

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 1103** Session of
1977

INTRODUCED BY KURY, MELLOW, SWEENEY, SCANLON, ROMANELLI,
McKINNEY, MESSINGER, BELL, ORLANDO, STOUT, JUBELIRER, MURRAY,
GURZENDA, STAPLETON, DUFFIELD AND HOLL, SEPTEMBER 27, 1977

SENATOR KURY, CONSUMER AFFAIRS, AS AMENDED, OCTOBER 4, 1977

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, adding provisions relating to energy
3 conservation and control.

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

Section 1. Part II of Title 66, act of November 25, 1970
(P.L.707, No.230), known as the Pennsylvania Consolidated
Statutes, is amended by adding a chapter to read:

TITLE 66

PUBLIC UTILITIES

Part

II. Other Provisions

PART II

OTHER PROVISIONS

Chapter

41. Energy Conservation and Control

CHAPTER 41

ENERGY CONSERVATION AND CONTROL

Subchapter

A. Preliminary Provisions

B. Pennsylvania Energy Council

1 C. Energy Information, Planning and Allocation

2 D. Violations and Penalties

3 SUBCHAPTER A

4 PRELIMINARY PROVISIONS

5 Sec.

6 4101. Short title of chapter.

7 4102. Definitions.

8 § 4101. Short title of chapter.

9 This chapter shall be known and may be cited as the "Energy
10 Conservation and Control Law."

11 § 4102. Definitions.

12 The following words and phrases when used in this chapter
13 shall have, unless the context clearly indicates otherwise, the
14 meanings given to them in this section:

15 "Council." The Pennsylvania Energy Council.

16 "Director." The director of the Pennsylvania Energy Council.

17 "Disaster." A man-made disaster, natural disaster or war-
18 caused disaster.

19 "Distributor." A person who:

20 (1) imports into this Commonwealth fuels for use,
21 distribution, storage or sale in this Commonwealth; or

22 (2) produces, refines, manufactures, blends or compounds
23 fuels and sells, uses, stores or distributes fuels within
24 this Commonwealth.

25 "Energy." Electricity however generated, fuels, petroleum
26 products and gases.

27 "Energy facility." Any plant or operation which produces,
28 converts, distributes or stores energy or converts one form of
29 energy to another. The term does not include an operation
30 conducted by a person acting only as a retail dealer.

1 "Energy industry." A person engaged in the exploration,
2 extraction, transportation, transmission, refining, processing,
3 generation, distribution, sale or storage of energy.

4 "Fuel." Coal, petroleum products, gases and nuclear fuel,
5 including enriched uranium, U235 and U238, and plutonium, U239.

6 "Gases." Natural gas, methane, liquified natural gas,
7 synthetic natural gas, coal gas and other manufactured gases.

8 "Man-made disaster." Any industrial, nuclear or
9 transportation accident, explosion, conflagration, power
10 failure, natural resource shortage or other condition, except
11 enemy action, resulting from man-made causes, such as oil spills
12 and other injurious environmental contamination, which threatens
13 or causes damage to property, human suffering, hardship or loss
14 of life.

15 "Natural disaster." Any hurricane, tornado, storm, flood,
16 high water, wind-driven water, tidal wave, earthquake,
17 landslide, mudslide, snowstorm, drought, fire, explosion or
18 other catastrophe which results in damage to property, hardship,
19 suffering or possible loss of life.

20 "Petroleum products." Includes motor gasoline, middle
21 distillate oils, residual fuel oils, aviation fuel, propane,
22 butane, natural gasoline, naphtha, gas oils, lubricating oils
23 and any other similar or dissimilar liquid hydrocarbons.

24 "Purchase." Includes, in addition to its ordinary meaning,
25 any acquisition of ownership or possession including but not
26 limited to condemnation by eminent domain proceedings.

27 "Retail dealer." A person who engages in the business of
28 selling fuels from a fixed location including but not limited to
29 a service station, filling station, store or garage directly to
30 the ultimate users of the fuel.

