
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 685 Session of
2019

INTRODUCED BY SONNEY, DeLUCA, HARKINS, LAWRENCE, MILLARD AND
ZIMMERMAN, MARCH 1, 2019

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MARCH 1, 2019

AN ACT

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

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16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 CHAPTER 1

19 PRELIMINARY PROVISIONS

20 Section 101. Short title.

21 This act shall be known and may be cited as the Lake Erie
22 Energy Development Act.

23 Section 102. Legislative declaration.

24 The General Assembly declares that the Commonwealth owns
25 lands within the bed of Lake Erie, all of which lands are
26 located in Erie County.

27 Section 103. Definitions.

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

1 "Department." The Department of General Services of the
2 Commonwealth.

3 "Fund." The Lake Erie Large-Scale Energy System Development
4 Fund established under section 702.

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

10 CHAPTER 3

11 LEASING OF SUBMERGED LANDS

12 Section 301. Authority and duties of department.

13 (a) Authorization.--The department, acting on behalf of the
14 Commonwealth, may lease submerged lands equal to or greater than
15 25 acres, but not in excess of 10,000 contiguous acres, within
16 the bed of Lake Erie in Erie County.

17 (b) Areas to be leased.--The department shall develop a map
18 designating the areas of the bed of Lake Erie that may be leased
19 for large-scale energy system development. The department shall
20 ensure that the areas that may be leased are:

21 (1) concentrated in the central and western portion of
22 Lake Erie;

23 (2) avoid development in nearshore areas;

24 (3) avoid shipping lanes; and

25 (4) avoid areas of Lake Erie where migratory birds are
26 concentrated.

27 (c) Competitive process.--The department shall develop and
28 implement a competitive process for the leasing of submerged
29 lands for the development of large-scale energy systems to
30 convert wind or solar energy to electricity. The competitive

1 process shall include, at a minimum:

2 (1) A demonstration by the bidders of their expertise,
3 experience and financial capacity to conduct a feasibility
4 study and to develop such a system.

5 (2) A certification that the bidder has the financial
6 capability to cover all costs associated with the feasibility
7 study and interconnecting to an energy distribution system.

8 (3) A demonstration by the bidders of the benefits to be
9 accrued by the Commonwealth, including, but not limited to:

10 (i) The number of full-time jobs to be created.

11 (ii) The overall economic impact of the proposed
12 system.

13 (iii) The environmental benefits of the system.

14 (iv) The overall need for the system.

15 (v) The amount of power to be provided by the
16 proposed system.

17 (vi) An initial assessment of community and public
18 acceptance of the proposed system.

19 Section 302. Qualifications of lessees.

20 A lease and a subsequent long-term lease approved under this
21 act shall be restricted to a lessee who:

22 (1) Demonstrates the expertise and capability to develop
23 large-scale energy systems in a marine environment.

24 (2) Has been deemed to be the most qualified bidder
25 based upon the criteria listed in section 301(c) and any
26 other additional criteria that may be developed by the
27 department.

28 (3) Files with the department a bond payable to the
29 Commonwealth to cover the entire cost associated with the
30 removal of facilities developed pursuant to this act and

1 located in submerged lands of Lake Erie.

2 Section 303. Waters of this Commonwealth.

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

8 Section 304. Term of lease.

9 (a) Term of initial lease.--

10 (1) The initial term of a lease shall be for a term of
11 up to seven years. The department may upon sufficient
12 justification renew the lease for an additional three-year
13 term.

14 (2) In the event a lessee does not develop the parcel or
15 contiguous parcels of submerged lands by installing a large-
16 scale energy system within the initial seven-year lease
17 period, the lease shall terminate.

18 (b) Term of long-term lease.--

19 (1) A lessee under subsection (a) may be eligible to
20 enter into a long-term lease for the facilities to be
21 constructed.

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

29 (3) The initial long-term lease may be extended for all
30 or any portion of the leased premises for additional terms of

1 up to 35 years.

2 (4) In addition to termination of a lease under
3 subsection (a)(2), the long-term lease shall contain a
4 provision for termination if the lessee has not initiated
5 construction of the large-scale energy system within a
6 reasonable period of time to be established in the terms of
7 the lease.

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

13 Section 305. Lease agreements.

14 (a) Approvals.--A lease and any other documents authorized
15 by this act shall be approved as to form and legality by the
16 Attorney General and the Office of General Counsel in accordance
17 with law and shall be executed by the department, which
18 approvals shall not be unreasonably withheld, in the name of the
19 Commonwealth.

20 (b) Lessee rights under lease.--A lease shall grant the
21 lessee the right to use the premises in accordance with this act
22 for the purposes of conducting a feasibility study and
23 development of large-scale energy systems.

24 Section 306. Feasibility study.

25 (a) General rule.--Prior to commencing construction of the
26 system, a lessee shall conduct a feasibility study to assess the
27 ability of the large-scale energy system to be viable and to
28 assess the environmental impacts and siting considerations
29 necessary to the successful development of such a system.

