

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1439 Session of
1990

INTRODUCED BY BRIGHTBILL, REIBMAN, PUNT, CORMAN, HOPPER,
LEMOND, AFFLERBACH, JUBELIRER, SHUMAKER, WENGER, HELFRICK,
O'PAKE AND BAKER, JANUARY 31, 1990

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 31, 1990

AN ACT

1 Amending the act of March 1, 1988 (P.L.82, No.16), entitled "An
2 act providing for the establishment, implementation and
3 administration of the Pennsylvania Infrastructure Investment
4 Authority; imposing powers and duties on a board of trustees;
5 transferring the rights, powers, duties and obligations of
6 the Water Facilities Loan Board to the Pennsylvania
7 Infrastructure Investment Authority; providing for the
8 issuance of notes and bonds; providing for financial
9 assistance and for a comprehensive water facilities plan;
10 authorizing a referendum to incur indebtedness; making an
11 appropriation; and making repeals," extending the act to
12 include storm water projects; and providing for a referendum
13 to incur indebtedness for such projects and the issuance of
14 notes and bonds if authorized by the referendum.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Section 2 of the act of March 1, 1988 (P.L.82,
18 No.16), known as the Pennsylvania Infrastructure Investment
19 Authority Act, is amended to read:

20 Section 2. Legislative intent.

21 The General Assembly finds and declares that:

22 (1) The health of millions of citizens of this
23 Commonwealth is at risk due to substandard and deteriorated

1 water supply and sewage disposal systems.

2 (2) Many water and sewage systems in this Commonwealth
3 are aging, outmoded, inadequate, deteriorating and operating
4 above capacity, and many areas have to limit their growth
5 solely due to lack of proper water supply and sewage
6 disposal.

7 (3) The economic revitalization of this Commonwealth is
8 being stifled by a lack of clean water and adequate sewage
9 facilities.

10 (4) Many Pennsylvania communities have antiquated or
11 inadequate storm water systems thereby resulting in storm
12 water flows which threaten the public health and safety due
13 to flooding, overloaded sewer lines, soil erosion, sinkhole
14 development and expansion, and reduction in surface water and
15 groundwater quality.

16 [(4)] (5) Financing of water and sewage projects and
17 storm water projects at affordable cost is not currently
18 available in many areas of this Commonwealth.

19 [(5)] (6) In order to assist in financing projects to
20 protect the health and safety of the citizens of this
21 Commonwealth and to promote the economic development of
22 Pennsylvania, the General Assembly has determined that it is
23 necessary to establish the Pennsylvania Infrastructure
24 Investment Authority and to provide funding of the authority
25 programs.

26 Section 2. The definition of "project" in section 3 of the
27 act is amended and the section is amended by adding a definition
28 to read:

29 Section 3. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 * * *

4 "Project." The eligible costs associated with the
5 acquisition, construction, improvement, expansion, extension,
6 repair or rehabilitation of all or part of any facility or
7 system, whether publicly or privately owned[, for the
8 collection, treatment or disposal of wastewater, including
9 industrial waste, or for the supply, treatment, storage or
10 distribution of drinking water.]:

11 (i) for the collection, treatment or disposal of
12 wastewater, including industrial waste, or

13 (ii) for the supply, treatment, storage or
14 distribution of drinking water, or

15 (iii) for the control of storm water, which may
16 include, but need not be limited to, the transport,
17 storage and the infiltration of storm water.

18 * * *

19 "Storm water." Drainage runoff from the surface of the land
20 resulting from precipitation or snow or ice melt.

21 * * *

22 Section 3. Sections 5 and 10(a)(2), (b), (c), (d), (f), (i),
23 (j) and (l) of the act are amended to read:

24 Section 5. Revenues of authority.

25 (a) Sources of revenues.--The authority may receive money
26 from sources of revenue, including, but not limited to, the
27 following:

28 (1) State funds appropriated to the authority.

29 (2) Federal funds appropriated to or granted to the
30 authority.

1 (3) Proceeds from the sale of bonds of the authority
2 authorized under section 7.

3 (4) Proceeds from the sale of bonds issued on or after
4 the effective date of this act from the remaining unused
5 authorization in addition to any other funds that remain
6 unencumbered on the effective date of this act from the act
7 of July 12, 1981 (P.L.263, No.88), entitled "An act
8 authorizing the incurring of indebtedness, with approval of
9 the electors, of \$300,000,000 for the repair, construction,
10 reconstruction, rehabilitation, extension and improvement of
11 community water supply systems, and for the repair,
12 reconstruction or rehabilitation of flood control facilities,
13 dams and port facilities and providing the allotment of
14 proceeds from borrowing hereunder," approved by the
15 electorate on November 3, 1981.

