



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 254

PRINTER'S NO. 2740

PRIME SPONSOR: Merski

COST / (SAVINGS)

FUND	FY 2023/24	FY 2024/25
General Fund	\$0	\$1,525,000
Lake Erie Large Scale System Development Fund	\$0	See Fiscal Impact
Fish Fund	\$0	See Fiscal Impact
Energy Development Fund	\$0	See Fiscal Impact
Conservation District Fund	\$0	See Fiscal Impact
Clean Water Fund	\$0	See Fiscal Impact
Erie County Funds	\$0	See Fiscal Impact

SUMMARY: HB 254 PN 2740 creates the Lake Erie Energy Development Act to be administered by Department of Environmental Protection (DEP). This legislation will take effect in 120 days.

ANALYSIS: This legislation creates a freestanding Lake Erie Development Act and provides for leasing submerged lands in Lake Erie for wind and solar energy development. The Department of Environmental Protection (DEP) would be tasked with administering the legislation. Specifically, the bill includes the following:

Definition

- “Large-scale energy system(s)” –
 - A wind energy generation system with a nameplate capacity of more than 5 MW;
 - A solar or kinetic energy system with a nameplate capacity of at least 5 MW;

Leasing

- Section 301 – Authority and duties of DEP
 - Develop a map of the areas of the bed of Lake Erie to be leased;
 - Engage in lease bidding process in consultation with DGS for the evaluation, development, and operation of large-scale energy systems in Lake Erie;
- Section 302 – Qualifications of the Lessees
 - Demonstrate expertise and capability to develop large-scale systems in marine environment;
 - Deemed to be a qualified bidder by DEP;
 - Submit a bond payable to the Commonwealth for the costs associated with the removal of developed facilities; and
 - Comply with fair wage standards, including Pennsylvania’s Prevailing Wage Act (Act 442 of 1961);
- Section 303 – Waters of this Commonwealth

Provides that a lease executed under this act shall ensure a reasonable accommodation for:

- Fishing, maritime commerce, energy transmission rights-of-way, and other commercial/recreational uses;
- Section 304 – Term of Leases
 - Term of initial feasibility leases shall be for up to seven years
 - May be extended by DEP for additional three-year term
 - In the event that a lessee does not develop a parcel by installing large-scale energy system in accordance with a subsequent long-term lease, the term shall terminate
 - Term of long-term leases
 - A lessee who is eligible for initial feasibility lease may be eligible to enter into long-term lease
 - A lessee deemed capable of long-term operation of the large-scale energy system, as determined by DEP, may enter into a long-term lease with initial term of up to 35 years
 - The initial long-term lease may be extended for additional term of up to 35 years
 - Shall contain a lease termination provision, if the lessee has not completed construction of the project within a reasonable period of time established under the lease
 - DEP may allow a lessee to lease contiguous parcels, not to exceed increments of 10,000 acres
- Section 305 – Lease Agreements
 - Lease agreements shall be approved by the Attorney General and the Office of General Counsel;
- Section 306 – Feasibility Study
 - Prior to entering into a long-term lease agreement, an initial lessee shall conduct a feasibility study to assess the viability of large-scale energy system development;
 - Evaluate the environmental impact of a potential project under all Federal and State requirements, as well as environmental impacts as determined by DEP;
 - Siting considerations shall include:
 - Wind speed, ice, lakebed, waves, and currents
 - Geophysical conditions and geohazards
 - Ports and infrastructure
 - Fixed and floating technology options
 - Interconnection to energy infrastructure
 - Cost projection modeling and financing assumptions
 - Economic development and opportunities for employment/workforce development
 - Consideration of Federal/State laws and regulations
 - Evaluation of environmental risk, benefit, and mitigation analysis
 - Ecological, human health, and safety considerations
 - Public support and equity benefit analysis
 - Use study;

