
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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JULY 3, 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 UNSAFE 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 "ELIGIBLE APPLICANT." THE COMMONWEALTH, AN INDEPENDENT <—
10 AGENCY OR ONE OR MORE MUNICIPALITIES OR MUNICIPAL AUTHORITIES. A
11 COMMONWEALTH OR INDEPENDENT AGENCY SHALL BE AN ELIGIBLE
12 APPLICANT ONLY FOR THE PURPOSES OF HIGH HAZARD UNSAFE DAM AND
13 FLOOD CONTROL PROJECTS.

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

16 "HIGH HAZARD UNSAFE DAM." A DAM THAT IS BOTH A HIGH HAZARD <—
17 AND AN UNSAFE DAM.

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

22 ~~"NUTRIENT." NITROGEN OR PHOSPHORUS.~~ <—

23 ~~"NUTRIENT CREDIT." THE UNIT OF COMPLIANCE THAT CORRESPONDS~~
24 ~~WITH A POUND OF REDUCTION OF A NUTRIENT AND THAT HAS BEEN~~
25 ~~APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.~~

26 "PENNVEST." The Pennsylvania Infrastructure Investment
27 Authority established under the act of March 1, 1988 (P.L.82,
28 No.16), known as the Pennsylvania Infrastructure Investment
29 Authority Act.

30 "Project." The acquisition, construction, improvement,

1 including the installation of security measures, expansion,
2 repair or rehabilitation of all or part of a water supply
3 system, sewage disposal system, storm water system, flood
4 control system or high hazard UNSAFE dam. The term shall include <—
5 the consolidation OR REGIONALIZATION of two or more water supply <—
6 systems, sewage disposal systems, ~~storm water systems or flood~~ <—
7 ~~control systems.~~

8 ~~"Public utility." As defined in 66 Pa.C.S. § 102 (relating~~ <—
9 ~~to definitions).~~ OR STORM WATER SYSTEMS. <—

10 "Regional flood control project." A project to construct,
11 rehabilitate or upgrade a flood control system that is owned by
12 two or more municipalities or authorities.

13 "REGIONAL SYSTEMS." TWO OR MORE WATER SUPPLY, SEWAGE <—
14 DISPOSAL OR STORM WATER SYSTEMS MANAGED OR OPERATED AS AN
15 INTEGRATED SYSTEM REGARDLESS OF WHETHER THE SYSTEM IS PHYSICALLY
16 CONNECTED.

17 "Regional water supply, sewage disposal or storm water
18 project." A project to construct, rehabilitate or upgrade a
19 water supply system, sewage disposal system or storm water
20 system that is owned by two or more municipalities or by a
21 municipal authority that provides a water or sewer system for,
22 or water or sewer services to, two or more municipalities.

23 "UNSAFE DAM." A DAM DESIGNATED BY THE DEPARTMENT OF <—
24 ENVIRONMENTAL PROTECTION WITH DEFICIENCIES OF SUCH A NATURE THAT
25 IF NOT CORRECTED, THE DEFICIENCIES COULD CAUSE A FAILURE OF THE
26 DAM WITH SUBSEQUENT LOSS OF LIVES OR SUBSTANTIAL PROPERTY
27 DAMAGE.

28 "Water or sewer project." The acquisition, construction,
29 improvement, including the installation of security measures,
30 ~~THE PURCHASE OR TRADING OF NUTRIENT CREDITS,~~ expansion, repair <—

1 or rehabilitation of all or part of a water supply system,
2 sewage disposal system or storm water system.