16 (5) Proceeds from the sale of bonds not to exceed a
17 total sum of \$150,000,000 issued for site development under
18 the provisions of Article XVI-B of the act of April 9, 1929
19 (P.L.343, No.176), known as The Fiscal Code. This paragraph
20 shall expire on December 31, 1989, except that the board may
21 fund projects approved prior to December 31, 1989.

22 (6) Proceeds from the sale of any Commonwealth general
23 obligation bonds issued under sections 16, 16.1 and 17.

24 (7) Proceeds from the sale of authority assets.

25 (8) Repayment of loan principal.

26 (9) Payment of interest on loans made by the authority.

27 (10) Interest earned on the investments of authority
28 moneys.

29 (b) Control of revenues; investment of funds.--The board
30 shall have exclusive control and management of all moneys of the

1 authority and full power to invest moneys not required for
2 immediate use in any securities or other investments in which
3 funds of the Commonwealth are authorized to be invested and in
4 any other type of security or investment if, prior to the
5 acquisition of the securities or investments, the board
6 determines by resolution that such type of security or
7 investment is in the best interests of the authority and the
8 State Treasurer approves of such type of security or other
9 investment.

10 (c) General fund and other separate funds or accounts.--

11 (1) The board shall establish a general fund from which
12 it may authorize expenditures for any of the purposes of this
13 act.

14 (2) The board shall establish a Water Pollution Control
15 Revolving Fund administered in accordance with the
16 requirements of section 212 of the Water Quality Act of 1987
17 (Public Law 100-4, 101 Stat. 21), and may establish such
18 other separate revolving funds and accounts when determined
19 by the board to be necessary or convenient. The board may
20 deposit no more than \$375,000,000 in funds and accounts
21 established under this paragraph from the sources specified
22 in subsection (a)(4), (5) and (6). This limitation shall not
23 apply to any Federal funds.

24 (3) The board shall establish a Storm Water Control
25 Revolving Loan Fund which shall consist of the proceeds from
26 the sale of any Commonwealth general obligation bonds
27 authorized under section 16.1, the repayment of principal and
28 interest on loans made from this fund, the interest earned on
29 the investment of money allocated to this fund, and any other
30 money appropriated or made available to this fund from any

1 source, and all interest, earnings, increment and additions
2 thereto.

3 [(3)] (4) The board may also establish such nonrevolving
4 funds and accounts as it deems necessary or convenient. Any
5 funds from sources specified in subsection (a)(4), (5) and
6 (6) which are not deposited in the board's revolving funds
7 and accounts shall be deposited into these nonrevolving funds
8 and accounts.

9 (d) Loan repayment.--Subject to any agreement with the
10 holders of bonds, repayments of loan principal, together with
11 any interest thereon, shall be deposited with the authority.
12 Repayments from loans made from revolving funds and accounts may
13 be deposited in such funds and accounts as the board shall
14 determine, except that repayment of the principal, together with
15 any interest thereon, of loans made from the Storm Water Control
16 Revolving Loan Fund shall be deposited in that fund. Repayments
17 from other loans shall be deposited in nonrevolving funds and
18 accounts for the purpose of repayment of general obligation
19 bonds of the Commonwealth issued under the authority of this
20 act. Loans made by the Water Facilities Loan Board prior to the
21 effective date of this act and repayment of the principal of and
22 interest on those loans shall be controlled by the provisions of
23 Title 32 of the Pennsylvania Consolidated Statutes (relating to
24 forests, waters and State parks) and the regulations promulgated
25 thereunder. The board shall maintain such separate funds and
26 accounts as may be necessary for the deposit of payments made
27 under authority or requirement of State or Federal law.

28 Section 10. Financial assistance.

29 (a) Criteria for obtaining assistance.--In reviewing
30 applications for financial assistance, the authority shall

1 consider:

2 * * *

3 (2) Whether the proposed project will lead to an
4 effective or complete solution to the problems experienced
5 with the water supply [or], sewage treatment or storm water
6 system to be aided, including compliance with State and
7 Federal laws, regulations or standards.

8 * * *

9 (b) Financing priorities.--In assigning priorities for
10 projects, the board shall consult with the Department of
11 Commerce and the department. In addition to any requirements of
12 Federal law imposed on the use of Federal funds, the board shall
13 determine priorities based on factors which include, but are not
14 limited to:

15 (1) Benefits to public health.

16 (2) The contribution to and impact of the project on
17 economic development as well as social and environmental
18 values.

19 (3) Benefits to public safety or welfare.

20 (4) Improvement in the ability of an applicant to come
21 into compliance with State and Federal statutes, regulations
22 and standards.

23 (5) Improvement in the adequacy or efficiency of the
24 water supply [or], sewage treatment or storm water system.

25 (6) The cost-effectiveness of the project.

26 (7) Whether the governmental unit to be served by a
27 sewage treatment system is subject to construction or
28 connection limitations issued by the department and the date
29 that any such limitation was issued.

