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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 2717** Session of  
2008

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INTRODUCED BY DePASQUALE, PERRY, BEAR, BELFANTI, BENNINGTON,  
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STURLA, SWANGER, THOMAS, WALKO AND YOUNGBLOOD, JULY 14, 2008

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
JULY 14, 2008

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AN ACT

1 Authorizing programs relating to nutrient credit; providing for  
2 powers and duties of the Department of Environmental  
3 Protection, the Environmental Quality Board and the Nutrient  
4 Credit Trading Program Board; further providing for the  
5 Pennsylvania Infrastructure Investment Authority; and  
6 providing for the promulgation of regulations.

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

9 CHAPTER 1

10 PRELIMINARY PROVISIONS

11 Section 101. Short title.

12 This act shall be known and may be cited as the Nutrient  
13 Credit Trading Program Act.

14 Section 102. Definitions.

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

18 "Aggregator" or "broker." An individual or entity that

1 obtains and compiles credits from individual sources for sale  
2 to:

- 3 (1) the Nutrient Credit Trading Program Board;
- 4 (2) entities required to comply with nutrient limits; or
- 5 (3) other entities created for the purpose of obtaining,  
6 compiling and selling credits.

7 "Board." The Nutrient Credit Trading Program Board  
8 established in this act.

9 "Credit." The unit of compliance that corresponds with a  
10 pound of reduction of nutrient or sediment and that has been  
11 approved by the Department of Environmental Protection pursuant  
12 to Chapter 3.

13 "Department." The Department of Environmental Protection of  
14 the Commonwealth.

15 "Entities required to comply with nutrient limits." An  
16 entity that is required to reduce, prevent or eliminate nutrient  
17 or sediment discharges into surface waters, including:

- 18 (1) municipalities;
- 19 (2) municipal authorities;
- 20 (3) point source entities;
- 21 (4) developers; and
- 22 (5) nonpoint source entities.

23 "Nonpoint source." A source of potential water pollution  
24 that is not a point source.

25 "Nutrient." Nitrogen or phosphorus.

26 "Point source." A discernable, confined and discrete  
27 conveyance, including, but not limited to, any pipe, ditch,  
28 channel, tunnel, conduit, well, discrete fissure, container,  
29 rolling stock, landfill leachate collection system or vessel or  
30 other floating craft from which pollutants are or may be

1 discharged.

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### CHAPTER 3

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#### NUTRIENT AND SEDIMENT REDUCTION CREDITS

4 Section 301. Scope of chapter.

5 This chapter relates to the process by which nutrient and  
6 sediment reduction credits are calculated, approved, verified,  
7 tracked and used. Credits approved by the department may be  
8 sold, purchased or traded as provided by this chapter or by  
9 Chapter 5.

10 Section 302. Oversight of credit approval process.

11 The department shall have the power and the responsibility  
12 to:

13 (1) Accept and review applications to create credits.

14 (2) Make determinations on applications for credits.

15 (3) Provide for the verification of nutrient and  
16 sediment reductions.

17 (4) Approve and calculate credits.

18 (5) Register and track credits.

19 (6) Provide for the use of credits by entities required  
20 to comply with nutrient limits.

21 (7) Cooperate with the board.

22 Section 303. Applications.

23 (a) Process.--The Environmental Quality Board shall  
24 establish, by regulation, procedures and requirements relating  
25 to applications for credits and the process by which such  
26 applications shall be reviewed. Applications shall be reviewed  
27 for completeness, technical acceptability and consistency with  
28 regulatory and legal requirements.

29 (b) Determinations.--The department shall make a  
30 determination on an application to generate credits within 60

1 days after receipt of a complete application.

2 (c) Notice.--The department shall post credit application  
3 requirements and review procedures on its publicly accessible  
4 Internet website.

5 Section 304. Verification.

6 (a) General rule.--

7 (1) Prior to a determination on an application to  
8 generate credits, the department shall verify that the  
9 relevant regulatory and legal requirements have been met by  
10 the applicant.

11 (2) The department shall establish a process to verify  
12 nutrient and sediment reductions after approval of an  
13 application.

14 (b) Third parties.--The department may allow approved third  
15 parties to perform verifications on its behalf or on behalf of  
16 entities that have submitted applications.

17 Section 305. Calculation of credits.

18 (a) Measurement.--Credits shall be measured in terms that  
19 correspond to a unit of compliance and a time period.

20 (b) Procedures.--The Environmental Quality Board shall, by  
21 regulation, establish procedures and methodologies by which  
22 credits will be calculated. Such procedures and methodologies  
23 may have general applicability or they may be specific to a  
24 particular watershed, as determined by regulation.

