

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 180 Session of
2011

INTRODUCED BY SONNEY, HORNAMAN, BARBIN, BRENNAN, BURNS,
CALTAGIRONE, COHEN, CONKLIN, DALEY, DEASY, FABRIZIO, GEIST,
GIBBONS, HARKINS, KAMPF, KOTIK, MAHONEY, MILLARD, MURPHY,
M. O'BRIEN, ROSS, SANTONI, SCHRODER, VULAKOVICH AND
YOUNGBLOOD, OCTOBER 18, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 18, 2011

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 assessment, development, construction and operation of
4 utility scale offshore wind, solar or kinetic energy
5 generation facilities; providing for collection of certain
6 lease and royalty payments; establishing the Lake Erie Large
7 Scale Energy System Development Fund; and providing for
8 transfers and distributions from the fund.

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

11 Section 1. Short title.

12 This act shall be known and may be cited as the Lake Erie
13 Wind Energy Development Act.

14 Section 2. Definitions.

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

18 "Department." The Department of General Services of the
19 Commonwealth.

1 "Fund." The Lake Erie Large Scale Energy System Development
2 Fund established by this act.

3 "Large scale energy system" or "system." A wind energy
4 generation system at more than 500 megawatts as measured by the
5 nameplate capacity of the system or a solar energy system of at
6 least 12 megawatts as measured by the nameplate capacity of the
7 system.

8 Section 3. Lands within the Lake Erie Basin.

9 (a) Legislative declaration.--The General Assembly declares
10 that the Commonwealth owns lands within the bed of Lake Erie,
11 all of which lands are located in Erie County.

12 (b) Authorization.--

13 (1) The Department of General Services, acting on behalf
14 of the Commonwealth, may lease submerged lands equal to or
15 greater than 25 acres, but not in excess of 10,000 contiguous
16 acres, within the bed of Lake Erie in Erie County.

17 (2) Develop a map designating the areas of the bed of
18 Lake Erie that may be leased for large scale energy system
19 development. The department shall ensure that the areas that
20 may be leased are concentrated in the central and western
21 portion of Lake Erie, avoid development in nearshore areas,
22 avoid shipping lanes and avoid areas of Lake Erie where
23 migratory birds are concentrated.

24 (3) The department shall develop and implement a
25 competitive process for the leasing of submerged lands for
26 the development of large scale energy systems to convert wind
27 or solar energy to electricity. The competitive process shall
28 include, at a minimum:

29 (i) A demonstration by the bidders of their
30 expertise, experience and financial capacity to conduct a

feasibility study and to develop such a system.

(ii) A certification that the bidder has the financial capability to cover all costs associated with the feasibility study and interconnecting to an energy distribution system.

(iii) A demonstration by the bidders of the benefits to be accrued by the Commonwealth, including, but not limited to:

(A) The number of full-time jobs to be created.

(B) The overall economic impact of the proposed system.

(C) The environmental benefits of the system.

(D) The overall need for the system.

(F) The amount of power to be provided by the proposed system.

(G) An initial assessment of community and public acceptance of the proposed system.

Section 4. Lease conditions.

(a) Qualifications of lessees.--A lease and a subsequent long-term lease approved under this act shall be restricted to lessees who:

(1) Demonstrate the expertise and capability to develop large scale energy systems in a marine environment.

(2) Have been deemed to be the most qualified bidder based upon the criteria listed in section 3(b)(3) and any other additional criteria that may be developed by the department.

(3) File with the department a bond payable to the Commonwealth to cover the entire cost associated with the removal of facilities developed pursuant to this act and

1 located in submerged lands of Lake Erie.

2 (b) Waters of this Commonwealth.--A lease and any subsequent
3 long-term lease approved under section 3 shall ensure reasonable
4 accommodation for fishing, maritime commerce, energy
5 transmission rights-of-way and other current and future
6 commercial and recreational uses of the waters of this
7 Commonwealth held in the public trust.

8 (c) Term of lease.--The initial term of a lease shall be for
9 a term of up to seven years. The department may upon sufficient
10 justification renew the lease for an additional three-year term.
11 In the event the lessee does not develop the parcel or
12 contiguous parcels of submerged lands by installing a large
13 scale energy system within the initial seven-year lease period,
14 the lease shall terminate.

15 (d) Term of long-term lease.--

16 (1) A person awarded a lease under this act may be
17 eligible to enter into a long-term lease for the facilities
18 to be constructed.

19 (2) The department, based upon satisfactory evidence
20 that the lessee is capable of long-term operation of the
21 large scale energy system, may enter into a long-term lease
22 with an initial term of up to 35 years for the construction,
23 operation, maintenance and removal of a large scale energy
24 system and any associated transmission facilities in Lake
25 Erie.

26 (3) The initial long-term lease may be extended for all
27 or any portion of the leased premises for additional terms of
28 up to 35 years.

29 (4) The long-term lease shall contain a provision for
30 termination if the lessee has not initiated construction of

1 the large scale energy system within a reasonable period of
2 time to be established in the terms of the lease.

3 (5) The department may permit, as an option to the long-
4 term lease, the ability of the lessee to lease contiguous
5 parcels. The department shall have the authority to determine
6 the size of the contiguous parcels but not to exceed
7 increments of 10,000 acres.

