
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 2

Session of
2008

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WAUGH, KITCHEN, VANCE, GORDNER, BROWNE, PIPPY, ROBBINS, BAKER
AND BRUBAKER, MAY 5, 2008

AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND
ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 30, 2008

AN ACT

1 Providing for the allocation of money in the Pennsylvania Gaming
2 Economic Development and Tourism Fund and for funding of
3 water or sewer projects, storm water projects, flood control
4 projects and high hazard dam projects.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 CHAPTER 1

8 PRELIMINARY PROVISIONS

9 Section 101. Short title.

10 This act shall be known and may be cited as the H2O PA Act.

11 Section 102. Definitions.

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

15 "Authority." The Commonwealth Financing Authority
16 established under 64 Pa.C.S. Ch. 15 (relating to Commonwealth

1 Financing Authority).

2 "Board." The Board of the Commonwealth Financing Authority
3 established under 64 Pa.C.S. § 1512 (relating to board).

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

6 "Eligible applicant." One or more municipalities ~~or~~, ←
7 municipal authorities OR PUBLIC UTILITIES PROVIDING WATER OR ←
8 WASTEWATER SERVICES.

9 "High hazard dam." A dam so located as to endanger populated
10 areas downstream by its failure.

11 "Municipal authority." A public authority created under 53
12 Pa.C.S. Ch. 56 (relating to municipal authorities) or under the
13 former act of May 2, 1945 (P.L.382, No.164) known as the
14 Municipality Authorities Act of 1945.

15 "NUTRIENT." NITROGEN OR PHOSPHORUS. ←

16 "NUTRIENT CREDIT." THE UNIT OF COMPLIANCE THAT CORRESPONDS
17 WITH A POUND OF REDUCTION OF A NUTRIENT AND THAT HAS BEEN
18 APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

19 "PENNVEST." The Pennsylvania Infrastructure Investment
20 Authority established under the act of March 1, 1988 (P.L.82,
21 No.16), known as the Pennsylvania Infrastructure Investment
22 Authority Act.

23 "Project." The acquisition, construction, improvement,
24 including the installation of security measures, expansion,
25 repair or rehabilitation of all or part of a water supply
26 system, sewage disposal system, storm water system, flood
27 control system or high hazard dam. The term shall include the
28 consolidation of two or more water supply systems, sewage
29 disposal systems, storm water systems or flood control systems.

30 "PUBLIC UTILITY." AS DEFINED IN 66 PA.C.S. § 102 (RELATING ←

1 TO DEFINITIONS).

2 "Regional flood control project." A project to construct,
3 rehabilitate or upgrade a flood control system that is owned by
4 two or more municipalities or authorities.

5 "Regional water supply, sewage disposal or storm water
6 project." A project to construct, rehabilitate or upgrade a
7 water supply system, sewage disposal system or storm water
8 system that is owned by two or more municipalities or by a
9 municipal authority that provides a water or sewer system for,
10 or water or sewer services to, two or more municipalities.

11 "Water or sewer project." The acquisition, construction,
12 improvement, including the installation of security measures,
13 THE PURCHASE OR TRADING OF NUTRIENT CREDITS, expansion, repair <—
14 or rehabilitation of all or part of a water supply system,
15 sewage disposal system or storm water system.

16 CHAPTER 3

17 ALLOCATION OF FUNDS

18 Section 301. Fund distribution.

19 Notwithstanding the provisions of 4 Pa.C.S. § 1407(b)
20 (relating to Pennsylvania Gaming Economic Development and
21 Tourism Fund), all money in the Pennsylvania Gaming Economic
22 Development and Tourism Fund not previously allocated to
23 projects under the act of July 25, 2007 (P.L.342, No.53), known
24 as Pennsylvania Gaming Economic Development and Tourism Fund
25 Capital Budget Itemization Act of 2007, shall be allocated to
26 the authority for distribution under this act for water or
27 sewer, storm water, flood control and high hazard dam projects.

