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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 475 Session of  
2021

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INTRODUCED BY YAW, BARTOLOTTA, ARGALL, MARTIN, MENSCH, BAKER,  
PITTMAN AND STEFANO, MARCH 25, 2021

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 25, 2021

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AN ACT

1 Amending Title 27 (Environmental Resources) of the Pennsylvania  
2 Consolidated Statutes, in special programs, providing for  
3 Pennsylvania Clean Water Procurement Pilot Program; and  
4 establishing the Watershed Innovation and Improvement Fund.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 27 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 67

10 CLEAN WATER PROCUREMENT PILOT PROGRAM

11 Sec.

12 6701. Short title of chapter.

13 6702. Definitions.

14 6703. Watershed Innovation and Improvement Fund.

15 6704. Pennsylvania Clean Water Procurement Pilot Program.

16 6705. Duties of department.

17 6706. Duties of commission.

18 6707. Regulations.

19 6708. Expiration.

1 § 6701. Short title of chapter.

2 This chapter shall be known and may be cited as the  
3 Pennsylvania Clean Water Procurement Pilot Program Act.

4 § 6702. Definitions.

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

8 "Aggregator." A person that facilitates or coordinates a  
9 best management practice implemented by other persons for  
10 nutrient or sediment reduction. The term includes an  
11 agricultural business, educational institution or nonprofit  
12 agricultural or conservation organization that:

13 (1) acts on behalf of farmers through a production  
14 contract or cooperative membership; or

15 (2) administers a publicly or privately supported  
16 program for implementation of a best management practice to  
17 reduce nutrient or sediment pollution on a farm.

18 "Authority." The Pennsylvania Infrastructure Investment  
19 Authority.

20 "Best management practice." A practice or combination of  
21 practices determined by the commission or by the Natural  
22 Resources and Conservation Service of the United States  
23 Department of Agriculture to be effective and practical,  
24 considering technological, economic and institutional factors,  
25 to manage nutrient and sediment to protect surface water and  
26 groundwater.

27 "Chesapeake Bay TMDL." The Chesapeake Bay TMDL for nitrogen,  
28 phosphorus and sediment as established by the Environmental  
29 Protection Agency.

30 "Commission." The State Conservation Commission.

1 "Department." The Department of Environmental Protection of  
2 the Commonwealth.

3 "Fund." The Watershed Innovation and Improvement Fund  
4 established under section 6703 (relating to Watershed Innovation  
5 and Improvement Fund).

6 "Locally impaired watershed." The land area, corresponding  
7 to a 12-digit Hydrologic Unit Code as designated by the United  
8 States Geological Survey, that includes a body of water on the  
9 Commonwealth's list of impaired waters under section 303(d) of  
10 the Federal Water Pollution Control Act (62 Stat. 1155, 33  
11 U.S.C. § 1251 et seq.).

12 "Nutrient." Nitrogen or phosphorous.

13 "Nutrient or sediment reduction." A nitrogen, phosphorus or  
14 sediment pollution load reduction to surface water or  
15 groundwater that can be directly quantified or modeled by any of  
16 the following:

17 (1) The Chesapeake Bay Program Watershed Model.

18 (2) Any other model approved or accepted by the  
19 Environmental Protection Agency for the purpose of evaluating  
20 progress under the Chesapeake Bay TMDL.

21 "Program." The Pennsylvania Clean Water Procurement Pilot  
22 Program established under section 6704 (relating to Pennsylvania  
23 Clean Water Procurement Pilot Program).

24 "Qualified bidder." A person or aggregator with a  
25 verification plan approved by the department.

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

28 "Small farm." An agricultural operation, except for a CAFO  
29 as defined in 25 Pa. Code § 92a.2 (relating to definitions).

30 "TMDL." Total maximum daily load.

1 "Verification plan." A plan that details the method that a  
2 qualified bidder will use to verify performance of a best  
3 management practice for nutrient or sediment reduction in  
4 accordance with a protocol approved or accepted by the  
5 Environmental Protection Agency.

6 "Verified nutrient or sediment reduction." Nutrient or  
7 sediment reduction measured in pounds created by a best  
8 management practice pursuant to a verification plan and approved  
9 by the department.

10 § 6703. Watershed Innovation and Improvement Fund.

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

13 (b) Purpose.--Money in the fund shall be used for activities  
14 necessary to meet the requirements of this chapter.

15 (c) Sources.--The following are sources of the fund:

16 (1) Money appropriated for the purposes under this  
17 chapter that:

18 (i) is not transferred from money available to the  
19 department or another agency for a similar program; and

20 (ii) is not transferred from the Environmental  
21 Stewardship Fund.

22 (2) Federal money appropriated to the fund.

23 (3) Money received from another governmental agency  
24 through an interagency agreement or memorandum of  
25 understanding.

26 (4) A gift or other contribution from a public or  
27 private source.

28 (5) Return on money in the fund.

29 (d) Limitation.--No more than 2.5% of the money in the fund  
30 may be used by the department to implement the program.

1 (e) Nonlapse.--Money in the fund is continuously  
2 appropriated to the fund. This appropriation shall not lapse at  
3 the end of a fiscal year.

4 § 6704. Pennsylvania Clean Water Procurement Pilot Program.