1 "Sale." Includes, in addition to its ordinary meaning, any
2 exchange, gift, theft or other disposition. In cases where fuels
3 are exchanged, given, stolen or otherwise disposed of, they
4 shall be deemed to have been sold.

5 "War-caused disaster." Any condition following an attack
6 upon the United States resulting in substantial damage to
7 property or injury to persons in the United States caused by use
8 of bombs, missiles, shellfire, nuclear, radiological, chemical
9 or biological means, or other weapons or overt paramilitary
10 actions, or other conditions such as sabotage.

11 "Wholesale dealer." A person who engages in the business of
12 selling fuels to other persons who resell the fuel.

13 SUBCHAPTER B

14 PENNSYLVANIA ENERGY COUNCIL

15 Sec.

16 4111. Establishment of council.

17 4112. Organization of council.

18 4113. Powers and duties.

19 4114. Utilization of existing services and facilities.

20 4115. Access to facilities and records of energy industries.

21 4116. Subpoena and examination of witnesses and documents.

22 § 4111. Establishment of council.

23 There is hereby established the Pennsylvania Energy Council
24 to assist in the direction, control and coordination of energy
25 resources.

26 § 4112. Organization of council.

27 (a) Composition.--The council shall consist of the Governor
28 ex officio, Lieutenant Governor, Adjutant General, Chairman of
29 the Office of Emergency Preparedness, Chairman of the Public
30 Utility Commission, Secretary of Environmental Resources,

1 Secretary of Transportation, Secretary of Community Affairs,
2 President pro tempore of the Senate or his designee, Speaker of
3 the House of Representatives or his designee and six citizens,
4 to be appointed for terms of three years by the Governor by and
5 with the advice and consent of a majority of the members elected
6 to the Senate, at least two of whom shall be members of consumer
7 or environmental groups, two of whom shall be elected municipal
8 government officials and two of whom shall either be persons
9 possessing knowledge and experience in the fields of oil, gas,
10 coal or electricity or persons from the academic community who
11 have expertise in energy related fields.

12 (b) Officers, quorum and meetings.--The Lieutenant Governor
13 shall be the chairman and the council shall elect a vice
14 chairman and secretary from the membership. ~~Fifteen~~ EIGHT <—
15 members of the council shall constitute a quorum. The council
16 shall meet at the call of the chairman or a majority of its
17 members.

18 (c) Employees and expenditures.--The council may employ a
19 director and such technical, clerical, stenographic and other
20 personnel, fix their compensation and may make such expenditures
21 within the appropriation therefor or other funds made available
22 to it as are necessary to carry out the purposes of this
23 chapter.

24 (d) Compensation and expenses.--The members of the council
25 shall serve without compensation but may be reimbursed for their
26 actual and necessary traveling and other expenses incurred in
27 connection with attendance upon meetings of the council.

28 (e) Offices, equipment and supplies.--The council shall be
29 provided with appropriate office space, furniture, equipment,
30 supplies, stationery and printing in the same manner as other

1 Commonwealth agencies are supplied.

2 (f) Conflict of interest.--No person who is an official or
3 employee of the council shall participate in any manner in any
4 decision or action of the council wherein the official or
5 employee has a direct or indirect financial interest.

6 (g) Applicability of other law.--The council shall be
7 subject to the provisions of the act of April 9, 1929 (P.L.177,
8 No.175), known as "The Administrative Code of 1929," except as
9 in this part otherwise provided.

10 § 4113. Powers and duties.

11 The council shall:

12 (1) Be the central repository within this Commonwealth
13 for the collection of energy information.

14 (2) Collect and analyze data relating to present and
15 future demands and resources for all forms of energy.

16 (3) Have authority to require any energy industry within
17 this Commonwealth to submit such information as shall be
18 required to carry out the provisions of this chapter
19 including but not limited to information necessary for
20 determining the impact of any construction or development on
21 the production, distribution, consumption or conservation of
22 energy within this Commonwealth.

23 (4) Establish an energy information system which will
24 provide for the forecasting and publishing of anticipated
25 energy shortages and which will provide all data necessary to
26 insure a fair and equitable distribution of available energy,
27 permit a more efficient and effective use of available energy
28 and provide the basis for long-term planning related to
29 energy needs.

