
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1901 Session of
2021

INTRODUCED BY HERSHEY, BOBACK, CIRESI, COOK, SCHLEGEL CULVER,
GILLESPIE, GUENST AND SAPPEY, SEPTEMBER 23, 2021

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
SEPTEMBER 23, 2021

AN ACT

1 Amending Titles 3 (Agriculture) and 27 (Environmental Resources)
2 of the Pennsylvania Consolidated Statutes, in Conservation
3 Excellence Grant Program, further providing for criteria for
4 evaluation of applications; and, in conservation and natural
5 resources, providing for nonpoint source pollution reduction
6 and establishing the Agriculture Conservation Assistance
7 Program, the Pennsylvania Clean Water Procurement Program and
8 the Municipal Storm Water Assistance Program.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 3107(2) of Title 3 of the Pennsylvania
12 Consolidated Statutes is amended to read:

13 § 3107. Criteria for evaluation of applications.

14 In approving applications for eligible projects under the
15 program, the commission shall give priority to complete
16 applications based upon the following criteria:

17 * * *

18 (2) Priority practices as follows:

19 (i) Livestock exclusion fencing.

20 (ii) Stream-side buffers.

- 1 (iii) Streambank restoration.
- 2 (iv) Barnyard and feedlot runoff abatement.
- 3 (v) Stream crossings.
- 4 (vi) Off-stream watering.
- 5 (vii) Manure storage facilities.
- 6 (viii) Nutrient management plans and manure
7 management plans.
- 8 (ix) Conservation plans or agricultural erosion and
9 sedimentation plans.
- 10 (x) Cover crops.
- 11 (xi) Remediation of legacy sediment that was:
- 12 (A) eroded from upland areas after the arrival
13 of early Pennsylvania settlers and during centuries
14 of intensive land use;
- 15 (B) deposited in valley bottoms along stream
16 corridors, burying presettlement streams,
17 floodplains, wetlands and valley bottoms; and
- 18 (C) altered and continues to impair the
19 hydrologic, biologic, aquatic, riparian and water
20 quality functions of presettlement and modern
21 environments.
- 22 (xii) Any other priority practices approved by the
23 commission.

24 * * *

25 Section 2. Part III of Title 27 is amended by adding a
26 chapter to read:

27 CHAPTER 33

28 NONPOINT SOURCE POLLUTION REDUCTION

29 Sec.

30 3301. Scope of chapter.

1 3302. Findings and declarations.

2 3303. Definitions.

3 3304. Clean Streams Fund.

4 3305. Agriculture Conservation Assistance Program.

5 3306. Pennsylvania Clean Water Procurement Program.

6 3307. Municipal Storm Water Assistance Program.

7 § 3301. Scope of chapter.

8 This chapter relates to nonpoint source pollution reduction.

9 § 3302. Findings and declarations.

10 The General Assembly finds and declares that:

11 (1) The rivers and streams in this Commonwealth provide
12 an abundance of fresh water that support the settlement,
13 growth and industrialization of this Commonwealth.

14 (2) Almost one-third of those waters do not meet safety
15 standards for humans or fish.

16 (3) Poor water quality in this Commonwealth adversely
17 impacts Pennsylvania's environment, human health, drinking
18 water supplies, recreational enjoyment and opportunities and
19 economic and commercial businesses and jobs that depend on
20 good water quality.

21 (4) Poor water quality in Pennsylvania also adversely
22 impacts downstream waters in neighboring states, prompting
23 Federal scrutiny, oversight and litigation.

24 (5) The leading causes of local water quality impairment
25 are historic mining and agricultural activity.

26 (6) Best management practices are available to cost
27 effectively mitigate the impacts of nonpoint source
28 pollution, but the cost to meaningfully implement them far
29 exceeds currently available public and private funds.

30 (7) Introduction of pay-for-success approaches will spur

1 further innovation and private investment.

2 (8) Improving water quality will improve drinking water
3 supplies and recreational and related commercial
4 opportunities as well as create jobs and promote economic
5 growth in this Commonwealth.

6 § 3303. Definitions.

