
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 994 Session of
2013

INTRODUCED BY VOGEL, ALLOWAY, VANCE, SCHWANK, SCARNATI, MENSCH,
YUDICHAK, SMUCKER, ARGALL, FOLMER, BROWNE AND GREENLEAF,
JUNE 5, 2013

REFERRED TO AGRICULTURE AND RURAL AFFAIRS, JUNE 5, 2013

AN ACT

1 Providing for the creation of a major watershed improvement
2 program, for establishment of a verified TMDL parameter
3 credit program, for the powers and duties of the Department
4 of Environmental Protection and the Pennsylvania
5 Infrastructure Investment Authority and for completion of a
6 study by the Legislative Budget and Finance Committee.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Major
11 Watershed Improvement Act.

12 Section 2. Definitions.

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

16 "Board." The Environmental Quality Board.

17 "Budget Office." The Governor's Office of the Budget.

18 "Department." The Department of Environmental Protection of
19 the Commonwealth.

1 "Fund." The Major Watershed Improvement Fund.

2 "Major watershed." As follows:

3 (1) The following watersheds located in this
4 Commonwealth and designated by the Department of
5 Environmental Protection as major watersheds:

6 (i) Delaware.

7 (ii) Genesee.

8 (iii) Lake Erie.

9 (iv) Ohio.

10 (v) Potomac.

11 (vi) Susquehanna.

12 (2) A watershed located in this Commonwealth that may be
13 designated as a major watershed on or after the effective
14 date of this section.

15 "Nutrient." Nitrogen or phosphorus.

16 "Participating authority." A water, sewer, water and sewer
17 or storm water management authority that serves a participating
18 municipality.

19 "Participating municipality." A city, borough, incorporated
20 town, township or home rule municipality identified by the
21 Department of Environmental Protection as being wholly or
22 partially located within a major watershed. The term does not
23 include a county.

24 "PENNVEST." The Pennsylvania Infrastructure Investment
25 Authority.

26 "Program." The Major Watershed Improvement Program.

27 "TMDL." Total maximum daily load.

28 "TMDL parameter." Nutrient or sediment for which a TMDL has
29 been established or approved by the United States Environmental
30 Protection Agency under section 303 of the Water Pollution

1 Control Act (62 Stat. 1155, 33 U.S.C. § 1313) and made
2 applicable to a major watershed.

3 "TMDL parameter credit." The unit of compliance that
4 corresponds with a verified pound of reduction of a TMDL
5 parameter.

6 "Verified TMDL parameter credit." The unit of compliance
7 that corresponds with a verified pound of reduction of a TMDL
8 parameter as determined by the department.

9 "Water year." The 12-month period beginning October 1 of
10 each calendar year.

11 Section 3. Major Watershed Improvement Program.

12 (a) Establishment.--There is established a Major Watershed
13 Improvement Program which shall consist of the purchase of
14 verified TMDL parameter credits by PENNVEST through a program
15 administered by the department and PENNVEST.

16 (b) Contracts with TMDL parameter credit sellers.--

17 (1) The following shall apply:

18 (i) No later than 30 days following the publication
19 of temporary regulations by the board under section 5 and
20 no later than June 1 of each year thereafter when
21 required or necessary to meet an unmet TMDL parameter,
22 the department shall publish in the Pennsylvania Bulletin
23 a notice containing an updated forecast of the unmet TMDL
24 parameter planning targets for future water years
25 commencing the year after the date of publication.

26 (ii) No later than 60 days following publication of
27 the notice under subparagraph (i), PENNVEST shall issue,
28 in consultation with the department, a request for
29 proposals under 62 Pa.C.S. Pt. I (relating to
30 Commonwealth Procurement Code) for long-term purchase of

1 verified TMDL parameter credits from interested parties,
2 including private entities, participating authorities and
3 participating municipalities, in order to meet the unmet
4 TMDL parameter planning targets for those water years
5 included in the notice, as projected by the department
6 and contained in impaired surface waters listings and
7 Total Maximum Daily Load amounts in any watershed
8 implementation plan required on or after the effective
9 date of this section by the United States Environmental
10 Protection Agency under the Water Pollution Control Act
11 (62 Stat. 1155, 33 U.S.C. § 1251 et seq.).

12 (iii) A request for proposal under subparagraph (ii)
13 shall be for a minimum term of 10 years and shall allow
14 sufficient time for the delivery of verified reductions
15 of TMDL parameters consistent with the time frame
16 necessary for the permitting and development of public or
17 private projects.

