

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2539 Session of  
2008

INTRODUCED BY SEIP, MCGEEHAN, BRENNAN, CALTAGIRONE, CARROLL,  
FREEMAN, GOODMAN, GRUCELA, HORNAMAN, JOSEPHS, MARSHALL,  
McCALL, McILHATTAN, McILVAINE SMITH, MUNDY, MUSTIO, READSHAW,  
SCAVELLO, SCHRODER, SIPTROTH, WANSACZ, J. WHITE AND YUDICHAK,  
MAY 14, 2008

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
MAY 14, 2008

AN ACT

1 Amending the act of June 5, 1947 (P.L.422, No.195), entitled,  
2 "An act authorizing the Department of Forests and Waters to  
3 provide for stream clearance and stream channel  
4 rectifications; to construct and maintain dams, reservoirs,  
5 lakes and other works and improvements for impounding flood  
6 waters, and conserving the water supply of the Commonwealth;  
7 and for creating additional recreational areas; to acquire by  
8 purchase, condemnation or otherwise, certain lands for such  
9 purposes; to construct and maintain flood forecasting and  
10 warning systems," further providing for the purposes of the  
11 act and for the authority of the Department of Environmental  
12 Protection; and making editorial changes.

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

15 Section 1. The title of the act of June 5, 1947 (P.L.422,  
16 No.195), entitled, "An act authorizing the Department of Forests  
17 and Waters to provide for stream clearance and stream channel  
18 rectifications; to construct and maintain dams, reservoirs,  
19 lakes and other works and improvements for impounding flood  
20 waters, and conserving the water supply of the Commonwealth; and  
21 for creating additional recreational areas; to acquire by

1 purchase, condemnation or otherwise, certain lands for such  
2 purposes; to construct and maintain flood forecasting and  
3 warning systems," is amended to read:

4 AN ACT

5 Authorizing the Department of [Forests and Waters] Environmental  
6 Protection to provide for stream clearance and stream channel  
7 rectifications; to construct and maintain dams, reservoirs,  
8 lakes and other works and improvements for impounding flood  
9 waters, and conserving the water supply of the Commonwealth; and  
10 for creating additional recreational areas; to acquire by  
11 purchase, condemnation or otherwise, certain lands for such  
12 purposes; to construct and maintain flood forecasting and  
13 warning systems[.]; to develop, implement and maintain  
14 nonstructural flood protection measures and stream channel  
15 environmental improvement projects; and to cooperate with  
16 counties, municipalities and municipal authorities to undertake  
17 all categories of work herein authorized for the Department of  
18 Environmental Protection.

19 Section 2. Sections 1, 2, 3, 4 and 5 of the act are amended  
20 to read:

21 Section 1. The Department of [Forests and Waters]  
22 Environmental Protection is hereby authorized to dredge and  
23 remove flood waste, deposits, flood water obstructions, gravel,  
24 bars and debris from any river or stream or part thereof; to  
25 restore or rectify flood damaged or destroyed stream channels,  
26 wholly or partly within, or forming part of the boundary of this  
27 Commonwealth[, except the tidal waters of the Delaware River and  
28 of its navigable tributaries]; to construct and maintain dams,  
29 lakes and other works and improvements, as in the judgment of  
30 the department may be necessary to impound flood waters and

1 conserve the water supply of the Commonwealth; [and] to provide  
2 additional recreational areas; [and] to construct and maintain  
3 flood forecasting and warning systems[.]; to develop, implement  
4 and maintain nonstructural flood protection and stream channel  
5 environmental improvement projects and to cooperate with  
6 counties, municipalities and municipal authorities that  
7 undertake all categories of work herein authorized for the  
8 department. Nonstructural flood protection projects shall mean  
9 and include floodplain improvements such as acquisition of land  
10 and structures, and demolition, removal, relocation, elevating  
11 and floodproofing of structures and other facilities susceptible  
12 to flood damage; and floodplain clearance and restoration.  
13 Stream channel environmental improvements shall mean and include  
14 installation and maintenance of vegetated stream banks and  
15 riparian corridors, bioengineered projects for bank stability  
16 and erosion control, and in-channel structures for habitat and  
17 geomorphic stabilization of stream channel profile, pattern and  
18 dimensions.

19 Section 2. The Department of [Forests and Waters]  
20 Environmental Protection is hereby authorized to make such  
21 appropriate surveys and prepare such suitable plans as are  
22 necessary for the execution of the above stated work.