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

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

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

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

20 "Agricultural erosion and sediment control plan." A site-
21 specific plan identifying best management practices to minimize
22 accelerated erosion and sedimentation from agricultural runoff
23 required by 25 Pa. Code Ch. 102 (relating to erosion and
24 sediment control).

25 "Agricultural operation." The management and use of farming
26 resources for production of crops, livestock or poultry.

27 "Agriculturally impaired stream miles." Stream miles that
28 are designated impaired due to the identified source being
29 agriculture as defined by the most recent Pennsylvania
30 Integrated Water Quality Monitoring and Assessment Report by the

1 department.

2 "Animal concentration area." The following:

3 (1) A barnyard, feedlot, loafing area, exercise lot or
4 other similar animal confinement area that will not maintain
5 a growing crop or where deposited manure nitrogen is in
6 excess of crop needs.

7 (2) The term does not include:

8 (i) An area managed as pastures or other cropland.

9 (ii) Pasture access ways, if they do not cause
10 direct flow of nutrients to surface water or groundwater.

11 "Best management practice" or "BMP." A practice or
12 combination of practices determined by the commission or by the
13 Natural Resources Conservation Service of the United States
14 Department of Agriculture to be effective and practical,
15 considering technological, economic and institutional factors,
16 to manage nutrient and sediment to protect surface water and
17 groundwater.

18 "Chesapeake Bay Total Maximum Daily Load." The most current
19 Chesapeake Bay Total Maximum Daily Load for nitrogen, phosphorus
20 and sediment as established by the United States Environmental
21 Protection Agency.

22 "Commission." The State Conservation Commission established
23 under the act of May 15, 1945 (P.L.547, No.217), known as the
24 Conservation District Law.

25 "Conservation district." A county conservation district
26 established under the Conservation District Law.

27 "Conservation plan." A plan that identifies conservation
28 practices and includes site-specific BMPs for agricultural
29 plowing or tilling activities and animal heavy-use areas.

30 "Cropland acres." The acres of land used to produce adapted

1 crops for harvest, which includes both cultivated and
2 noncultivated crops and areas managed for forage production that
3 are harvested by livestock or a combination of livestock and
4 mechanical harvesting.

5 "Department." The Department of Environmental Protection of
6 the Commonwealth.

7 "Erosion." The natural process by which the surface of the
8 land is worn away by water, wind or chemical action.

9 "Fund." The Clean Streams Fund established under section
10 3304 (relating to Clean Streams Fund).

11 "Groundwater." Water that is located within the saturated
12 zone below the water table and is available to supply wells and
13 springs.

14 "Livestock." Animals raised, stabled, fed or maintained on
15 an agricultural operation with the purpose of generating income
16 or providing work, recreation or transportation. The term does
17 not include aquatic species.

18 "Locally impaired watershed." The land area, corresponding
19 to a watershed not larger than a 12-digit Hydrologic Unit Code
20 as designated by the United States Geological Survey, that
21 includes a body of water on the Commonwealth's list of impaired
22 waters under section 303(d) of the Federal Water Pollution
23 Control Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.).

24 "Manure management plan." A plan developed and implemented
25 in accordance with 25 Pa. Code Ch. 91 (relating to general
26 provisions).

27 "Nonpoint source pollution." Waterborne pollution which does
28 not have a discernible or confined discrete conveyance and
29 includes, but is not limited to, pollution caused by storm water
30 runoff across the land or infiltration into the groundwater such

1 as pollution from agriculture, abandoned mining activities and
2 urban runoff. The term does not include activities subject to a
3 National Pollutant Discharge Elimination System permit under the
4 Federal Water Pollution Control Act.

5 "Nutrient." Nitrogen or phosphorous.

6 "Nutrient management plan." A written site-specific plan
7 which incorporates BMPs to manage the use of plant nutrients for
8 crop production and water quality protection consistent with the
9 criteria established in 3 Pa.C.S. §§ 504 (relating to powers and
10 duties of commission) and 506 (relating to nutrient management
11 plans).

12 "Nutrient or sediment reduction." A reduction in a nitrogen,
13 phosphorus or sediment pollution load discharged to surface
14 water or groundwater that can be directly quantified or modeled
15 using any model approved or accepted by the department or the
16 United States Environmental Protection Agency for the purpose of
17 determining the amount of nutrient or sediment pollution
18 reduction, in pounds per year, achieved by implementing a best
19 management practice.

