

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 2342 Session of  
2010INTRODUCED BY HORNAMAN, FABRIZIO, SONNEY, HARKINS AND J. EVANS,  
MARCH 18, 2010AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MAY 3, 2010

## AN ACT

~~1 Authorizing the Department of General Services to lease  
2 submerged lands in excess of 25 acres within Erie County, for  
3 the development, construction and operation of utility scale  
4 offshore wind generation facilities.~~ ←

~~5 The General Assembly finds and declares as follows:~~

~~6 (1) That the potential for generation of electricity  
7 through development of wind energy conversion systems in Lake  
8 Erie would provide significant benefits to the Commonwealth.~~

~~9 (2) That legislation should be enacted to permit the  
10 development, construction and operation of wind energy  
11 conversion facilities in Lake Erie.~~

12 AUTHORIZING THE DEPARTMENT OF GENERAL SERVICES, WITH THE ←  
13 CONCURRENCE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, TO  
14 LEASE SUBMERGED LANDS IN EXCESS OF 25 ACRES WITHIN ERIE  
15 COUNTY, FOR THE ASSESSMENT, DEVELOPMENT, CONSTRUCTION AND  
16 OPERATION OF UTILITY SCALE OFFSHORE WIND, SOLAR OR KINETIC  
17 ENERGY GENERATION FACILITIES.

18 THE GENERAL ASSEMBLY FINDS AND DECLARES AS FOLLOWS:

19 (1) THAT THE POTENTIAL FOR GENERATION OF ELECTRICITY  
20 THROUGH DEVELOPMENT OF WIND, SOLAR OR KINETIC ENERGY  
21 GENERATION SYSTEMS IN LAKE ERIE WOULD PROVIDE SIGNIFICANT

1 BENEFITS TO THE COMMONWEALTH.

2 (2) THAT LEGISLATION SHOULD BE ENACTED TO AUTHORIZE THE  
3 DEPARTMENT OF GENERAL SERVICES, WITH THE CONCURRENCE OF THE  
4 DEPARTMENT OF ENVIRONMENTAL PROTECTION, TO LEASE SUBMERGED  
5 LANDS OF THE COMMONWEALTH IN LAKE ERIE FOR THE ASSESSMENT,  
6 DEVELOPMENT, CONSTRUCTION, OPERATION AND REMOVAL OF WIND,  
7 SOLAR OR KINETIC ENERGY GENERATION SYSTEMS IN LAKE ERIE.

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

10 ~~Section 1. Lands within the Lake Erie Basin.~~ ←

11 ~~(a) Authorization. The Commonwealth owns lands within the~~  
12 ~~bed of Lake Erie, all of which lands are located in Erie County.~~

13 ~~(b) The Department of General Services, with the concurrence~~  
14 ~~of the Department of Environmental Protection, acting on behalf~~  
15 ~~of the Commonwealth, is hereby authorized to lease submerged~~  
16 ~~lands in excess of 25 acres within the bed of Lake Erie in Erie~~  
17 ~~County for the development of utility scale systems to convert~~  
18 ~~wind energy to electricity. This development may include~~  
19 ~~electrical collection and transmission facilities and other~~  
20 ~~related structures.~~

21 ~~Section 2. Lease conditions.~~

22 ~~(a) Qualifications of lessees. A lease approved under~~  
23 ~~section 1 shall be restricted to lessees who can demonstrate the~~  
24 ~~expertise and capability to develop wind energy conversion~~  
25 ~~projects and who have a high likelihood of community and public~~  
26 ~~acceptance in Erie County.~~

27 ~~(b) Waters of the Commonwealth. A lease approved under~~  
28 ~~section 1 shall insure reasonable accommodation for fishing,~~  
29 ~~maritime commerce and other current and future commercial and~~  
30 ~~recreational uses of the waters of the Commonwealth now held in~~

1 ~~the public trust.~~

2 ~~(c) Term of lease. A lease approved under section 1 shall~~  
3 ~~be for a term of up to 49 years and may be extended, at the~~  
4 ~~option of the lessee, for all or any portion of the leased~~  
5 ~~premises for an additional term of up to 49 years. Any such~~  
6 ~~lease shall contain a provision for termination after ten years~~  
7 ~~if the lessee has not initiated construction of wind energy~~  
8 ~~conversion systems.~~