30 (5) Design, implement and enforce a program for the

1 conservation of energy which program shall include but not be
2 limited to commercial, industrial and residential areas and
3 may provide for the evaluation of energy systems as they
4 relate to lighting, heating, refrigeration, air conditioning,
5 building design and operation, and appliance manufacturing
6 and operation.

7 (6) Inform and educate the public about the ways in
8 which energy can be conserved.

9 (7) Monitor prices charged for energy within this
10 Commonwealth, evaluate policies governing the establishment
11 of rates and prices for energy and make recommendations for
12 necessary changes in these policies to other concerned
13 Federal and Commonwealth agencies and to the General
14 Assembly.

15 (8) Have authority to conduct and supervise research
16 projects and programs for the purpose of increasing the
17 efficiency of energy use, developing new sources of energy,
18 evaluating energy conservation measures and meeting other
19 goals consistent with the intent of this chapter.

20 (9) Have authority to distribute and expend funds made
21 available for the purpose of research projects and programs.

22 (10) Have authority to enter into interstate compacts in
23 order to carry out energy research and planning with other
24 states or the Federal Government where appropriate.

25 (11) Have authority to apply for, accept and expend
26 grants-in-aid and assistance from private and public sources
27 for energy programs. Notwithstanding any other law to the
28 contrary, the council is designated as the Commonwealth
29 agency to apply for, receive and expend Federal and other
30 funding made available to the Commonwealth for the purposes

of this chapter.

(12) Have authority to adopt and promulgate rules and regulations necessary and proper to carry out the purposes of this chapter.

(13) Administer such regulations of agencies of the Federal Government as are applicable to the states including but not limited to state energy conservation plans.

§ 4114. Utilization of existing services and facilities.

In order to avoid duplication of services and facilities, the council shall utilize the services and facilities of existing officers and agencies of the Commonwealth and the political subdivisions thereof. These officers and agencies shall cooperate with and extend their services and facilities to the council as it shall request.

§ 4115. Access to facilities and records of energy industries.

The council shall have full power and authority whenever it shall deem it necessary or proper in carrying out any of the provisions of this chapter to enter upon the premises, buildings, machinery, system, plant or equipment and make any inspection, valuation, physical examination, inquiry or investigation of any and all plant and equipment, facilities, property and pertinent records, books, papers, memoranda, documents or effects whatsoever of any energy industry, and to hold any hearing for such purposes. In the exercise of these powers, the council may have access to and use any books, records or documents in the possession of any agency of the Commonwealth or any political subdivision thereof.

§ 4116. Subpoena and examination of witnesses and documents.

(a) General rule.--The council shall have the power, in any part of this Commonwealth, to subpoena witnesses, administer

1 oaths, examine witnesses or take such testimony, or compel the
2 production of such books, records, papers and documents as it
3 may deem necessary or proper in and pertinent to any proceeding,
4 investigation or hearing held or had by it and to do all
5 necessary and proper things and acts in the lawful exercise of
6 its powers or the performance of its duties.

7 (b) Fees for serving subpoena.--The fees for serving a
8 subpoena shall be the same as those paid sheriffs for similar
9 services.

10 (c) Penalty.--It is a summary offense for any individual
11 subpoenaed to attend before the council, or its representative
12 to fail to obey the command of the subpoena, or for any
13 individual in attendance before the council or its
14 representative to refuse to be sworn or to be examined, or to
15 answer any relevant question, or to produce any relevant data,
16 book, record, paper or document when ordered so to do by the
17 council or its representative.

18 SUBCHAPTER C

19 ENERGY INFORMATION, PLANNING AND ALLOCATION

20 Sec.

21 4121. Periodic reports from energy industries.

22 4122. Utilization of previously supplied information.

23 4123. Master energy plan.

24 4124. Emergency energy allocation plan.

25 4125. Declaration by Governor of disaster emergency.

26 4126. Powers during disaster emergency.

27 § 4121. Periodic reports from energy industries.