20 "PENNVEST." The Pennsylvania Infrastructure Investment
21 Authority.

22 "Poultry." Birds raised, fed or maintained on an
23 agricultural operation with the purpose of generating income.

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

26 "Sediment." Soil or another erodible material transported by
27 water, wind or other means as a product of erosion.

28 "Small farm." An agricultural operation, except for a
29 concentrated animal feeding operation or "CAFO" as defined under
30 25 Pa. Code § 92a.2 (relating to definitions).

1 "Storm water." Drainage runoff from the surface of the land
2 resulting from precipitation or snow or ice melt.

3 "Surface water." Perennial and intermittent streams, rivers,
4 lakes, reservoirs, ponds, wetlands, springs, natural seeps and
5 estuaries. The term does not include water at facilities
6 approved for wastewater treatment such as wastewater treatment
7 impoundments, cooling water ponds and constructed wetlands used
8 as part of a wastewater treatment process.

9 "Technical assistance." Advice, technical expertise,
10 information, training and tools provided to a landowner,
11 commission, conservation district or others regarding program
12 implementation, including, but not limited to, the proper
13 planning, design and installation of best management practices.

14 "Verification plan." A written plan that describes the
15 method that a qualified bidder will use to verify performance of
16 a best management practice for nutrient or sediment reduction in
17 accordance with a protocol approved or accepted by the
18 department.

19 "Verified nutrient or sediment reduction." Nutrient or
20 sediment reduction measured in pounds created by a best
21 management practice in accordance to a verification plan and
22 approved by the department.

23 "Watershed implementation plan." A plan created to achieve
24 water quality improvement goals within a watershed of this
25 Commonwealth, including, but not limited to, Chesapeake Bay
26 Watershed implementation plans, county action plans or other
27 watershed-based restoration and implementation plans.

28 § 3304. Clean Streams Fund.

29 (a) Establishment.--The Clean Streams Fund is established in
30 the State Treasury.

1 (b) Deposits.--

2 (1) The following shall be deposited into the fund under
3 subsection (a):

4 (i) Money appropriated for purposes of the fund.

5 (ii) Federal money appropriated or authorized for
6 purposes of the fund.

7 (iii) Money received from another governmental
8 agency through an interagency agreement or memorandum of
9 understanding.

10 (iv) A gift or other contribution from a public or
11 private source.

12 (v) Return on money dedicated for the fund,
13 including, but not limited to, interest on loans,
14 investment interest or refunds.

15 (2) For fiscal year 2021-2022, at least \$250,000,000 is
16 appropriated to the fund.

17 (c) Distribution.--The deposits made to the fund under
18 subsection (b) shall be distributed annually as follows:

19 (1) Fifty percent to the commission to implement the
20 program under section 3305 (relating to Agriculture
21 Conservation Assistance Program).

22 (2) Twenty percent to the department for the Acid Mine
23 Drainage Abatement and Treatment Fund.

24 (3) Ten percent to PENNVEST for implementation of the
25 Pennsylvania Clean Water Procurement Program established in
26 section 3306 (relating to Pennsylvania Clean Water
27 Procurement Program).

28 (4) Ten percent to the department for Municipal Storm
29 Water Assistance Program established in section 3307
30 (relating to Municipal Storm Water Assistance Program).

1 (5) Two and one-half percent to the Department of
2 Conservation and Natural Resources for the Keystone Tree
3 Restricted Account as established under section 6602
4 (relating to establishment).

5 (6) Seven and one-half percent to the Nutrient
6 Management Fund established in 3 Pa.C.S. § 512 (relating to
7 Nutrient Management Fund).

8 (d) Nonreversion.--Any money remaining in the fund,
9 including interest at the end of each fiscal year, shall not
10 revert to the General Fund but shall remain in the fund.

11 (e) Status of fund.--The fund shall not be subject to 42
12 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system).
13 § 3305. Agriculture Conservation Assistance Program.

14 (a) Establishment.--The Agriculture Conservation Assistance
15 Program is established in the commission.