30 (8) Whether the project encourages consolidation of

1 water or sewer systems, where such consolidation would enable
2 the customers of the systems to be more effectively and
3 efficiently served.

4 (9) In the case of storm water projects, the failure of
5 a county to adopt a watershed storm water management plan as
6 required by the act of October 4, 1978 (P.L.864, No.167),
7 known as the Storm Water Management Act, shall not bar a
8 storm water project in that county from qualifying for
9 assistance under this act.

10 (c) Decision of board.--Establishment of priority for
11 financial assistance under subsection (b) or (d) shall not be
12 deemed to be a final action under 2 Pa.C.S. (relating to
13 administrative law and procedure), nor shall it confer a right
14 or duty upon the board or any other person. A decision as to an
15 applicant's eligibility under subsection (a) may be appealed
16 pursuant to 2 Pa.C.S., but the priority assigned the project may
17 not be raised in that appeal.

18 (d) Small projects.--

19 (1) The board shall establish a program of assistance to
20 water supply and sewage disposal systems serving communities
21 with a population of 12,000 people or less or systems having
22 hookups of 1,000 or less.

23 (2) The board shall establish a program to financially
24 assist storm water projects by municipalities with a
25 population of 12,000 people or less. In addition to other
26 factors which the board in its discretion may consider in
27 assigning priorities under this program, preference shall be
28 given where the municipality undertaking the project:

29 (i) has no natural watercourse within its
30 boundaries;

1 (ii) relies on methods of storm water control which
2 do not comply with State or Federal rules, regulations or
3 standards; or

4 (iii) has been found to be subject to karst sinkhole
5 development or other geologic condition which poses a
6 danger to person or property and which may be aggravated
7 by uncontrolled storm water flows.

8 * * *

9 (f) Loans.--Subject to any agreements with the holders of
10 bonds, the board shall have the power to set terms applicable to
11 loans in any manner it deems appropriate, subject to the
12 provisions of this subsection. The board may consider such
13 factors as it deems relevant, including current market interest
14 rates, the financial and economic distress of the area which the
15 project serves, and the necessity to maintain the authority
16 funds in a financially sound manner. Loans may be made based on
17 the ability to repay the loan from future revenue to be derived
18 from the project, by a mortgage or other property lien, or on
19 any other fiscal matters which the authority deems appropriate.
20 The board shall have the power to defer principal on loans for
21 up to five years. In the event of a default on the repayment of
22 a loan, the board may apply to the court of common pleas of the
23 county where the project is located for the appointment of a
24 receiver to assume operation and supervision of the facility
25 under the supervision of the court. The minimum rate of interest
26 to be paid on any loan made pursuant to this act shall be 1%.
27 The maximum rate of interest shall not exceed the following:

28 (1) For projects in counties whose unemployment rate
29 exceeds the Statewide unemployment rate by 40% or more, 1%
30 for the first five years and 25% of the bond issue rate for

1 the remainder of the loan.

2 (2) For projects in counties whose unemployment rate
3 exceeds the Statewide unemployment rate, but exceeds it by
4 less than 40%, 30% of the bond issue rate for the first five
5 years and 60% of the bond issue rate for the remainder of the
6 loan.

7 (3) For all other projects, 60% of the bond issue rate
8 for the first five years and 75% of the bond issue rate for
9 the remainder of the loan.

10 (4) For projects located within municipalities for which
11 unemployment rates exist which would qualify the project for
12 lower interest rates than if the relevant county unemployment
13 rate were used, the unemployment rate of that municipality
14 may be used in determining the interest rate on the loan.

15 For purposes of this subsection, the phrase "unemployment rate
16 of the county" shall mean the average unemployment rate for the
17 county in the most recent calendar year for which data has been
18 finalized. For the projects which serve multiple counties, the
19 highest unemployment rate of the counties involved shall be
20 used. The unemployment data utilized shall be data reported by
21 the Department of Labor and Industry. For purposes of this
22 subsection, the phrase "bond interest rate" shall be the rate of
23 interest paid by the Commonwealth immediately preceding the date
24 of the loan for the bonds issued under sections 16, 16.1 and 17.

25 * * *

26 (i) Limitation.--The provisions of other law
27 notwithstanding, all projects eligible for assistance under this
28 act shall be determined to be site development projects as
29 referenced in the act of April 9, 1929 (P.L.343, No.176), known
30 as The Fiscal Code. In no case shall total assistance to any

1 single project total more than \$11,000,000, or \$20,000,000 if a
2 project serves more than one municipality, except that the board
3 by a vote of at least nine members may authorize loans in excess
4 of \$20,000,000 to comprehensive projects providing or proposing
5 consolidated service to a region encompassing all or parts of
6 four or more municipalities. The limitations contained in this
7 subsection shall not apply to storm water projects but the board
8 shall provide by regulation for reasonable limitations for such
9 projects.