8 (e) Feasibility study.--

9 (1) Prior to commencing construction of the system, a
10 developer awarded a lease shall conduct a feasibility study
11 to assess the ability of the large scale energy system to be
12 viable and to assess the environmental impacts and siting
13 considerations necessary to the successful development of
14 such a system.

15 (2) The environmental impacts to be addressed shall
16 include, but not be limited to, the impacts to fishing,
17 migratory bird and mammal routes.

18 (3) The siting considerations to be assessed shall
19 include, but not be limited to:

20 (i) Ice impacts.

21 (ii) Wind speed.

22 (iii) Ship traffic.

23 (iv) View shed impacts.

24 (4) The department shall utilize the results of the
25 feasibility study, as part of the review process associated
26 with the approval or disapproval, to proceed with the
27 construction of a large scale energy system.

28 (5) No feasibility study, construction, installation or
29 operation of large scale energy systems or other related
30 structures on the lands subject to lease shall occur without

adherence to Federal and State laws and prior receipt of all applicable Federal and State permits.

(f) Improvements.--Development of the parcels authorized to be leased by this act shall be for large scale energy systems, including electrical collection and transmission facilities, submerged electrical transmission cables and other related structures.

(g) Regulations.--The department shall, for purposes of leasing the bed of Lake Erie for large scale energy system development, adopt regulations which at a minimum:

(1) Determine minimum standards for the technology used to construct large scale energy systems on and to transmit electricity from the areas of Lake Erie leased for that purpose.

(2) Establish procedures for the conduct of feasibility studies by large scale energy system developers related to, but not limited to, the siting, economics and environmental issues of a system.

(3) Establish reasonable fees to cover the costs incurred by the department and directly related to the preparation, review, execution of lease or other agreements associated with this act.

(4) Establish a process for the developer of the large scale energy system to demonstrate community and public acceptance of the proposed system.

(5) Establish any other requirements that the department determines are necessary to implement or administer this section.

(6) Prohibit lessees from entering into subleases.

(h) Covenants.--These conditions shall be covenants that run

1 with the land and shall be binding upon the lessee. Should the
2 lessee permit the parcels authorized to be leased under this
3 section, or any portion thereof, to be used in a manner
4 inconsistent with the conditions contained in this act, all
5 rights and interests in the lease authorized by this act shall
6 terminate immediately.

7 (i) Lease agreements.--

8 (1) Any lease and any other documents authorized by this
9 act shall be approved as to form and legality by the Attorney
10 General and the Office of General Counsel in accordance with
11 law and shall be executed by the department, which approvals
12 shall not be unreasonably withheld, in the name of the
13 Commonwealth.

14 (2) The lease shall grant the lessee the right to use
15 the premises in accordance with this act for the purposes of
16 conducting a feasibility study and development of large scale
17 energy systems.

18 (j) Sublease by department prohibited.--The department may
19 not enter into subleases or nondisturbance agreements on any of
20 the submerged lands of this Commonwealth in accordance with this
21 act.

22 (k) Transfer of interest prohibited.--Except as provided in
23 section 3, this act does not authorize or otherwise allow for or
24 include any transfer of any mineral or other surface or
25 subsurface interest associated with Lake Erie submerged lands of
26 this Commonwealth.

27 Section 5. Other applicable law.

28 Except as provided in section 3, nothing in this act shall be
29 construed to affect or otherwise limit the requirements of the
30 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 6. Interagency responsibilities.

The department shall work cooperatively with:

(1) The Department of Environmental Protection to ensure that all of the systems meet all applicable environmental standards and comply with all environmental permit requirements.

(2) The Pennsylvania Public Utility Commission to establish that the proposed large scale energy system is viable, both economically and from an energy production perspective. The Pennsylvania Public Utility Commission shall also assist the department in assessing the system's impact on ratepayers, and the ability of the proposed developer to have sufficient resources and the ability to successfully complete all the activities necessary for interconnection to the electric distribution system.

Section 7. Royalty payments.

Each operator of a large scale energy system shall be subject to the payment to the Commonwealth of a 2% royalty on the gross revenues of the system. The operator of the system shall submit this payment annually unless an alternative payment schedule is approved by the department. The operator shall submit the initial royalty payment beginning on January 1 of the year following the system being placed into production.

Section 8. Lake Erie Large Scale Energy System Development Fund.

(a) Establishment.--The Lake Erie Large Scale Energy System Development Fund is established in the State Treasury.

1 (b) Deposits.--All royalty payments from the production of
2 electricity from large scale energy systems situated on lands
3 owned by the Commonwealth in Lake Erie shall be deposited in the
4 fund.

5 Section 9. Transfers and distributions.

6 On the last business day of each calendar quarter the State
7 Treasurer shall make the following transfers and distributions
8 of the moneys from the fund:

9 (1) Twenty percent shall be distributed to Erie County.

10 (2) Twenty percent shall be distributed to the
11 Pennsylvania Fish and Boat Commission to be used for
12 programs, projects or other activities related to Lake Erie.

13 (3) Forty percent shall be distributed to the Department
14 of Environmental Protection, which shall be used for dam
15 removal, restoration and repair projects.

16 (4) Twenty percent shall be transferred to the
17 Conservation District Fund for distribution to county
18 conservation districts pursuant to the guidelines established
19 by the State Conservation Commission.

20 Section 10. Effective date.

21 This act shall take effect in 120 days.