

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 575 Session of 2019

INTRODUCED BY YAW, KILLION, ARGALL, BARTOLOTTA, STEFANO, COSTA, SCARNATI, MARTIN, CORMAN, YUDICHAK, REGAN, LAUGHLIN AND MENSCH, MAY 31, 2019

SENATOR BROWNE, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 10, 2019

AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania
2 Consolidated Statutes, in environmental stewardship and
3 watershed protection, further providing for agencies;
4 providing for Pennsylvania Clean Water Procurement Program;
5 establishing the Watershed Innovation and Improvement Fund;
6 and making an appropriation.

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

9 Section 1. Section 6105(a)(1) of Title 27 of the
10 Pennsylvania Consolidated Statutes is amended to read:

11 § 6105. Agencies.

12 (a) The Department of Conservation and Natural Resources.--

13 (1) The Department of Conservation and Natural Resources
14 shall utilize money it receives from the fund for the
15 following purposes:

16 (i) To rehabilitate, repair and develop State park
17 and State forest lands and facilities and the acquisition
18 of interior lands within State parks and State forests.

19 (ii) To provide grants to a county or other

1 municipality, council of governments, conservation  
2 districts and authorized organizations for the purpose of  
3 planning, education, acquisition, development,  
4 rehabilitation and repair of greenways, recreational  
5 trails, including connection between trails, open space,  
6 natural areas, river corridors and access to lakefronts  
7 or riverfronts, watersheds, community [and heritage]  
8 parks and recreation facilities; community conservation  
9 and beautification projects; forest conservation[;],  
10 including conservation of forested riparian buffers;  
11 heritage areas; and other conservation and recreation  
12 purposes. Grants under this paragraph may not be used by  
13 an authorized organization for land acquisition unless  
14 the authorized organization obtains the approval of all  
15 counties in which the land is situated. Grant moneys may  
16 also be used for the acquisition of farmland for the  
17 purposes set forth in this paragraph.

18 (iii) To provide grants to a county or other  
19 municipality and authorized organizations for the purpose  
20 of research, planning, inventories and technical  
21 assistance intended to protect and conserve the  
22 biological diversity of this Commonwealth.

23 \* \* \*

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

25 CHAPTER 67

26 CLEAN WATER PROCUREMENT PROGRAM

27 Sec.

28 6701. Short title of chapter.

29 6702. Definitions.

30 6703. Watershed Innovation and Improvement Fund.

1 6704. Pennsylvania Clean Water Procurement Program.

2 6705. Duties of department.

3 6706. Regulations.

4 § 6701. Short title of chapter.

5 This chapter shall be known and may be cited as the  
6 Pennsylvania Clean Water Procurement Program Act.

7 § 6702. Definitions.

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

11 "Aggregator." A person that arranges for the sale of  
12 nutrient and sediment reductions generated by another person.  
13 The term includes an agricultural business acting on behalf of  
14 farmers via a production contract or cooperative membership.

15 "Authority." The Pennsylvania Infrastructure Investment  
16 Authority.

17 "Chesapeake Bay TMDL." The Chesapeake Bay TMDL for nitrogen,  
18 phosphorus and sediment as established by the United States  
19 Environmental Protection Agency on December 29, 2010.

20 "Department." The Department of Environmental Protection of  
21 the Commonwealth.

22 "Fund." The Watershed Innovation and Improvement Fund  
23 established under section 6703 (relating to Watershed Innovation  
24 and Improvement Fund).

25 "Nutrient." Nitrogen or phosphorous.

26 "Nutrient or sediment reductions." Nitrogen, phosphorus and  
27 sediment pollution load reductions to surface water and  
28 groundwater resources that can be directly measured and  
29 quantified or modeled by any of the following:

30 (1) The Chesapeake Bay Program Watershed Model.

1           (2) Any other model approved by the United States  
2           Environmental Protection Agency or the department, including,  
3           but not limited to, nonpoint source phosphorous, nitrogen and  
4           sediment loads to surface water and groundwater resources and  
5           pathogens using quantification methodologies and modeling  
6           tools.

7           "Program." The Pennsylvania Clean Water Procurement Program  
8           established under section 6704 (relating to Pennsylvania Clean  
9           Water Procurement Program).

10          "Qualified bidder." A bidder with an approved verification  
11          plan.

12          "Request for proposals." A request for competitive sealed  
13          proposals that define contract terms, future delivery dates and  
14          technical specifications that is issued by the authority, in  
15          conjunction with the department, to procure verified nutrient  
16          and sediment reductions that count toward achievement of the  
17          Chesapeake Bay TMDL nutrient and sediment pollutant reduction  
18          requirements.

19          "Sediment." Soils or other erodible materials transported by  
20          water as a product of erosion.

21          "Small farm." An agricultural operation that is not large  
22          enough to meet the definition of CAFO as set forth in 25 Pa.  
23          Code § 92a.2 (relating to definitions).

24          "TMDL." Total maximum daily load.

25          "Verification plan." As follows:

26                 (1) A plan that details the method that a qualified  
27                 bidder will use to produce verified nutrient or sediment  
28                 reductions, including mass balance calculation.

29                 (2) In the case of an aggregator, a plan as specified  
30                 under paragraph (1) that describes the process that the

1 aggregator will use to certify verified nutrient or sediment  
2 reductions from approved contracting parties under section  
3 6704(b)(4), including the aggregator's contract farmers,  
4 cooperative members or other similar entities.

5 "Verified nutrient and sediment reductions." Nutrient or  
6 sediment reductions measured in pounds created by an action,  
7 activity or technology pursuant to a verification plan and  
8 approved by the department.