16 (b) Sources of funding.--Funding for the program may be
17 provided through any of the following:

18 (1) Money allocated from the fund under section 3304(c)
19 (relating to Clean Streams Fund).

20 (2) Other money appropriated for the purposes of the
21 program.

22 (3) Federal money appropriated or authorized for
23 purposes of the program.

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

27 (5) A gift or other contribution from a public or
28 private source.

29 (6) Return on money dedicated for the program, including
30 interest on loans, investment interest or refunds.

1 (c) Powers and duties of commission.--The commission shall:

2 (1) Adopt performance standards for the administration
3 and oversight of the program, including best management
4 practices to be implemented and receive funding under the
5 program.

6 (2) Provide a system of program evaluation and quality
7 control.

8 (3) Annually assess the program and report the
9 assessment to:

10 (i) The chairperson and minority chairperson of the
11 Agriculture and Rural Affairs Committee of the Senate.

12 (ii) The chairperson and minority chairperson of the
13 Agriculture and Rural Affairs Committee of the House of
14 Representatives.

15 (iii) The chairperson and minority chairperson of
16 the Environmental Resources and Energy Committee of the
17 Senate.

18 (iv) The chairperson and minority chairperson of the
19 Environmental Resources and Energy Committee of the House
20 of Representatives.

21 (4) Develop a training, education and technical
22 assistance program for technicians, engineers and other
23 individuals performing work under the program.

24 (5) Create a system for collecting and reporting of
25 collected data on funded practices to governmental agencies,
26 in a manner consistent with criteria established under
27 Federal and State laws.

28 (d) Delegation of powers and duties.--In performance of its
29 powers and duties, the commission may delegate to The
30 Pennsylvania State University or other entity determined

1 appropriate by the commission to execute specific administrative
2 tasks and activities. Up to 4% of the funds provided under
3 subsection (b) may be committed by the commission to compensate
4 the entities performing the administrative tasks and activities.

5 (e) Administration expenses.--The commission may dedicate up
6 to 4% of the funds allocated under subsection (b) for expenses
7 incurred in administration of the program.

8 (f) Apportionment criteria.--The commission shall apportion
9 the funds under subsection (b) to participating conservation
10 districts based on written apportionment criteria developed by
11 the commission to establish priorities based on preventing
12 nutrient and sediment pollution. The following shall apply:

13 (1) The apportionment criteria shall consider:

14 (i) Agriculturally impaired stream miles.

15 (ii) The number of cropland acres.

16 (iii) The number of farms.

17 (iv) The number of livestock and poultry.

18 (v) Other criteria as established by the commission.

19 (2) Any apportioned funds that are not used in any
20 fiscal year may roll over for the following fiscal year. Any
21 unused apportioned funds after two years shall be
22 reapportioned to participating conservation districts in the
23 following year, consistent with the apportionment criteria
24 prescribed under this section.

25 (g) Powers and duties of participating conservation
26 districts.--The following shall apply:

27 (1) Each conservation district participating in the
28 program shall manage and administer funds apportioned by the
29 commission in a manner consistent with this section and the
30 guidelines established by the commission. Each participating

1 conservation district shall enter into an agreement with the
2 commission to establish the administrative responsibilities
3 and activities to be performed by the conservation district.

4 (2) Funds apportioned to a participating conservation
5 district shall be used for:

6 (i) Approving and providing financial assistance to
7 the person who received approval for the project to
8 install and implement BMPs, consistent with the criteria
9 for approval of projects provided under subsection (j).

10 (ii) Costs for technical training and education and
11 technical assistance in administration of projects
12 approved by the conservation district, including
13 technical assistance provided by third parties in
14 accordance with the provisions of subsection (c)(4).

15 (iii) Establishment of procedures for submission and
16 approval of applications for financial assistance for
17 BMPs that minimize, to the extent feasible, procedural
18 tasks and obligations for applicants.

19 (iv) Adoption of written criteria for ranking of
20 applications for financial assistance and determination
21 of proposed projects to be given priority.

22 (v) Entering into written agreements with recipients
23 of approved funding.

24 (vi) Administration and procedures to ensure
25 recipients of financial assistance timely complete
26 projects in a manner that meets established design and
27 construction standards.

