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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 431 Session of  
2017

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INTRODUCED BY R. BROWN, BOBACK, CALTAGIRONE, D. COSTA, CUTLER,  
DUSH, GILLEN, HAHN, JAMES, KNOWLES, MACKENZIE, MILLARD,  
O'NEILL, ORTITAY, PEIFER, PICKETT, SIMMONS, TALLMAN, WARD AND  
WATSON, FEBRUARY 10, 2017

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
FEBRUARY 10, 2017

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AN ACT

1 Establishing the Private Dam Financial Assurance Program and the  
2 Private Dam Financial Assurance Fund.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Private Dam  
7 Financial Assurance Program Act.

8 Section 2. Definitions.

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

12 "Common interest community." Includes a cooperative,  
13 condominium and planned community where an individual by virtue  
14 of ownership interest in any portion of real estate is or may  
15 become obligated by covenant, easement or agreement imposed upon  
16 the owner's interest to pay any amount for real property taxes,

1 insurance, maintenance, repair, improvement, management,  
2 administration or regulation of any part of the real estate  
3 other than the portion or interest owned solely by the  
4 individual.

5 "Community association." Any person or incorporated  
6 community under 68 Pa.C.S. Subpts. B (relating to condominiums),  
7 C (relating to cooperatives) and D (relating to planned  
8 communities) or common interest community.

9 "Department." The Department of Community and Economic  
10 Development of the Commonwealth.

11 "Eligible cost." Any cost to be incurred by an owner  
12 enrolled in the program for the maintenance, repair,  
13 rehabilitation or permanent breach of the owner's dam. The term  
14 includes construction activities, engineering fees, demolition,  
15 excavation, reclamation and related costs.

16 "Fund." The Private Dam Financial Assurance Fund established  
17 under section 6.

18 "Owner." A person who owns, controls, operates, maintains or  
19 manages a regulated private dam in this Commonwealth.

20 "Person." Includes a natural person, partnership,  
21 association, community association or corporation. The term does  
22 not include an agency of the Federal, State, county or municipal  
23 government or an interstate government.

24 "Program." The Private Dam Financial Assurance Program  
25 established under section 3.

26 "Regulated private dam." A privately owned dam subject to  
27 the requirements of section 11 of the act of November 26, 1978  
28 (P.L.1375, No.325), known as the Dam Safety and Encroachments  
29 Act.

30 Section 3. Private Dam Financial Assurance Program.

1 (a) Establishment.--The department, in consultation with the  
2 Department of Environmental Protection, is authorized to  
3 establish the Private Dam Financial Assurance Program to provide  
4 financial assurance assistance to owners of regulated private  
5 dams to meet any proof of financial responsibility requirements  
6 promulgated under section 11 of the act of November 26, 1978  
7 (P.L.1375, No.325), known as the Dam Safety and Encroachments  
8 Act, and any regulations promulgated under that act.

9 (b) Financial responsibility.--An owner that is enrolled in  
10 the program is deemed to have met proof of financial  
11 responsibility requirements promulgated under section 11 of the  
12 Dam Safety and Encroachments Act for the owner's dam.

13 (c) Eligibility.--Financial assurance assistance through the  
14 program shall be made available to an owner provided that the  
15 owner:

16 (1) Demonstrates compliance with the Dam Safety and  
17 Encroachments Act and the regulations promulgated under that  
18 act, as determined by the Department of Environmental  
19 Protection, including annual inspection reporting, payment of  
20 registration fees and compliance with an approved emergency  
21 action plan.

22 (2) Pays a one-time program enrollment fee of \$1,000 per  
23 dam to the fund.

24 (3) Pays an annual fee to the fund in an amount equal to  
25 1% of the bond amount required by the Department of  
26 Environmental Protection under proof of financial  
27 responsibility requirements promulgated under section 11 of  
28 the Dam Safety and Encroachments Act.