25 (c) Farmland preservation.--Credits shall not be generated  
26 from the purchase and idling of whole or substantial portions of  
27 farms to provide credits for use offsite. Credits may be  
28 generated when converting one land use to another, as provided  
29 by regulation.

30 Section 306. Registration and tracking of credits.

1 (a) Registration.--The department shall create a registry of  
2 credits that have been approved and that are available for sale  
3 to:

4 (1) the board;

5 (2) entities required to comply with nutrient limits; or

6 (3) aggregators or brokers.

7 (b) Tracking.--The department shall track and verify the  
8 disposition of credits registered under this section.

9 Section 307. Use of credits.

10 Credits approved and registered under this chapter may be  
11 used to meet the requirements of permits administered by the  
12 department, including National Pollutant Discharge Elimination  
13 System permits required under the Federal Water Pollution  
14 Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.).

15 Section 308. Priority review.

16 Nutrient reduction projects funded by the board under section  
17 504(a) shall have priority for review.

18 Section 309. Regulations.

19 (a) Environmental Quality Board.--The Environmental Quality  
20 Board shall promulgate regulations as necessary for the  
21 implementation of this chapter. The Department of Agriculture  
22 and the board shall be consulted in the drafting of regulations.

23 (b) Temporary regulation.--Notwithstanding any other  
24 provision of law to the contrary and in order to facilitate the  
25 prompt implementation of this chapter, regulations promulgated  
26 during the two years following the effective date of this  
27 chapter shall be deemed temporary regulations which shall expire  
28 no later than three years following the effective date of this  
29 chapter or upon promulgation of regulations as generally  
30 provided by law. The temporary regulations shall not be subject

1 to:

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

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

7 (c) Expiration of authority.--The authority provided to  
8 adopt temporary regulations in this subsection shall expire two  
9 years from the effective date of this chapter. Regulations  
10 adopted after the two-year period shall be promulgated as  
11 provided by law.

12 CHAPTER 5

13 NUTRIENT CREDIT TRADING PROGRAM BOARD

14 Section 501. Scope of chapter.

15 This chapter relates to the powers and duties of the Nutrient  
16 Credit Trading Program Board.

17 Section 502. Board established.

18 There is hereby established a Nutrient Credit Trading Program  
19 Board. The board shall adopt policies and implement programs to  
20 purchase and sell credits in the Chesapeake Bay watershed and  
21 fund projects that generate credits in the Chesapeake Bay  
22 watershed.

23 Section 503. Board composition.

24 (a) Membership.--The board shall consist of:

25 (1) Three members as follows:

26 (i) The Secretary of Environmental Protection or a  
27 designee.

28 (ii) The Secretary of Agriculture or a designee.

29 (iii) The executive director of the Pennsylvania  
30 Infrastructure Investment Authority or a designee.

1 (2) Four members as follows:

2 (i) One member appointed by the President pro  
3 tempore of the Senate.

4 (ii) One member appointed by the Minority Leader of  
5 the Senate.

6 (iii) One member appointed by the Speaker of the  
7 House of Representatives.

8 (iv) One member appointed by the Minority Leader of  
9 the House of Representatives.

10 (3) Nine members appointed by the Governor as follows:

11 (i) One member from county conservation districts  
12 from a list of no more than three individuals nominated  
13 by the State Conservation Commission.

14 (ii) Three members from local government as follows:

15 (A) one member representing boroughs from a list  
16 of no more than three individuals nominated by the  
17 Pennsylvania State Association of Boroughs;

18 (B) one member representing townships from a  
19 list of no more than three individuals nominated by  
20 Pennsylvania State Association of Township  
21 Supervisors; and

22 (C) one member representing cities from a list  
23 of no more than three individuals nominated by the  
24 Pennsylvania League of Cities and Municipalities.

25 (iii) One member from the agricultural sector from a  
26 list of no more than three individuals nominated by the  
27 Pennsylvania Farm Bureau.

28 (iv) One member from municipal authorities  
29 representing wastewater treatment facilities from a list  
30 of no more than three individuals nominated by the

1 Pennsylvania Municipal Authorities Association.

2 (v) One member of the housing industry from a list  
3 of no more than three individuals nominated by the  
4 Pennsylvania Builders Association.

5 (vi) One water quality engineer from a list of no  
6 more than three individuals nominated by the chair of the  
7 Joint Legislative Air and Water Pollution Control and  
8 Conservation Committee.

9 (vii) One representative from an environmental  
10 organization from a list of no more than three  
11 individuals nominated by the Chesapeake Bay Foundation.

12 (b) Officers.--The members shall annually elect, by a  
13 majority vote of the members, such officers as the members shall  
14 determine as necessary.

