

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 568 Session of  
2013

---

INTRODUCED BY SONNEY, O'BRIEN, COHEN, CALTAGIRONE, FABRIZIO,  
LUCAS, BIZZARRO, D. COSTA, KORTZ, HARKINS, MOUL, MAHONEY,  
MILLARD, LAWRENCE, FLECK, ROSS AND EVERETT, FEBRUARY 8, 2013

---

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 8, 2013

---

AN ACT

1 Authorizing the Department of General Services to lease  
2 submerged lands in excess of 25 acres within Erie County, for  
3 the assessment, development, construction and operation of  
4 utility scale offshore wind, solar or kinetic energy  
5 generation facilities; providing for collection of certain  
6 lease and royalty payments; establishing the Lake Erie Large  
7 Scale Energy System Development Fund; and providing for  
8 transfers and distributions from the fund.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Lake Erie  
13 Wind Energy Development Act.

14 Section 2. Definitions.

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

18 "Department." The Department of General Services of the  
19 Commonwealth.

20 "Fund." The Lake Erie Large Scale Energy System Development

1 Fund established by this act.

2 "Large scale energy system" or "system." A wind energy  
3 generation system at more than 500 megawatts as measured by the  
4 nameplate capacity of the system or a solar energy system of at  
5 least 12 megawatts as measured by the nameplate capacity of the  
6 system.

7 Section 3. Lands within the Lake Erie Basin.

8 (a) Legislative declaration.--The General Assembly declares  
9 that the Commonwealth owns lands within the bed of Lake Erie,  
10 all of which lands are located in Erie County.

11 (b) Authorization.--

12 (1) The Department of General Services, acting on behalf  
13 of the Commonwealth, may lease submerged lands equal to or  
14 greater than 25 acres, but not in excess of 10,000 contiguous  
15 acres, within the bed of Lake Erie in Erie County.

16 (2) The department shall develop a map designating the  
17 areas of the bed of Lake Erie that may be leased for large  
18 scale energy system development. The department shall ensure  
19 that the areas that may be leased are concentrated in the  
20 central and western portion of Lake Erie, avoid development  
21 in nearshore areas, avoid shipping lanes and avoid areas of  
22 Lake Erie where migratory birds are concentrated.

23 (3) The department shall develop and implement a  
24 competitive process for the leasing of submerged lands for  
25 the development of large scale energy systems to convert wind  
26 or solar energy to electricity. The competitive process shall  
27 include, at a minimum:

28 (i) A demonstration by the bidders of their  
29 expertise, experience and financial capacity to conduct a  
30 feasibility study and to develop such a system.

1           (ii) A certification that the bidder has the  
2 financial capability to cover all costs associated with  
3 the feasibility study and interconnecting to an energy  
4 distribution system.

5           (iii) A demonstration by the bidders of the benefits  
6 to be accrued by the Commonwealth, including, but not  
7 limited to:

8           (A) The number of full-time jobs to be created.

9           (B) The overall economic impact of the proposed  
10 system.

11           (C) The environmental benefits of the system.

12           (D) The overall need for the system.

13           (E) The amount of power to be provided by the  
14 proposed system.

15           (F) An initial assessment of community and  
16 public acceptance of the proposed system.

17 Section 4. Lease conditions.

18       (a) Qualifications of lessees.--A lease and a subsequent  
19 long-term lease approved under this act shall be restricted to  
20 lessees who:

21           (1) Demonstrate the expertise and capability to develop  
22 large scale energy systems in a marine environment.

23           (2) Have been deemed to be the most qualified bidder  
24 based upon the criteria listed in section 3(b)(3) and any  
25 other additional criteria that may be developed by the  
26 department.

27           (3) File with the department a bond payable to the  
28 Commonwealth to cover the entire cost associated with the  
29 removal of facilities developed pursuant to this act and  
30 located in submerged lands of Lake Erie.