9 § 6703. Watershed Innovation and Improvement Fund.

10 (a) Establishment.--The Watershed Innovation and Improvement  
11 Fund is established in the State Treasury.

12 (b) Source of funding.--The fund shall consist of  
13 appropriations made to the fund and interest earned on money in  
14 the fund.

15 (c) Appropriation.--The sum of \$20,000,000 is hereby  
16 appropriated from the General Fund to the fund for the purposes  
17 specified under subsection (d).

18 (d) Use of fund.--The following apply:

19 (1) Except as provided under paragraph (2), money in the  
20 fund shall be used by the authority for the purchase of  
21 verified nutrient and sediment reductions under section 6704  
22 (relating to Pennsylvania Clean Water Procurement Program).

23 (2) No more than ~~5%~~ 2.5% of the money in the fund may be <--  
24 used by the department ~~and the authority~~ to implement the <--  
25 program.

26 § 6704. Pennsylvania Clean Water Procurement Program.

27 (a) Establishment.--The Pennsylvania Clean Water Procurement  
28 Program is established and shall provide for the purchase of  
29 verified nutrient and sediment reductions from approved  
30 contracting parties through a competitive sealed proposal

1 procurement procedure consistent with 62 Pa.C.S. Pt. I (relating  
2 to Commonwealth Procurement Code) or any other competitive  
3 bidding process determined to be appropriate by the authority.

4 (b) Duties of authority.--The authority shall have all of  
5 the following duties:

6 (1) Within 60 days of an appropriation to the fund, in  
7 consultation with the department, issue a request for  
8 proposals or initiate a competitive bidding process under 62  
9 Pa.C.S. Pt. I for the supply of long-term nutrient and  
10 sediment reductions for future delivery to accelerate  
11 progress towards the achievement of the Chesapeake Bay TMDL  
12 nutrient and sediment pollutant reduction requirements.

13 (2) Administer the fund for the purpose of implementing  
14 this chapter.

15 (3) Evaluate the responses to the request for proposals  
16 or competitive bidding process under paragraph (1) and  
17 execute contracts with verified nutrient and sediment  
18 reduction producers or aggregators. Contracts under this  
19 paragraph shall be for at least 10 years and shall provide  
20 sufficient time for the construction and permitting of  
21 facilities and the delivery of verified nutrient and  
22 sediment reductions.

23 (4) Require a contracting party for the supply of long-  
24 term nutrient and sediment reductions to make available 20%  
25 of its total nutrient or sediment reduction allotment for  
26 participation for 30 days by small farms or aggregators of  
27 small farms. The purpose of this requirement is to enable  
28 small farms or aggregators of small farms to sell their  
29 credits from modeled reductions into the nutrient or  
30 sediment reduction allotment and receive the winning bid

1 price without participating in the request for proposals or  
2 competitive bidding process under paragraph (1).

3 (5) Purchase verified nutrient and sediment reductions  
4 in accordance with the terms of the contracts under  
5 paragraph (3) after the department has verified the nutrient  
6 and sediment reductions. The verification of nutrient and  
7 sediment reductions shall be performed monthly, based upon  
8 required data submissions from nutrient credit generators  
9 certified by the department.

10 (c) Publicly funded reductions.--Nutrient and sediment  
11 reductions funded entirely by public grants are not eligible to  
12 bid or respond to the request for proposals or competitive  
13 bidding process under subsection (b) (1). If a percentage of  
14 nutrient and sediment reductions are funded partially by public  
15 grants, the percentage of the remaining nutrient and sediment  
16 reductions that are eligible to bid or respond to a request for  
17 proposals or competitive bidding process under subsection (b) (1)  
18 shall be commensurate with the percentage of the reduction  
19 activity that is not provided by public grants.

20 (d) Criteria.--The criteria for the evaluation of responses  
21 to the request for proposals or competitive bidding process  
22 under subsection (b) (1) and the weighted percentage to be  
23 applied to each factor in the evaluation of the responses shall  
24 be published by the department as part of the request for  
25 proposals or competitive bidding process under subsection (b) (1)  
26 and include, but not be limited to, all of the following:

27 (1) The environmental and recreational benefits to this  
28 Commonwealth and local communities resulting from the  
29 nutrient and sediment reduction activities.

30 (2) The cost effectiveness of the proposed nutrient and

1 sediment reduction activity.

2 (3) Any additional criteria determined relevant and  
3 necessary by the department.

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

7 (1) The total cost for the program.

8 (2) The nutrient and sediment reduction activities  
9 implemented.

10 (3) The verified nutrient and sediment reductions  
11 achieved towards the satisfaction of the Chesapeake Bay TMDL  
12 nutrient and sediment pollutant reduction requirements.

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

15 § 6705. Duties of department.

16 The department shall have all of the following duties:

17 (1) Administer the program and take any action necessary  
18 to effectuate the purposes of this chapter.

19 (2) Verify the generated nutrient and sediment load  
20 reductions achieved by a contracting party under section  
21 6704(b)(4) (relating to Pennsylvania Clean Water Procurement  
22 Program).

23 (3) Review and approve the verification plans and mass  
24 balance calculations submitted with the responses to the  
25 request for proposals or competitive bidding process under  
26 section 6704(b)(1) and advise the authority regarding the  
27 acceptability of the verification plans and mass balance  
28 calculations.

29 (4) Evaluate the responses to the request for proposals  
30 or competitive bidding process based on the criteria under

1 section 6704(d), other than the price considerations, and  
2 advise the authority regarding the acceptability of the  
3 responses.

4 § 6706. Regulations.

5 The department may promulgate regulations necessary to  
6 administer the provisions of this chapter.

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