



**CHESAPEAKE BAY FOUNDATION**  
*Saving a National Treasure*

May 4, 2015

The Honorable David G. Argall  
Chairman, Senate Majority Policy Committee  
Senate Box 203029  
171 Main Capitol  
Harrisburg, PA 17120-3029

RE: Comments on Senate Bill 724 (P.N. 730)

Dear Chairman Argall:

On behalf of the Chesapeake Bay Foundation (“CBF”), we respectfully submit the following comments on Senator Vogel’s legislation before the Senate Majority Policy Committee.

CBF is the largest nonprofit organization dedicated to the protection and restoration of the Chesapeake Bay, its tributaries, and its resources. With the support of over 200,000 members, our staff of scientists, restoration specialists, attorneys, educators, and policy experts work to ensure that policy, regulation, and legislation are protective of the quality of the Chesapeake Bay and its watershed.

We commend Senator Vogel for his interest in and dedication to improving the waters of the Commonwealth and helping Pennsylvania’s family farmers through cost-effective mechanisms. Today, roughly 19,000 miles of rivers and streams are considered “impaired” by the Pennsylvania Department of Environmental Protection. Sediment from polluted runoff from farm fields, roads, and suburban and urban settings and the erosion of streambeds and streambanks is the leading cause of this impairment, affecting just under 8,900 miles of streams.

Recently, Senator Vogel introduced legislation intended to create a more cost-effective approach to dealing with the pollution affecting Pennsylvania’s rivers and streams as well as the Chesapeake Bay. We’re concerned, however, that the program established in Senate Bill 724, P.N. 730 would inadvertently create a flawed, administratively burdensome, and impractical “Total Maximum Daily Load (“TMDL”) parameter credit program” that could divert limited resources from scientifically-proven, cost-effective, conservation programs.

Please find CBF’s chief concerns with Senate Bill 724, P.N. 730 outlined below.

- 1) The bill would create an RFP program that favors large-scale, capital-intensive projects, not family farmers or local governments.

The proposed aim of Senate Bill 724, P.N. 730 is for the State to buy TMDL parameter credits to meet any “unmet TMDL reductions” needed in “major watersheds” with a TMDL. While CBF appreciates the intent to assist Pennsylvania in the attainment of its TMDL goals for the over 7,500 miles of streams and 16,700 acres of lakes with them, we are concerned that this legislation creates a process that will heavily favor large-scale projects such as technologies. In doing so, the majority of the roughly 59,000 farms in Pennsylvania, over 2,600 municipalities, and local entities, like watershed groups and most county conservation districts, would find it impossible to participate.

- 2) The Bill creates an additional nutrient credit marketplace that offers ambiguous regulatory value to entities with Federal Clean Water Act permits containing pollutant-specific and numerical effluent permit limits, such as municipal sewage treatment plants, or non-numerical practice-based permits, such as those for stormwater runoff from certain suburban and urban areas.

Existing nutrient credit trading programs allow entities meeting a set of baseline requirements to sell state-certified pollution reduction “credits” to other entities needing them; like sewage treatment plants. The Pennsylvania Department of Environmental Protection (“DEP”) and PENNVEST already offer certified nutrient credits through a market-based online exchange and auction. As of the most recent auction in November 2014, nitrogen credits were sold for between \$1.13 and \$2.51 per credit.

Furthermore, Senate Bill 724, P.N. 730 would create a competitive bidding process for the state to purchase “TMDL parameter credits” which are not obligated to meet the current DEP nutrient trading regulations (25 Pa. Code §§ 96.8(d)(5) & (e)(3)(vi)). As a result, reductions will have no real market value to the Commonwealth; nor would they be able to be applied to state and federal permits.

- 3) Senate Bill 724, P.N. 730 creates an unfunded program that threatens to syphon from funds currently used for Best Management Practices on farms.

Senate Bill 724 does little to help the more than 59,000 farms across Pennsylvania, who must develop and follow plans to manage manure and chemical fertilizers and prevent erosion from farm fields. These practices help farms keep soil and nutrients on the land, and out of waterways.

Small farmers would be at risk for losing important support. As written, the bill is an unfunded program with no cap on the amount that could be allocated towards it. As a result, the bill could syphon existing and any new resources for conservation, many of which support smaller, family farms as well as land preservation, parks & recreation, and the like.

- 4) Senate Bill 724, P.N. 730 would create a significant new bureaucracy.

As written, the RFP process would be carried out for each watershed with a TMDL in the state. Currently, there are over 7,500 miles of streams and 16,700 acres of lakes representing 305 individual approved TMDLs. Since the bill does not define “major watershed”, the Commonwealth would conceivably need to administer 305 RFP processes for the watersheds comprising these streams and lakes in order to execute the program as currently conceived in the bill.

In 2014, DEP raised concerns over the identical RFP process outlined in Senate Bill 724’s predecessor bill (SB 994, P.N. 1209 ). DEP expressed concern that it would be burdensome to run an RFP process with its existing staff and would have to add extra responsibilities added to workloads that would take staff time away from core functions.

DEP staff would also need to create regulations to support this legislation. Again, without a dedicated funding source, which also covers staff time, this legislation has the potential to create an undue burden on DEP and the taxpayers of the Commonwealth.

In summary, Pennsylvania already has the tools in place to promote cost-effective and performance based conservation practices to meet its Bay TMDL goals. As written Senate Bill 724, P.N. 730, could divert critical funding from conservation programs that are helping Pennsylvania farmers do their part for water quality and would waste taxpayer dollars to promote unproductive and costly practices. Thus, CBF concludes that the program created through Senate Bill 724, P.N. 730, as proposed, would be neither cost-effective nor affordable for Pennsylvania.

CBF thanks you for your time and attention. Please contact Assistant Director & Staff Attorney, Lee Ann Murray, [lamurray@cbf.org](mailto:lamurray@cbf.org) if you have any questions about CBF’s position on this piece of legislation or nutrient credit trading.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry Campbell", written in a cursive style.

Harry Campbell  
Pennsylvania Executive Director