

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2055

Session of  
1981

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INTRODUCED BY HAYES, BOWSER, DOMBROWSKI, PETERSON, MERRY, SWIFT,  
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J. L. WRIGHT, NOVEMBER 10, 1981

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AS REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF  
REPRESENTATIVES, AS AMENDED, APRIL 26, 1982

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## AN ACT

1 Amending Title 32 (Forests, Waters and State Parks) of the  
2 Pennsylvania Consolidated Statutes, adding provisions  
3 relating to water resources projects and making repeals.

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1 facilities.

2 The General Assembly of the Commonwealth of Pennsylvania  
3 hereby enacts as follows:

4 Section 1. Title 32, act of November 25, 1970 (P.L.707,  
5 No.230), known as the Pennsylvania Consolidated Statutes, is  
6 amended by adding a part to read:

7 TITLE 32

8 FORESTS, WATERS AND STATE PARKS

9 Part

10 IV. Water Resources Projects

11 PART IV

12 WATER RESOURCES PROJECTS

13 Chapter

14 71. General Provisions (Reserved)

15 73. Hydroelectric Facilities

16 CHAPTER 71

17 GENERAL PROVISIONS

18 (Reserved)

19 CHAPTER 73

20 HYDROELECTRIC FACILITIES

21 Sec.

22 7301. Short title of chapter.

23 7302. Declaration of policy and purposes.

24 7303. Definitions.

25 7304. Plans and studies.

26 7305. Development and operation of facilities.

27 7306. Cooperative projects, franchise rights and leases.

28 7307. Marketing and distribution of power.

29 7308. Exclusive rights in Commonwealth lands, waters and  
30 facilities.

1 § 7301. Short title of chapter.

2 This chapter shall be known and may be cited as the  
3 "Commonwealth Hydroelectric Facilities Act."

4 § 7302. Declaration of policy and purposes.

5 The policy and purposes of this chapter are to:

6 (1) Recognize, protect and enhance the balanced and  
7 multiple use and conservation of the water resources of this  
8 Commonwealth for water supply, power and energy, navigation,  
9 flood control and environmental purposes consistent with  
10 comprehensive plans and programs for water management.

11 (2) Protect and enhance the public's investment in  
12 existing lands, facilities, water rights and water storage  
13 capacity by authorizing and encouraging the use of such  
14 public lands, facilities, water rights and storage capacity  
15 for the development of hydroelectric facilities consistent  
16 with the public interest.

17 (3) Encourage development of hydroelectric facilities in  
18 this Commonwealth through cooperative arrangements between  
19 agencies of the Commonwealth, municipalities, municipal  
20 authorities, rural electric cooperatives and private  
21 enterprise.

22 § 7303. Definitions.

23 The following words and phrases when used in this chapter  
24 shall have, unless the context clearly indicates otherwise, the  
25 meanings given to them in this section:

26 "Competitive bid process." A process for the award of a  
27 franchise right, right-of-way or lease to the highest  
28 responsible bidder when the Commonwealth is receiving money, or  
29 to the lowest responsible bidder when the Commonwealth is  
30 spending money, based on detailed specifications established by

1 the department.

2 "Competitive proposal process." A process for award of a  
3 franchise right, right-of-way or lease based on selection of the  
4 proposal, including financial arrangements, capital investments,  
5 services and other terms and conditions, which best serves the  
6 interest of the Commonwealth.

7 "Department." The Department of Environmental Resources of  
8 the Commonwealth.

9 "Franchise rights." The right to operate hydroelectric  
10 facilities owned by the Commonwealth, to market the power  
11 derived from such facilities and collect the revenue therefrom.

12 "Hydroelectric facilities or projects." Any dam, reservoir,  
13 power house, generation facility or related facility for the  
14 generation and transmission of hydroelectric power and energy.

15 "Lands, water rights or facilities of the Commonwealth." Any  
16 lands, water rights, dams, reservoirs, canals and other  
17 facilities, including appurtenant works, owned or leased by the  
18 Commonwealth; and any storage capacity in any Federal, State or  
19 other reservoir facility purchased by the Commonwealth or by any  
20 river basin commission on behalf of the Commonwealth, or  
21 developed with the contribution of lands or funds by the  
22 Commonwealth.

