

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 540 Session of 2001

INTRODUCED BY GEORGE, McCALL, HANNA, PETRARCA, SOLOBAY, SURRA, LaGROTTA, EACHUS, LAUGHLIN, WATERS, WALKO, WANSACZ, STEELMAN, THOMAS, HARHAI, TIGUE, LEVDANSKY, MICHLOVIC, WOJNAROSKI, TRAVAGLIO, CORRIGAN, STABACK, M. BAKER, GORDNER, GRUCELA, FEESE, LESCOVITZ, YUDICHAK, DeWEESE, STERN, CRUZ, CURRY, CAWLEY, BELFANTI, FAIRCHILD, SAINATO, HERMAN, C. WILLIAMS, BELARDI, CALTAGIRONE, COSTA AND JOSEPHS, FEBRUARY 7, 2001

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 7, 2001

AN ACT

1 Authorizing the incurring of indebtedness of \$50,000,000 for the
2 clearance of streams, improvement of watercourse flow
3 patterns, and abatement of flooding potential in this
4 Commonwealth; defining the powers and duties of certain
5 offices, agencies and political subdivisions; providing for
6 the allotment of proceeds under this act, including
7 Commonwealth grants; prescribing standards; establishing the
8 Watercourse Flow Improvement Fund; creating the Watercourse
9 Flow Improvement Sinking Fund; providing for use of certain
10 proceeds of the State Realty Transfer Tax; and making an
11 appropriation.

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13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Short title.

16 This act shall be known and may be cited as the Watercourse
17 Flow Improvement Act.

18 Section 2. Declaration of policy.

19 The General Assembly finds and declares as follows:

20 (1) Fundamental to the health and welfare of the people
21 of this Commonwealth are the land and water resources of this
22 Commonwealth.

23 (2) Many miles of waterways in this Commonwealth have
24 diminished flow capabilities because of infiltration of silt
25 and debris. This diminished capacity can cause damage to
26 homes and property due to flooding.

27 (3) The need to make watercourse flow improvements and
28 stream clearance are urgent matters requiring action by the
29 Commonwealth, not only for conservation purposes, but for the
30 protection of the health and welfare of the citizens of this

Commonwealth, especially those living in or adjacent to
affected areas.

(4) The Department of Environmental Protection shall be
responsible for any and all activities necessary to conduct
the business of watercourse flow improvements and stream
clearance projects funded under this act.

Section 3. Definitions.

The following words and phrases when used in this act shall
have the meanings given to them in this section unless the
context clearly indicates otherwise:

"Administrative expenses." An expenditure of funds to
accomplish the purposes of this act, including, but not limited
to, an expenditure of Commonwealth agencies for studies,
planning, development, appraisal, investigation, engineering,
legal and construction costs.

"Department." The Department of Environmental Protection of
the Commonwealth.

"Issuing officials." The Governor, the Auditor General and
the State Treasurer acting in concert to effect borrowing in
accordance with and for the purposes of this act.

"Land." Real property, including improvements thereof or
thereon, rights-of-way, water, riparian and other rights,
easements, privileges and any other physical property or rights
or interests of any kind or description relating to or connected
with real property.

"Political subdivision." A county, city, borough, town or
township. The term also includes an official agency created by a
county, city, borough, town or township under the laws of this
Commonwealth, provided that any of the actions of the official
agency taken under the authority of this act is first approved

1 by the participating local governing bodies in the official
2 agency.

3 "Secretary." The Secretary of Environmental Protection of
4 the Commonwealth.

5 "Studies." The collection, analysis and presentation of
6 information, alternatives and recommendations in order that the
7 Commonwealth or political subdivisions may singly or jointly
8 determine a course of action to meet the purposes of this act.

9 Section 4. Referendum to authorize incurring indebtedness.

10 (a) Submission of question to electors.--The question of
11 incurring indebtedness of \$50,000,000 for the Watercourse Flow
12 Improvement Fund to be used for the abatement and elimination of
13 flooding potential from the streams of this Commonwealth,
14 watercourse flow improvements and stream clearances shall be
15 submitted to the electors at the next primary, municipal or
16 general election following the effective date of this act.