9 ~~(d) Improvements. Development of the parcels authorized to~~  
10 ~~be leased in this section shall be for utility scale systems to~~  
11 ~~convert wind energy to electricity, including electrical~~  
12 ~~collection and transmission facilities and other related~~  
13 ~~structures. No construction, installation or operation of wind~~  
14 ~~energy conversion facilities or other related structures on the~~  
15 ~~lands subject to lease shall commence without adherence to~~  
16 ~~Federal and State laws and prior receipt of all applicable~~  
17 ~~Federal and State permits.~~

18 ~~(e) Covenants. These conditions shall be covenants that run~~  
19 ~~with the land and shall be binding upon the lessee, any~~  
20 ~~sublessee and their respective successors and assigns. Should~~  
21 ~~the lessee, any sublessee or any of their respective successors~~  
22 ~~or assigns permit the parcels authorized to be leased under this~~  
23 ~~section, or any portion thereof, to be used in a manner~~  
24 ~~inconsistent with the conditions contained in this subsection,~~  
25 ~~all rights and interests in the lease authorized by this act~~  
26 ~~shall terminate immediately.~~

27 ~~(f) Lease agreement. Any such lease and any other documents~~  
28 ~~hereby contemplated shall be approved as to form and legality by~~  
29 ~~the Attorney General and the Office of General Counsel and shall~~  
30 ~~be executed by the Department of General Services, with the~~

~~concurrence of the Department of Environmental Protection, which  
approvals shall not be unreasonably withheld, in the name of the  
Commonwealth. The lease shall grant the lessee, and all  
successors, assigns and sublessees, the right to use the above-  
described premises, or to assign the lease or sublease or permit  
the sublease of the above described premises for the purposes of  
development of utility scale systems to convert wind energy to  
electricity. The lease shall also grant the lessee, and all  
successors, assigns and sublessees, the right to develop,  
construct and operate one or more submarine electrical  
transmission cables from the above described premises to the  
shoreline in Erie County.~~

~~(g) Sublease. The Department of General Services, with the  
concurrence of the Department of Environmental Protection,  
acting on behalf of the Commonwealth, is also specifically  
authorized to enter into one or more nondisturbance agreements  
with any sublessee of the premises described in this section  
pursuant to which the Commonwealth will agree that, if the  
Commonwealth succeeds to the interest of the sublessor under a  
sublease, it will not terminate the sublease unless the  
sublessee is in default.~~

~~(h) Consideration. The Department of General Services shall  
lease the land within the bed of Lake Erie as described in  
subsection (b) upon such terms and conditions and for such  
consideration as it shall, with the concurrence of the  
Department of Environmental Protection, establish through the  
lease agreements.~~

~~(i) Costs and fees. Costs and fees incidental to the lease  
authorized by this section shall be borne by the lessee,  
including the costs incurred by the Department of General~~

~~Services and the Department of Environmental Protection, in the preparation, execution and review of the lease, nondisturbance agreements and related documents.~~

~~Section 3. Other applicable legislation.~~


~~Nothing herein shall affect or otherwise limit the requirements of the provisions of the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act, which may require further measures to provide for public access and use of the land and adjacent water.~~

~~Section 4. Sunset provision.~~

~~In the event that a lease authorized by this act does not occur within 24 months following the effective date of this act, the authority contained in this act shall be void.~~

~~Section 5. Effective date.~~

~~This act shall take effect immediately.~~

SECTION 1. LANDS WITHIN THE LAKE ERIE BASIN. 

(A) BACKGROUND.--THE COMMONWEALTH OWNS LANDS WITHIN THE BED OF LAKE ERIE, ALL OF WHICH LANDS ARE LOCATED IN ERIE COUNTY.

