       trout stream designated by the Pennsylvania Fish  
11       Commission.

12           (v) The wetland serves as a critical recharge area  
13       to groundwaters utilized by an existing public drinking  
14       water supply.

15           (vi) The wetland is located in the watershed of, and  
16       is important to maintaining the quality of, surface  
17       waters used by an existing unfiltered public drinking  
18       water supply.

19           (vii) The wetland is located in the watershed of,  
20       and is important to maintaining the quality of, waters  
21       designated as "exceptional value" pursuant to regulations  
22       adopted by the Environmental Quality Board, as set forth  
23       in 25 Pa. Code Ch. 93 (relating to water quality  
24       standards).

25       (2) Prior to proposal of rules designating an  
26       exceptional value wetland, the department shall conduct a  
27       study and prepare a report. Such report shall:

28           (i) Identify the area and location of the wetland to  
29       be designated.

30           (ii) Evaluate the environmental and ecological

1 values of the wetland.

2 (iii) Describe and evaluate the impact of existing  
3 and proposed land uses in the area adjacent to the  
4 wetland.

5 (iv) Describe and assess the social and economic  
6 effect of an exceptional value wetland designation on  
7 existing and proposed uses of public and private lands  
8 adjacent to or in the watershed of the wetland, including  
9 impacts upon the value of any private lands which may be  
10 affected or restricted by such designation.

11 (3) A public hearing shall be held in the county where  
12 the wetland is located. Notice of the public hearing shall be  
13 given at least three weeks before the hearing in a newspaper  
14 of general circulation in the county. At least three weeks  
15 prior to such hearing, notice shall also be given by first  
16 class mail to the owners of all lands within the watershed of  
17 the wetland, as shown on county tax assessment records.

18 (4) Following the adoption of rulemaking by the  
19 Environmental Quality Board designating an exceptional value  
20 wetland, such wetland shall be mapped on topographic maps at  
21 a scale of 1:24,000. A copy of such map shall be filed by the  
22 department with the municipality where the wetland is  
23 located, and a copy of such map shall be filed and recorded  
24 in the Office of Recorder of Deeds for the county where the  
25 wetland is located. All maps prepared and filed in accordance  
26 with this subsection shall be available to the public. The  
27 department shall update such maps as new information or as  
28 data becomes available.

29 (e) The Environmental Quality Board shall establish by  
30 regulation standards and permit application review criteria



governing the location, design, construction, operation and maintenance of dams, water obstructions and encroachments located in or directly impacting exceptional value wetlands. Such standards and review criteria shall provide for approval of permits for such dams, water obstructions and encroachments where either of the following requirements is satisfied:

(1) The project is either water-dependent or necessary to provide for public health, safety or welfare, and:

(i) There is no practicable alternative to the proposed project.

(ii) Any adverse environmental impacts upon the wetland have been avoided or reduced to the maximum extent possible.

(iii) Mitigation will be provided to replace the areal extent and functions of the impacted wetlands, in order to compensate for any unavoidable adverse impacts.

(2) The project has no significant adverse impact on the listed exceptional value wetland or includes designs (including mitigation) which the department determines will provide a net increase in the area or functional value of the exceptional value wetland.

Section 4. The act is amended by adding a section to read:  
Section 5.1. Wetlands Conservation Advisory Committee.

(a) There shall be created a Wetlands Conservation Advisory Committee. The committee shall be appointed within three months after the effective date of this act and biennially thereafter. The committee shall consist of 16 members, appointed as follows:

(1) Two members shall be appointed by the President pro tempore of the Senate.

(2) Two members shall be appointed by the Speaker of the

1 House of Representatives.

2 (3) Two members shall be elected from among the  
3 membership of the Citizens Advisory Council.

4 (4) Ten members shall be appointed by the secretary. Six  
5 members shall be representatives from Statewide or regional  
6 organizations representing building, construction, landowner,  
7 mineral extraction, agricultural and commercial interests.  
8 Four members shall be representatives from environmental,  
9 conservation, sportsmen's, professional and public interest  
10 organizations. The secretary shall solicit written  
11 nominations for membership on the committee from Statewide  
12 and regional organizations representing such interests, and  
13 shall select members of the committee from among those  
14 nominated by such organizations.