17 (b) Certification to county boards of elections.--The
18 Secretary of the Commonwealth shall immediately certify the
19 question under subsection (a) to the county boards of elections.

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

22 Do you favor the incurring of indebtedness by the
23 Commonwealth of \$50,000,000 to be used for the abatement
24 and elimination of flooding potential from the streams of
25 this Commonwealth, watercourse flow improvements and
26 stream clearance?

27 (d) Conduct of election.--The election shall be conducted in
28 accordance with the act of June 3, 1937 (P.L.1333, No.320),
29 known as the Pennsylvania Election Code, except that the time
30 limits for advertisement of notice of the election may be waived

1 as to the question.

2 Section 5. Authority to borrow.

3 In the event that the question of incurring indebtedness, as
4 described in section 4, is approved by a majority of those
5 voting on the question in accordance with section 7(a)(3) of
6 Article VIII of the Constitution of Pennsylvania, the issuing
7 officials are hereby authorized and directed to borrow, on the
8 credit of the Commonwealth, such sum or sums of money not
9 exceeding in the aggregate the sum of \$50,000,000 as may be
10 necessary to carry out the purposes of this act.

11 Section 6. Bonds, issue, maturity, interest, etc.

12 (a) Issuance.--As evidence of the indebtedness authorized in
13 this act, general obligation bonds of the Commonwealth shall be
14 issued from time to time for such total amounts, in such forms,
15 in such denominations and subject to such terms and conditions
16 of issue, redemption and maturity, rate or rates of interest and
17 time of payment of interest as the issuing officials shall
18 direct, except that the latest stated maturity date shall not
19 exceed 30 years from the date of the bond first issued for each
20 such series.

21 (b) Signatures and seal.--All bonds issued under the
22 authority of this act shall bear facsimile signatures of the
23 issuing officials, and a facsimile of the Great Seal of the
24 Commonwealth, and shall be countersigned by two duly authorized
25 officers of the duly authorized loan and transfer agents of the
26 Commonwealth.

27 (c) Full faith and credit.--All bonds issued in accordance
28 with the provisions of this act shall be direct obligations of
29 the Commonwealth, and the full faith and credit of the
30 Commonwealth are hereby pledged for the payment of the interest

1 thereon as the same shall become due and for the payment of the
2 principal thereof at maturity. All bonds issued under the
3 provisions of this act shall be exempt from taxation for State
4 and local purposes. The principal of and interest on such bonds
5 shall be payable in lawful money of the United States of
6 America.

7 (d) Form.--Bonds issued under this act may be issued as
8 coupon bonds or registered as to both principal and interest as
9 the issuing officials may determine. If interest coupons are
10 attached, they shall contain the facsimile signature of the
11 State Treasurer.

12 (e) Amount.--The issuing officials shall provide for the
13 amortization of the bonds issued under this act in substantial
14 and regular amounts over the term of the debt.

15 (f) Preparation.--The issuing officials shall proceed to
16 have the necessary bonds prepared and printed. The bonds, as
17 soon as they are prepared and printed, shall be deposited with
18 the duly authorized loan and transfer agent of the Commonwealth,
19 there to remain until sold in accordance with the provisions of
20 this act.

21 Section 7. Sale of bonds.

22 (a) Offering for sale.--When bonds are issued under this
23 act, they shall be offered for sale and shall be sold by the
24 issuing officials to the highest and best bidder or bidders
25 after due public advertisement, on such terms and conditions and
26 upon such open competitive bidding as the issuing officials
27 shall direct. The manner and character of advertisement and the
28 times of advertising shall be prescribed by the issuing
29 officials.

30 (b) Private sale.--Any portion of any bond issue offered

1 under subsection (a) and not sold or subscribed for may be
2 disposed of by private sale by the issuing officials, in such
3 manner and at such prices as the Governor shall direct.