(B) AUTHORIZATION.--THE DEPARTMENT OF GENERAL SERVICES, WITH THE CONCURRENCE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, ACTING ON BEHALF OF THE COMMONWEALTH, IS HEREBY AUTHORIZED TO GRANT EXCLUSIVE OPTIONS TO LEASE AND TO LEASE SUBMERGED LANDS IN EXCESS OF 25 ACRES WITHIN THE BED OF LAKE ERIE IN ERIE COUNTY THROUGH A COMPETITIVE PROCESS TO BE ESTABLISHED AND ADMINISTERED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE ASSESSMENT AND DEVELOPMENT OF UTILITY SCALE SYSTEMS TO CONVERT WIND, SOLAR OR KINETIC ENERGY TO ELECTRICITY. THE COMPETITIVE PROCESS SHALL INCLUDE, AT A MINIMUM, A DEMONSTRATION BY THE BIDDERS OF THEIR EXPERTISE, EXPERIENCE AND FINANCIAL CAPACITY. THIS DEVELOPMENT MAY INCLUDE ELECTRICAL COLLECTION AND TRANSMISSION FACILITIES,

SUBMARINE ELECTRICAL TRANSMISSION CABLES AND OTHER RELATED  
STRUCTURES.

SECTION 2. EXCLUSIVE OPTION TO LEASE AND LEASE CONDITIONS.

(A) QUALIFICATIONS OF LESSEES.--AN EXCLUSIVE OPTION TO LEASE  
AND SUBSEQUENT LONG-TERM LEASE APPROVED UNDER SECTION 1 SHALL BE  
RESTRICTED TO LESSEES WHO CAN DEMONSTRATE THE EXPERTISE AND  
CAPABILITY TO DEVELOP WIND, SOLAR OR KINETIC ENERGY GENERATION  
SYSTEMS IN A MARINE ENVIRONMENT AND WHO HAVE A HIGH LIKELIHOOD  
OF COMMUNITY AND PUBLIC ACCEPTANCE IN ERIE COUNTY. THE LEASE  
APPROVED UNDER SECTION 1 SHALL ALSO INCLUDE THE REQUIREMENT TO  
FILE WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION A BOND  
PAYABLE TO THE COMMONWEALTH FOR REMOVAL OF FACILITIES DEVELOPED  
PURSUANT TO THIS ACT AND LOCATED IN SUBMERGED LANDS OF LAKE  
ERIE.

(B) WATERS OF THE COMMONWEALTH.--AN EXCLUSIVE OPTION TO  
LEASE AND SUBSEQUENT LONG-TERM LEASE APPROVED UNDER SECTION 1  
SHALL ENSURE REASONABLE ACCOMMODATION FOR FISHING, MARITIME  
COMMERCE, ENERGY TRANSMISSION RIGHTS-OF-WAY AND OTHER CURRENT  
AND FUTURE COMMERCIAL AND RECREATIONAL USES OF THE WATERS OF THE  
COMMONWEALTH HELD IN THE PUBLIC TRUST.

(C) TERM OF EXCLUSIVE OPTION TO LEASE.--AN EXCLUSIVE OPTION  
TO LEASE A PARCEL OR CONTIGUOUS PARCELS OF SUBMERGED LANDS OF  
THIS COMMONWEALTH NOT TO EXCEED 10,000 CONTIGUOUS ACRES PER  
PARCEL, THROUGH A COMPETITIVE PROCESS UNDER SECTION 1 FOR  
PURPOSES OF ASSESSMENT, SHALL BE FOR A TERM OF UP TO FIVE YEARS  
FOR REASONABLE CONSIDERATION, WHICH OPTION MAY BE RENEWED OR  
TRANSFERRED TO A PERSON MEETING THE QUALIFYING CRITERIA  
ESTABLISHED UNDER SECTION 1, WITH THE APPROVAL OF THE DEPARTMENT  
OF ENVIRONMENTAL PROTECTION, FOR ADDITIONAL FIVE-YEAR TERMS.