10 (j) Continuing education of operators.--No agreement with
11 individuals or entities shall be valid in the absence of an
12 agreement by the individuals or entities seeking assistance
13 under this act to assure that the system operators are
14 participating or will participate in continuing education
15 programs developed by the Department of Environmental Resources.
16 If the board determines that the system operator of a system
17 receiving assistance is not participating in continuing
18 education programs, the board shall take all steps necessary to
19 cease all financial assistance and recover all prior payments,
20 including, but not limited to, the immediate repayment of any
21 outstanding loans and interest and any grants. The provisions of
22 this subsection shall not apply to cases where financial
23 assistance is provided for storm water projects.

24 * * *

25 (1) Financial analysis.--The financial analysis used by the
26 board to determine the need of all applicants for financial
27 assistance shall include, but not be limited to, the following:

28 (1) Fair and reasonable costs of wastewater treatment or
29 of supplying drinking water or of controlling storm water
30 incurred by comparable systems.

1 (2) The incomes of affected ratepayers and their ability
2 to pay increased rates necessary to complete the proposed
3 projects.

4 (3) Other sources of financing available to individuals
5 or entities seeking assistance under this act.

6 (4) A determination that any financial assistance
7 provided by this act will not be used to supplant financial
8 resources already available to the applicant.

9 * * *

10 Section 4. The act is amended by adding a section to read:

11 Section 16.1. Storm water control referendum.

12 (a) General rule.--Pursuant to the provisions of section
13 7(a)(3) of Article VIII of the Constitution of Pennsylvania, the
14 question of incurring indebtedness of \$50,000,000 for loans for
15 the acquisition, repair, construction, reconstruction,
16 rehabilitation, extension, expansion and improvement of storm
17 water control systems, subject to implementation through this
18 act, shall be submitted to the electors at the next primary,
19 municipal or general election following the effective date of
20 this section.

21 (b) Certification.--The Secretary of the Commonwealth shall
22 forthwith certify the question to the county boards of
23 elections.

24 (c) Form of question.--The question shall be in
25 substantially the following form:

26 Do you favor the incurring of indebtedness by the
27 Commonwealth of \$50,000,000 for use as loans to acquire,
28 repair, construct, reconstruct, rehabilitate, extend,
29 expand and improve storm water control systems?

30 Section 5. Section 17(a), (b), (c) and (m) of the act are

1 amended to read:

2 Section 17. Bonds.

3 (a) Issuance of general obligation bonds.--As evidence of
4 the indebtedness if authorized under [section 16] sections 16
5 and 16.1, general obligation bonds of the Commonwealth shall be
6 issued from time to time to fund and retire notes issued
7 pursuant to [section 16] sections 16 and 16.1 to carry out the
8 purposes of this act, or both, for such total amounts, in such
9 form, in such denominations and subject to such terms and
10 conditions of issue, redemption and maturity, rate of interest
11 and time of payment of interest as the issuing officials direct
12 except that the latest stated maturity date shall not exceed 30
13 years from the date of the debt first issued for each series.

14 (b) Execution of bonds.--All bonds and notes issued under
15 the authority of [section 16] sections 16 and 16.1 shall bear
16 facsimile signatures of the issuing officials and a facsimile of
17 the great seal of the Commonwealth and shall be countersigned by
18 a duly authorized loan and transfer agent of the Commonwealth.

19 (c) Direct obligation of Commonwealth.--All bonds and notes
20 issued in accordance with [section 16] sections 16 and 16.1
21 shall be direct obligations of the Commonwealth, and the full
22 faith and credit of the Commonwealth are hereby pledged for the
23 payment of the interest thereon as it becomes due and the
24 payment of the principal at maturity. The principal of and
25 interest on the bonds and notes shall be payable in lawful money
26 of the United States of America.

27 * * *

28 (m) Disposition and use of proceeds.--The proceeds realized
29 from the sale of bonds and notes, except funding bonds,
30 refunding bonds and renewal notes, under the provisions of this

1 section are specifically dedicated to the purposes of the
2 [referendum] referenda to be implemented by this act and shall
3 be paid into the special funds established in the State Treasury
4 in such amounts as may be specified by the board pursuant to
5 section 5(c). The proceeds shall be paid by the State Treasurer
6 periodically to the board to expend them at such times and in
7 such amounts as may be necessary to satisfy the funding needs of
8 the board. The proceeds of the sale of funding bonds, refunding
9 bonds and renewal notes shall be paid to the State Treasurer and
10 applied to the payment of principal, the accrued interest and
11 premium, if any, and costs of redemption of the bonds and notes
12 for which such obligations shall have been issued.

13 * * *

14 Section 6. This act shall take effect in 60 days.