15 (c) Terms.--Members shall serve terms as follows:

16 (1) Members under subsection (a)(1) shall serve  
17 concurrently with their position.

18 (2) Members under subsection (a)(2) shall serve a term  
19 concurrent with the term of the appointing authority.

20 (3) Members under subsection (a)(3) shall serve a term  
21 of four years. The initial terms of members appointed under  
22 subsection (a)(3) shall be staggered by the Governor so that  
23 two members are appointed to a term of one year, two members  
24 are appointed to a term of two years, two members are  
25 appointed to a term of three years and three members are  
26 appointed to a term of four years.

27 (d) Quorum.--Nine members shall constitute a quorum.

28 Section 504. Powers and duties.

29 (a) Fees.--

30 (1) The board shall set fees and payment schedules for



1 the sale of credits to entities required to comply with  
2 nutrient discharge limits. The schedule shall provide for the  
3 sale of credits in advance of the time period for which the  
4 credits are needed. Credits sold under this paragraph may be  
5 used as provided in section 307.

6 (2) The fees collected from an advance sale of credits  
7 shall be used by the board to fund nutrient reduction  
8 projects that will generate at least the number of credits  
9 sold by the board in the time period for which they were  
10 sold. Such credits shall be determined by the department  
11 under Chapter 3.

12 (b) Credits.--The board may purchase credits that have been  
13 approved by the department under Chapter 3.

14 (c) Sale of credits.--The board may sell credits to entities  
15 required to comply with nutrient discharge limits.

16 (d) Trading program.--The board shall operate the nutrient  
17 credit trading program to generate revenues sufficient to offset  
18 its cost operations. Administrative or overhead expenses  
19 incurred by the Pennsylvania Infrastructure Investment Authority  
20 under section 505 shall not be considered in this determination.

21 (e) Reserve.--The board shall hold credits in reserve to  
22 offset any failures or loss of credits. In addition to this  
23 reserve, the board shall hold a minimum percentage of credits in  
24 reserve for new growth. The board shall set these reserves at  
25 percentages it deems necessary, but in no instance shall the  
26 reserve for new growth be lower than 5%.

27 (f) Internet website.--The board shall post information  
28 regarding the cost and methods of purchasing and selling credits  
29 on its Internet website. The board shall post on its Internet  
30 website a list of those projects that have been determined by

1 the department to generate credits.

2 (g) Technical assistance.--The board shall establish a  
3 technical subcommittee to provide technical assistance to  
4 entities proposing projects to generate credits. Members of the  
5 subcommittee shall be appointed by the board and shall have  
6 appropriate technical training and experience.

7 Section 505. Administration.

8 The Pennsylvania Infrastructure Investment Authority shall  
9 provide staff and administrative and technical support to the  
10 board in the performance of its powers and duties under this  
11 chapter.

12 Section 506. Private market preserved.

13 Nothing in this chapter prohibits the private purchase and  
14 sale of credits.

15 Section 507. Regulations.

16 (a) Other regulations.--The board shall promulgate  
17 regulations as necessary for the implementation of this chapter.  
18 The board shall consult with the department and the Department  
19 of Agriculture in the drafting of regulations.

20 (b) Temporary regulations.--Notwithstanding any other  
21 provision of law to the contrary and in order to facilitate the  
22 prompt implementation of this chapter, regulations promulgated  
23 by the board during the two years following the effective date  
24 of this chapter shall be deemed temporary regulations which  
25 shall expire no later than three years following the effective  
26 date of this chapter or upon promulgation of regulations as  
27 generally provided by law. The temporary regulations shall not  
28 be subject to:

29 (1) Sections 201, 202, 203, 204 and 205 of the act of  
30 July 31, 1968 (P.L.769, No.240), referred to as the

1 Commonwealth Documents Law.

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

4 (c) Expiration of authority.--The authority provided to the  
5 board to adopt temporary regulations in this section shall  
6 expire two years from the effective date of this chapter.  
7 Regulations adopted after the two-year period shall be  
8 promulgated as provided by law.

9 CHAPTER 9

10 MISCELLANEOUS PROVISIONS

11 Section 901. Continuation of policy.

12 Policies and procedures created by the department for the  
13 approval, calculation and trading of credits that are in effect  
14 on the effective date of this act shall be superseded by this  
15 act 120 days after the effective date of this act or upon the  
16 publication of temporary regulations under section 309,  
17 whichever comes first.

18 Section 902. Existing credits.

19 Subject to section 901, credits approved by the department  
20 shall remain in effect and shall be subject to the terms and  
21 conditions imposed by the department at the time of approval.

22 Section 903. Effective date.

23 This act shall take effect in 60 days.