28 AT LEAST 75% OF THE MONEY ALLOCATED TO THE AUTHORITY SHALL BE <—
29 DESIGNATED FOR GRANTS AND 25% SHALL BE DESIGNATED FOR LOANS
30 PURSUANT TO THIS ACT. For a ten-year period beginning with the

1 initial deposits under 4 Pa.C.S. § 1407(c), no LOANS OR grants ←
2 shall be distributed for any project located in a city or county
3 of the first or second class. Following the allocation of all
4 proceeds from obligations issued under section 501(a), all money
5 other than money required for debt service shall be available
6 for distribution under 4 Pa.C.S. § 1407. No money shall be
7 authorized or distributed for any economic development or
8 tourism project within a city or county of the first or second
9 class until such time as an amount equal to \$750,000,000 has
10 been authorized and distributed from the fund for economic
11 development or tourism projects outside of a city or county of
12 the first or second class.

13 CHAPTER 5

14 WATER OR SEWER PROJECTS, STORM WATER PROJECTS,
15 FLOOD CONTROL PROJECTS AND HIGH HAZARD DAM PROJECTS

16 Section 501. Commonwealth Financing Authority.

17 (a) General rule.--The authority shall incur indebtedness in
18 an amount of up to \$800,000,000 in accordance with 64 Pa.C.S.
19 Ch. 15 (relating to Commonwealth Financing Authority). The term
20 of indebtedness shall not exceed 30 years. Net proceeds from the
21 sale of obligations incurred under this section shall be
22 allocated by the board for projects set forth under section 502
23 and for the payment of all reasonable costs and expenses related
24 to the issuance.

25 (b) Payments.--Beginning in fiscal year 2009-2010, money
26 allocated under section 301 shall be used by the authority for
27 payment of the debt service related to the issuance of
28 obligations under subsection (a).

29 (c) Grants AND LOANS.--Proceeds from obligations issued ←
30 under subsection (a) and money remaining in the fund following

1 payment of debt service shall be used for single-year or
2 multiyear LOANS AND grants to eligible applicants for projects <—
3 under this chapter following review under section 502. Grants
4 AND LOANS shall be awarded to eligible applicants for projects <—
5 of \$500,000 or more. A ~~grant~~ LOAN, GRANT, OR A COMBINATION <—
6 THEREOF, under this act shall not exceed a total of \$20,000,000
7 for any project. Grants from proceeds from debt and from money
8 remaining in the fund shall be awarded over a period not to
9 exceed six years.

10 (d) Making of grants.--Grants shall be made as follows:

11 (1) A minimum of \$100,000,000 shall be awarded to flood
12 control projects.

13 (2) A minimum of \$25,000,000 shall be awarded to high
14 hazard dam projects.

15 (e) Receipt of PENNVEST loan or grant.--The receipt of a
16 loan or grant from PENNVEST shall not disqualify an applicant
17 from eligibility for a grant under this act.

18 (f) Local participation.--An eligible applicant shall
19 provide funds of not less than 50% of the amount awarded by the
20 authority for water or sewer projects. ~~or flood control~~ <—

21 ~~projects.~~ AN ELIGIBLE APPLICANT FOR A FLOOD CONTROL PROJECT <—
22 SHALL PROVIDE EASEMENTS AND RIGHTS-OF-WAY, RELOCATION OF
23 BUILDINGS AND UTILITIES AND ALTERATION OR REBUILDING OF
24 INADEQUATE BRIDGES AND OPERATION AND MAINTENANCE OF COMPLETED
25 PROJECT. An eligible applicant shall provide funds of not less
26 than 25% of the amount awarded by the authority for high hazard
27 dams.

28 (g) Applications.--Applications for grants OR LOANS under <—
29 this chapter shall be in a form determined by the board and
30 shall contain plans and other documentation as required by the

1 board. Applications shall be available electronically.

2 (h) Guidelines.--The authority shall publish guidelines in
3 the Pennsylvania Bulletin relating to the following:

4 (1) Eligibility of applicant.

5 (2) Required documentation.

6 (3) Form of application.

7 (4) Costs of a project that are eligible for a grant OR ←
8 LOAN.

9 (5) Requirements and standards of review for eligible
10 projects.

