

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1427 Session of
1997

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AND ROONEY, APRIL 30, 1997

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
APRIL 30, 1997

AN ACT

1 Authorizing the incurring of indebtedness of \$250,000,000 for
2 the conservation and reclamation of land and water resources
3 necessary to alleviate acid mine drainage in this
4 Commonwealth; defining the powers and duties of certain
5 offices, agencies and political subdivisions; providing for
6 the allotment of proceeds under this act, including
7 Commonwealth grants; prescribing standards; creating the Mine
8 Drainage Cleanup Fund; creating the Mine Drainage Cleanup
9 Sinking Fund; and making an appropriation.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Short title.

15 This act shall be known and may be cited as the Mine Drainage
16 Cleanup Act.

17 Section 2. Declaration of policy.

18 The General Assembly finds and declares as follows:

19 (1) Fundamental to the health and welfare of the people
20 of this Commonwealth are the land and water resources of this
21 Commonwealth.

22 (2) There are over 250,000 acres of abandoned surface
23 mines with dangerous highwalls and water-filled pits. About
24 2,400 miles of streams do not meet water quality standards
25 because of drainage from abandoned mines. There are uncounted
26 households with inadequate water supplies due to acid mine
27 drainage resulting from past mining practices.

28 (3) The prevention, control and elimination of stream
29 pollution from mine drainage and the alleviation and
30 prevention of subsidence above abandoned mine operations are

1 urgent matters requiring action by the Commonwealth, not only
2 for conservation purposes, but for the protection of the
3 health and welfare of the citizens of this Commonwealth,
4 especially those living in or adjacent to affected areas.

5 (4) Despite receiving an annual appropriation from the
6 Federal Government, the moneys received by the Commonwealth
7 under that appropriation are inadequate and are prioritized
8 primarily to address specific safety issues and are therefore
9 rarely available for water restoration projects. Moreover,
10 moneys from forfeited bonds have been largely inadequate to
11 make progress in the reduction of acid mine drainage.

12 (5) The Department of Environmental Protection shall be
13 responsible for any and all activities necessary to conduct
14 the business of alleviating acid mine drainage.

15 Section 3. Definitions.

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

19 "Administrative expenses." Any expenditures of funds to
20 accomplish the purposes of this act, including, but not limited
21 to, expenditures of Commonwealth agencies for studies, planning,
22 development, appraisal, investigation, engineering, legal and
23 construction costs.

24 "Department." The Department of Environmental Protection of
25 the Commonwealth.

26 "Development." Any construction, improvement, utility and
27 road relocation, alteration or renovation required for and
28 compatible with the physical development, improvement of land or
29 water resources.

30 "Issuing officials." The Governor, the Auditor General and

1 the State Treasurer acting in concert to effect borrowing in
2 accordance with and for the purposes of this act.

3 "Land." Real property, including improvements thereof or
4 thereon, rights-of-way, water, riparian and other rights,
5 easements, privileges and any other physical property or rights
6 or interests of any kind or description relating to or connected
7 with real property.

8 "Political subdivision." Any county, city, borough, town or
9 township or any official agency created by the foregoing units
10 of government under the laws of this Commonwealth, provided that
11 any of the actions of such official agency taken under the
12 authority of this act shall be first approved by the
13 participating local governing bodies in such agency.

14 "Secretary." The Secretary of Environmental Protection of
15 the Commonwealth.

16 "Studies." The collection, analysis and presentation of
17 information, alternatives and recommendations in order that the
18 Commonwealth or political subdivisions may singly or jointly
19 determine a course of action to meet the purposes of this act.

20 Section 4. Referendum to authorize incurring indebtedness.

21 (a) Submission of question to electors.--The question of
22 incurring indebtedness of \$250,000,000 for the Mine Drainage
23 Cleanup Fund to be used for the conservation and reclamation of
24 land and water resources of this Commonwealth, including the
25 elimination of acid mine drainage pollution from the streams of
26 this Commonwealth and the restoration of abandoned strip mine
27 areas shall be submitted to the electors at the next primary,
28 municipal or general election following the effective date of
29 this act.

30 (b) Certification to county boards of elections.--The

1 Secretary of the Commonwealth shall immediately certify the
2 question under subsection (a) to the county boards of elections.

3 (c) Form of question.--The question shall be in
4 substantially the following form:

5 Do you favor the incurring of indebtedness by the
6 Commonwealth of \$250,000,000 to be used for the
7 conservation and reclamation of land and water resources
8 of this Commonwealth, including the elimination of acid
9 mine drainage pollution from the streams of this
10 Commonwealth and the restoration of abandoned strip mine
11 areas?