15 (b) Committee members shall not receive a salary but shall  
16 be reimbursed for all necessary expenses incurred in the  
17 performance of their duties.

18 (c) All actions of the committee shall be by majority vote.  
19 The committee shall meet at the call of the secretary, but not  
20 less than semiannually, to carry out its duties under this act.  
21 The committee shall select a chairman and such other officers as  
22 it deems appropriate.

23 (d) The department shall consult with the committee in the  
24 formulation, drafting and development of all regulations,  
25 guidelines, manuals and policies relating to the delineation and  
26 conservation of wetlands, and the regulation of activities  
27 affecting wetlands under this act or under other acts and  
28 programs administered by the department. The committee shall be  
29 given a reasonable opportunity to review and comment on all  
30 regulations, guidelines, manuals and policies related to

1 wetlands prior to the submission of such regulations to the  
2 Environmental Quality Board for initial consideration, or the  
3 publication of such guidelines, manuals or policies by the  
4 department. The written report of the committee shall be  
5 presented to the Environmental Quality Board with any regulatory  
6 proposal, and the chairman of the committee shall be invited to  
7 participate in the presentation of all regulations relating to  
8 wetlands before the Environmental Quality Board.

9 (e) Nothing herein shall preclude any member of the  
10 committee from filing a petition for rulemaking with the  
11 Environmental Quality Board in accordance with procedures  
12 established by the Environmental Quality Board.

13 Section 5. Section 7 of the act, amended October 23, 1979  
14 (P.L.204, No.70), is amended to read:

15 Section 7. General permits and waiver of permit requirements.

16 (a) The Environmental Quality Board may, by regulation,  
17 waive the permit requirements for any category of dam, water  
18 obstruction or encroachment which it determines has  
19 insignificant effect upon the safety and protection of life,  
20 health, property and the environment. The Environmental Quality  
21 Board shall, by regulation, waive the permit requirements for:

22 (1) All categories of water obstructions and  
23 encroachments in, along or across or projecting into any  
24 artificial treatment wetland constructed and maintained for  
25 the purpose of treating acid mine drainage, sewage or other  
26 waste.

27 (2) All categories of water obstructions and  
28 encroachments in, along or across or projecting into any  
29 artificial storm water detention basin, drainage ditch,  
30 erosion and sedimentation control facility, mine drainage

1 pit, waste lagoon or impoundment.

2 (3) All categories of water obstruction and  
3 encroachments in, along or across or projecting into a  
4 natural wetland which the department determines to be a  
5 limited value wetland. If the department, after  
6 investigation, finds that any water obstruction or  
7 encroachment will have a significant effect upon safety or  
8 the protection of life, health, property or the environment,  
9 then it may require the owner of the water obstruction or  
10 encroachment to obtain a permit pursuant to this act.

11 (4) All categories of water obstructions and  
12 encroachments exempted from regulation pursuant to section  
13 404(f) of the Federal Water Pollution Control Act (62 Stat.  
14 1155, 33 U.S.C. § 1344(f)).

15 (5) Those water obstructions or encroachments necessary  
16 to the restoration to active agricultural use of lands that  
17 have been historically devoted to agricultural use, where  
18 such lands have been idle for a period of not more than 25  
19 years and, during such period, have developed wetland  
20 characteristics.

21 (b) The department may, in accordance with rules adopted by  
22 the Environmental Quality Board, issue general permits on a  
23 regional or Statewide basis for any category of dam, water  
24 obstruction or encroachment if the department determines that  
25 the projects in such category are similar in nature, and can be  
26 adequately regulated utilizing standardized specifications and  
27 conditions.

28 (c) General permits shall specify such design, operating and  
29 monitoring conditions as are necessary to adequately protect  
30 life, health, property and the environment, under which such

1 projects may be constructed and maintained without applying for  
2 and obtaining individual permits. The department may require the  
3 registration of any project constructed pursuant to a general  
4 permit.