30 (b) Environmental impact.--The environmental impacts to be

1 addressed shall include, but not be limited to, the impacts to
2 fishing and migratory bird and mammal routes.

3 (c) Siting considerations.--The siting considerations to be
4 assessed shall include, but not be limited to:

5 (1) Ice impacts.

6 (2) Wind speed.

7 (3) Ship traffic.

8 (4) Viewshed impacts.

9 (d) Use of study.--The department shall utilize the results
10 of the feasibility study, as part of the review process
11 associated with the approval or disapproval, to proceed with the
12 construction of a large-scale energy system.

13 Section 307. Improvements.

14 Development of the parcels authorized to be leased by this
15 act shall be for large-scale energy systems, including
16 electrical collection and transmission facilities, submerged
17 electrical transmission cables and other related structures.

18 Section 308. Covenants.

19 The conditions imposed under this act shall be covenants that
20 run with the land and shall be binding upon the lessee. Should
21 the lessee permit the parcels authorized to be leased under this
22 act, or any portion thereof, to be used in a manner inconsistent
23 with the conditions contained in this act, all rights and
24 interests in the lease authorized by this act shall terminate
25 immediately.

26 Section 309. Federal and State law and permits.

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

1 State permits.

2 CHAPTER 5
3 ADMINISTRATION

4 Section 501. Regulations.

5 The department shall, for purposes of leasing the bed of Lake
6 Erie for large-scale energy system development, adopt
7 regulations which at a minimum:

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

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

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

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

23 (5) Establish any other requirements that the department
24 determines are necessary to implement or administer this act.

25 (6) Prohibit lessees from entering into subleases.

26 Section 502. Sublease by department prohibited.

27 The department may not enter into subleases or nondisturbance
28 agreements on any of the submerged lands of Lake Erie.

29 Section 503. Transfer of interest prohibited.

30 Except as provided in section 301, this act does not

1 authorize or otherwise allow for or include any transfer of any
2 mineral or other surface or subsurface interest associated with
3 the submerged lands of Lake Erie.

4 Section 504. Construction.

5 Except as provided in section 301, nothing in this act shall
6 be construed to affect or otherwise limit the provisions of the
7 act of November 26, 1978 (P.L.1375, No.325), known as the Dam
8 Safety and Encroachments Act, that may require further measures
9 to provide for public access and use of the land and adjacent
10 water.

11 Section 505. Interagency responsibilities.

12 The department shall work cooperatively with:

13 (1) The Department of Environmental Protection to ensure
14 that all of the systems meet all applicable environmental
15 standards and comply with all environmental permit
16 requirements.

17 (2) The Pennsylvania Public Utility Commission to
18 establish that the proposed large-scale energy system is
19 viable, both economically and from an energy production
20 perspective. The Pennsylvania Public Utility Commission shall
21 assist the department in assessing all of the following:

22 (i) The system's impact on ratepayers.

23 (ii) Whether a bidder has sufficient resources.

24 (iii) Whether a bidder has the ability to
25 successfully complete all of the activities necessary for
26 interconnection to the electric distribution system.

27 CHAPTER 7

28 ROYALTY PAYMENTS AND

29 DISTRIBUTIONS

30 Section 701. Royalty payments.

1 Each operator of a large-scale energy system shall be subject
2 to the payment to the Commonwealth of a 2% royalty on the gross
3 revenues of the system. The operator of the system shall submit
4 the royalty payment annually unless an alternative payment
5 schedule is approved by the department. The operator shall
6 submit the initial royalty payment beginning on January 1 of the
7 year following the system's being placed into production.

8 Section 702. Lake Erie Large-Scale Energy System Development
9 Fund.

10 (a) Establishment.--The Lake Erie Large-Scale Energy System
11 Development Fund is established in the State Treasury. The money
12 of the fund is hereby appropriated on a continuing basis for the
13 distributions and transfers provided under section 703.

14 (b) Deposits.--All royalty payments from the production of
15 electricity from large-scale energy systems situated on lands
16 owned by the Commonwealth in Lake Erie shall be deposited in the
17 fund.

18 Section 703. Distributions and transfers.

19 On the last business day of each calendar quarter, the State
20 Treasurer shall make the following distributions and transfers
21 from the fund:

22 (1) Twenty percent of the fund shall be distributed to
23 the department for payment to Erie County.

24 (2) Twenty percent of the fund shall be distributed to
25 the Pennsylvania Fish and Boat Commission for programs,
26 projects or other activities related to Lake Erie.

27 (3) Forty percent of the fund shall be distributed to
28 the Department of Environmental Protection for dam removal,
29 restoration and repair projects.

30 (4) Twenty percent of the fund shall be transferred to

1 the Conservation District Fund for distribution to county
2 conservation districts consistent with guidelines established
3 by the State Conservation Commission.

4 CHAPTER 21

5 MISCELLANEOUS PROVISIONS

6 Section 2101. Effective date.

7 This act shall take effect in 120 days.