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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 319 Session of  
2021

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INTRODUCED BY PUSKARIC, ECKER, HILL-EVANS AND N. NELSON,  
JANUARY 28, 2021

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
JANUARY 28, 2021

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AN ACT

1 Providing for issuance of consolidated general microhydropower  
2 permits by the Department of Environmental Protection; and  
3 establishing a microhydropower pilot program.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Consolidated  
8 General Microhydropower Pilot Program Act.

9 Section 2. Definitions.

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

13 "Approved applicant." A qualified applicant that has been  
14 approved for a consolidated general microhydropower permit in  
15 this Commonwealth by the department and is participating in the  
16 program.

17 "Department." The Department of Environmental Protection of  
18 the Commonwealth.

1 "Microhydropower." Technology that produces electric power  
2 no greater than 100 kilowatts per turbine and harnesses the  
3 hydroelectric potential of moving water impoundments and meets  
4 the certification standards established by the second edition of  
5 the Low Impact Hydropower Institute's Low Impact Hydropower  
6 Certification Handbook.

7 "Nonparticipant." An applicant or qualified applicant that  
8 is no longer participating or has never participated in the  
9 program.

10 "Pass-through entity." Any of the following:

11 (1) A partnership as defined in section 301(n.0) of the  
12 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
13 Code of 1971.

14 (2) A Pennsylvania S corporation as defined in section  
15 301(n.1) of the Tax Reform Code of 1971.

16 (3) Any nonparticipant of the program.

17 "Permit." The consolidated general microhydropower permit  
18 authorized under this act.

19 "Program." The pilot program established under section 4.

20 "Qualified applicant." An agency of this Commonwealth or the  
21 political subdivisions of the Commonwealth, municipal or other  
22 local authorities or an agency of the political subdivision or  
23 local authority. The term includes State-aided and State-related  
24 colleges and universities.

25 "Qualified tax liability." The liability for taxes imposed  
26 under Article III, IV, VII, VIII, IX or XV of the Tax Reform  
27 Code of 1971. The term includes the liability for taxes imposed  
28 under Article III of the Tax Reform Code of 1971 on the owner or  
29 owners of a pass-through entity. The term does not include  
30 amounts withheld or required to be withheld from employees under

1 Article III of the Tax Reform Code of 1971.

2 "Tax credit." The Microhydropower Tax Credit authorized in  
3 this act.

4 "Vendor." An offeror, bidder or contractor that sells or  
5 provides a service or supply or engages in the construction of  
6 microhydropower. The term does not include an attorney at law, a  
7 lobbyist or a lobbying firm.

8 Section 3. Consolidated general microhydropower permits.

9 (a) General rule.--An applicant shall receive a permit which  
10 shall encompass all necessary permits required by Federal or  
11 State law.

12 (b) Procedure.--Within 180 days of the effective date of  
13 this section, the department shall develop a procedure to issue  
14 a permit for the installation of microhydropower generators. In  
15 carrying out its duty under this subsection, the department  
16 shall consult with other Commonwealth departments and interstate  
17 agencies. Application shall be made on a form prescribed and  
18 furnished by the department on its publicly accessible Internet  
19 website. Notification of the completion of the form availability  
20 on the department's publicly accessible Internet website shall  
21 be transmitted to the Legislative Reference Bureau for  
22 publication in the Pennsylvania Bulletin.

23 (c) Timeframe.--The department shall approve or deny an  
24 application of an applicant within 60 days of filing. If the  
25 department fails to approve or deny an application, the  
26 department shall correspond by mail with the applicant as to the  
27 circumstances pertaining to the department's noncompliance. The  
28 correspondence shall occur no less than five days before the  
29 initial timeframe established under this subsection. The  
30 department shall detail the remaining provisions necessary to

1 approve or deny the application. If the proper notification  
2 process is followed, the department shall be granted an  
3 additional 30-day extension from the original 60-day deadline to  
4 approve or deny an application.

5 (d) Authorization of permit.--The permit authorizes the  
6 entity to which the permit is issued to install a  
7 microhydropower generator at a specific location in this  
8 Commonwealth.

9 Section 4. Pilot program.

10 (a) Intent.--The program is established to better understand  
11 the capabilities of microhydropower utilization as a reliable  
12 and efficient form of alternative energy generation in this  
13 Commonwealth.