23 Section 3. The Department of [Forests and Waters]  
24 Environmental Protection in the performance of the work  
25 authorized under the provisions of this act may, with the  
26 approval of the Governor, enter into contracts or agreements  
27 with any person, corporation or municipality covering the lease  
28 or purchase of [power, shovels, bulldozers and other] necessary  
29 equipment for stream clearance and stream channel  
30 rectifications, as well as covering the construction, repair and

1 maintenance of dams, reservoirs, lakes, the purchase and  
2 installation of flood forecasting and warning systems, and other  
3 works and improvements required to carry out the purposes of  
4 this act.

5 Section 4. The Department of [Forests and Waters]  
6 Environmental Protection is hereby authorized, subject to the  
7 approval of the Governor, to acquire by donation, agreement,  
8 lease, purchase or condemnation, and to own or hold in the name  
9 of the Commonwealth, real and personal property, rights, lands,  
10 easements and rights-of-way necessary for the execution of the  
11 work authorized by this act.

12 Section 5. The [department] Department of Environmental  
13 Protection shall have power to acquire any lands, easements,  
14 rights-of-way, franchises and other property, deemed necessary  
15 for the construction of any of its public works or improvements  
16 provided for in this act, except for nonstructural flood  
17 protection projects which shall only be acquired from a willing  
18 seller, by condemnation proceedings, and shall have power to  
19 enter upon, take possession of, and occupy such property deemed  
20 necessary for such purposes. The proceedings for the  
21 condemnation of property and for the assessment of damages shall  
22 be in accordance with the provisions of the act, approved the  
23 fifteenth day of July, one thousand nine hundred nineteen  
24 (Pamphlet Laws 976), entitled "An act to authorize the Board of  
25 Commissioners of Public Grounds and Buildings to acquire  
26 property for the Commonwealth by proceedings in eminent domain,  
27 where the purchase of such property has either been authorized  
28 by law or determined by the Board of Commissioners of Public  
29 Grounds and Buildings under existing laws, and an appropriation  
30 made therefor," its amendments and supplements, except that the

1 department shall have the right to immediate possession of the  
2 property upon paying into the court of common pleas of the  
3 county wherein the property is situated, upon the department's  
4 petition to such court for leave so to do, the value of the  
5 property as determined by the department's appraisers: Provided,  
6 however, That any property owner who believes the amount  
7 tendered insufficient to fully compensate him may accept the  
8 same under protest and without prejudice to his right to apply  
9 for the appointment of a board of view to assess the damages  
10 claimed. Upon application for the appointment of a board of view  
11 the court of the proper county, or any law judge thereof in  
12 vacation, shall appoint three discreet and disinterested free-  
13 holders of the county as viewers. If the owner, lessee or  
14 occupier of any of such property shall refuse to remove  
15 therefrom, or give up possession thereof, the department may  
16 proceed to obtain possession in the manner now provided by law.

17 Section 3. Section 6 of the act, amended September 29, 1951  
18 (P.L.1631, No.424), is amended to read:

19 Section 6. The Department of [Forests and Waters]  
20 Environmental Protection is hereby authorized to consult,  
21 cooperate, negotiate, and with the approval of the Governor,  
22 enter into contracts and other agreements with the Federal  
23 Government, or any appropriate agency thereof. The [General  
24 State Authority] Department of General Services, any State or  
25 local agency, department, board, bureau, commission, or any  
26 political subdivisions, municipality, county, authority,  
27 corporation, association, person or persons, for cooperation and  
28 assistance in planning, constructing, financing, maintaining and  
29 operating, any works or facilities needed to carry out the  
30 purposes of this act: Provided, That all work of any character

1 whatsoever performed under the authority of this act, except as  
2 undertaken by its own forces, or other agencies of the  
3 Commonwealth, [or of] the Federal Government or any appropriate  
4 agency thereof or [The General State Authority] the Department  
5 of General Services, or any municipality or county pursuant to  
6 an agreement under section 6.1 of this act, shall be performed  
7 under written contract let by the Department of [Forests and  
8 Waters] Environmental Protection to the lowest responsible  
9 bidder, after due advertising as provided by law and in  
10 accordance with plans and specifications prepared by the  
11 department.

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

13 Section 6.1. The Department of Environmental Protection may  
14 provide financial assistance to counties, municipalities and  
15 municipal authorities for the purposes set forth in section 1 of  
16 this act to the extent funds are appropriated by the General  
17 Assembly for such purposes. Prior to providing any such  
18 assistance, and as a condition thereto, the Department of  
19 Environmental Protection shall have approved the plans and  
20 specifications of the project, and the municipality, county or  
21 authority shall have satisfied the terms and conditions of any  
22 agreement entered into pursuant to section 6 of this act.  
23 Awardees of the financial assistance described in this section  
24 shall obtain all required Federal, State and local permits prior  
25 to commencement of the project, and shall develop, implement and  
26 maintain the project in accordance with all applicable laws.

27 Section 5. This act shall take effect immediately.