4 (c) Series.--When bonds are issued from time to time, the
5 bonds of each issue shall constitute a separate series to be
6 designated by the issuing officials or may be combined for sale
7 as one series with other general obligation bonds of the
8 Commonwealth.

9 Section 8. Refunding bonds.

10 The issuing officials are hereby authorized to provide by
11 resolution for the issuance of refunding bonds for the purpose
12 of refunding any bonds issued under the provisions of this act
13 and then outstanding, either by voluntary exchange with the
14 holders of such outstanding bonds with accrued interest and any
15 premium payable thereon, at maturity or at any call date. The
16 issuance of refunding bonds, the maturities and other details
17 thereof, the rights of the holders thereof and the duties of the
18 issuing officials in respect to refunding bonds shall be
19 governed by the foregoing provisions of this act, insofar as
20 they may be applicable. Refunding bonds may be issued by the
21 issuing officials to refund bonds originally issued or to refund
22 bonds previously issued for refunding purposes.

23 Section 9. Registration of bonds.

24 The Auditor General shall prepare the necessary registry book
25 to be kept in the office of the duly authorized loan and
26 transfer agent of the Commonwealth for the registration of any
27 bonds, at the request of owners thereof, according to the terms
28 and conditions of issue directed by the issuing officials. All
29 bonds which are issued under this act without interest coupons
30 attached shall be registered in the registry books kept by the

1 duly authorized loan and transfer agent of the Commonwealth.

2 Section 10. Disposition and use of proceeds.

3 (a) Watercourse Flow Improvement Fund.--There is hereby
4 established in the State Treasury a special fund to be known as
5 the Watercourse Flow Improvement Fund. The proceeds realized
6 from the sale of bonds under this act shall be paid into the
7 fund and are hereby specifically dedicated to the purpose of the
8 referendum authorized under section 4. The moneys shall be paid
9 periodically by the State Treasurer to the department at such
10 times and in such amounts as may be necessary to satisfy the
11 purpose of this act.

12 (b) Investment and earnings.--Pending their application to
13 the purposes authorized, moneys held or deposited in the
14 Watercourse Flow Improvement Fund by the State Treasurer may be
15 invested or reinvested as are other funds in the custody of the
16 State Treasurer in the manner provided by law. All earnings
17 received from the investment or deposit of such funds shall be
18 paid into the State Treasury to the credit of the Watercourse
19 Flow Improvement Fund.

20 Section 11. Watercourse Flow Improvement Sinking Fund.

21 (a) Establishment.--All bonds issued under the authority of
22 this act shall be redeemed at maturity, and all interest due
23 from time to time on such bonds shall be paid from the
24 Watercourse Flow Improvement Sinking Fund which is hereby
25 established. For the specific purpose of redeeming these bonds
26 at maturity and paying all interest thereon in accordance with
27 the information received from the Governor, the General Assembly
28 shall appropriate moneys for the payment of interest on these
29 bonds and the principal thereof at maturity.

30 (b) Investment.--All moneys paid into the Watercourse Flow

1 Improvement Sinking Fund and all of such moneys not necessary to
2 pay accruing interest shall be invested by the Board of Finance
3 and Revenue in such securities as are provided by law for the
4 investment of the sinking funds of the Commonwealth.

5 Section 12. Expenses of preparation, issue and sale of bonds.

6 There is hereby appropriated to the State Treasurer, from the
7 proceeds of the bonds issued, as much of the moneys as may be
8 necessary for all costs and expenses in connection with the
9 issue of and sale and registration of bonds in connection with
10 this act.

11 Section 13. Temporary financing authorization.

12 (a) Temporary borrowing.--Pending the issuance of bonds of
13 the Commonwealth, the issuing officials are authorized, on the
14 credit of the Commonwealth, to make temporary borrowings of such
15 moneys as may from time to time be necessary to carry out the
16 purposes of this act and are authorized in the name and on
17 behalf of the Commonwealth to enter into loan or credit
18 agreements with any banks or trust companies or other lending
19 institutions or persons in the United States having power to
20 enter into the same.