28 (a) General rule.--The council shall adopt rules and
29 regulations requiring the periodic reporting by energy
30 industries of energy information which shall include but not be

1 limited to the following:

2 (1) Electrical generating capacity in this Commonwealth;
3 long-range plans for additions to that capacity; efficiency
4 of electrical generation; price and cost factors in
5 electrical generation; types and quantities of fuels used;
6 projections of future demand, consumption of electricity by
7 sectors; and times, duration and levels of peak demand.

8 (2) Petroleum refining capacity; amount and type of fuel
9 produced; amount and type of fuel sold; interstate transfers
10 of fuel; price and cost factors in refining, production and
11 sale; long-term plans for alterations or additions to
12 refining capacity; and location, amount and type of fuel
13 storage.

14 (3) Storage capacity for gases; amount and end uses of
15 gases sold; and price and cost factors in the sale and use of
16 gases.

17 (4) Such other information as the council may determine
18 necessary for carrying out the purposes of this chapter.

19 (b) Filing copies of reports to Federal agencies.--The
20 council may require the energy industry or person to file with
21 it a copy of any report filed by the energy industry or person
22 with any Federal agency.

23 (c) Oath or affirmation.--All information submitted shall be
24 under oath or affirmation when required by the council.

25 (d) Annual report analyzing information.--The council shall
26 at least annually publish a report analyzing all energy
27 information collected.

28 § 4122. Utilization of previously supplied information.

29 In order to avoid duplication of reporting by the energy
30 industry, the council shall utilize any information previously

1 supplied to officers and agencies of this Commonwealth and
2 political subdivisions thereof. These officers and agencies
3 shall cooperate with and supply to the council such information
4 as the council shall request.

5 § 4123. Master energy plan.

6 The council shall prepare and, after public hearing, adopt a
7 master plan for a period of ten years on the production,
8 distribution, consumption and conservation of energy in this
9 Commonwealth. The plan shall include long-term objectives but
10 shall provide for the interim implementation of measures
11 consistent with these objectives. The council may from time to
12 time and after public hearing amend the master plan to maintain
13 and keep the plan current. In preparing the master plan or any
14 portion thereof or amendment thereto the council shall give due
15 consideration to the energy needs and supplies in the several
16 geographic areas of this Commonwealth and shall consult and
17 cooperate with any Federal or Commonwealth agency having an
18 interest in the production, distribution, consumption or
19 conservation of energy.

20 § 4124. Emergency energy allocation plan.

21 The council shall prepare and adopt, in conjunction with the
22 Public Utility Commission and the Office of Emergency
23 Preparedness, an emergency allocation plan, including a schedule
24 of emergency energy curtailment based on a uniform
25 classification of energy customers, specifying actions to be
26 taken in the event of an impending serious shortage of energy
27 which poses grave threats to the public health, safety or
28 welfare. The council shall direct all Commonwealth agencies to
29 develop, subject to approval by the council, contingency plans
30 for dealing with these emergencies.

1 § 4125. Declaration by Governor of disaster emergency.

2 (a) Responsibility to meet disasters.--The Governor is
3 responsible for meeting the dangers to this Commonwealth and
4 people presented by disasters.

5 (b) Executive orders, proclamations and regulations.--Under
6 this chapter, the Governor may issue, amend and rescind
7 executive orders, proclamations and regulations which shall have
8 the force and effect of law.

9 (c) Declaration of disaster emergency.--A disaster emergency
10 shall be declared by executive order or proclamation of the
11 Governor upon finding that a disaster has occurred or that the
12 occurrence or the threat of a disaster is imminent. The state of
13 disaster emergency shall continue until the Governor finds that
14 the threat or danger has passed or the disaster has been dealt
15 with to the extent that emergency conditions no longer exist and
16 terminates the state of disaster emergency by executive order or
17 proclamation, but no state of disaster emergency may continue
18 for longer than 30 days unless renewed by the Governor. The
19 General Assembly by concurrent resolution may terminate a state
20 of disaster emergency at any time. Thereupon, the Governor shall
21 issue an executive order or proclamation ending the state of
22 disaster emergency. All executive orders or proclamations issued
23 under this subsection shall indicate the nature of the disaster,
24 the area or areas threatened and the conditions which have
25 brought the disaster about or which make possible termination of
26 the state of disaster emergency. An executive order or
27 proclamation shall be disseminated promptly by means calculated
28 to bring its contents to the attention of the general public
29 and, unless the circumstances attendant upon the disaster
30 prevent or impede, shall be promptly filed with the council.

