

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2338 Session of 2024

INTRODUCED BY FIEDLER, O'MARA, STEELE, SCHLOSSBERG, HILL-EVANS, D. WILLIAMS, WEBSTER, CURRY, KRAJEWSKI, SCOTT, VITALI, SANCHEZ, BOYD, DONAHUE, SHUSTERMAN, T. DAVIS, KENYATTA, BOROWSKI, ROZZI, SAPPEY AND GUENST, MAY 28, 2024

REFERRED TO COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND UTILITIES, MAY 28, 2024

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
 2 "An act providing for and reorganizing the conduct of the
 3 executive and administrative work of the Commonwealth by the
 4 Executive Department thereof and the administrative
 5 departments, boards, commissions, and officers thereof,
 6 including the boards of trustees of State Normal Schools, or
 7 Teachers Colleges; abolishing, creating, reorganizing or
 8 authorizing the reorganization of certain administrative
 9 departments, boards, and commissions; defining the powers and
 10 duties of the Governor and other executive and administrative
 11 officers, and of the several administrative departments,
 12 boards, commissions, and officers; fixing the salaries of the
 13 Governor, Lieutenant Governor, and certain other executive
 14 and administrative officers; providing for the appointment of
 15 certain administrative officers, and of all deputies and
 16 other assistants and employes in certain departments, boards,
 17 and commissions; providing for judicial administration; and
 18 prescribing the manner in which the number and compensation
 19 of the deputies and all other assistants and employes of
 20 certain departments, boards and commissions shall be
 21 determined," in Energy Development Authority and emergency
 22 powers, further providing for definitions, for Energy
 23 Development Authority, for powers and duties and for
 24 authority indebtedness.

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

27 Section 1. The definitions of "cost" and "project" in

1 section 2801-C of the act of April 9, 1929 (P.L.177, No.175),
2 known as The Administrative Code of 1929, are amended to read:

3 Section 2801-C. Definitions.--The following words and
4 phrases when used in this article shall have the meanings given
5 to them in this section unless the context clearly indicates
6 otherwise:

7 * * *

8 "Cost" means the expense of construction and the expense of
9 acquisition of all structures, equipment, fixtures, lands and
10 other property rights and interests in land necessary to a
11 project. The term also includes the expense of demolishing,
12 removing or relocating any buildings, equipment, fixtures or
13 structures on lands acquired or to be acquired, including the
14 expense of acquiring any lands to which such buildings, equipment, fixtures or structures may be moved or relocated;
15 storm water management; sewage treatment, waste treatment and
16 pollution control facilities; [railroad sidings, spurs or branch
17 lines;] all labor, materials, machinery, fixtures and
18 equipment[, fixtures]; financing charges; interest on all bonds
19 prior to and during construction, and for a period of one year
20 thereafter; engineering, financial and legal services; plans,
21 specifications, studies, surveys necessary or incidental to
22 determining the feasibility or practicability of constructing a
23 project; administrative expenses; reserves for interest and for
24 extension, enlargements, additions and improvements; and such
25 other expenses as may be necessary or incidental to the
26 construction of the project and the placing of the same in
27 operation[.], including expenses for energy audits,
28 environmental and geotechnical surveys, permits and other
29 necessary approvals, planning and financing.

1 * * *

2 "Project" means [an] a structure, fixture, real and other
3 property and property rights and interests, facility,
4 undertaking or activity, entirely or largely located or
5 conducted in Pennsylvania, which cannot be effectively funded
6 using privately available resources, relating to:

7 (1) basic and applied research concerning energy use,
8 renewable energy resources and energy extraction, transmission,
9 storage or conversion;

10 (2) limited scale demonstration of innovative or
11 commercially unproven technology to promote the production, use
12 or conservation of energy; [or]

13 (3) activities to promote or remove obstacles to the
14 utilization and transportation of Pennsylvania energy resources,
15 including but not limited to limited scale synthetic fuel
16 facilities and the conversion or technological improvement of
17 industrial, commercial or agricultural systems to utilize
18 Pennsylvania indigenous energy resources, including coal or
19 renewable energy resources: Provided, That no such facility
20 unreasonably interferes with private waste recycling
21 industries[.];

22 (4) the development, generation, conservation, management,
23 delivery or storage of renewable energy resources for
24 residential, commercial, industrial, governmental, agricultural,
25 transportation or cogeneration use; or

26 (5) the strengthening of the resiliency of infrastructure
27 that supports the development, generation, conservation,
28 management, delivery, storage or efficient use of energy.

29 Section 2. Section 2803-C(b)(1), (2), (3) and (4) and (d) of
30 the act are amended and the section is amended by adding a

1 subsection to read:

2 Section 2803-C. Energy Development Authority.--* * *

3 (b) The authority shall be governed and all of its corporate
4 powers exercised by a board of directors which shall be composed
5 of the following individuals:

6 (1) [Nine] Five members to be appointed by the Governor[,
7 one of whom shall be designated as chairman]. At least two
8 members shall be members of the general public. The members
9 initially appointed shall serve for terms of two, three and four
10 years, respectively, the particular term of each to be
11 designated by the Governor at the time of appointment. The terms
12 of all of their successors shall be four years each, except that
13 any person appointed to fill a vacancy shall serve only for the
14 unexpired term. Every member's term shall extend until his
15 successor is appointed and qualified. Any appointment of a
16 member of the authority shall be subject to the advice and
17 consent of a majority of all of the members of the Senate. Any
18 appointed member of the authority shall be eligible for
19 reappointment.

20 (2) The Secretary of Environmental [Resources] Protection or
21 his designee.

22 (3) The Secretary of [Banking] Conservation and Natural
23 Resources or his designee.

24 (4) The Secretary of [Commerce] Community and Economic
25 Development or his designee.