28 (vii) Adoption of procedures to ensure that
29 recipients of the approved funding will fully comply with
30 requirements for future maintenance activities

1 established under the terms of agreement.

2 (viii) Development of procedures to ensure proper
3 performance of agreements executed under the program.

4 (3) A participating district may dedicate up to 12% of
5 the annual amount apportioned by the commission under
6 subsection (f) for expenses incurred in administration of the
7 program.

8 (h) Advisory committee.--Within a conservation district, a
9 committee may be appointed by the conservation district board to
10 advise the program and identify local priorities and
11 opportunities to complement other programs. The committee shall
12 include, at a minimum, one staff member of the conservation
13 district and one local representative of the United States
14 Department of Agriculture Natural Resources Conservation Service
15 and may include up to three other local representatives who are
16 knowledgeable of agricultural operations and conservation.

17 (i) Applications and certifications.--The following shall
18 apply:

19 (1) In a county with a participating conservation
20 district, a person may apply to the person's applicable
21 delegated conservation district for an eligible project under
22 the program. In a county without a participating conservation
23 district, a person may apply directly to the commission for
24 an eligible project under the program. The conservation
25 district and commission shall prescribe the respective form
26 and manner of the application. The application, at a minimum,
27 shall include:

28 (i) The location of the project.

29 (ii) The description of the project, including the
30 planned BMPs.

1 (iii) If applicable, the amount and sources of
2 funding available for the project.

3 (iv) The total cost of the project.

4 (v) Any other information as required by the
5 conservation district or commission, as applicable.

6 (vi) Relevance of the project to the development,
7 improvement or implementation of the applicant's manure
8 or nutrient management plan, conservation plan or
9 agriculture erosion and sediment control plan.

10 (2) The conservation district or commission, as
11 applicable, shall review complete applications based upon the
12 criteria established under subsection (j) on an ongoing basis
13 and in the order received. Within 90 days of receipt of a
14 complete application, unless extenuating circumstances
15 prevent the conservation district or commission from doing
16 so, the conservation district or commission, as applicable,
17 shall notify the applicant of:

18 (i) Whether the project is approved for funding
19 under the program.

20 (ii) The total amount of funds approved for the
21 project.

22 (iii) The amount of each type of funding approved
23 for the project.

24 (3) Upon completion of a project funded under the
25 program, the person who received the approval for the project
26 shall notify the conservation district or commission, as
27 applicable, of the completion of the project and shall submit
28 all documents to certify the completion.

29 (4) Projects funded under the program may be subject to
30 inspection by the commission, conservation district or a

1 designated agent.

2 (5) The funds shall be distributed upon certification
3 and verification that the funded project has been completed
4 and design and construction standards have been met.

5 (j) Criteria for evaluation of applications.--In approving
6 applications for eligible projects under the program, the
7 applicable delegated conservation district or commission shall
8 give priority to complete applications based upon the following
9 criteria:

10 (1) The project meets the goals of any applicable
11 watershed implementation plan.

12 (2) If applicable to the agricultural operation, the
13 applicant has a conservation plan or agricultural erosion and
14 sediment control plan and a manure management plan or
15 nutrient management plan. Development of the plans shall be
16 included in the application if not yet developed prior to the
17 application.

18 (3) The project implements best management practices
19 included in a conservation plan, agricultural erosion and
20 sediment control plan, manure management plan or nutrient
21 management plan. For purposes of this paragraph, the
22 conservation district or commission shall give priority to
23 projects that implement best management practices for control
24 of nitrogen or phosphorus.

25 (4) An agricultural operation with an animal
26 concentration area shall have implemented best management
27 practices necessary to abate storm water runoff, loss of
28 sediment, loss of nutrients and runoff of other pollutants
29 from the animal concentration area or the implementation of
30 best management practices shall be included in an application

1 for funds.

2 (5) Proximity to surface waters, public drinking water
3 sources or karst geology with underground drainage systems or
4 open sinkholes.

5 (6) The project meets the design and construction
6 standards established by the commission. If standards do not
7 exist for a best management practice approved by the
8 commission, the commission may establish or approve design,
9 construction and certification standards for a best
10 management practice.