1 § 4126. Powers during disaster emergency.

2 (a) General rule.--The council is authorized, in the event
3 of a disaster emergency as proclaimed by the Governor pursuant
4 to section 4125 (relating to declaration by Governor of disaster
5 emergency), to the extent not in conflict with applicable
6 Federal law or regulation but notwithstanding any State or local
7 law or contractual agreement, to:

8 (1) Order any person to reduce by a specified amount the
9 use of any energy form; to make use of an alternate energy
10 form, where possible; or to cease the use of any energy form.

11 (2) Order any person engaged in the distribution of any
12 energy form to reduce or increase by a specified amount or to
13 cease the distribution of the energy form; to distribute a
14 specified amount and type of energy form to certain users as
15 specified by the council; or to share supplies of any energy
16 form with other distributors thereof.

17 (3) Establish priorities for the distribution of any
18 energy form.

19 (4) Regulate and control the distribution and sale of
20 any energy form by:

21 (i) Establishing such limitations, priorities or
22 rationing procedures as shall be necessary to insure a
23 fair and equitable distribution of available supplies.

24 (ii) Establishing minimum and maximum quantities to
25 be sold to any purchaser.

26 (iii) Fixing the days and hours of access to retail
27 dealers.

28 (iv) Compelling sales to members of the general
29 public during times when a retail dealer is open for the
30 sale of an energy form.

1 (v) Establishing methods for notifying the public by
2 flags, symbols or other appropriate means whether retail
3 dealers are open and selling the subject energy form.

4 (5) Direct the heads of those Commonwealth agencies that
5 were ordered to develop contingency plans pursuant to section
6 4122 (utilization of previously supplied information) to
7 implement the plans.

8 (6) Order the temporary closing of public or private
9 facilities by class including but not limited to any
10 business, school or sports facility.

11 (7) Adopt and promulgate such rules and regulations as
12 are necessary and proper to carry out the purposes of this
13 section.

14 (b) Power of Governor to suspend laws, etc.--During the
15 existence of a disaster emergency, the Governor may order the
16 suspension of any laws, rules, regulations or orders of any
17 agency of the Commonwealth or any political subdivision which
18 deal with or affect energy and which impede the ability of the
19 Governor to alleviate or terminate a disaster emergency. Upon
20 declaring a disaster emergency, the Governor may supersede any
21 other such emergency powers.

22 (c) Review of orders of council.--Any aggrieved person, upon
23 application to the council, shall be granted a review of whether
24 the continuance of any order issued by the council pursuant to
25 this section is unreasonable in light of then prevailing
26 conditions of emergency.

27 (d) Compelling assistance from Commonwealth agencies.--
28 During a disaster emergency the council may require any other
29 Commonwealth agency to provide such information, assistance,
30 resources and personnel as shall be necessary to discharge the

1 functions and responsibilities of the council under this
2 chapter, rules and regulations adopted under this chapter or
3 applicable Federal laws and regulations.

4 (e) Powers of Governor and council cumulative.--The powers
5 granted to the Governor and the council under this section shall
6 be in addition to and not in limitation of any emergency powers
7 now or hereafter vested in the Governor, the council or any
8 other Commonwealth agency pursuant to any other laws, including
9 but not limited to any power now vested in the Public Utility
10 Commission to require utility companies to allocate available
11 supplies of energy.

12 SUBCHAPTER D

13 VIOLATIONS AND PENALTIES

14 Sec.

15 4131. Actions for injunctive relief.

16 4132. Civil penalties.

17 4133. Criminal penalties.

18 4134. Recommending license suspension or revocation.

19 § 4131. Actions for injunctive relief.