5 (d) All general permits shall be published in the  
6 Pennsylvania Bulletin at least 30 days prior to the effective  
7 date of the permit.

8 (e) Specific general permits shall be issued as follows:

9 (1) On or before December 31, 1989, the department shall  
10 develop and adopt general permits for the following  
11 categories of minor encroachments in, along or across  
12 wetlands:

13 (i) Bridges, culverts, and other road or driveway  
14 crossings affecting a cumulative area of less than 1.0  
15 acre of wetlands.

16 (ii) Utility line crossings, including pipelines for  
17 water supply, sewage collection, transportation of  
18 liquid, gaseous, liquefiable or slurry substances, and  
19 cables, conduits, lines or wires for transmission of  
20 electrical energy, telephone, telegraph, radio or  
21 television signals affecting a cumulative area of less  
22 than 2.0 acres of wetlands.

23 (iii) The construction, drilling, operation or  
24 removal of any well or well site permitted pursuant to  
25 the requirements of the act of December 19, 1984  
26 (P.L.1140, No.223), known as the "Oil and Gas Act,"  
27 affecting a cumulative area of less than 2.0 acres of  
28 wetlands.

29 (2) On or before July 1, 1990, the department shall  
30 develop and adopt general permits for each category of water

1 obstruction or encroachment which is exempt from Federal  
2 permit requirements pursuant to United States Department of  
3 the Army regulations 33 CFR 323.4 (relating to discharges not  
4 requiring permits) or which is authorized pursuant to a  
5 Nationwide General Permit issued by the United States  
6 Department of the Army regulations 33 CFR 330.5 (relating to  
7 nationwide permits); or prior to that date, the department  
8 shall report to the General Assembly the specific reasons why  
9 such general permits should not be issued.

10 (3) Any general permits adopted pursuant to paragraphs  
11 (1) and (2) shall be subject to the following limitations and  
12 conditions:

13 (i) The general permit shall not authorize  
14 activities within any exceptional value wetland, any  
15 stream or body of water designated as exceptional value  
16 waters pursuant to 25 Pa.Code Ch. 93 (relating to water  
17 quality standards), or any stream or watercourse  
18 designated as a national or state wild or scenic river in  
19 accordance with the Wild and Scenic Rivers Act (Public  
20 Law 90-542, 16 U.S.C. § 1271 et seq.), or the act of  
21 December 5, 1972 (P.L.1277, No.283), known as the  
22 "Pennsylvania Scenic Rivers Act."

23 (ii) The general permit may require the project  
24 sponsor to develop and implement a mitigation plan  
25 consistent with criteria set forth in the general permit  
26 or to provide compensation through the wetlands  
27 mitigation bank as provided in section 26.1(d).

28 Section 6. Section 9 of the act is amended by adding  
29 subsections to read:

30 Section 9. Permit issuance and conditions.

1       \* \* \*

2       (c) After receipt of a permit application under this act,  
3 the department shall determine whether the application is  
4 administratively complete. For purposes of this section, an  
5 application is administratively complete if it contains  
6 necessary information, maps, fees and other documents,  
7 regardless of whether the information, maps, fees and documents  
8 would be sufficient for issuance of the permit.

9       (1) If the application is not administratively complete,  
10 the department shall, within 60 days of receipt of the  
11 application, return it to the applicant, along with a written  
12 statement of the specific information, maps, fees and  
13 documents that are required to make the application  
14 administratively complete.

15       (2) The department shall deny the application if the  
16 applicant fails to provide the information, maps, fees and  
17 documents within 90 days of receipt of the notice described  
18 in paragraph (1), unless the applicant requests and the  
19 department determines that additional time is necessary to  
20 prepare and submit the required information.

21       (d) (1) The department shall issue or deny permit  
22 applications under this act within the following periods of  
23 time:

24           (i) For dams and reservoirs, within 120 days from  
25 the date of the department's determination under  
26 subsection (c) that the application is administratively  
27 complete.

28           (ii) For all other permits, within 60 days from the  
29 date of the department's determination under subsection  
30 (c) that the application is administratively complete.

1 If the department fails to act upon an administratively complete  
2 application within the time periods specified in this paragraph,  
3 the permit application shall be deemed approved.