23 "Person." Any natural person, partnership, association,  
24 corporation, municipality, municipal authority, receiver or  
25 trustee and any department, board, commission or authority of  
26 the Commonwealth or of the Federal Government, or any other  
27 legal entity whatsoever which is recognized by law as the  
28 subject ~~of~~ OF rights and duties. <—

29 "River basin commission." Any river basin commission created  
30 under compact or Federal or State law and responsible for

1 planning and management of interstate water resources.

2 § 7304. Plans and studies.

3 (a) General rule.--The department is authorized to prepare  
4 or to enter into agreements with any person to prepare plans and  
5 feasibility studies for the development and operation of  
6 hydroelectric facilities and projects utilizing lands, water  
7 rights or facilities of the Commonwealth, including plans for  
8 the marketing and distribution of power derived from such  
9 hydroelectric facilities and projects.

10 (b) Interagency cooperation.--The department shall cooperate  
11 with the Pennsylvania Fish Commission, Pennsylvania Game  
12 Commission, river basin commissions and other appropriate  
13 agencies of the Commonwealth and the Federal Government to  
14 assure that plans and studies for any hydroelectric facility or  
15 project undertaken under this chapter are consistent with any  
16 State or Federal plans for the improvement of commerce,  
17 navigation, water supply, recreation, flood control, fish and  
18 wildlife protection, water quality and water resources  
19 management. Any hydroelectric facility or project undertaken  
20 under this chapter shall be planned and constructed so as to be  
21 adaptable to such plans.

22 § 7305. Development and operation of facilities.

23 (a) General rule.--The department may construct, ~~finance,~~ <—  
24 maintain and operate or enter into agreements with any person to  
25 construct, finance, maintain and operate hydroelectric  
26 facilities and projects, including facilities for the  
27 transmission of hydroelectric power produced by such projects  
28 where transmission facilities are not otherwise available upon  
29 reasonable terms. NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO <—  
30 AUTHORIZE THE DEPARTMENT TO DEVELOP, CONSTRUCT OR OPERATE A NEW

1 DAM OR RESERVOIR FOR THE SOLE OR PRIMARY PURPOSE OF GENERATING  
2 HYDROELECTRIC ENERGY.

3 (b) Acquisition of property.--The department shall have the  
4 power to acquire and hold in the name of the Commonwealth any  
5 lands, waters, easements, rights-of-way, franchises or other  
6 property deemed necessary for the construction and operation of  
7 any facilities authorized under this chapter, by donation,  
8 agreement, lease, purchase or condemnation in accordance with  
9 the provisions of the act of June 22, 1964 (1st Sp.Sess.,  
10 P.L.86, No.6), known as the "Eminent Domain Code." NOTHING IN <—  
11 THIS SECTION SHALL AUTHORIZE THE DEPARTMENT TO EXERCISE THE  
12 POWER OF EMINENT DOMAIN IN ORDER TO ACQUIRE AN EXISTING DAM OR  
13 HYDROELECTRIC FACILITY OWNED OR OPERATED BY ANOTHER PERSON OR IN  
14 ORDER TO ACQUIRE A SITE FOR THE CONSTRUCTION AND OPERATION OF A  
15 DAM OR RESERVOIR SOLELY OR PRIMARILY FOR THE PURPOSES OF  
16 GENERATING HYDROELECTRIC ENERGY. THE DEPARTMENT SHALL RETAIN THE  
17 RIGHT TO ACQUIRE LANDS, WATERS, WATER RIGHTS AND FACILITIES FOR  
18 OTHER PURPOSES AS NOW OR HEREAFTER AUTHORIZED BY OTHER STATUTES.

19 (c) Use of Commonwealth funds.--No Commonwealth funds shall  
20 be expended for the acquisition of lands or for the construction  
21 of hydroelectric facilities and projects unless such funds are  
22 specifically appropriated by the General Assembly for such  
23 purposes or specifically made available from funds provided by  
24 ~~the Pennsylvania Energy Development Authority.~~ ANY AGENCY OR <—  
25 AUTHORITY ESTABLISHED BY THE COMMONWEALTH TO PROVIDE LOANS AND  
26 GRANTS TO FOSTER THE DEVELOPMENT OF HYDROELECTRIC FACILITIES.