11 (7) Any other criteria considered by the conservation
12 district, as applicable, and approved by the commission.

13 (k) Liability for failure of performance.--A person
14 receiving funds under an approved project who fails to
15 adequately perform any term of the agreement executed for the
16 project shall be liable for repayment of money provided to the
17 recipient related to adequate performance of the agreement term.
18 The commission or conservation district may initiate any legal
19 action in law or equity to compel adequate performance of a
20 project agreement or recoup funds provided under an approved
21 project for which the recipient is liable for repayment under
22 this subsection. Any funds repaid to the commission as a result
23 of failure of performance of a project agreement may be provided
24 to the conservation district that was party to that project
25 agreement for use in other project agreements.

26 (l) Definition.--As used in this section, the term "program"
27 shall mean the Agricultural Conservation Assistance Program
28 established under this section.

29 § 3306. Pennsylvania Clean Water Procurement Program.

30 (a) Establishment.--The Pennsylvania Clean Water Procurement

1 Program is established and shall provide for the purchase of a
2 verified nutrient or sediment reduction through a competitive
3 bidding process consistent with 62 Pa.C.S. Pt. I (relating to
4 Commonwealth Procurement Code).

5 (b) Funding.--

6 (1) Funding for the program may be provided through any
7 of the following:

8 (i) Money allocated under section 3304(c) (relating
9 to Clean Streams Fund).

10 (ii) Any other money appropriated for the program
11 that is not transferred from money available to the
12 department or another agency for a similar program.

13 (iii) Federal money appropriated or authorized for
14 purposes of the program.

15 (iv) Money received from another governmental agency
16 through an interagency agreement or memorandum of
17 understanding.

18 (v) A gift or other contribution from a public or
19 private source.

20 (vi) Return on money dedicated to the program,
21 including, but not limited to interest on loans,
22 investment interest or refunds.

23 (2) No more than 4% of the money dedicated to the
24 program may be used by the department to perform its duties
25 under subsection (g).

26 (c) Duties of PENNVEST.--PENNVEST shall:

27 (1) Issue a request for proposals or initiate
28 competitive bidding process under 62 Pa.C.S. Pt. I for the
29 supply of a verified nutrient or sediment reduction toward
30 the achievement of the Chesapeake Bay Total Maximum Daily

1 Load. PENNVEST shall require that a response to the request
2 for proposals or competitive bidding process shall include:

3 (i) The legal name, address and contact information,
4 including where available a telephone number and email
5 address of the person submitting the proposal.

6 (ii) A description of the project or practices to be
7 used or implemented to achieve the proposed nutrient or
8 sediment reduction, including an estimate of the amount
9 of reduction in pounds per year for each year of the
10 contract and the basis for estimates.

11 (iii) The location where the projects or practices
12 will be used or implemented.

13 (iv) The expected life of each reduction that will
14 be achieved as a result of the proposed projects or
15 practices.

16 (v) A description of the ownership, or written
17 agreement with the owner, of each parcel of land or
18 facility that will be used in implementing the projects
19 or practices.

20 (vi) A description of the measures to be used to
21 quantify, by measurement or modeling, the amounts of the
22 reductions of nutrients or sediment resulting from the
23 proposed projects or practices, and a "verification plan"
24 to verify the reductions, at such times or intervals as
25 PENNVEST or the department shall specify.

26 (vii) A suggested payment schedule.

27 (viii) A statement of the qualified bidder's
28 qualification, experience and resources.

29 (ix) A statement of the qualified bidder's proposed
30 surety and other financial assurances.

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

4 (3) Execute a contract with a qualified bidder. A
5 contract under this paragraph:

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

7 (ii) Shall require periodic submissions from the
8 qualified bidder, which may be required in conjunction
9 with specified performance targets, in accordance with a
10 verification plan approved by the department.

11 (iii) Shall require that payment be conditioned on
12 the achievement of specific outcomes based on defined
13 performance targets in accordance with a verification
14 plan approved by the department.