4       (2) The time periods in paragraph (1) do not include a  
5 period beginning with the date on which the department has  
6 requested, in writing, that the applicant make substantive  
7 corrections or changes to the application, or provide  
8 additional information supportive of the application, and  
9 ending with the date that the applicant submits the requested  
10 corrections, changes or information.

11       Section 7. Section 17(d) of the act, amended October 23,  
12 1979 (P.L.204, No.70), is amended and the section is amended by  
13 adding a subsection to read:

14       Section 17. Intergovernmental coordination and delegations to  
15                       local agencies.

16       \* \* \*

17       (d) The department shall cooperate and coordinate with the  
18 United States Army Corps of Engineers and other appropriate  
19 Federal and interstate agencies for the purpose of assuring  
20 efficient regulation, permitting and inspection of dams, water  
21 obstructions and encroachments. The department is authorized,  
22 with the approval of the Attorney General, to enter into  
23 administrative agreements with appropriate Federal and  
24 interstate agencies for the following purposes:

25               (1) to facilitate the submission and coordinated review  
26 of permit applications;

27               (2) to avoid unnecessary duplication of staff functions  
28 and hearings;

29               (3) to provide for coordinated inspection, monitoring  
30 and enforcement of [application] applicable laws and



1 regulations; and

2 (4) to accept delegations of authority from Federal and  
3 interstate agencies relating to the regulation of dams, water  
4 obstructions and encroachments.

5 (e) Not later than December 31, 1989, the Governor and the  
6 department shall submit to the Administrator of the United  
7 States Environmental Protection Agency a request, pursuant to  
8 section 404 of the Federal Water Pollution Control Act (62 Stat.  
9 1155, 33 U.S.C. § 1344), to administer the Commonwealth's  
10 individual and general permit program for the discharge of  
11 dredged and fill material into navigable waters. Every six  
12 months following submission of such request, the department  
13 shall report to the General Assembly regarding the status and  
14 progress of actions to obtain approval of such program pursuant  
15 to section 404 of the Federal Water Pollution Control Act.

16 Section 8. The act is amended by adding sections to read:

17 Section 17.1. Local ordinances.

18 (a) The regulation and management of water obstructions and  
19 encroachments in, along or across wetlands, and the delineation  
20 and conservation of wetlands, are hereby declared to be matters  
21 of Statewide concern, requiring the application of consistent  
22 Federal and State criteria, standards and regulations. Except  
23 with respect to ordinances adopted pursuant to the act of July  
24 31, 1968 (P.L.805, No.247), known as the "Pennsylvania  
25 Municipalities Planning Code," all local ordinances and  
26 enactments purporting to define or delineate wetlands, or to  
27 regulate the location, construction, operation or maintenance of  
28 water obstructions or encroachments in, along or across wetlands  
29 are hereby superseded. The Commonwealth, by this enactment,  
30 hereby preempts the regulation of water obstructions and

encroachments in, along or across wetlands and the definition and delineation of wetlands.

(b) Pursuant to the "Pennsylvania Municipalities Planning Code," municipalities may adopt zoning, subdivision and land development ordinances and regulations which consider the conservation of wetland areas, provided that:

(1) Such ordinances and regulations shall not be less stringent nor more restrictive than this act and the regulations adopted by the Environmental Quality Board pursuant to this act.

(2) Such ordinances and regulations shall not address any matter, standard or requirement which is the subject of a regulation adopted by the Environmental Quality Board, except to reference and incorporate such State regulation.

(3) Such ordinance or regulation may not impose additional review, approval or permit requirements upon any water obstruction or encroachment for which a permit is waived pursuant to section 7(a) or which is authorized under a general permit issued pursuant to section 7(c), (d) and (e).

Section 26.1. Pennsylvania Wetlands Trust.

(a) There is hereby created the Pennsylvania Wetlands Trust within the department.