21 (b) Form.--All temporary borrowings made under the authority
22 of this section shall be evidenced by notes of the Commonwealth,
23 which shall be issued from time to time for such amounts, not
24 exceeding in the aggregate the sum of \$50,000,000, in such form
25 and in such denominations, and subject to such terms and
26 conditions of issue, prepayment or redemption and maturity, rate
27 of interest and time of payment of interest as the issuing
28 officials shall direct. All notes issued under the authority of
29 this section shall bear the facsimile signatures of the issuing
30 officials and a facsimile of the Great Seal of the Commonwealth

1 and shall be countersigned by two duly authorized officers of a
2 duly authorized loan and transfer agent of the Commonwealth.

3 (c) Funding and retirement.--All notes under this section
4 shall be funded and retired by the issuance and sale of bonds of
5 the Commonwealth to the extent that payment of these notes has
6 not otherwise been made or provided for.

7 (d) Proceeds.--The proceeds of all temporary borrowings
8 under this section shall be paid into the Watercourse Flow
9 Improvement Fund.

10 Section 14. Quorum.

11 Whenever in this act any action is to be taken or any
12 decision is to be made by the issuing officials and the three
13 officers are not able to agree unanimously, the action or
14 decision of the Governor and either the Auditor General or the
15 State Treasurer shall be binding and final.

16 Section 15. Information to General Assembly.

17 The Governor shall include in every budget submitted to the
18 General Assembly full information relating to the issuance of
19 bonds under the provisions of this act and the status of the
20 sinking funds of the Commonwealth for the payment of the
21 interest on those bonds and the principal thereof at maturity.

22 Section 16. Allotment of moneys.

23 (a) Projects.--Of the moneys received by the Commonwealth
24 from the issuance and sale of bonds and notes pursuant to this
25 act, when appropriated by the General Assembly from the
26 Watercourse Flow Improvement Fund, the sum of \$50,000,000 shall
27 be allotted to the Department of Environmental Protection for
28 the abatement and elimination of flooding potential of
29 watersheds and waterways, the restoration or improvement of
30 watercourse flow patterns, stream clearance and administration

1 expenses attendant thereto.

2 (b) Right to enter land to restore or improve watercourse
3 flow patterns and to provide stream clearance.

4 (1) If the secretary makes a finding of fact that:

5 (i) flooding potential resulting from inadequate or
6 improper watercourse flow is at a stage where, in the
7 public interest, immediate action should be taken; and

8 (ii) the owners of the property upon which entry
9 must be made to combat the flooding potential are not
10 known, are not readily available or will not give
11 permission for the secretary or agents of the department
12 to enter upon the premises; then, upon giving notice by
13 mail to the owners, if known, or, if not known, by
14 posting notice upon the premises and advertising once in
15 a newspaper of general circulation in the municipality in
16 which the land lies, the secretary and agents of the
17 department shall have the right to enter upon the
18 premises and any other land in order to have access to
19 the premises to combat flooding potential and to do all
20 things necessary or expedient to do so.

21 (2) Entry shall not be construed as an act of
22 condemnation of property or of trespass. The moneys expended
23 for the work and the benefits accruing to the premises so
24 entered upon shall be chargeable against the land and shall
25 mitigate or offset any claim in or any action brought by any
26 owner of any interest in such premises for any alleged
27 damages by virtue of the entry.

28 (3) This subsection shall not be construed as
29 establishing any right of action or eliminating any immunity
30 existing on the effective date of this act.

1 (4) The secretary and agents of the department may enter
2 upon any lands for the purpose of conducting a study or
3 exploratory work to determine if flooding potential exists
4 and to determine the feasibility of correcting such
5 conditions. Entry shall not be construed as an act of
6 condemnation of property or of trespass.