15 (iv) Shall specify measures that PENNVEST will take
16 in the event of a failure by the qualified bidder to meet
17 or satisfy any performance obligation, or otherwise fail
18 to comply with any term or condition of the contract,
19 including the withholding of payments or portions of
20 payments that would otherwise be made, the use of payment
21 adjustments and time schedules, including the extension
22 of any target date, if performance targets or schedules
23 are not met, cancellation of the contract in the event of
24 a substantial failure of performance that cannot be
25 readily corrected or mitigated and such other measures as
26 may be appropriate.

27 (4) After the department has verified a nutrient or
28 sediment reduction, purchase a verified nutrient or sediment
29 reduction in accordance with the terms of a contract under
30 paragraph (3).

1 (d) Publicly funded reductions.--A verified nutrient or
2 sediment reduction funded entirely by public funding may not be
3 eligible to be purchased under the program. If a percentage of a
4 verified nutrient or sediment reduction is funded by public
5 funding, the percentage of the remaining verified nutrient or
6 sediment reduction that is eligible to be purchased shall be
7 commensurate with the percentage of the verified nutrient or
8 sediment reduction that is not provided by public funding.

9 (e) Criteria.--The criteria for the evaluation of responses
10 to the request for proposals or competitive bidding process
11 under subsection (c) (1) and the weighted percentage to be
12 applied to each factor in the evaluation of the responses shall
13 be determined by PENNVEST in consultation with the department
14 and commission and be published as part of the request for
15 proposals or competitive bidding process under subsection (c)
16 (1). The criteria to be considered must include all of the
17 following:

18 (1) The quantity of nutrient or sediment loads
19 anticipated to be reduced.

20 (2) The dollar cost per pound of nutrient or sediment
21 removed.

22 (3) A verified nutrient or sediment reduction in a
23 locally impaired watershed.

24 (4) A verified nutrient or sediment reduction in a
25 county designated by the department as a Tier 1 Chesapeake
26 Bay county.

27 (5) The extent to which the project includes small
28 farms.

29 (6) The extent to which the project would provide
30 additional community and environmental benefits, including

1 mitigation of flooding, human exposure to toxic substances
2 and climate change.

3 (7) Any additional criteria determined relevant and
4 necessary by PENNVEST, the department and commission.

5 (f) Annual report.--PENNVEST shall publish and make
6 available to the public an annual report on the program
7 detailing all of following for the prior year:

8 (1) The total cost of the program.

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

11 (3) The verified nutrient or sediment reductions
12 achieved toward the satisfaction of the Chesapeake Bay Total
13 Maximum Daily Load.

14 (4) The total cost for each verified nutrient or
15 sediment reduction.

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

17 (g) Duties of department.--The department shall:

18 (1) Advise PENNVEST as it establishes criteria under
19 subsection (e).

20 (2) Review and approve a verification plan submitted
21 with a response to a request for proposals or competitive
22 bidding process under subsection (c)(1) and advise PENNVEST
23 regarding the acceptability of a verification plan, including
24 what changes, if any, must be made in order for it to be
25 acceptable. To be approved, a verification plan must describe
26 the procedures that can be easily used by the bidder, the
27 department or a technically qualified inspection contractor
28 engaged by the department, to inspect any projects or
29 practices utilized by a bidder and determine the amount of
30 any reduction of nutrients or sediment being achieved under

1 the terms of the contract.

2 (3) Evaluate the responses to the request for proposals
3 or competitive bidding process based on the criteria under
4 subsection (e) and advise PENNVEST regarding the
5 acceptability of the responses.

6 (4) In accordance with a contract under subsection (c)
7 (3), ensure, through inspections, compliance audits or other
8 means, that a qualified bidder is in compliance with an
9 approved verification plan. The department may enter into an
10 agreement with a third party to perform the duty under this
11 paragraph.

12 (h) Duties of commission.--The commission shall:

13 (1) Advise PENNVEST as criteria is established under
14 subsection (e).

15 (2) Review a response to a request for proposals or
16 competitive bidding process under subsection (c)(1) and
17 advise PENNVEST accordingly.

18 (i) Regulations.--The department may promulgate regulations
19 necessary to administer the provisions of this section. A lack
20 of regulations promulgated under this section shall not preclude
21 the department, the commission or PENNVEST from administering
22 and implementing the provisions of this section.