(1) The trust shall consist of seven member trustees, including the secretary or his designee, who shall serve as chairman; two persons appointed by the Governor; two persons appointed by the Speaker of the House of Representatives; and two persons appointed by the President pro tempore of the Senate. The appointed members of the trust shall be citizens of this Commonwealth, who, during their respective terms,

1 shall hold no other State office to which any salary is  
2 attached. The term of office of each appointed members of the  
3 trust shall be for three years, measured from the third  
4 Tuesday of January of the year in which the member takes  
5 office, or until the member's successor has been appointed.  
6 Members of the trust shall include persons knowledgeable in  
7 fields related to wetland conservation, including ecology,  
8 biology, hydrology, engineering, geography and the law.

9 (2) Members of the trust shall not receive a salary but  
10 may be reimbursed for all necessary expenses incurred in the  
11 performance of their duties.

12 (b) There shall be established in the State Treasury a  
13 special fund to be known as the Pennsylvania Wetlands  
14 Conservation Trust Fund, which shall be administered by the  
15 Pennsylvania Wetlands Trust. All fines collected under the penal  
16 provisions of this act and all civil penalties collected under  
17 this act that are related to activities affecting wetlands shall  
18 be paid into the fund. Such additional funds as may from time to  
19 time be appropriated by the General Assembly from the General  
20 Fund or from the proceeds of bonds issued by the Commonwealth  
21 for such purposes shall be deposited in the trust fund. The  
22 trust fund may accept and deposit in the trust fund such grants,  
23 gifts, contributions or bequests as may be made by governmental  
24 agencies or other persons for the purposes of promoting the  
25 conservation, protection and restoration of wetland resources.  
26 All moneys contained in the trust fund are continuously  
27 appropriated to the Pennsylvania Wetlands Trust for the  
28 exclusive use to carry out the purposes of this section.

29 (c) The trust shall have the power and its duty shall be:

30 (1) To conduct and supervise educational programs

1 regarding the values, functions and conservation of wetlands  
2 and related environmental resources.

3 (2) To conduct studies and research regarding the  
4 functions, development, conservation, restoration, creation  
5 and improvement of wetlands.

6 (3) To acquire, in the name of the Commonwealth, by  
7 purchase, gift, lease, or condemnation, and to hold as State  
8 parks, forests or conservation lands:

9 (i) any lands comprising important or exceptional  
10 value wetlands;

11 (ii) any lands adjacent to important or exceptional  
12 value wetlands which the trust deems necessary to protect  
13 the functions and values of important or exceptional  
14 value wetlands; and

15 (iii) any lands suitable and appropriate for the  
16 establishment, creation or restoration of wetlands.

17 The trust may acquire and hold such lands, subject to such  
18 reservations, if any, as the trust deems to be consistent  
19 with such purposes. The trust shall establish priorities for  
20 acquiring wetland pursuant to this subsection based upon  
21 wetland types, functions, size, threat of loss or  
22 degradation, and cost.

23 (4) To acquire fee title to or development rights in any  
24 exceptional value wetland, as designated pursuant to section  
25 5(d), which is not owned by a department, board or agency of  
26 Federal, State or local government or by a nonprofit  
27 conservation organization, unless the owner of such land  
28 executes a written agreement under which the landowner:

29 (i) waives the right to have the wetlands acquired  
30 by the trust; and

1           (ii) agrees, on behalf of himself and his heirs,  
2           successors and assigns, not to construct any structure or  
3           undertake any development within 300 feet of any such  
4           exceptional value wetland.

5 The trust shall submit to the General Assembly each year a  
6 budget identifying the funds necessary to meet this objective in  
7 a timely and effective manner.

8           (5) To acquire fee title or development rights in any  
9           wetlands or adjacent lands where:

10           (i) the department has denied, or imposed conditions  
11           upon approval of, a permit application submitted pursuant  
12           to this act; and

13           (ii) it is determined by the Environmental Hearing  
14           Board or a court of competent jurisdiction that, as a  
15           result of such permit denial or permit conditions, the  
16           landowner has been denied substantially all economically  
17           viable use of the affected land. For purposes of this  
18           subparagraph, there shall be a rebuttable presumption  
19           that an inability to acquire access to or to engage in  
20           development upon more than 60% of the land area  
21           constitutes a denial of substantially all economically  
22           viable use of the affected land. Such rebuttable  
23           presumption may be rebutted only by clear and convincing  
24           proof that the landowner is able to develop, upon the  
25           remaining unaffected portion of the land, an economically  
26           viable use, consistent with zoning and other regulations,  
27           which is equivalent in value to the use that would  
28           otherwise have been possible on the land absent denial of  
29           the permit or imposition of the permit conditions.