27 § 7306. Cooperative projects, franchise rights and leases.

28 (a) Cooperative projects.--The department may enter into  
29 contracts and other agreements with any person for cooperation  
30 and assistance in planning, constructing, financing, maintaining

1 and operating hydroelectric facilities and projects or related  
2 facilities needed to carry out the purposes of this chapter.

3 (b) Leases and franchise rights.--The department may grant a  
4 franchise right, right-of-way or lease for any lands, water  
5 rights, dams or other facilities of the Commonwealth under the  
6 control of the department to any person for purposes of the  
7 development and operation of hydroelectric facilities and  
8 projects, upon such terms and conditions as may be considered  
9 reasonable, subject to the following limitations:

10 (1) The development and operation of hydroelectric  
11 facilities and projects shall be permitted only where the  
12 department determines that the facilities and projects can be  
13 constructed and operated in a manner compatible with the  
14 other authorized public uses and purposes of the lands,  
15 waters, dams or other facilities being utilized.

16 (2) Unless a substantial capital investment by the  
17 person receiving the franchise right, right-of-way or lease  
18 is involved, the period of the franchise right, right-of-way  
19 or lease shall not exceed ten years. If a substantial capital  
20 investment is involved and if it is deemed in the interest of  
21 the Commonwealth, the department may, ~~with the approval of~~ <—  
22 ~~the Governor,~~ grant such franchise rights, rights-of-way and  
23 leases for a period not to exceed 50 years.

24 (3) Except as provided in paragraphs (4) and (5), the  
25 department shall award a franchise right, right-of-way or  
26 lease involving revenue or value of more than \$5,000 per year  
27 only on the basis of a competitive bid or competitive  
28 proposal process after due advertisement.

29 (4) If a person pursuant to a cooperative agreement with  
30 the department incurs substantial risk or provides

1 substantial investment in the conduct of plans and studies of  
2 hydroelectric facilities and projects, the department may, <—  
3 ~~with the approval of the Governor,~~ provide to such person a  
4 right of first refusal or an option under specified  
5 conditions for the acquisition of franchise rights, rights-  
6 of-way or leases for such facilities and projects, or enter  
7 into other arrangements to compensate for the risks and  
8 investment so incurred, to the extent that such arrangements  
9 are found to be in the best interests of the Commonwealth and  
10 the public.

11 (5) The department ~~may~~ SHALL grant franchise rights, <—  
12 rights-of-way or a lease for such purposes to ~~any~~ <—  
13 ~~municipality, municipal authority or other agency or~~  
14 ~~subdivision of the Commonwealth~~ MUNICIPALITIES, MUNICIPAL <—  
15 AUTHORITIES, RURAL ELECTRIC COOPERATIVES AND STATE AGENCIES  
16 for the development and operation of hydroelectric facilities  
17 and projects on a nonprofit basis without the requirement of  
18 competitive bids or competitive proposals. IN ORDER TO OBTAIN <—  
19 FRANCHISE RIGHTS, RIGHTS-OF-WAY OR A LEASE PURSUANT TO THIS  
20 PARAGRAPH, THE MUNICIPALITY, MUNICIPAL AUTHORITY, AGENCY,  
21 SUBDIVISION, OR COOPERATIVE SHALL AGREE THAT ALL SALES OF  
22 ELECTRICITY AND ENERGY PRODUCED BY SUCH HYDROELECTRIC  
23 FACILITIES AND PROJECTS SHALL BE SET AT PRICES AND RATES  
24 REPRESENTING THE COST OF GENERATION AND CAPITAL AND OPERATING  
25 CHARGES PLUS A FAIR COST OF TRANSMISSION AND DISTRIBUTION.

26 § 7307. Marketing and distribution of power.

27 (a) General rule.--Power and energy derived from  
28 hydroelectric facilities and projects developed and operated  
29 directly by the department may be sold and distributed only on a  
30 wholesale basis and shall not be sold to retail customers except



1 that the department may sell and distribute power and energy to  
2 any State or municipal agency or municipal authority in this  
3 Commonwealth.