3 CHAPTER 3

4 ALLOCATION OF FUNDS

5 Section 301. Fund distribution.

6 Notwithstanding the provisions of 4 Pa.C.S. § 1407(b)
7 (relating to Pennsylvania Gaming Economic Development and
8 Tourism Fund), all money in the Pennsylvania Gaming Economic
9 Development and Tourism Fund not previously allocated to
10 projects under the act of July 25, 2007 (P.L.342, No.53), known
11 as Pennsylvania Gaming Economic Development and Tourism Fund
12 Capital Budget Itemization Act of 2007, ~~shall be allocated to~~ <—
13 ~~the authority for distribution under this act for water or~~
14 ~~sewer, storm water, flood control and high hazard dam projects.~~
15 ~~AT LEAST 75% OF THE MONEY ALLOCATED TO THE AUTHORITY SHALL BE~~ <—
16 ~~DESIGNATED FOR GRANTS AND 25% SHALL BE DESIGNATED FOR LOANS~~
17 ~~PURSUANT TO THIS ACT.~~ AND THE COMMONWEALTH'S RIGHT, TITLE AND <—
18 INTEREST IN PENNSYLVANIA GAMING ECONOMIC DEVELOPMENT AND TOURISM
19 FUND RECEIPTS NOT ENCUMBERED BY THE PENNSYLVANIA GAMING ECONOMIC
20 DEVELOPMENT AND TOURISM FUND CAPITAL BUDGET ITEMIZATION ACT OF
21 2007 ARE HEREBY TRANSFERRED TO THE AUTHORITY. THE STATE
22 TREASURER IS AUTHORIZED AND DIRECTED TO ENTER INTO ANY
23 AGREEMENTS WITH THE AUTHORITY AND ESTABLISH ACCOUNTS AND FUNDS,
24 THAT SHALL NOT BE IN THE STATE TREASURY, AS THE AUTHORITY MAY
25 DIRECT AS BEING NECESSARY OR APPROPRIATE TO EFFECT THE TRANSFER
26 OF PENNSYLVANIA GAMING ECONOMIC DEVELOPMENT AND TOURISM FUND
27 RECEIPTS TO THE AUTHORITY. For a ten-year period beginning with
28 the initial deposits under 4 Pa.C.S. § 1407(c), no ~~LOANS OR~~ <—
29 grants shall be distributed for any project located in a city or
30 county of the first or second class. Following the allocation of

1 all proceeds from obligations issued under section 501(a), all
2 money other than money required for debt service shall be
3 available for distribution under ~~4 Pa.C.S. § 1407~~ THIS ACT. No
4 money shall be authorized or distributed for any ~~economic~~
5 ~~development or tourism~~ project within a city or county of the
6 first or second class, OTHER THAN THOSE PROJECTS DESCRIBED IN
7 THE PENNSYLVANIA GAMING ECONOMIC DEVELOPMENT AND TOURISM FUND
8 CAPITAL BUDGET ITEMIZATION ACT OF 2007, until such time as an
9 amount equal to \$750,000,000 has been authorized and distributed
10 from the fund for ~~economic development or tourism~~ projects
11 outside of a city or county of the first or second class.

12 CHAPTER 5

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

15 Section 501. Commonwealth Financing Authority.

16 ~~(a) General rule. The authority shall incur indebtedness in~~

17 (A) GENERAL RULE.--

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

26 (2) BONDS ISSUED UNDER THIS CHAPTER SHALL NOT BE A DEBT,
27 LIABILITY OR OBLIGATION OF THE COMMONWEALTH. THE PROVISIONS
28 LIMITING LIABILITY IMPOSED UNDER 64 PA.C.S. § 1521(D)
29 (RELATING TO BONDS ISSUANCE) SHALL APPLY TO THE INDEBTEDNESS
30 UNDER THIS ACT.

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

5 (c) Grants ~~AND LOANS~~.--Proceeds from obligations issued <—
6 under subsection (a) and money remaining in the fund following
7 payment of debt service shall be used for single-year or
8 multiyear ~~LOANS AND~~ grants to eligible applicants for projects <—
9 under this chapter following review under section 502. Grants
10 ~~AND LOANS~~ shall be awarded to eligible applicants for projects <—
11 of \$500,000 or more. A grant ~~LOAN, GRANT, OR A COMBINATION~~ <—
12 ~~THEREOF,~~ GRANT under this act shall not exceed a total of <—
13 \$20,000,000 for any project. Grants from proceeds from debt and
14 from money remaining in the fund shall be awarded over a period
15 not to exceed six years.

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

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

19 (2) A minimum of ~~\$25,000,000~~ \$35,000,000 shall be <—
20 awarded to high hazard UNSAFE dam projects. NO MORE THAN <—
21 \$20,000,000 MAY GO TO AN ELIGIBLE APPLICANT THAT IS THE
22 COMMONWEALTH OR AN INDEPENDENT AGENCY.