30           (6) To plan, develop, construct, restore, expand,

1 improve and maintain wetlands.

2 (7) To transfer, lease or convey, to any county,  
3 municipality, conservation district, conservancy, or other  
4 governmental or qualified nonprofit conservation  
5 organization, such wetlands and adjacent lands, subject to  
6 such terms, conditions and reservations as will assure  
7 permanent protection and conservation of such wetlands and  
8 adjacent lands.

9 (8) To make grants from the Pennsylvania Wetlands  
10 Conservation Trust Fund to the department, or to any county,  
11 municipality, conservation district, conservancy or qualified  
12 nonprofit conservation organization, for projects to map,  
13 conserve, protect, expand, create, restore or improve  
14 wetlands.

15 (9) To establish and administer a wetlands mitigation  
16 bank program in accordance with subsection (d).

17 (d) (1) The trust, in cooperation with the department,  
18 shall initiate and implement a program for wetlands  
19 mitigation banks.

20 (2) The trust shall develop, and the Environmental  
21 Quality Board shall by regulation adopt, standards and  
22 criteria for, the site selection process, operation,  
23 monitoring and evaluation of mitigation banks. Criteria to be  
24 considered shall include, but need not be limited to:

25 (i) Historical wetland trends, including the  
26 estimated rate of current and future losses of the  
27 respective types of wetlands.

28 (ii) The contributions of the wetlands to wildlife,  
29 migratory birds and resident species; commercial and  
30 sport fisheries; surface water and groundwater quality

1       and quantity; flood moderation and storm water  
2       management; outdoor recreation; aesthetics; and  
3       scientific and research values.

4           (iii) Statewide and regional economic needs.

5       (3) For each mitigation bank, the trust shall establish  
6       a well-defined plan, including objectives, inventory of  
7       resource values and evaluation and monitoring program.

8       (4) For each mitigation bank, the trust shall establish  
9       a system of resource values and credits based upon the area  
10      and value of the wetlands created within the mitigation bank.

11      (5) A credit from a mitigation bank may be withdrawn  
12      only for a permit action after onsite mitigation methods have  
13      been examined and found to be impracticable.

14      (6) Credits from a mitigation bank shall be used only  
15      for mitigation of a permit action that occurs within 40 miles  
16      of that bank, and within the same river basin or subbasin as  
17      the mitigation bank.

18      (7) The trust may authorize a withdrawal of a credit  
19      from the mitigation bank after the trust determines that:

20           (i) The mitigation bank site is functional,  
21           considering hydrology, vegetation and other relevant  
22           factors.

23           (ii) The wetland functions and values of the  
24           mitigation bank site are equal to or greater than the  
25           functions and the values of the wetland area to be  
26           damaged, destroyed or adversely affected by the permit  
27           action.

28      (8) The price for any mitigation credit purchased by a  
29      project sponsor or permit applicant shall be set by the trust  
30      at an amount that will compensate the trust for all costs and

1 expenses incurred in establishing and maintaining that  
2 portion of the mitigation bank.

3 (9) No mitigation bank credits may be withdrawn for any  
4 permit action where the wetland area to be adversely affected  
5 by the proposed project or activity authorized by the permit  
6 exceeds five acres.

7 (10) The trust shall not authorize the withdrawal of  
8 credits from a mitigation bank for a specific permit action  
9 if the trust determines that:

10 (i) The credits for that specific permit action  
11 would not adequately maintain habitat or species  
12 diversity.

13 (ii) The mitigation bank site from which credits are  
14 proposed to be withdrawn is not sufficiently similar or  
15 superior in wetland functions and values to the wetland  
16 area to be damaged, destroyed or affected by the permit  
17 action.

18 Section 9. This act shall take effect immediately.