23 (j) Definition.--As used in this section, the term "program"
24 means the Pennsylvania Clean Water Procurement Program
25 established under this section.

26 (k) Expiration.--This section shall expire 10 years after
27 the effective date of this section.

28 § 3307. Municipal Storm Water Assistance Program.

29 (a) Establishment.--The Municipal Storm Water Assistance
30 Program is established in the department.

1 (b) Sources of funding.--Funding for the program may be
2 provided through any of the following:

3 (1) Money allocated from the fund under section 3304(c)
4 (relating to Clean Streams Fund).

5 (2) Any other money appropriated for the program.

6 (3) Federal money appropriated or authorized for
7 purposes of the program.

8 (4) Money received from another governmental agency
9 through an interagency agreement or memorandum of
10 understanding and directed to the program.

11 (5) A gift or other contribution from a public or
12 private source and directed to the program.

13 (6) Return on money dedicated for the program, including
14 interest on loans, investment interest or refunds.

15 (c) Powers and duties of department.--The department shall:

16 (1) Provide a system of financial assistance to
17 counties, municipalities or municipal authorities for the:

18 (i) Planning for storm water management under the
19 act of October 4, 1978 (P.L.864, No.167), known as the
20 Storm Water Management Act.

21 (ii) Implementation of projects pursuant to a
22 Pollution Reduction Plan as part of a National Pollutant
23 Discharge Elimination System (NPDES) Permit for
24 Stormwater Discharges from Municipal Separate Storm Sewer
25 Systems (MS4s).

26 (2) Adopt performance standards for administration and
27 oversight of the program and procedures for public
28 participation in the development and revision of the project
29 ranking criteria established in this section.

30 (3) Establish a system of program evaluation and quality

1 control.

2 (4) Adopt written and publicly available criteria for
3 ranking of applications for financial assistance and
4 determination of proposed projects to be given priority,
5 including:

6 (i) Projects that are part of a multimunicipal
7 regional storm water plan or integrated water resources
8 plan.

9 (ii) Projects with a perpetual easement protecting
10 the implemented practice, where applicable.

11 (iii) Projects with a contract for long term
12 maintenance of the implemented project.

13 (iv) Projects that utilize geographic information
14 systems or other targeting techniques to identify cost-
15 effective practice choices and siting.

16 (v) Projects that leverage a greater ratio of
17 matching funds based on fiscal need of the applicant.

18 (vi) Location of projects in an environmental
19 justice area as designated by the department.

20 (vii) Projects that will provide multiple benefits,
21 such as filtering toxic pollutants or mitigating
22 flooding.

23 (5) Annually assess the program and produce a report
24 that describes the numbers and types of projects funded, the
25 names and locations of projects and description of each
26 project and the amount of funding provided, the number of
27 applications received, the benefits that have resulted and
28 are expected to result, other measures taken by the
29 department to implement the program, a financial accounting
30 of funds received and expended and any other information that

1 the department determines would be appropriate. Copies of the
2 report shall be provided to the following:

3 (i) The chairperson and minority chairperson of the
4 Environmental Resources and Energy Committee of the
5 Senate.

6 (ii) The chairperson and minority chairperson of the
7 Environmental Resources and Energy Committee of the House
8 of Representatives.

9 (iii) The chairperson and minority chairperson of
10 the Urban Affairs and Housing Committee of the Senate.

11 (iv) The chairperson and minority chairperson of the
12 Urban Affairs Committee of the House of Representatives.

13 (v) The chairperson and minority chairperson of the
14 Local Government Committee of the Senate.

15 (vi) The chairperson and minority chairperson of the
16 Local Government Committee of the House of
17 Representatives.

18 (6) Create a system for collecting and reporting of
19 collected data on funded practices to governmental agencies,
20 in a manner consistent with criteria established under
21 Federal and State law.

22 (d) Administration expenses.--The department may dedicate no
23 more than 5% of the funds allocated in subsection (b) for
24 expenses incurred in administration of the program by the
25 department.

26 (e) Definition.--For purposes of this section, the term
27 "program" means the Municipal Storm Water Assistance Program
28 established under this section.

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