- Section 307 - Improvements
 - Development of parcels shall be for large-scale energy systems including:
 - Electrical collection and transmission facilities
 - Submerged electrical transmission cables and related infrastructure
- Section 308 – Covenants
 - Conditions imposed under this act shall be covenants that run with the land and shall be binding upon the lessee;
 - If a lessee uses a leased parcel in a manner inconsistent with conditions of this act, all rights and interests of the lease shall terminate immediately;
- Section 309 – Federal and State law and permits
 - No feasibility study, construction, installation, or operation of a large-scale energy system or related structures subject to a lease under this act shall occur without adherence to Federal and State laws and receipt of all applicable Federal/State permits, certifications, or approvals;

Administration

- Section 501 – Regulations

Provides that the Environmental Quality Board (EQB) may establish regulations to:

 - Determine minimum standards for types of technology to be used;
 - Establish procedures for feasibility study related to siting, economics, and environmental issues of projects;
 - Establish fee structure related to the preparation, review, execution of lease, or other agreements associated with this act;
 - Establish a process through which a developer can demonstrate community/public acceptance of a proposed project;
 - Establish siting, design, and other technical specifications for a project; and
 - Prohibit lessees from entering into subleases;
- Section 502 – Subleasing
 - Prohibits DEP from entering into subleases;
- Section 503 Transfer of interest
 - Except as provided under Section 301, this section does not authorize or allow for the transfer of any mineral, or other surface, or subsurface interest associated with submerged lands of Lake Erie;
- Section 504 – Construction
 - Except as provided under Section 301, nothing in this act shall be construed to affect or limit provisions of the Dam Safety and Encroachment Act (Act 325 of 1978);
- Section 505 – Interagency Responsibilities
 - Provides for cooperation between DEP, DGS, and PUC;

Royalty Payments and Distributions

▪ Section 701 – Royalty Payments

- Each long-term lessee under this act shall be subject to payment to the Commonwealth of:
 - Submerged lands occupational fees
 - Development rental fees
 - Bonus and royalty payments from energy generation to be determined within a specific long-term lease
- Operator shall submit the initial royalty payment on January 1 of the year following the system being placed into production;

▪ Section 702 – Fund Establishment

- Lake Erie Large-Scale Energy System Development Fund is established for the deposit of proceeds under this act;

FISCAL IMPACT: The enactment of this legislation would have a fiscal impact on Commonwealth funds. Analysis of the fiscal impact falls in two categories, evaluating the potential proceeds generated from the legislation and the effect that the legislation would have on DEP as it relates to administering this act.

Regarding potential proceeds, due to the unknown nature of the number of projects that would be created under this act, it is not possible to determine the proceeds which would be due to the Commonwealth. Furthermore, language contained in this act provides for the distribution of any proceeds, as follows:

▪ Section 703 (Lake Erie Large Scale Energy System Development Fund distributions/transfers)

- 10 percent to DEP for administration of leases for conservation and maintenance projects;
- 20 percent to Erie County for public natural resource conservation and maintenance projects within the county;
- 20 percent to Fish and Boat Commission for conservation and maintenance projects associated with Lake Erie;
- 30 percent to Energy Development Fund to support efforts by PEDDA related to energy efficiency, renewable energy, or clean energy projects; and
- 20 percent to Conservation District Fund for distribution to the Lake Erie Watershed for conservation and maintenance projects;

▪ Section 704 (relating to submerged lands lease fees)

- Submerged lands occupation fees shall be deposited into the Clean Water Fund

In order for DEP to administer provisions of this legislation, the agency would need to add eight (8) personnel positions as follows:

- 4 Water Program Specialists
- 1 Program Analyst
- 1 Civil Engineer (Hydraulic)
- 1 Energy Program Specialist
- 1 Environmental Group Manager

The estimated cost for these positions is about \$1.53 million per fiscal year, which includes costs related to salaries, benefits, and operating expenses.

PREPARED BY: Gueorgui Tochev, Budget Analyst
House Appropriations Committee (D)

DATE: April 16, 2024

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.