12 (d) Conduct of election.--The election shall be conducted in
13 accordance with the act of June 3, 1937 (P.L.1333, No.320),
14 known as the Pennsylvania Election Code, except that the time
15 limits for advertisement of notice of the election may be waived
16 as to the question.

17 Section 5. Authority to borrow.

18 In the event that the question of incurring indebtedness, as
19 described in section 4, is approved by a majority of those
20 voting on the question in accordance with section 7(a)(3) of
21 Article VIII of the Constitution of Pennsylvania, the issuing
22 officials are hereby authorized and directed to borrow, on the
23 credit of the Commonwealth, such sum or sums of money not
24 exceeding in the aggregate the sum of \$250,000,000, as may be
25 necessary to carry out the purposes of this act.

26 Section 6. Bonds, issue, maturity, interest, etc.

27 (a) Issuance.--As evidence of the indebtedness authorized in
28 this act, general obligation bonds of the Commonwealth shall be
29 issued from time to time for such total amounts, in such forms,
30 in such denominations and subject to such terms and conditions

1 of issue, redemption and maturity, rate or rates of interest and
2 time of payment of interest as the issuing officials shall
3 direct, except that the latest stated maturity date shall not
4 exceed 30 years from the date of the bond first issued for each
5 such series.

6 (b) Signatures and seal.--All bonds issued under the
7 authority of this act shall bear facsimile signatures of the
8 issuing officials, and a facsimile of the Great Seal of the
9 Commonwealth, and shall be countersigned by two duly authorized
10 officers of the duly authorized loan and transfer agents of the
11 Commonwealth.

12 (c) Full faith and credit.--All bonds issued in accordance
13 with the provisions of this act shall be direct obligations of
14 the Commonwealth, and the full faith and credit of the
15 Commonwealth are hereby pledged for the payment of the interest
16 thereon as the same shall become due and for the payment of the
17 principal thereof at maturity. All bonds issued under the
18 provisions of this act shall be exempt from taxation for State
19 and local purposes. The principal of and interest on such bonds
20 shall be payable in lawful money of the United States of
21 America.

22 (d) Form.--Bonds issued under this act may be issued as
23 coupon bonds or registered as to both principal and interest as
24 the issuing officials may determine. If interest coupons are
25 attached, they shall contain the facsimile signature of the
26 State Treasurer.

27 (e) Amount.--The issuing officials shall provide for the
28 amortization of the bonds issued under this act in substantial
29 and regular amounts over the term of the debt.

30 (f) Preparation.--The issuing officials shall proceed to

1 have the necessary bonds prepared and printed. The bonds, as
2 soon as they are prepared and printed, shall be deposited with
3 the duly authorized loan and transfer agent of the Commonwealth,
4 there to remain until sold in accordance with the provisions of
5 this act.

6 Section 7. Sale of bonds.

7 (a) Offering for sale.--When bonds are issued under this
8 act, they shall be offered for sale and shall be sold by the
9 issuing officials to the highest and best bidder or bidders
10 after due public advertisement, on such terms and conditions and
11 upon such open competitive bidding as the issuing officials
12 shall direct. The manner and character of advertisement and the
13 times of advertising shall be prescribed by the issuing
14 officials.

15 (b) Private sale.--Any portion of any bond issue offered
16 under subsection (a) and not sold or subscribed for may be
17 disposed of by private sale by the issuing officials, in such
18 manner and at such prices as the Governor shall direct.

19 (c) Series.--When bonds are issued from time to time, the
20 bonds of each issue shall constitute a separate series to be
21 designated by the issuing officials or may be combined for sale
22 as one series with other general obligation bonds of the
23 Commonwealth.

24 Section 8. Refunding bonds.

25 The issuing officials are hereby authorized to provide by
26 resolution for the issuance of refunding bonds for the purpose
27 of refunding any bonds issued under the provisions of this act
28 and then outstanding, either by voluntary exchange with the
29 holders of such outstanding bonds with accrued interest and any
30 premium payable thereon, at maturity or at any call date. The

1 issuance of refunding bonds, the maturities and other details
2 thereof, the rights of the holders thereof and the duties of the
3 issuing officials in respect to refunding bonds shall be
4 governed by the foregoing provisions of this act, insofar as
5 they may be applicable. Refunding bonds may be issued by the
6 issuing officials to refund bonds originally issued or to refund
7 bonds previously issued for refunding purposes.

