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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 767 Session of  
2009

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INTRODUCED BY VANCE, M. WHITE, MUSTO, BRUBAKER, WAUGH, BAKER,  
ERICKSON, VOGEL, WOZNIAK, ALLOWAY, BROWNE, GORDNER, PICCOLA,  
RAFFERTY, TOMLINSON AND WONDERLING, APRIL 3, 2009

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, APRIL 3, 2009

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AN ACT

1 Providing for nutrient and sediment reduction credits;  
2 establishing the Nutrient Credit Trading Board and providing  
3 for its powers and duties; and providing for powers and  
4 duties of the Department of Environmental Protection, the  
5 Environmental Quality Board and the Pennsylvania  
6 Infrastructure Investment Authority.

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  
19 obtains and compiles credits from individual sources for sale

1 to:

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

6 "Board." The Nutrient Credit Trading Board established in

7 Chapter 5.

8 "Credit." The unit of compliance that corresponds with a

9 pound of reduction of nutrient or sediment and that has been

10 approved by the Department of Environmental Protection pursuant

11 to Chapter 3.

12 "Department." The Department of Environmental Protection of

13 the Commonwealth.

14 "Entities required to comply with nutrient discharge limits."

15 An entity that is required to reduce, prevent or eliminate

16 nutrient or sediment discharges into surface waters, including:

- 17 (1) Municipalities.
- 18 (2) Municipal authorities.
- 19 (3) Point source entities.
- 20 (4) Developers.
- 21 (5) Nonpoint source entities.

22 "Nonpoint source." A source of potential water pollution

23 that is not a point source.

24 "Nutrient." Nitrogen or phosphorus.

25 "Point source." A discernable, confined and discrete

26 conveyance, including, but not limited to, any pipe, ditch

27 channel, tunnel, conduit, well, discrete fissure, container,

28 rolling stock, landfill leachate collection system or vessel or

29 other floating craft from which pollutants are or may be

30 discharged.

1 CHAPTER 3

2 NUTRIENT AND SEDIMENT REDUCTION CREDITS

3 Section 301. Scope.

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

9 Section 302. Oversight of credit approval process.

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

- 12 (1) Accept and review applications to create credits.
- 13 (2) Make determinations on applications for credits.
- 14 (3) Provide for the verification of nutrient and  
15 sediment reductions.
- 16 (4) Approve and calculate credits.
- 17 (5) Register and track credits.
- 18 (6) Provide for the use of credits by entities required  
19 to comply with nutrient limits.
- 20 (7) Cooperate with the board.

21 Section 303. Applications.

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

28 (b) Determinations.--The department shall make a  
29 determination on an application to generate credits within 60  
30 days after receipt of a complete application.

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

4 Section 304. Verification.

5 (a) General rule.--

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

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

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

16 Section 305. Calculation of credits.

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

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

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

29 Section 306. Registration and tracking of credits.

30 (a) Registration.--The department shall create a registry of

1 credits that have been approved and that are available for sale  
2 to:

- 3 (1) The board.
- 4 (2) Entities required to comply with nutrient limits.
- 5 (3) Aggregators or brokers.

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

8 Section 307. Use of credits.

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

14 Section 308. Priority review.

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

17 Section 309. Regulations.

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

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



1 tempore of the Senate.

2 (ii) One member appointed by Minority Leader of the  
3 Senate.

4 (iii) One member appointed by the Speaker of the  
5 House of Representatives.

6 (iv) One member appointed by the Minority Leader of  
7 the House of Representatives.

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

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

12 (ii) Three members from local government, one  
13 representing boroughs from a list of no more than three  
14 individuals nominated by the Pennsylvania State  
15 Association of Boroughs, one representing townships from  
16 a list of no more than three individuals nominated by the  
17 Pennsylvania State Association of Township Supervisors  
18 and one representing cities from a list of no more than  
19 three individuals nominated by the Pennsylvania League of  
20 Cities and Municipalities.

21 (iii) One member from the agricultural sector from a  
22 list of no more than three individuals nominated by the  
23 Pennsylvania Farm Bureau.

24 (iv) One member from municipal authorities  
25 representing wastewater treatment facilities from a list  
26 of no more than three individuals nominated by the  
27 Pennsylvania Municipal Authorities Association.

28 (v) One member of the housing industry from a list  
29 of no more than three individuals nominated by the  
30 Pennsylvania Builders Association.

1           (vi) One water quality engineer from a list of no  
2 more than three individuals nominated by the chair of the  
3 Joint Legislative Air and Water Pollution Control and  
4 Conservation Committee.

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

8       (b) Officers.--The board members shall annually elect, by a  
9 majority vote of the members, such officers as the members shall  
10 determine necessary.

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

12           (1) Members under subsection (a)(1) shall serve  
13 concurrently with their position.

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

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

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

24 Section 504. Powers and duties.

25       (a) Sale of credits.--

26           (1) The board shall set fees and payment schedules for  
27 the sale of credits to entities required to comply with  
28 nutrient discharge limits. The schedule shall provide for the  
29 sale of credits in advance of the time period for which the  
30 credits are needed. Credits sold under this paragraph may be



1 used as provided in section 307.

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

8 (b) Board purchase.--The board may purchase credits that  
9 have been approved by the department under Chapter 3.

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

12 (d) Revenues and expenses.--The board shall operate the  
13 nutrient credit trading program to generate revenues sufficient  
14 to offset its cost of operations. Administrative or overhead  
15 expenses incurred by the Pennsylvania Infrastructure Investment  
16 Authority under section 505 shall not be considered in this  
17 determination.

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

24 (f) Internet availability of information.--The board shall  
25 post information regarding the costs and methods of purchasing  
26 and selling credits on its Internet website. The board shall  
27 post on its Internet website a list of those projects that have  
28 been determined by the department to generate credits.

29 (g) Technical subcommittee.--The board shall establish a  
30 technical subcommittee to provide technical assistance to

1 entities proposing projects to generate credits. Members of the  
2 subcommittee shall be appointed by the board and shall have  
3 appropriate technical training and experience.

4 Section 505. Administration.

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

9 Section 506. Private market preserved.

10 Nothing in this chapter prohibits the private purchase and  
11 sale of credits.

12 Section 507. Regulations.

13 (a) General rule.--The board shall promulgate regulations as  
14 necessary for the implementation of this chapter. The board  
15 shall consult with the department and the Department of  
16 Agriculture in the drafting of regulations.

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

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

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

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

6 CHAPTER 21

7 MISCELLANEOUS PROVISIONS

8 Section 2101. Continuation of policy.

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

15 Section 2102. Existing credits.

16 Subject to section 2101, credits approved by the department  
17 shall remain in effect and shall be subject to the terms and  
18 conditions imposed by the department at the time of approval.

19 Section 2103. Effective date.

20 This act shall take effect in 60 days.