18 (2) Factors to be considered as part of the criteria for
19 evaluation of responses received to a request for proposals
20 and the weighted percentage to be applied to each factor
21 shall be included by the department in temporary regulations
22 published under section 5 and in final regulations and shall
23 include:

24 (i) Cost.

25 (ii) Environmental and recreational benefits
26 resulting from the TMDL parameter to this Commonwealth
27 and local communities, including verified TMDL parameter
28 reductions to freshwater resources of this Commonwealth
29 and the applicable major watershed.

30 (iii) Additional criteria determined relevant by the

1 department.

2 (c) Participation in program.--

3 (1) Nutrients, which have been identified as a TMDL
4 parameter where significant cost savings can be achieved
5 pursuant to a Legislative Budget and Finance Committee study
6 released in January 2013 and titled "A Cost Effective
7 Alternative Approach to Meeting Pennsylvania's Chesapeake Bay
8 Nutrient Reduction Targets," shall be included in the
9 program.

10 (2) Additional major watersheds and TMDL parameters may
11 be added to the program by the department upon publication in
12 the Pennsylvania Bulletin of a notice which includes a
13 statement by the department of the rationale for each
14 addition and, for TMDL parameters, an analysis indicating
15 that the inclusion of TMDL parameters in the program will
16 result in cost savings as a result of competitive bidding.

17 Section 4. Major Watershed Improvement Fund.

18 (a) Establishment.--There is created within the State
19 Treasury a special fund to be known as the Major Watershed
20 Improvement Fund.

21 (b) Deposits.--The following shall be deposited into the
22 fund:

23 (1) any appropriation made to the program; and

24 (2) Any other existing or future Federal or State
25 appropriation or other money determined by the department, in
26 consultation with the Budget Office, to be available for the
27 program.

28 (c) Use.--Money in the fund shall be used by PENNVEST for
29 the purchase of verified TMDL parameter credits under section
30 3(b).

1 (d) Issuance of request for proposals.--Any request for a
2 proposal under section 3 may only be issued upon certification
3 by the department and the Budget Office that money has been
4 identified and is available to be deposited in the fund to pay
5 for costs associated with issuance of a request for proposals,
6 including payments for long-term purchase of verified TMDL
7 parameter credits. A notice containing the certification shall
8 be published by the department in the Pennsylvania Bulletin no
9 later than 30 days following issuance of the certification.

10 Section 5. Temporary regulations.

11 (a) Promulgation.--In order to facilitate the prompt
12 implementation of this act, temporary regulations may be
13 promulgated by the board under this section. Prior to adoption,
14 a draft of the temporary regulations shall be published in the
15 Pennsylvania Bulletin and subject to public comment for a period
16 of 30 days. Following completion of the public comment period
17 and approval by the board, temporary regulations shall be
18 published in the Pennsylvania Bulletin. The temporary
19 regulations shall expire no later than two years following their
20 publication. The temporary regulations shall not be subject to:

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

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

26 (3) Sections 204(b) and 301(10) of the act of October
27 15, 1980 (P.L.950, No.164), known as the Commonwealth
28 Attorneys Act.

29 (b) Expiration.--The authority of the board to adopt
30 temporary regulations under subsection (a) shall expire two

1 years after the effective date of this section. Regulations
2 adopted after this period shall be promulgated as provided by
3 law.

4 (c) Draft.--The board shall publish draft temporary
5 regulations pursuant to subsection (a) in the Pennsylvania
6 Bulletin no later than 60 days following publication of the
7 notice required under section 4(d).

8 Section 6. Legislative Budget and Finance Committee funding
9 study.

10 (a) Scope.--The Legislative Budget and Finance Committee
11 shall conduct a study of possible sources of funding for the
12 program in addition to sources authorized to be deposited into
13 the fund under section 4(b).

14 (b) Report and recommendations.--A report and
15 recommendations shall be presented by the Legislative Budget and
16 Finance Committee to the department, PENNVEST, the Environmental
17 Resources and Energy Committee, Agriculture and Rural Affairs
18 Committee and Local Government Committee of the Senate and the
19 Environmental Resources and Energy Committee, Agriculture and
20 Rural Affairs Committee and Local Government Committee of the
21 House of Representatives within six months following the
22 effective date of this section.

23 Section 20. Effective date.

24 This act shall take effect in 30 days.