8 Section 9. Registration of bonds.

9 The Auditor General shall prepare the necessary registry book
10 to be kept in the office of the duly authorized loan and
11 transfer agent of the Commonwealth for the registration of any
12 bonds, at the request of owners thereof, according to the terms
13 and conditions of issue directed by the issuing officials. All
14 bonds which are issued under this act without interest coupons
15 attached shall be registered in the registry books kept by the
16 duly authorized loan and transfer agent of the Commonwealth.

17 Section 10. Disposition and use of proceeds.

18 (a) Creation of Mine Drainage Cleanup Fund.--There is hereby
19 created in the State Treasury a special fund to be known as the
20 Mine Drainage Cleanup Fund. The proceeds realized from the sale
21 of bonds under the provisions of this act shall be paid into
22 this fund and are hereby specifically dedicated to the purpose
23 of the referendum authorized under section 4. The moneys shall
24 be paid periodically by the State Treasurer to the department at
25 such times and in such amounts as may be necessary to satisfy
26 the purpose of this act.

27 (b) Investment and earnings.--Pending their application to
28 the purposes authorized, moneys held or deposited in the Mine
29 Drainage Cleanup Fund by the State Treasurer may be invested or
30 reinvested as are other funds in the custody of the State

1 Treasurer in the manner provided by law. All earnings received
2 from the investment or deposit of such funds shall be paid into
3 the State Treasury to the credit of the Mine Drainage Cleanup
4 Fund.

5 Section 11. Mine Drainage Cleanup Sinking Fund.

6 All bonds issued under the authority of this act shall be
7 redeemed at maturity, and all interest due from time to time on
8 such bonds shall be paid from the Mine Drainage Cleanup Sinking
9 Fund, which is hereby created. For the specific purpose of
10 redeeming these bonds at maturity and paying all interest
11 thereon in accordance with the information received from the
12 Governor, the General Assembly shall appropriate moneys for the
13 payment of interest on these bonds and the principal thereof at
14 maturity. All moneys paid into the Mine Drainage Cleanup Sinking
15 Fund and all of such moneys not necessary to pay accruing
16 interest shall be invested by the Board of Finance and Revenue
17 in such securities as are provided by law for the investment of
18 the sinking funds of the Commonwealth.

19 Section 12. Expenses of preparation, issue and sale of bonds.

20 There is hereby appropriated to the State Treasurer, from the
21 proceeds of the bonds issued, as much of the moneys as may be
22 necessary for all costs and expenses in connection with the
23 issue of and sale and registration of bonds in connection with
24 this act.

25 Section 13. Temporary financing authorization.

26 (a) Temporary borrowing.--Pending the issuance of bonds of
27 the Commonwealth, the issuing officials are authorized, on the
28 credit of the Commonwealth, to make temporary borrowings of such
29 moneys as may from time to time be necessary to carry out the
30 purposes of this act and are authorized in the name and on

1 behalf of the Commonwealth to enter into loan or credit
2 agreements with any banks or trust companies or other lending
3 institutions or persons in the United States having power to
4 enter into the same.

5 (b) Form.--All temporary borrowings made under the authority
6 of this section shall be evidenced by notes of the Commonwealth,
7 which shall be issued from time to time for such amounts, not
8 exceeding in the aggregate the sum of \$250,000,000, in such form
9 and in such denominations, and subject to such terms and
10 conditions of issue, prepayment or redemption and maturity, rate
11 of interest and time of payment of interest as the issuing
12 officials shall direct. All notes issued under the authority of
13 this section shall bear the facsimile signatures of the issuing
14 officials and a facsimile of the Great Seal of the Commonwealth
15 and shall be countersigned by two duly authorized officers of a
16 duly authorized loan and transfer agent of the Commonwealth.

17 (c) Funding and retirement.--All notes under this section
18 shall be funded and retired by the issuance and sale of bonds of
19 the Commonwealth to the extent that payment of these notes has
20 not otherwise been made or provided for.

21 (d) Proceeds.--The proceeds of all temporary borrowings
22 under this section shall be paid into the Mine Drainage Cleanup
23 Fund.

24 Section 14. Quorum.

25 Whenever in this act any action is to be taken or any
26 decision is to be made by the issuing officials and the three
27 officers are not able to agree unanimously, the action or
28 decision of the Governor and either the Auditor General or the
29 State Treasurer shall be binding and final.

30 Section 15. Information to General Assembly.

1 The Governor shall include in every budget submitted to the
2 General Assembly full information relating to the issuance of
3 bonds under the provisions of this act and the status of the
4 sinking funds of the Commonwealth for the payment of the
5 interest on those bonds and the principal thereof at maturity.
6 Section 16. Registration of bonds.