7 (5) The department may expend funds, as appropriated in
8 this section, for the emergency abatement of flooding,
9 whenever created, if the secretary makes a finding of fact
10 that:

11 (i) an emergency exists constituting an extreme
12 danger to the public; and

13 (ii) no other person or agency will act to combat
14 the condition.

15 (6) (i) The department shall have the right to enter
16 upon the premises where the emergency exists and any
17 other land to have access to the premises to combat
18 flooding and to do all things necessary or expedient to
19 do so. Entry shall not be construed as an act of
20 condemnation of property or of trespass thereon.

21 (ii) The moneys expended for the work and the
22 benefits accruing to the land shall be chargeable against
23 the land and shall mitigate or offset any claim in or any
24 action brought by any owner of any interest in the land
25 for alleged damages by virtue of the entry.

26 (iii) This paragraph shall not be construed as
27 establishing any right of action or eliminating any
28 immunity existing on the effective date of this act.

29 (7) (i) All moneys expended under this act for the
30 emergency abatement of flooding may be recovered in full

1 from the landowner or any other person liable under law
2 for abating the conditions resulting in the emergency.
3 The moneys expended for the emergency abatement of these
4 conditions shall constitute a debt which may be recovered
5 in any action at law to compel payment of debts.

6 (ii) If the landowner or another person is not
7 liable under law to abate the emergency conditions, then,
8 within either six months after the completion of the work
9 or within six months after the final court determination
10 of the absence of liability, the secretary may file a
11 lien on the property.

12 (iii) The department may:

13 (A) Engage in the work and to do all things
14 necessary and expedient to effect the programs.

15 (B) Enter into cooperative abatement projects
16 under this act with the Federal Government and its
17 agencies and other states and their agencies.

18 (iv) In addition to any other remedies provided for
19 in this act, the Attorney General, at the request of the
20 department, may initiate, in the Commonwealth Court or
21 the court of common pleas of the county in which the land
22 lies, an action in equity for an injunction to restrain
23 any interference with the exercise of the rights of entry
24 provided in or the conduct of any project contemplated in
25 this paragraph.

26 (c) Joint departmental projects.--The respective departments
27 and commissions may cooperate and expend funds jointly on water
28 projects where the objectives of such projects can be better
29 achieved, where economies may be obtained by cooperation and
30 joint action or, in other instances, where joint action is

1 determined to be in the public interest.

2 (d) Administrative expenses.--Departments and commissions
3 incurring administrative expenses in accomplishing the purposes
4 of this act may charge these expenses against their specific
5 allotment.

6 (e) Federal programs.--The departments and commissions set
7 forth herein may utilize any available Federal program to
8 augment the funds made available to such department or
9 commission under this act.

10 Section 17. Estimated useful life and term of debt.

11 (a) Estimated useful life.--The General Assembly states that
12 the estimated useful life of the public improvement projects
13 itemized in this act is 30 years.

14 (b) Term of debt.--The maximum term of the debt authorized
15 to be incurred under this act is 30 years.

16 Section 18. Appropriation.

17 (a) Appropriation to fund.--

18 (1) The sum of \$50,000,000, or as much thereof as is
19 able to be borrowed by temporary financing or by bonds, is
20 hereby appropriated to the Watercourse Flow Improvement Fund
21 for the purposes set forth in this act.

22 (2) The General Assembly may make appropriations from
23 time to time to the Watercourse Flow Improvement Fund, to the
24 Department of Environmental Protection, or to both, to carry
25 out the purposes of this act, which appropriations shall be
26 continuing appropriations and shall not lapse.

27 (b) Other sources of funds.--In addition to the moneys
28 appropriated from time to time by the General Assembly for its
29 work, the department may make application for and expend such
30 Federal grants as may be available and may also receive and

- 1 expend contributions from other public, quasi-public or private
- 2 sources as may become available.
- 3 Section 19. Effective date.
- 4 This act shall take effect immediately.