26 * * *

27 (d) The board of directors shall provide for the holding of
28 regular and special meetings. [Ten] Eight directors attending
29 shall constitute a quorum for the transaction of any business
30 and at least [six] five votes shall be required to adopt any

1 action, except that at least [nine] seven votes shall be
2 required to approve financial assistance for any project.

3 (e) The Governor shall designate a member of the board to
4 serve as chairperson. The members shall select from among
5 themselves other officers as the members deem necessary.

6 Section 3. Section 2806-C(2), (11), (14) and (18) of the act
7 are amended and the section is amended by adding paragraphs to
8 read:

9 Section 2806-C. Powers and Duties.--The authority, as a
10 public corporation and governmental instrumentality exercising
11 public powers of the Commonwealth, is hereby granted and shall
12 have and may exercise all powers necessary or appropriate to
13 carry out and effectuate the purposes of this article, including
14 the following powers, in addition to others herein granted:

15 * * *

16 (2) To have perpetual existence [for a term of fifty years,
17 or until its existence shall be terminated by law].

18 * * *

19 (11) To lease, lease with an option to purchase, sell by
20 installment sale or otherwise, or to otherwise dispose of, any
21 or all of its projects, or any or all of its real and other
22 property and property rights and interests necessary for a
23 project, in whole or in part, for such rentals or amounts and
24 upon such terms and conditions as the authority may deem proper.

25 * * *

26 (14) To make grants, loans and loan guarantees to fund
27 [research] projects, including pilot programs for projects.

28 * * *

29 (18) To receive appropriations and apply for and accept
30 grants, gifts, donations, bequests and settlements from any

1 public, quasi-public, nonprofit or private source[.], including
2 the Federal Government, the Commonwealth or any political
3 subdivision of the Commonwealth, corporations, associations,
4 partnerships, nonprofit corporations, charitable organizations,
5 foundations, estates and individuals. For purposes of this
6 paragraph, a "grant" shall include the Federal tax refund
7 generated by the authority's elective payment of an applicable
8 tax credit under the Inflation Reduction Act of 2022 (Public Law
9 117-169, 136 Stat. 1818). To the extent permitted by Federal
10 law, a "grant" shall also include a tax credit, or the total or
11 partial dollar value of a tax refund generated by the elective
12 payment of a tax credit, that is transferred, assigned, paid,
13 conveyed to or shared with the authority by a public, quasi-
14 public, nonprofit or private entity. Funds received by the
15 authority shall be deposited in the Energy Development Fund and
16 used for the purposes of the authority.

17 (19) To establish, through bylaws and any amendments to the
18 bylaws, its fiscal year.

19 (20) To consider assistance to low-income and moderate-
20 income individuals and disadvantaged communities, assistance to
21 small businesses and local governmental entities and job
22 creation, retention and training in establishing and
23 effectuating its priorities.

24 (21) To plan, design, develop, finance, construct, own,
25 operate, maintain and improve projects, including pilot programs
26 for projects, either alone or jointly with other entities,
27 provided that the authority, or a wholly owned subsidiary of the
28 authority, shall maintain majority ownership of a project at all
29 times unless or until it terminates its interest in the project
30 consistent with this section. The power under this paragraph

1 shall extend to projects on real property which the authority
2 does not own or in which the authority does not have a property
3 right or interest, subject to agreement by the owner of the real
4 property, right or interest.

5 (22) To provide capital, leverage private capital, provide
6 credit enhancements, make investments and provide other forms of
7 financial assistance for the development or deployment of
8 renewable energy resources in this Commonwealth, either directly
9 or by contract with an external administrator acting under the
10 oversight of the authority. The authority or its contractor may
11 invest in or finance projects alone or in conjunction with other
12 investors such as community development financial institutions,
13 insured credit unions and depository institutions and nonprofit
14 organizations that perform lending activities. Neither the
15 authority or its contractor may provide typical banking
16 functions or take deposits other than deposits from repayments
17 and other revenue received from financial assistance provided
18 under this section.

19 (23) To acquire, own, lease or maintain real and other
20 property and property rights and interests necessary for a
21 project.

22 (24) To apply for and receive, and assist a public, quasi-
23 public, nonprofit or private entity in applying for and
24 receiving, a Federal tax refund generated by the elective
25 payment of an applicable tax credit under the Inflation
26 Reduction Act of 2022. The authority may charge a reasonable fee
27 for providing assistance and shall deposit all fees collected
28 into the Energy Development Fund to be used for the purposes of
29 the authority.

30 Section 4. Section 2807-C(j) introductory paragraph of the

1 act is amended to read:

2 Section 2807-C. Authority Indebtedness.--* * *

3 (j) In the event that the authority shall default in the
4 payment of principal [~~of~~] or premium, if any, or interest on any
5 issue of bonds after the principal premium or interest shall
6 become due, whether at maturity, upon call for redemption or
7 otherwise and such default shall continue for a period of thirty
8 days or in the event that the authority shall fail or refuse to
9 comply with the provisions of this act or shall default in any
10 agreement made with the holders of the bonds, the holders of
11 twenty-five percent (25%) in aggregate principal amount of the
12 bonds then outstanding of such issues, by instrument or
13 instruments filed in the Office of the Prothonotary of the
14 Commonwealth Court, may appoint a trustee to represent the
15 bondholders for the purpose herein provided. Such trustee and
16 any trustee under any indenture or other agreement, may, and
17 upon written request of the holders of twenty-five percent
18 (25%), or such other percentage as may be specified in any
19 indenture or other agreement aforesaid, in principal amount of
20 the particular issues of bonds then outstanding, shall, in his
21 or its own name:

22 * * *

23 Section 5. This act shall take effect immediately.