7 The Auditor General shall prepare the necessary registry
8 books to be kept in the office of the duly authorized loan and
9 transfer agent of the Commonwealth for the registration of any
10 bonds, at the request of the owner thereof, according to the
11 terms and conditions of issue. All bonds which are issued
12 without interest coupons attached shall be registered in the
13 registry books kept by the duly authorized loan and transfer
14 agent of the Commonwealth.

15 Section 17. Allotment of moneys.

16 (a) Projects.--Of the moneys received by the Commonwealth
17 from the issuance and sale of bonds and notes pursuant to this
18 act, when appropriated by the General Assembly from the Mine
19 Drainage Cleanup Fund, the sum of \$250,000,000 shall be allotted
20 to the Department of Environmental Protection for the abatement
21 and elimination of acid mine drainage pollution of watersheds
22 and waterways created by past mining practices; the restoration
23 of abandoned strip mine areas; the elimination and control of
24 abandoned mine conditions detrimental to public health and
25 safety; reclamation of abandoned mines; and administration
26 expenses attendant thereto.

27 (b) Right to enter land to abate and eliminate mine drainage
28 pollution.--

29 (1) If the secretary makes a finding of fact that:

30 (i) stream pollution resulting from mine drainage or

1 subsidence resulting from mining is at a stage where, in
2 the public interest, immediate action should be taken;
3 and

4 (ii) the owners of the property upon which entry
5 must be made to combat the stream pollution resulting
6 from mine drainage or subsidence resulting from mining
7 are not known, are not readily available or will not give
8 permission for the secretary or agents of the department
9 to enter upon the premises;

10 then, upon giving notice by mail to the owners, if known, or,
11 if not known, by posting notice upon the premises and
12 advertising once in a newspaper of general circulation in the
13 municipality in which the land lies, the secretary and agents
14 of the department shall have the right to enter upon the
15 premises and any other land in order to have access to the
16 premises to combat stream pollution resulting from mine
17 drainage or subsidence resulting from mining and to do all
18 things necessary or expedient to do so.

19 (2) Such entry shall not be construed as an act of
20 condemnation of property or of trespass. The moneys expended
21 for such work and the benefits accruing to any such premises
22 so entered upon shall be chargeable against such land and
23 shall mitigate or offset any claim in or any action brought
24 by any owner of any interest in such premises for any alleged
25 damages by virtue of such entry, provided, however, that this
26 provision is not intended to create new rights of action or
27 eliminate existing immunities.

28 (3) The secretary and agents of the department shall
29 have the right to enter upon any lands for the purpose of
30 conducting a study or exploratory work to determine if stream

1 pollution is from mine drainage and to determine the
2 feasibility of correcting such conditions. Entry shall not be
3 construed as an act of condemnation of property or of
4 trespass.

5 (4) Within six months after the completion of any work
6 to abate or eliminate pollution conditions from past mining
7 practices on privately owned property, the secretary shall
8 itemize any moneys so expended and file a statement in the
9 office of the prothonotary of the county in which the land
10 lies, together with a notarized appraisal by an independent
11 appraiser of the value of the land before and after the
12 abatement or elimination of the pollution conditions, if the
13 moneys so expended result in a significant increase in
14 property value. This statement shall constitute a lien upon
15 the land as of the date of the expenditure of the moneys and
16 shall have priority as a lien second only to the lien of real
17 estate taxes imposed upon said land. The lien shall not
18 exceed the amount determined by the appraisal to be the
19 increase in the market value of the land as a result of the
20 abatement or elimination of the pollution immediately after
21 the department has completed its work, and the lien shall
22 extend only to that portion of the premises directly involved
23 in the work of the department under this act. The lien shall
24 be entered in the judgment index and shall be given the
25 effect of a judgment against the land. Any party aggrieved by
26 the lien process may appeal under the act of June 22, 1964
27 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

28 (5) The department may expend funds, as appropriated in
29 this section, for the emergency abatement of stream pollution
30 resulting from mine drainage whenever created if the

1 secretary makes a finding of fact that:

2 (i) an emergency exists constituting an extreme
3 danger to the public; and

4 (ii) no other person or agency will act to combat
5 the condition.

6 The department shall have the right to enter upon the
7 premises where the emergency exists and any other land to
8 have access to the premises to combat stream pollution
9 resulting from mine drainage and to do all things necessary
10 or expedient to do so. Entry shall not be construed as an act
11 of condemnation of property or of trespass thereon. The
12 moneys expended for such work and the benefits accruing to
13 the land shall be chargeable against the land and shall
14 mitigate or offset any claim in or any action brought by any
15 owner of any interest in the land for alleged damages by
16 virtue of the entry. This provision is not intended to create
17 new rights of action or eliminate existing immunities.

