

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1880 Session of 1977

INTRODUCED BY MESSRS. GEORGE, LETTERMAN, 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

AS REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 31, 1978

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 AND MAKING AN APPROPRIATION. <—

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

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

23 Section 203. Municipal Sewage.--(a) Whether or not a

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

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

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

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

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

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

1 ~~(2) The average annual income of the residents of the~~  
2 ~~municipality.~~

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

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

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

8 ~~(6) The revenues and indebtedness of the municipality.~~

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

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

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

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

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

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

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

14 (C) BEFORE COMPELLING A MUNICIPALITY TO ENTER INTO THE ←  
15 CONSTRUCTION PHASE OF A MAJOR SEWERAGE PROJECT REQUIRED UNDER  
16 SUBSECTION (A) OR (B), THE DEPARTMENT SHALL DETERMINE THAT THE  
17 MUNICIPALITY HAS SELECTED A COST-EFFECTIVE PROJECT FOR  
18 CONSTRUCTION, THAT THE MUNICIPALITY HAS PROVIDED PUBLIC  
19 DISCLOSURE OF THE PROPOSED PROJECT AND THE COSTS ASSOCIATED WITH  
20 THAT PROJECT, INCLUDING AN ESTIMATE OF THE TOTAL MONTHLY CHARGE  
21 TO A TYPICAL RESIDENTIAL USER, AND THAT THE MUNICIPALITY HAS THE  
22 LEGAL, INSTITUTIONAL, MANAGERIAL, AND FINANCIAL CAPABILITY TO  
23 INSURE ADEQUATE CONSTRUCTION, OPERATION AND MAINTENANCE OF THE  
24 FACILITIES PROPOSED. THE DEPARTMENT'S DETERMINATION SHALL BE  
25 BASED ON ITS REVIEW OF A FACILITIES PLAN AND OTHER DOCUMENTATION  
26 SUBMITTED BY THE MUNICIPALITY AS REQUIRED BY THE DEPARTMENT.

27 SECTION 2. THE SUM OF \$350,000 OR AS MUCH THEREOF AS MAY BE  
28 NECESSARY IS HEREBY APPROPRIATED TO THE DEPARTMENT OF  
29 ENVIRONMENTAL RESOURCES FOR THE FISCAL YEAR JULY 1, 1978 TO JUNE  
30 30, 1979.

1 Section 2 3. This act shall take effect in 90 days.

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