(D) TERM OF LONG-TERM LEASE.--A PERSON AWARDED AN EXCLUSIVE

1 OPTION TO LEASE UNDER SUBSECTION (C) SHALL BE ELIGIBLE TO ENTER  
2 INTO A LONG-TERM LEASE APPROVED UNDER SECTION 1 FOR THE AREAL  
3 EXTENT OF THE FACILITIES TO BE CONSTRUCTED FOR AN INITIAL TERM  
4 OF UP TO 35 YEARS FOR CONSTRUCTION, OPERATION, MAINTENANCE AND  
5 REMOVAL OF WIND, SOLAR OR KINETIC ENERGY GENERATION SYSTEMS AND  
6 TRANSMISSION FACILITIES IN LAKE ERIE AND WHICH MAY BE EXTENDED  
7 FOR ALL OR ANY PORTION OF THE LEASED PREMISES FOR ADDITIONAL  
8 TERMS OF UP TO 35 YEARS. ANY SUCH LEASE SHALL CONTAIN A  
9 PROVISION FOR TERMINATION IF THE LESSEE HAS NOT INITIATED  
10 CONSTRUCTION OF WIND, SOLAR OR KINETIC ENERGY GENERATION SYSTEMS  
11 WITHIN A REASONABLE PERIOD OF TIME TO BE ESTABLISHED IN THE  
12 TERMS OF THE LEASE.

13 (E) IMPROVEMENTS.--DEVELOPMENT OF THE PARCELS AUTHORIZED TO  
14 BE OPTIONED OR LEASED IN THIS SECTION SHALL BE FOR UTILITY SCALE  
15 SYSTEMS TO CONVERT WIND, SOLAR OR KINETIC ENERGY TO ELECTRICITY,  
16 INCLUDING ELECTRICAL COLLECTION AND TRANSMISSION FACILITIES,  
17 SUBMARINE ELECTRICAL TRANSMISSION CABLES AND OTHER RELATED  
18 STRUCTURES. NO ASSESSMENT, CONSTRUCTION, INSTALLATION OR  
19 OPERATION OF WIND, SOLAR OR KINETIC ENERGY CONVERSION FACILITIES  
20 OR OTHER RELATED STRUCTURES ON THE LANDS SUBJECT TO LEASE SHALL  
21 COMMENCE WITHOUT ADHERENCE TO FEDERAL AND STATE LAWS AND PRIOR  
22 RECEIPT OF ALL APPLICABLE FEDERAL AND STATE PERMITS.

23 (F) COVENANTS.--THESE CONDITIONS SHALL BE COVENANTS THAT RUN  
24 WITH THE LAND AND SHALL BE BINDING UPON THE LESSEE, ANY  
25 SUBLESSEE AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. SHOULD  
26 THE LESSEE, ANY SUBLESSEE OR ANY OF THEIR RESPECTIVE SUCCESSORS  
27 OR ASSIGNS PERMIT THE PARCELS AUTHORIZED TO BE OPTIONED OR  
28 LEASED UNDER THIS SECTION, OR ANY PORTION THEREOF, TO BE USED IN  
29 A MANNER INCONSISTENT WITH THE CONDITIONS CONTAINED IN THIS  
30 SUBSECTION, ALL RIGHTS AND INTERESTS IN THE OPTION OR LEASE

1 AUTHORIZED BY THIS ACT SHALL TERMINATE IMMEDIATELY.

2 (G) OPTION AND LEASE AGREEMENTS.--ANY SUCH OPTION, LEASE AND  
3 ANY OTHER DOCUMENTS HEREBY CONTEMPLATED SHALL BE APPROVED AS TO  
4 FORM AND LEGALITY BY THE ATTORNEY GENERAL AND THE OFFICE OF  
5 GENERAL COUNSEL AND SHALL BE EXECUTED BY THE DEPARTMENT OF  
6 GENERAL SERVICES, WITH THE CONCURRENCE OF THE DEPARTMENT OF  
7 ENVIRONMENTAL PROTECTION, WHICH APPROVALS SHALL NOT BE  
8 UNREASONABLY WITHHELD, IN THE NAME OF THE COMMONWEALTH. THE  
9 OPTION AND LEASE SHALL GRANT THE LESSEE, AND ALL SUCCESSORS,  
10 ASSIGNS AND SUBLESSEES, THE RIGHT TO USE THE ABOVE-DESCRIBED  
11 PREMISES, OR TO ASSIGN THE LEASE OR SUBLEASE OR PERMIT THE  
12 SUBLEASE OF THE SUBMERGED LANDS OF THE COMMONWEALTH IN  
13 ACCORDANCE WITH THIS ACT FOR THE PURPOSES OF ASSESSMENT AND  
14 DEVELOPMENT OF UTILITY SCALE SYSTEMS TO CONVERT WIND, SOLAR OR  
15 KINETIC ENERGY TO ELECTRICITY. THE LEASE SHALL ALSO GRANT THE  
16 LESSEE, AND ALL SUCCESSORS, ASSIGNS AND SUBLESSEES, THE LEASE OR  
17 SUBLEASE OR PERMIT THE SUBLEASE OF THE SUBMERGED LANDS OF THE  
18 COMMONWEALTH IN ACCORDANCE WITH THIS ACT FOR THE PURPOSE OF  
19 ASSESSMENT, DEVELOPMENT, CONSTRUCTION AND OPERATION OF ONE OR  
20 MORE COLLECTION FACILITIES AND ASSOCIATED SUBMARINE ELECTRICAL  
21 TRANSMISSION CABLES.