18 (6) All moneys expended under this act for the emergency
19 abatement of stream pollution from mine drainage may be
20 recovered in full from the landowner or any other person
21 liable under law for abating the conditions resulting in the
22 emergency. The moneys expended for the emergency abatement of
23 these conditions shall constitute a debt which may be
24 recovered in any action at law to compel payment of debts. If
25 the landowner or another person is not liable under law to
26 abate the emergency conditions, then, within either six
27 months after the completion of the work or within six months
28 after the final court determination of the absence of
29 liability, the secretary may file a lien upon the following
30 terms and conditions:

1 (i) The department shall have the power and
2 authority, if not granted it otherwise, to engage in the
3 work and to do all things necessary and expedient to
4 effect such programs. The department shall have the power
5 and authority to enter into co-operative abatement
6 projects under this act with the Federal Government and
7 its agencies and other states and their agencies. In
8 addition to any other remedies provided for in this act,
9 the Attorney General, at the request of the department,
10 may initiate, in the Commonwealth Court or the court of
11 common pleas of the county in which the land lies, an
12 action in equity for an injunction to restrain any
13 interference with the exercise of the rights of entry
14 provided herein or the conduct of any project
15 contemplated herein.

16 (ii) The department shall have the power and
17 authority to construct and operate a plant or plants for
18 the control and treatment of water pollution resulting
19 from mine drainage. Control and treatment may be
20 dependent upon the ultimate use of the water and shall be
21 subject to the provisions of the act of June 22, 1937
22 (P.L.1987, No.394), known as The Clean Streams Law, and
23 no control or treatment hereunder shall be in any way
24 less than that required under The Clean Streams Law. The
25 construction of a plant may include major interceptors
26 and other facilities appurtenant to the plant. In the
27 operation of a plant the department shall have the power
28 to permit coal mine operators or owners to discharge
29 their mine drainage to such plant or plants and the
30 secretary shall have the authority to charge coal mine

1 operators or owners for the treatment of such mine
2 drainage. The charge to the coal mine operators or owners
3 for the treatment of such mine drainage shall be based
4 upon their proportional share of the capital and
5 operating cost and the quantity and quality of the
6 pollutant. Further, the secretary shall have the
7 authority to sell any by-product resulting from the
8 operation of such plants. Moneys so received shall be
9 placed in the General Fund and are hereby appropriated to
10 the Department of Environmental Protection.

11 (iii) The secretary shall have the power and
12 authority to establish rules and regulations and
13 establish rates to implement paragraph (2). Such rules
14 and regulations may provide for the escrowing of payments
15 made prior to the construction or operation of the plant
16 or plants.

17 (c) Joint departmental projects.--The respective departments
18 and commissions may cooperate and expend funds jointly on land
19 and water projects where the objectives of such projects can be
20 better achieved, where economies may be obtained by cooperation
21 and joint action or, in other instances, where joint action is
22 determined to be in the public interest.

23 (d) Administrative expenses.--Departments and commissions
24 incurring administrative expenses in accomplishing the purposes
25 of this act may charge these expenses against their specific
26 allotment.

27 (e) Federal programs.--The departments and commissions set
28 forth herein may utilize any available Federal program to
29 augment the funds made available to such department or
30 commission under this act.

1 Section 18. Estimated useful life and term of debt.

2 (a) Estimated useful life.--The General Assembly states that
3 the estimated useful life of the public improvement projects
4 itemized in this act is 30 years.

5 (b) Term of debt.--The maximum term of the debt authorized
6 to be incurred under this act is 30 years.

7 Section 19. Appropriation.

8 (a) Appropriation to fund.--The sum of \$250,000,000, or as
9 much thereof as is able to be borrowed by temporary financing or
10 by bonds, is hereby appropriated to the Mine Drainage Cleanup
11 Fund for the purposes set forth in this act. The General
12 Assembly may make appropriations from time to time to the Mine
13 Drainage Cleanup Fund or to the department to carry out the
14 purposes of this act, which appropriations shall be continuing
15 appropriations and shall not lapse.

16 (b) Other sources of funds.--In addition to the moneys
17 appropriated from time to time by the General Assembly for its
18 work, the department is authorized to make application for and
19 expend such Federal grants as may be available and may also
20 receive and expend contributions from other public, quasi-public
21 or private sources as may become available.

22 Section 20. Effective date.

23 This act shall take effect immediately.