1 (b) Waters of this Commonwealth.--A lease and any subsequent  
2 long-term lease approved under section 3 shall ensure reasonable  
3 accommodation for fishing, maritime commerce, energy  
4 transmission rights-of-way and other current and future  
5 commercial and recreational uses of the waters of this  
6 Commonwealth held in the public trust.

7 (c) Term of lease.--The initial term of a lease shall be for  
8 a term of up to seven years. The department may upon sufficient  
9 justification renew the lease for an additional three-year term.  
10 In the event the lessee does not develop the parcel or  
11 contiguous parcels of submerged lands by installing a large  
12 scale energy system within the initial seven-year lease period,  
13 the lease shall terminate.

14 (d) Term of long-term lease.--

15 (1) A person awarded a lease under this act may be  
16 eligible to enter into a long-term lease for the facilities  
17 to be constructed.

18 (2) The department, based upon satisfactory evidence  
19 that the lessee is capable of long-term operation of the  
20 large scale energy system, may enter into a long-term lease  
21 with an initial term of up to 35 years for the construction,  
22 operation, maintenance and removal of a large scale energy  
23 system and any associated transmission facilities in Lake  
24 Erie.

25 (3) The initial long-term lease may be extended for all  
26 or any portion of the leased premises for additional terms of  
27 up to 35 years.

28 (4) The long-term lease shall contain a provision for  
29 termination if the lessee has not initiated construction of  
30 the large scale energy system within a reasonable period of

1 time to be established in the terms of the lease.

2 (5) The department may permit, as an option to the long-  
3 term lease, the ability of the lessee to lease contiguous  
4 parcels. The department shall have the authority to determine  
5 the size of the contiguous parcels but not to exceed  
6 increments of 10,000 acres.

7 (e) Feasibility study.--

8 (1) Prior to commencing construction of the system, a  
9 developer awarded a lease shall conduct a feasibility study  
10 to assess the ability of the large scale energy system to be  
11 viable and to assess the environmental impacts and siting  
12 considerations necessary to the successful development of  
13 such a system.

14 (2) The environmental impacts to be addressed shall  
15 include, but not be limited to, the impacts to fishing,  
16 migratory bird and mammal routes.

17 (3) The siting considerations to be assessed shall  
18 include, but not be limited to:

19 (i) Ice impacts.

20 (ii) Wind speed.

21 (iii) Ship traffic.

22 (iv) Viewshed impacts.

23 (4) The department shall utilize the results of the  
24 feasibility study, as part of the review process associated  
25 with the approval or disapproval, to proceed with the  
26 construction of a large scale energy system.

27 (5) No feasibility study, construction, installation or  
28 operation of large scale energy systems or other related  
29 structures on the lands subject to lease shall occur without  
30 adherence to Federal and State laws and prior receipt of all

1 applicable Federal and State permits.

2 (f) Improvements.--Development of the parcels authorized to  
3 be leased by this act shall be for large scale energy systems,  
4 including electrical collection and transmission facilities,  
5 submerged electrical transmission cables and other related  
6 structures.

7 (g) Regulations.--The department shall, for purposes of  
8 leasing the bed of Lake Erie for large scale energy system  
9 development, adopt regulations which at a minimum:

10 (1) Determine minimum standards for the technology used  
11 to construct large scale energy systems on and to transmit  
12 electricity from the areas of Lake Erie leased for that  
13 purpose.

14 (2) Establish procedures for the conduct of feasibility  
15 studies by large scale energy system developers related to,  
16 but not limited to, the siting, economics and environmental  
17 issues of a system.

18 (3) Establish reasonable fees to cover the costs  
19 incurred by the department and directly related to the  
20 preparation, review, execution of lease or other agreements  
21 associated with this act.

22 (4) Establish a process for the developer of the large  
23 scale energy system to demonstrate community and public  
24 acceptance of the proposed system.

25 (5) Establish any other requirements that the department  
26 determines are necessary to implement or administer this  
27 section.

28 (6) Prohibit lessees from entering into subleases.

