

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 236 Session of 2009

INTRODUCED BY WOZNIAK, STOUT, FONTANA, KITCHEN, ALLOWAY, LOGAN,
O'PAKE, STACK, COSTA AND WAUGH, FEBRUARY 19, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 19,
2009

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
22 purchase, condemnation or otherwise, certain lands for such

1 purposes; to construct and maintain flood forecasting and
2 warning systems," is amended to read:

3 AN ACT

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

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

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

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

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

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

1 installation of flood forecasting and warning systems, and other
2 works and improvements required to carry out the purposes of
3 this act.

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

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

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

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

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

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

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

12 Section 6.1. The Department of Environmental Protection may
13 provide financial assistance to counties, municipalities and
14 municipal authorities for the purposes set forth in section 1 of
15 this act to the extent funds are appropriated by the General
16 Assembly for such purposes. Prior to providing any such
17 assistance, and as a condition thereto, the Department of
18 Environmental Protection shall have approved the plans and
19 specifications of the project, and the municipality, county or
20 authority shall have satisfied the terms and conditions of any
21 agreement entered into pursuant to section 6 of this act.

22 Awardees of the financial assistance described in this section
23 shall obtain all required Federal, State and local permits prior
24 to commencement of the project, and shall develop, implement and
25 maintain the project in accordance with all applicable laws.

26 Section 5. This act shall take effect immediately.