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

26 (f) Local participation.--An eligible applicant shall
27 provide funds of not less than 50% of the amount awarded by the
28 authority for water or sewer projects. ~~or flood control~~ <—
29 ~~projects.~~ AN ELIGIBLE APPLICANT FOR A FLOOD CONTROL PROJECT <—
30 SHALL PROVIDE EASEMENTS AND RIGHTS-OF-WAY, RELOCATION OF

1 BUILDINGS AND UTILITIES AND ALTERATION OR REBUILDING OF
2 INADEQUATE BRIDGES AND OPERATION AND MAINTENANCE OF COMPLETED
3 PROJECT. An eligible applicant shall provide funds of not less
4 than 25% of the amount awarded by the authority for high hazard
5 UNSAFE dams. AN ELIGIBLE APPLICANT THAT IS THE COMMONWEALTH OR <—
6 AN INDEPENDENT AGENCY SHALL NOT BE REQUIRED TO MATCH.

7 (g) Applications.--Applications for grants ~~OR LOANS~~ under <—
8 this chapter shall be in a form determined by the board and
9 shall contain plans and other documentation as required by the
10 board. Applications shall be available electronically. AN <—
11 ELIGIBLE APPLICANT THAT IS THE COMMONWEALTH OR INDEPENDENT
12 AGENCY SHALL SUBMIT ITS APPLICATION THROUGH THE DEPARTMENT ON A
13 FORM PRESCRIBED BY THE DEPARTMENT.

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

- 16 (1) Eligibility of applicant.
- 17 (2) Required documentation.
- 18 (3) Form of application.
- 19 (4) Costs of a project that are eligible for a grant ~~OR~~ <—
20 ~~LOAN~~.
- 21 (5) Requirements and standards of review for eligible
22 projects.

23 (i) Notification.--

24 (1) Within 90 days of the effective date of this
25 section, the authority shall submit for publication
26 notification of the establishment of the programs under this
27 act and a brief description of each in the Pennsylvania
28 Bulletin and on the Internet website of the Department of
29 Community and Economic Development. The authority shall
30 provide written notification of the establishment of the

1 programs to all of the following:

2 (i) The County Commissioners Association of
3 Pennsylvania.

4 (ii) The Pennsylvania State Association of Township
5 Commissioners.

6 (iii) The Pennsylvania State Association of Township
7 Supervisors.

8 (iv) The Pennsylvania State Association of Boroughs.

9 (v) The Pennsylvania Municipal Authorities
10 Association.

11 (vi) The Pennsylvania League of Cities and
12 Municipalities.

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

17 Section 502. Distribution of funds.

18 (a) General rule.--The board shall distribute funds
19 available under section 501(c) by awarding grants ~~OR LOANS~~ to ~~←~~
20 eligible applicants for the following projects:

21 (1) Water or sewer projects owned by an eligible
22 applicant. ~~AN ELIGIBLE APPLICANT MAY, AT ITS OPTION, USE ANY~~ ~~←~~
23 ~~FUNDS RECEIVED UNDER THIS PARAGRAPH FOR THE PURCHASE OR~~
24 ~~TRADING OF NUTRIENT CREDITS.~~

25 (2) Flood control projects owned by an eligible
26 applicant.

27 (3) High hazard UNSAFE dam repair or rehabilitation ~~←~~
28 projects for dams owned by an eligible applicant.

29 (b) Review.--The authority shall consult with the
30 appropriate agency under section 503 and award grants ~~AND LOANS~~ ~~←~~

1 in accordance with priorities under section 503 and guidelines
2 adopted under section 501(h).

3 Section 503. Review by agencies.

4 (a) Water or sewer projects.--

5 (1) A minimum of 50% of ~~LOANS OR~~ grants for water or <—
6 sewer projects approved by the authority shall be awarded to
7 projects that will consolidate two or more systems or to
8 regional systems.

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

13 (3) PENNVEST, in cooperation with the department, shall
14 review all applications for grants ~~AND LOANS~~ under section <—
15 502(a)(1). The review shall include ~~an analysis of the~~ <—
16 ~~following:~~

17 (i) The number of municipalities that will be part
18 of the water or sewer project and the number of
19 municipalities that will benefit from the project.

20 (ii) Whether the construction, repair or
21 consolidation of a water or sewer project will enable
22 customers of the system OR REGIONAL SYSTEM to be more <—
23 efficiently served.