29 (d) Program application.--Owners seeking assurance under  
30 this act must submit a complete program application on forms

1 provided by the department. The department shall develop the  
2 application form in consultation with the Department of  
3 Environmental Protection. The department shall consult with the  
4 Department of Environmental Protection to determine owner  
5 eligibility under this act.

6 Section 4. Revolving loan program.

7 (a) Establishment.--The department, in consultation with the  
8 Department of Environmental Protection, is authorized to  
9 establish a revolving loan program for private dam owners  
10 enrolled in the program to provide assistance.

11 (b) Loan criteria.--The department, in consultation with the  
12 Department of Environmental Protection, shall establish criteria  
13 to award loans under the revolving loan program. Participation  
14 in the program shall be considered collateral for any loans  
15 awarded under this section.

16 (c) Loan amounts.--No loan amount under the program shall  
17 exceed 50% of the eligible costs, and no loan shall exceed  
18 \$500,000.

19 (d) Loan application.--Owners seeking program loans must  
20 submit a complete loan application to the department. The loan  
21 application form shall be provided by the department. The loan  
22 application form shall be developed, in consultation with the  
23 Department of Environmental Protection, and shall include all of  
24 the following:

- 25 (1) The name of the applicant.
- 26 (2) A brief description of the project to be funded.
- 27 (3) A demonstrated estimate of the eligible costs of the  
28 project.
- 29 (4) Any other information as the department or  
30 Department of Environmental Protection may require.

1 (e) Repayment.--Loans shall have a repayment period of up to  
2 10 years.

3 (f) Interest.--Loan interest rates shall be fixed at an  
4 interest rate in effect at the time the loan is made and shall  
5 be equal to the Five-Year United States Treasury Note on the  
6 date the loan is awarded.

7 (g) Fee.--The department may charge a loan origination fee  
8 not to exceed 2.5% of the approved loan amount.

9 (h) Penalties.--The department, in consultation with the  
10 Department of Environmental Protection, shall establish  
11 penalties for loan recipients who fail to meet their repayment  
12 obligations under the loan terms.

13 Section 5. Annual report.

14 The department, in consultation with the Department of  
15 Environmental Protection, shall prepare an annual report for the  
16 General Assembly concerning activities and expenditures made  
17 under this act for the preceding year. The report shall include  
18 information concerning all loans made to owners and loan  
19 applications denied.

20 Section 6. Private Dam Financial Assurance Fund.

21 (a) Establishment of fund.--The Private Dam Financial  
22 Assurance Fund is established in the State Treasury. All  
23 payments and fees collected by the department under this act  
24 shall be paid into the fund. Money deposited into the fund and  
25 any interest it accrues are appropriated to the department for  
26 use in accordance with this act and to the Department of  
27 Environmental Protection for costs associated with the entry,  
28 correction, repair, operation, maintenance, inspection,  
29 monitoring or removal of a dam as necessary in response to:

30 (1) the failure of an owner enrolled in the program to

1       comply with the act of November 26, 1978 (P.L.1375, No.325),  
2       known as the Dam Safety and Encroachments Act, or any  
3       regulation, permit or order issued under that act, where the  
4       failure of the owner to comply creates an unsafe condition  
5       under the Dam Safety and Encroachments Act and the  
6       regulations under that act; or

7               (2) abandonment of the dam by an owner enrolled in the  
8       program.

9       (b) Fund balance and loan program.--At any time that the  
10      fund has a balance equal to or greater than \$1,500,000 and the  
11      Department of Environmental Protection has not identified the  
12      need for an amount in excess of \$1,500,000 to correct the  
13      failure of owners to comply with the Dam Safety and  
14      Encroachments Act, the department may begin accepting and  
15      approving owner loan applications for eligible costs so long as  
16      a balance of at least \$1,000,000 remains in the fund.

17      (c) Supplements to fund.--The fund may be supplemented by  
18      appropriations from Federal, State or local government or from  
19      any private source.

20      Section 7. Effective date.

21      This act shall take effect immediately.