5 (a) Establishment.--The Pennsylvania Clean Water Procurement  
6 Pilot Program is established and shall provide for the purchase  
7 of a verified nutrient or sediment reduction through a  
8 competitive sealed proposal procurement procedure consistent  
9 with 62 Pa.C.S. Pt. I (relating to Commonwealth Procurement  
10 Code) or any other competitive bidding process determined by the  
11 authority to be appropriate.

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

14 (1) Issue a request for proposals or initiate a  
15 competitive bidding process under 62 Pa.C.S. Pt. I for the  
16 supply of a verified nutrient or sediment reduction toward  
17 the achievement of the Chesapeake Bay TMDL. The authority  
18 shall require that a response to the request for proposals or  
19 competitive bidding process shall include:

20 (i) A suggested payment schedule.

21 (ii) A statement of the qualified bidder's  
22 qualification, experience and resources.

23 (iii) A statement of qualified bidder's proposed  
24 surety and other financial assurances.

25 (2) Administer the fund for the purpose of implementing  
26 this chapter.

27 (3) Evaluate, in consultation with the department and  
28 the commission, the responses to the request for proposals or  
29 competitive bidding process under paragraph (1).

30 (4) Execute a contract with a qualified bidder. A

1 contract under this paragraph shall meet all of the  
2 following:

3 (i) May not be for a term of more than 10 years.

4 (ii) Shall require periodic submissions from a  
5 qualified bidder in accordance with a verification plan  
6 approved by the department.

7 (iii) Shall require that payment be conditioned on  
8 the achievement of specific outcomes based on defined  
9 performance targets in accordance with a verification  
10 plan approved by the department.

11 (iv) Shall include a schedule and calculation of  
12 consequences based on performance, including payments  
13 that would be earned if performance targets are met or  
14 the imposition of penalties or other payment adjustments  
15 if performance targets are not met.

16 (5) After the department has verified a nutrient or  
17 sediment reduction, purchase a verified nutrient or sediment  
18 reduction in accordance with the terms of a contract under  
19 paragraph (4).

20 (c) Publicly funded reductions.--A verified nutrient or  
21 sediment reduction funded entirely by public funding shall not  
22 be eligible to be purchased under the program. If a percentage  
23 of a verified nutrient or sediment reduction is funded partially  
24 by public funding, the percentage of the remaining verified  
25 nutrient or sediment reduction that is eligible to be purchased  
26 shall be commensurate with the percentage of the verified  
27 nutrient or sediment reduction that is not provided by public  
28 funding.

29 (d) Criteria.--The criteria for the evaluation of responses  
30 to the request for proposals or competitive bidding process

1 under subsection (b) (1) and the weighted percentage to be  
2 applied to each factor in the evaluation of the responses shall  
3 be determined by the authority in consultation with the  
4 department and commission and be published as part of the  
5 request for proposals or competitive bidding process under  
6 subsection (b) (1). The criteria to be considered must include  
7 all of the following:

8 (1) A verified nutrient or sediment reduction in a  
9 locally impaired watershed.

10 (2) A verified nutrient or sediment reduction in a  
11 county designated by the department as a Tier 1 Chesapeake  
12 Bay county.

13 (3) The dollar cost per pound of nutrient or sediment  
14 removed.

15 (4) The extent to which the project includes small  
16 farms.

17 (5) Any additional criteria determined relevant and  
18 necessary by the authority, department and commission.

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

22 (1) The total cost of the program.

23 (2) The best management practices implemented which  
24 resulted in nutrient or sediment reductions.

25 (3) The verified nutrient or sediment reductions  
26 achieved towards the satisfaction of the Chesapeake Bay TMDL.

27 (4) The total cost for each verified nutrient or  
28 sediment reduction.

29 (5) The participation of small farms in the program.

30 § 6705. Duties of department.

1 The department shall have all of the following duties:

2 (1) Advise the authority as the authority establishes  
3 criteria under section 6704(d) (relating to Pennsylvania  
4 Clean Water Procurement Pilot Program).

5 (2) Review and approve a verification plan submitted  
6 with a response to a request for proposals or competitive  
7 bidding process under section 6704(b)(1) and advise the  
8 authority regarding the acceptability of a verification plan.

9 (3) Evaluate the responses to the request for proposals  
10 or competitive bidding process based on the criteria under  
11 section 6704(d) and advise the authority regarding the  
12 acceptability of the responses.

13 (4) In accordance with a contract under section 6704(b)  
14 (4), ensure, through inspections, compliance audits or other  
15 means, that a qualified bidder is in compliance with an  
16 approved verification plan. The department may enter into an  
17 agreement with a third party to perform the duty under this  
18 paragraph.

19 § 6706. Duties of commission.

20 The commission shall have all of the following duties:

21 (1) Advise the authority as it establishes criteria  
22 under section 6704(d) (relating to Pennsylvania Clean Water  
23 Procurement Pilot Program).

24 (2) Review a response to a request for proposals or  
25 competitive bidding process under section 6704(b)(1) and  
26 advise the authority accordingly.

27 § 6707. Regulations.

28 The department may promulgate regulations necessary to  
29 administer the provisions of this chapter.

30 § 6708. Expiration.



1       This chapter shall expire 10 years after the effective date  
2 of this section.

3       Section 2. This act shall take effect in 60 days.