11 (i) Notification.--

12 (1) Within 90 days of the effective date of this
13 section, the authority shall submit for publication
14 notification of the establishment of the programs under this
15 act and a brief description of each in the Pennsylvania
16 Bulletin and on the Internet website of the Department of
17 Community and Economic Development. The authority shall
18 provide written notification of the establishment of the
19 programs to all of the following:

20 (i) The County Commissioners Association of
21 Pennsylvania.

22 (ii) The Pennsylvania State Association of Township
23 Commissioners.

24 (iii) The Pennsylvania State Association of Township
25 Supervisors.

26 (iv) The Pennsylvania State Association of Boroughs.

27 (v) The Pennsylvania Municipal Authorities
28 Association.

29 (vi) The Pennsylvania League of Cities and
30 Municipalities.

1 (2) The notification under paragraph (1) shall include
2 the name of a contact person and the anticipated time that
3 funding, applications and other information will become
4 available.

5 Section 502. Distribution of funds.

6 (a) General rule.--The board shall distribute funds
7 available under section 501(c) by awarding grants OR LOANS to <—
8 eligible applicants for the following projects:

9 (1) Water or sewer projects owned by an eligible
10 applicant. AN ELIGIBLE APPLICANT MAY, AT ITS OPTION, USE ANY <—
11 FUNDS RECEIVED UNDER THIS PARAGRAPH FOR THE PURCHASE OR
12 TRADING OF NUTRIENT CREDITS.

13 (2) Flood control projects owned by an eligible
14 applicant.

15 (3) High hazard dam repair or rehabilitation projects
16 for dams owned by an eligible applicant.

17 (b) Review.--The authority shall consult with the
18 appropriate agency under section 503 and award grants AND LOANS <—
19 in accordance with priorities under section 503 and guidelines
20 adopted under section 501(h).

21 Section 503. Review by agencies.

22 (a) Water or sewer projects.--

23 (1) A minimum of 50% of LOANS OR grants for water or <—
24 sewer projects approved by the authority shall be awarded to
25 projects that will consolidate two or more systems or to
26 regional systems.

27 (2) Priority shall be given to eligible applicants that
28 are currently subject to a Federal or State court or agency
29 order, consent decree or new permit discharge requirements
30 imposed after January 1, 2007.

1 (3) PENNVEST, in cooperation with the department, shall
2 review all applications for grants AND LOANS under section <—
3 502(a)(1). The review shall include an analysis of the
4 following:

5 (i) The number of municipalities that will be part
6 of the water or sewer project and the number of
7 municipalities that will benefit from the project.

8 (ii) Whether the construction, repair or
9 consolidation of a water or sewer project will enable
10 customers of the system to be more efficiently served.

11 (iii) The cost-effectiveness of the project when
12 compared to other water or sewer projects.

13 (iv) The nature of any Federal or State court or
14 agency order, consent decree or new permit discharge
15 requirements imposed after January 1, 2007, applicable to
16 the project.

17 (v) The consistency of the proposed project with
18 other State and regional resource management and economic
19 development plans.

20 (vi) Whether the project serves existing populations
21 or whether the project is intended to serve new
22 development.

23 (vii) Whether the eligible applicant has secured any
24 required planning and permit approvals for the project
25 from the department.

26 (viii) Whether the project is consistent with any
27 applicable county or local comprehensive plans.

28 ~~(b) Flood control projects.~~ <—

29 ~~(1) A minimum of 50% of grants for flood control~~
30 ~~projects approved by the authority shall be awarded to~~

1 ~~projects that will consolidate two or more systems or to~~
2 ~~regional systems.~~

3 ~~(2) The department shall review all applications for~~

4 (B) FLOOD CONTROL PROJECTS.--THE DEPARTMENT SHALL REVIEW ALL <—
5 APPLICATIONS FOR grants under section 502(a)(2). The review
6 shall include an analysis of the following:

7 (i) The number of municipalities that will be part
8 of the flood control project and the number of
9 municipalities that will benefit from the project.

10 (ii) The history of flooding in the area to be
11 served by the flood control project.

12 (iii) The cost-effectiveness of the flood control
13 project.

14 (iv) Improvement in the ability of the eligible
15 applicant to come into compliance with Federal and State
16 statutes, regulations or other standards.