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

26 (iv) The nature of any Federal or State court or
27 agency order, consent decree or new permit discharge
28 requirements imposed after January 1, 2007, applicable to
29 the project.

30 (v) The consistency of the proposed project with

1 other State and regional resource management and economic
2 development plans.

3 (vi) Whether the project serves existing populations
4 or whether the project is intended to serve new
5 development.

6 (vii) Whether the eligible applicant has secured any
7 required planning and permit approvals for the project
8 from the department.

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

11 ~~(b) Flood control projects.~~ ←

12 ~~(1) A minimum of 50% of grants for flood control~~
13 ~~projects approved by the authority shall be awarded to~~
14 ~~projects that will consolidate two or more systems or to~~
15 ~~regional systems.~~

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

17 (B) FLOOD CONTROL PROJECTS.--THE DEPARTMENT SHALL REVIEW ALL ←
18 APPLICATIONS FOR grants under section 502(a)(2). The review
19 shall include an analysis of the following:

20 (i) ~~The number of municipalities that will be part~~ ←
21 ELIGIBLE APPLICANT of the flood control project and the ←
22 number of municipalities that will POTENTIALLY benefit ←
23 from the project.

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

26 (iii) The cost-effectiveness of the flood control
27 project.

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

1 (v) Whether the eligible applicant has secured any
2 required planning and permit approvals for the project
3 from the department.

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

6 (c) High hazard UNSAFE dams.--The department shall review ←
7 all applications for grants under section 502(a)(3).

8 (1) The review shall include an analysis of the
9 following:

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

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

13 (2) To be eligible, the owner of the high hazard UNSAFE ←
14 dam shall:

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

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

22 (iii) Comply with all inspection requirements and
23 submit inspection reports to the department as required
24 by law.

25 Section 504. Project review.

26 The authority shall review the information received under
27 section 503, prepare an assessment of each project and determine
28 which projects will best utilize and promote the efficient
29 management of water resources and protect the health and safety
30 of the citizens of this Commonwealth.

1 ~~SECTION 505. PURCHASE OR TRADE OF NUTRIENT CREDITS.~~ <—

2 ~~NOTHING IN THIS ACT SHALL PROHIBIT AN ELIGIBLE APPLICANT FROM~~
3 ~~USING FUNDS ALLOCATED UNDER THE PROVISIONS OF THIS ACT TO~~
4 ~~PURCHASE OR TRADE NUTRIENT CREDITS.~~

5 CHAPTER 7

6 REPORTING

7 Section 701. Annual reports.

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

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

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

14 (3) The amount of the ~~LOAN OR~~ grant and a detailed <—
15 description of the project for which the ~~LOAN OR~~ grant was <—
16 awarded.

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

20 (1) An analysis of how each program authorized under
21 this act is improving the health and safety of the citizens
22 of this Commonwealth.

23 (2) A summary and analysis of other Commonwealth
24 programs dedicated to water or sewer projects, flood control
25 projects and high hazard UNSAFE dams and how those programs <—
26 are improving the health and safety of the citizens of this
27 Commonwealth.

28 (c) Submission of reports.--The reports required under
29 subsections (a) and (b) shall be submitted to the Majority
30 Leader of the Senate, the Minority Leader of the Senate, the

1 Majority Leader of the House of Representatives and the Minority
2 Leader of the House of Representatives by October 1, 2009, and
3 October 1 of each year thereafter. The reports shall also be
4 posted and maintained on the official Internet website of the
5 authority and the department.

6 CHAPTER 51

7 MISCELLANEOUS PROVISIONS

8 Section 5101. Expenses or costs.

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

12 Section 5102. Funds.

13 Funds deposited in the Pennsylvania Gaming Economic
14 Development and Tourism Fund under 4 Pa.C.S. § 1407(c) (relating
15 to Pennsylvania Gaming Economic Development and Tourism Fund)
16 shall not be considered State gaming receipts for purposes of 4
17 Pa.C.S. § 1202(b)(24) (relating to general and specific powers).

18 Section 5103. Limitations.

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

23 Section 5104. Inconsistent repeal.

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

26 Section 5105. Effective date.

27 This act shall take effect in 60 days.