20 Upon a violation of this chapter or of any rules, regulations
21 or orders issued under this chapter, the council may institute a
22 civil action in the Commonwealth Court or in the court of common
23 pleas of the judicial district in which the violation occurs for
24 injunctive relief to restrain the violation and for such other
25 relief as the court shall deem proper. Neither the institution
26 of this action nor any of the proceedings therein shall relieve
27 any party to the proceedings from other fines or penalties
28 prescribed for the violation by this chapter or by any rule,
29 regulation or order issued under this chapter.

30 § 4132. Civil penalties.

1 Any person who fails to provide energy information when so
2 required by the council shall be liable for a civil penalty of
3 not more than \$3,000 for each offense. If the violation is of a
4 continuing nature, each day during which it continues shall
5 constitute an additional and separate offense.

6 § 4133. Criminal penalties.

7 (a) Purchasers.--Any person purchasing or attempting to
8 purchase energy in violation of section ~~4123~~ 4126 (relating to <—
9 ~~master energy plan~~ POWERS DURING DISASTER EMERGENCY) or any <—
10 rules, regulations or orders issued thereunder commits a summary
11 offense.

12 (b) Retail dealers.--Any retail dealer who violates section
13 ~~4123~~ 4126 or any rules, regulations or orders issued thereunder <—
14 commits a summary offense.

15 (c) Suppliers.--Any distributor or any other supplier of
16 energy who violates any of the provisions of section ~~4123~~ 4126 <—
17 or of any rules, regulations or orders issued thereunder commits
18 a misdemeanor of the first degree.

19 § 4134. Recommending license suspension or revocation.

20 In addition to any other penalties provided under this
21 chapter or other statute, the council may recommend to the
22 appropriate agency the suspension or revocation of the license
23 of any retail dealer, gasoline jobber, wholesale dealer,
24 distributor or supplier of fuel who has violated this chapter or
25 any rules, regulations or orders issued under this chapter.

26 Section 2. Governor's Energy Council abolished.

27 (a) General rule.--The Governor's Energy Council is hereby
28 abolished and, except as otherwise provided by this act, all the
29 functions, powers and duties of the existing Governor's Energy
30 Council are hereby continued in the Pennsylvania Energy Council.

1 (b) Transfer of funds.--All appropriations, grants and other
2 moneys available to the Governor's Energy Council are hereby
3 transferred to the Pennsylvania Energy Council created by this
4 act and shall remain available for the objects and purposes for
5 which appropriated, subject to any terms, restrictions,
6 limitations or other requirements imposed by Federal or State
7 law.

8 (c) Transfer of employees.--The employees of the Governor's
9 Energy Council are hereby transferred to the Pennsylvania Energy
10 Council. Nothing in this act shall be construed to deprive the
11 employees of any rights or protections provided them by the
12 civil service, pension or retirement laws of this Commonwealth.

13 (d) Transfer of property.--All files, books, papers,
14 records, equipment and other property of the Governor's Energy
15 Council are hereby transferred to the Pennsylvania Energy
16 Council.

17 (e) Existing rules, regulations and orders.--The rules,
18 regulations and orders of the Governor's Energy Council shall
19 continue with full force and effect as the rules, regulations
20 and orders of the Pennsylvania Energy Council until further
21 amended or repealed.

22 (f) Construction of references.--Whenever in any law, rule,
23 regulation, order, contract, document, judicial or
24 administrative proceedings, or otherwise, reference is made to
25 the Governor's Energy Council, the reference shall be considered
26 to mean and refer to the Pennsylvania Energy Council.

27 Section 3. Expiration of Pennsylvania Energy Council.

28 (a) General rule.--Except as provided in subsection (b), the
29 provisions of 66 Pa.C.S. Chap. 41 (relating to energy
30 conservation and control) and the Pennsylvania Energy Council

1 shall expire on June 30, 1978.

2 (b) Extension by General Assembly.--The General Assembly, by
3 concurrent resolution adopted prior to the then current
4 expiration date, may extend the date of expiration for such
5 additional period and for as many times as the General Assembly
6 determines.

7 Section 4. Effective date.

8 This act shall take effect in 60 days.