17 (v) Whether the eligible applicant has secured any
18 required planning and permit approvals for the project
19 from the department.

20 (vi) Whether the project is consistent with any
21 applicable county or local comprehensive plans.

22 (c) High hazard dams.--The department shall review all
23 applications for grants under section 502(a)(3).

24 (1) The review shall include an analysis of the
25 following:

26 (i) The level of hazard posed by the dam.

27 (ii) Whether the proposed project represents the
28 most cost-effective way to address the hazard.

29 (2) To be eligible, the owner of the high hazard dam
30 shall:

1 (i) Obtain all applicable permits required under the
2 act of November 26, 1978 (P.L.1375, No.325), known as the
3 Dam Safety and Encroachments Act.

4 (ii) Develop an emergency action plan as required by
5 section 5(a)(4) of the Dam Safety and Encroachments Act
6 and distribute the plan to affected county and municipal
7 emergency management officials.

8 (iii) Comply with all inspection requirements and
9 submit inspection reports to the department as required
10 by law.

11 Section 504. Project review.

12 The authority shall review the information received under
13 section 503, prepare an assessment of each project and determine
14 which projects will best utilize and promote the efficient
15 management of water resources and protect the health and safety
16 of the citizens of this Commonwealth.

17 SECTION 505. PURCHASE OR TRADE OF NUTRIENT CREDITS. <—

18 NOTHING IN THIS ACT SHALL PROHIBIT AN ELIGIBLE APPLICANT FROM
19 USING FUNDS ALLOCATED UNDER THE PROVISIONS OF THIS ACT TO
20 PURCHASE OR TRADE NUTRIENT CREDITS.

21 CHAPTER 7

22 REPORTING

23 Section 701. Annual reports.

24 (a) Authority report.--The authority shall provide an annual
25 report, which at a minimum shall include:

26 (1) A list of all LOANS AND grants approved AND LOANS <—
27 REPAID during the previous fiscal year.

28 (2) The name and address of each recipient, including
29 the name of a contact person of the recipient.

30 (3) The amount of the LOAN OR grant and a detailed <—

1 description of the project for which the LOAN OR grant was
2 awarded.

3 (b) Department report.--The department, in collaboration
4 with PENNVEST, shall provide an annual report, which at a
5 minimum shall include:

6 (1) An analysis of how each program authorized under
7 this act is improving the health and safety of the citizens
8 of this Commonwealth.

9 (2) A summary and analysis of other Commonwealth
10 programs dedicated to water or sewer projects, flood control
11 projects and high hazard dams and how those programs are
12 improving the health and safety of the citizens of this
13 Commonwealth.

14 (c) Submission of reports.--The reports required under
15 subsections (a) and (b) shall be submitted to the Majority
16 Leader of the Senate, the Minority Leader of the Senate, the
17 Majority Leader of the House of Representatives and the Minority
18 Leader of the House of Representatives by October 1, 2009, and
19 October 1 of each year thereafter. The reports shall also be
20 posted and maintained on the official Internet website of the
21 authority and the department.

22 CHAPTER 51

23 MISCELLANEOUS PROVISIONS

24 Section 5101. Expenses or costs.

25 No more than 0.5% of funds from net proceeds from the sale of
26 obligations under this act may be used for administrative review
27 and technical assistance relating to project review.

28 Section 5102. Funds.

29 Funds deposited in the Pennsylvania Gaming Economic
30 Development and Tourism Fund under 4 Pa.C.S. § 1407(c) (relating

1 to Pennsylvania Gaming Economic Development and Tourism Fund)
2 shall not be considered State gaming receipts for purposes of 4
3 Pa.C.S. § 1202(b)(24) (relating to general and specific powers).
4 Section 5103. Limitations.

5 Funds deposited in the Pennsylvania Gaming Economic
6 Development and Tourism Fund shall not be used for grants or
7 loans under 64 Pa.C.S. § 1558 (relating to Water Supply and
8 Wastewater Infrastructure Program).

9 Section 5104. Inconsistent repeal.

10 The provisions of 4 Pa.C.S. § 1407(b) are repealed insofar as
11 they are inconsistent with this act.

12 Section 5105. Effective date.

13 This act shall take effect in 60 days.