22 (H) SUBLEASE.--THE DEPARTMENT OF GENERAL SERVICES, WITH THE  
23 CONCURRENCE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
24 ACTING ON BEHALF OF THE COMMONWEALTH, IS ALSO SPECIFICALLY  
25 AUTHORIZED TO ENTER INTO ONE OR MORE NONDISTURBANCE AGREEMENTS  
26 WITH ANY SUBLESSEE OF THE SUBMERGED LANDS OF THE COMMONWEALTH IN  
27 ACCORDANCE WITH THIS ACT PURSUANT TO WHICH THE COMMONWEALTH WILL  
28 AGREE THAT, IF THE COMMONWEALTH SUCCEEDS TO THE INTEREST OF THE  
29 SUBLESSOR UNDER A SUBLEASE, IT WILL NOT TERMINATE THE SUBLEASE  
30 UNLESS THE SUBLESSEE IS IN DEFAULT.



1 (I) CONSIDERATION.--THE DEPARTMENT OF GENERAL SERVICES SHALL  
2 GRANT EXCLUSIVE OPTIONS TO LEASE AND LEASE THE LAND WITHIN THE  
3 BED OF LAKE ERIE AS DESCRIBED IN SUBSECTION (B) UPON SUCH TERMS  
4 AND CONDITIONS AND FOR SUCH CONSIDERATION AS IT SHALL, WITH THE  
5 CONCURRENCE OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
6 ESTABLISH.

7 (J) COSTS AND FEES.--COSTS AND FEES INCIDENTAL TO THE LEASE  
8 AUTHORIZED BY THIS SECTION SHALL BE BORNE BY THE LESSEE,  
9 INCLUDING THE COSTS INCURRED BY THE DEPARTMENT OF GENERAL  
10 SERVICES AND THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, IN THE  
11 PREPARATION, EXECUTION AND REVIEW OF THE LEASE, NONDISTURBANCE  
12 AGREEMENTS AND RELATED DOCUMENTS.

13 (K) TRANSFER OF INTEREST PROHIBITED.--EXCEPT AS PROVIDED IN  
14 SECTION 1, THIS ACT DOES NOT AUTHORIZE OR OTHERWISE ALLOW FOR OR  
15 INCLUDE ANY TRANSFER OF ANY MINERAL OR OTHER SURFACE OR  
16 SUBSURFACE INTEREST ASSOCIATED WITH LAKE ERIE SUBMERGED LANDS OF  
17 THE COMMONWEALTH.

18 SECTION 3. OTHER APPLICABLE LEGISLATION.

19 EXCEPT AS PROVIDED IN SECTION 1, NOTHING HEREIN SHALL AFFECT  
20 OR OTHERWISE LIMIT THE REQUIREMENTS OF THE PROVISIONS OF THE ACT  
21 OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE DAM SAFETY  
22 AND ENCROACHMENTS ACT, WHICH MAY REQUIRE FURTHER MEASURES TO  
23 PROVIDE FOR PUBLIC ACCESS AND USE OF THE LAND AND ADJACENT  
24 WATER.

25 SECTION 4. EXPIRATION.

26 IN THE EVENT THAT EITHER AN EXCLUSIVE OPTION TO LEASE OR A  
27 LONG-TERM LEASE AUTHORIZED BY THIS ACT DOES NOT OCCUR WITHIN 60  
28 MONTHS FOLLOWING THE EFFECTIVE DATE OF THIS ACT, THE AUTHORITY  
29 CONTAINED IN THIS ACT SHALL BE VOID.

30 SECTION 5. EFFECTIVE DATE.

1        THIS ACT SHALL TAKE EFFECT IMMEDIATELY.