4 ~~(b) Rate establishment. The department may from time to~~ <—  
5 ~~time after public notice and hearing fix, alter and revise~~  
6 ~~rates, rentals, charges and classifications thereof for the use~~  
7 ~~of hydroelectric facilities and projects it may own or operate,~~  
8 ~~and for power and energy produced by such facilities and~~  
9 ~~projects, without regulation or control by any other department,~~  
10 ~~commission or agency of the Commonwealth. Rates and charges~~  
11 ~~fixed by the department for power which is produced by its~~  
12 ~~facilities shall be reasonable, nondiscriminatory and just.~~

13 (B) RENTAL AND ROYALTY CHARGES.--THE DEPARTMENT MAY FIX, <—  
14 ALTER, CHARGE AND COLLECT RENTALS, ROYALTIES, AND OTHER CHARGES  
15 FOR THE USE OF LANDS, WATERS, WATER RIGHTS, DAM AND RESERVOIR  
16 FACILITIES AND HYDROELECTRIC FACILITIES OWNED OR OPERATED BY THE  
17 DEPARTMENT, WITHOUT REGULATION OR CONTROL BY ANY OTHER  
18 DEPARTMENT, COMMISSION, OR AGENCY OF THE COMMONWEALTH EXCEPT AS  
19 PROVIDED BY THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN  
20 AS THE "COMMONWEALTH ATTORNEYS ACT."

21 (C) CHARGES AND RATES.--THE DEPARTMENT MAY BY CONTRACT OR  
22 GENERAL REGULATION FIX, ALTER, CHARGE AND COLLECT RATES AND  
23 CHARGES, AND CLASSIFICATIONS THEREOF, FOR POWER AND ENERGY  
24 PRODUCED BY HYDROELECTRIC FACILITIES OWNED AND OPERATED BY THE  
25 DEPARTMENT, SUBJECT TO SUCH JURISDICTION OR APPROVAL AS MAY BE  
26 PROVIDED BY FEDERAL LAW. EXCEPT AS REQUIRED BY FEDERAL LAW, THE  
27 ESTABLISHMENT AND COLLECTION OF SUCH RATES OR CHARGES SHALL NOT  
28 BE SUBJECT TO THE REGULATION OR CONTROL OF ANY OTHER DEPARTMENT,  
29 COMMISSION OR AGENCY OF THE COMMONWEALTH. RATES AND CHARGES  
30 ESTABLISHED UNDER THIS PROVISION SHALL BE REASONABLE,

1 NONDISCRIMINATORY, AND JUST.

2 ~~(e)~~ (D) Preferences for sales.--In the sale and distribution <—  
3 of power and energy produced by facilities and projects  
4 developed and operated directly by the department, preference  
5 shall be given to municipalities, municipal authorities, rural  
6 electric cooperatives and State agencies. Sales to such entities  
7 shall be at prices representing the cost of generation and  
8 capital and operating charges, plus a fair cost of transmission, <—  
9 as determined by the department.

10 § 7308. Exclusive rights in Commonwealth lands, waters and  
11 facilities.

12 (a) General rule.--The Commonwealth, acting through the  
13 department, a river basin commission created by interstate  
14 compact or such other agency as may be explicitly designated by  
15 the General Assembly, shall have the exclusive rights to  
16 construct, operate and maintain hydroelectric projects utilizing  
17 lands, water rights or facilities of the Commonwealth.

18 (b) Limitation on municipal entities.--No municipality,  
19 municipal authority or other subdivision of the Commonwealth  
20 shall be authorized to construct, operate or maintain a  
21 hydroelectric facility or project utilizing lands, water rights  
22 or facilities of the Commonwealth except pursuant to a  
23 cooperative agreement or the grant of a franchise right, right-  
24 of-way or lease under section 7306 (relating to cooperative  
25 projects, franchise rights and leases). No municipality,  
26 municipal authority or other subdivision of the Commonwealth is  
27 authorized to apply for or receive a preliminary permit or  
28 license pursuant to the Federal Power Act for any such  
29 hydroelectric facility or project except as provided in this  
30 section and section 7306.

1       Section 2. All acts or parts of acts inconsistent herewith  
2 are hereby repealed to the extent of such inconsistency.  
3       Section 3. This act shall take effect immediately.