

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1880 Session of
1977

INTRODUCED BY C. GEORGE, LETTERMAN, F. TAYLOR, YAHNER, CASSIDY,
D. R. WRIGHT, McCALL, DeMEDIO, KOLTER, PETRARCA,
W. D. HUTCHINSON, DUFFY, RAVENSTAHL, LOGUE, MACKOWSKI,
CESSAR, DAVIES, STUBAN, GAMBLE, SWEET, LIVENGOOD, ENGLEHART
AND B. F. O'BRIEN, NOVEMBER 16, 1977

REFERRED TO COMMITTEE ON CONSERVATION, NOVEMBER 16, 1977

AN ACT

1 Amending the act of June 22, 1937 (P.L.1987, No.394), entitled,
2 as amended, "An act to preserve and improve the purity of the
3 waters of the Commonwealth for the protection of public
4 health, animal and aquatic life, and for industrial
5 consumption, and recreation; empowering and directing the
6 creation of indebtedness or the issuing of non-debt revenue
7 bonds by political subdivisions to provide works to abate
8 pollution; providing protection of water supply; providing
9 for the jurisdiction of courts in the enforcement thereof;
10 providing additional remedies for abating pollution of
11 waters; imposing certain penalties; repealing certain acts;
12 regulating discharges of sewage and industrial wastes;
13 regulating the operation of mines; and placing
14 responsibilities upon landowners and land occupiers,"
15 limiting the authority of the Department of Environmental
16 Resources and courts in requiring construction of sewerage
17 facilities by municipalities.

18 The General Assembly of the Commonwealth of Pennsylvania

19 hereby enacts as follows:

20 Section 1. Sections 203 and 210, act of June 22, 1937
21 (P.L.1987, No.394), known as "The Clean Streams Law," amended
22 July 31, 1970 (P.L.653, No.222), are amended to read:

23 Section 203. Municipal Sewage.--(a) Whether or not a
24 municipality is required by other provisions of this act to have

1 a permit for the discharge of sewage, if the department finds
2 that the acquisition, construction, repair, alteration,
3 completion, extension or operation of a sewer system or
4 treatment facility is necessary to properly provide for the
5 prevention of pollution or prevention of a public health
6 nuisance, the department may, subject to the limitations set
7 forth in subsection (c), order such municipality to acquire,
8 construct, repair, alter, complete, extend, or operate a sewer
9 system and/or treatment facility. Such order shall specify the
10 length of time, after receipt of the order, within which such
11 action shall be taken.

12 (b) The department may from time to time order a
13 municipality to file a report with the department pertaining to
14 sewer systems or treatment facilities owned, operated, or
15 maintained by such municipality or pertaining to the effect upon
16 the waters of the Commonwealth of any sewage discharges
17 originating from sources within the municipality. The report
18 shall contain such plans, facts, and information which the
19 department may require to enable it to determine whether
20 existing sewer systems and treatment facilities are adequate to
21 meet the present and future needs or whether the acquisition,
22 construction, repair, alteration, completion, extension, or
23 operation of a sewer system or treatment facility should be
24 required to meet the objectives of this act. Whether or not such
25 reports are required or received by the department, the
26 department may, subject to the limitations set forth in
27 subsection (c), issue appropriate orders to municipalities where
28 such orders are found to be necessary to assure that there will
29 be adequate sewer systems and treatment facilities to meet
30 present and future needs or otherwise to meet the objectives of

1 this act. Such orders may include, but shall not be limited to,
2 orders requiring municipalities to undertake studies, to prepare
3 and submit plans, to acquire, construct, repair, alter,
4 complete, extend, or operate a sewer system or treatment
5 facility, or to negotiate with other municipalities for combined
6 or joint sewer systems or treatment facilities. Such orders may
7 prohibit sewer system extensions, additional connections, or any
8 other action that would result in an increase in the sewage that
9 would be discharged into an existing sewer system or treatment
10 facility.

11 (c) Notwithstanding any other provision of this section or
12 act to the contrary, a municipality may not be compelled by the
13 department or any court to construct, or be subjected to
14 criminal or civil penalties for failure to construct, a sewage
15 treatment plant or sewers if such construction is not
16 economically feasible. The department shall have the duty and
17 burden of establishing that such construction is economically
18 feasible under guidelines adopted by the Environmental Quality
19 Board in every case in which a municipality files a petition,
20 accompanied by a feasibility report and other documentation
21 required by the department, alleging that such construction is
22 not economically feasible.

23 (d) The Environmental Quality Board shall, by regulation,
24 adopt guidelines for determining whether or not construction of
25 sewerage facilities by municipalities is economically feasible.
26 In addition to other criteria which the board deems pertinent,
27 the board shall consider the following:

28 (1) The total market value of taxable real property in the
29 entire municipality and in the area or areas to be served.

30 (2) The average annual income of the residents of the

1 municipality.

2 (3) The total cost and per capita cost of the project.

3 (4) The amount of Federal and State aid available for the
4 project.

5 (5) The number of residents and population density of the
6 municipality.

7 (6) The revenues and indebtedness of the municipality.

8 (7) Average Statewide total costs and per capita costs of
9 projects of comparable size and scope.

10 (8) Unusual topographical or other features creating
11 inequities in the assessment of construction costs.

12 (e) Whenever it is determined that construction of sewerage
13 facilities is not economically feasible in a particular
14 municipality, the municipality shall, to the extent that funds
15 are available and if the department determines that the
16 municipality should construct sewerage facilities, be given such
17 additional financial assistance under the act of January 19,
18 1968 (1967 P.L.996, No.443), known as "The Land and Water
19 Conservation and Reclamation Act," as shall be necessary to make
20 the construction economically feasible.

21 Section 210. Duties of Municipalities.--(a) It shall be the
22 duty of the corporate authorities of a municipality upon whom an
23 order is issued pursuant to section 203 of this act to proceed
24 diligently in compliance with such order.

25 (b) If the corporate authorities fail to proceed diligently,
26 or if the municipality fails to comply with the order within the
27 specified time, the corporate authorities shall be guilty of
28 contempt and shall be punished by the court in an appropriate
29 manner and, for this purpose, application may be made by the
30 Attorney General to the [Court of Common Pleas of Dauphin

1 County, until such time as the Commonwealth Court comes into
2 existence and thereafter the Commonwealth Court instead of said
3 Court of Common Pleas of Dauphin County, or to the] court of
4 common pleas of the county wherein the municipality is situated,
5 which courts are hereby given jurisdiction.

6 (c) No court shall have jurisdiction to enforce an order
7 under subsection (b) or to enforce an order or otherwise compel
8 a municipality in an action at law or in equity to construct
9 sewerage facilities in any case where the municipality has filed
10 a petition under section 203(c) either prior to or subsequent to
11 the institution of court proceedings unless and until the
12 petition has been finally determined against the municipality.

13 Section 2. This act shall take effect in 90 days.