29 (h) Covenants.--These conditions shall be covenants that run  
30 with the land and shall be binding upon the lessee. Should the

1 lessee permit the parcels authorized to be leased under this  
2 section, or any portion thereof, to be used in a manner  
3 inconsistent with the conditions contained in this act, all  
4 rights and interests in the lease authorized by this act shall  
5 terminate immediately.

6 (i) Lease agreements.--

7 (1) Any lease and any other documents authorized by this  
8 act shall be approved as to form and legality by the Attorney  
9 General and the Office of General Counsel in accordance with  
10 law and shall be executed by the department, which approvals  
11 shall not be unreasonably withheld, in the name of the  
12 Commonwealth.

13 (2) The lease shall grant the lessee the right to use  
14 the premises in accordance with this act for the purposes of  
15 conducting a feasibility study and development of large scale  
16 energy systems.

17 (j) Sublease by department prohibited.--The department may  
18 not enter into subleases or nondisturbance agreements on any of  
19 the submerged lands of this Commonwealth in accordance with this  
20 act.

21 (k) Transfer of interest prohibited.--Except as provided in  
22 section 3, this act does not authorize or otherwise allow for or  
23 include any transfer of any mineral or other surface or  
24 subsurface interest associated with Lake Erie submerged lands of  
25 this Commonwealth.

26 Section 5. Other applicable law.

27 Except as provided in section 3, nothing in this act shall be  
28 construed to affect or otherwise limit the requirements of the  
29 provisions of the act of November 26, 1978 (P.L.1375, No.325),  
30 known as the Dam Safety and Encroachments Act, which may require

1 further measures to provide for public access and use of the  
2 land and adjacent water.

3 Section 6. Interagency responsibilities.

4 The department shall work cooperatively with:

5 (1) The Department of Environmental Protection to ensure  
6 that all of the systems meet all applicable environmental  
7 standards and comply with all environmental permit  
8 requirements.

9 (2) The Pennsylvania Public Utility Commission to  
10 establish that the proposed large scale energy system is  
11 viable, both economically and from an energy production  
12 perspective. The Pennsylvania Public Utility Commission shall  
13 also assist the department in assessing the system's impact  
14 on ratepayers, and the ability of the proposed developer to  
15 have sufficient resources and the ability to successfully  
16 complete all the activities necessary for interconnection to  
17 the electric distribution system.

18 Section 7. Royalty payments.

19 Each operator of a large scale energy system shall be subject  
20 to the payment to the Commonwealth of a 2% royalty on the gross  
21 revenues of the system. The operator of the system shall submit  
22 this payment annually unless an alternative payment schedule is  
23 approved by the department. The operator shall submit the  
24 initial royalty payment beginning on January 1 of the year  
25 following the system's being placed into production.

26 Section 8. Lake Erie Large Scale Energy System Development  
27 Fund.

28 (a) Establishment.--The Lake Erie Large Scale Energy System  
29 Development Fund is established in the State Treasury.

30 (b) Deposits.--All royalty payments from the production of

1 electricity from large scale energy systems situated on lands  
2 owned by the Commonwealth in Lake Erie shall be deposited in the  
3 fund.

4 Section 9. Transfers and distributions.

5 On the last business day of each calendar quarter the State  
6 Treasurer shall make the following transfers and distributions  
7 of the moneys from the fund:

8 (1) Twenty percent shall be distributed to Erie County.

9 (2) Twenty percent shall be distributed to the  
10 Pennsylvania Fish and Boat Commission to be used for  
11 programs, projects or other activities related to Lake Erie.

12 (3) Forty percent shall be distributed to the Department  
13 of Environmental Protection, which shall be used for dam  
14 removal, restoration and repair projects.

15 (4) Twenty percent shall be transferred to the  
16 Conservation District Fund for distribution to county  
17 conservation districts pursuant to the guidelines established  
18 by the State Conservation Commission.

19 Section 10. Effective date.

20 This act shall take effect in 120 days.