14 (b) Eligibility.--No less than 10 but no more than 25  
15 qualified applicants shall be accepted by the department for  
16 participation in the program. The likely qualified applicants  
17 shall be identified by members of the General Assembly during a  
18 30-day comment period and provided to the department by way of  
19 written correspondence from the President pro tempore of the  
20 Senate and the Speaker of the House of Representatives. A  
21 qualified applicant shall be deemed eligible upon approval of a  
22 permit.

23 (c) Length.--The program shall extend no more than five  
24 years from the date the department establishes and transmits  
25 notice to the Legislative Reference Bureau under section 3.

26 (d) Vendors.--No less than five vendors shall be accepted by  
27 the department for participation in the program.

28 (e) Report.--The department, as well as the Department of  
29 Community and Economic Development, shall develop a procedure to  
30 obtain the necessary information from an approved applicant

1 participating in the program. No later than January 1, 2022, and  
2 each January 1 thereafter in which the program existed in the  
3 previous year, the department shall submit a report to the  
4 chairperson and minority chairperson of the Environmental  
5 Resources and Energy Committee of the Senate and the chairperson  
6 and minority chairperson of the Environmental Resources and  
7 Energy Committee of the House of Representatives which shall  
8 include:

9 (1) The number of days taken by the department to issue  
10 a permit to each qualified applicant.

11 (2) The number of days from permit approval to  
12 installation of a microhydropower generator.

13 (3) The monetary costs of implementing, maintaining and  
14 utilizing microhydropower generators.

15 (4) The geographical location of each microhydropower  
16 generator and the implications and considerations that should  
17 be examined for future implementation.

18 (5) Data concerning the amount of energy generated and  
19 the resulting output from a microhydropower generator.

20 (6) Any existing data from previous studies specifically  
21 related to microhydropower.

22 (7) Any negative effects which have occurred during the  
23 implementation and utilization of microhydropower.

24 (8) The dollar amount of tax credits granted under this  
25 act in aggregate.

26 (9) An enumeration of any complications that have arisen  
27 regarding the issuance of the tax credit established in this  
28 act to each nonparticipant.

29 (10) The number of applications received, approved and  
30 denied.

1 (f) Approved applicant duties.--An approved applicant shall  
2 make a good faith effort to comply with and provide the  
3 department all information needed to complete the report under  
4 subsection (e).

5 (g) Microhydropower Pilot Program Restricted Account.--The  
6 Microhydropower Pilot Program Restricted Account is established  
7 in the General Fund. All money deposited into the restricted  
8 account shall be used by the Commonwealth to implement  
9 microhydropower generators for approved applicants of the  
10 program established in this section. The account shall expire on  
11 the day succeeding the last day of the program. All remaining  
12 money in the account shall be returned to the General Fund.

13 (h) Funding.--The Commonwealth shall be responsible for 80%  
14 of the total costs associated with the implementation and  
15 maintenance of a microhydropower generator for approved  
16 applicants for the duration of the program. The approved  
17 applicant shall be responsible for the remaining 20%. Money  
18 appropriated to the restricted account shall come from a one-  
19 time appropriation of \$5,000,000.

20 (i) Compensation.--An approved applicant shall be prohibited  
21 from receiving compensation or revenue from any electric  
22 distribution company for the duration of the approved  
23 applicant's participation in the program.

24 (j) Termination.--If an approved applicant terminates  
25 participation at any point during the program, the approved  
26 applicant shall be responsible for refunding all payments under  
27 subsection (h).

28 Section 5. Microhydropower Tax Credit application and approval.

29 (a) Establishment.--The Microhydropower Tax Credit is  
30 established by the Department of Community and Economic

1 Development to encourage private investment in the utilization  
2 of nontraditional and alternative forms of renewable energy,  
3 reduction of greenhouse gas emissions and the overall  
4 proliferation of clean energy generation and consumption in this  
5 Commonwealth.

6 (b) General rule.--For the purposes of this section, only  
7 nonparticipants shall be eligible for the Microhydropower Tax  
8 Credit.

9 (c) Application.--The following shall apply:

10 (1) Beginning January 1, 2022, and each January 1  
11 thereafter, a nonparticipant may submit an application  
12 prescribed and provided by the Department of Community and  
13 Economic Development to the Department of Community and  
14 Economic Development no later than February 1, 2022, and each  
15 February 1 thereafter.

16 (2) Before the tax credit is granted, the Department of  
17 Community and Economic Development shall ensure that the  
18 nonparticipant has filed all required State tax reports and  
19 returns for all applicable taxable years and paid any balance  
20 of State tax due as determined at settlement or assessment by  
21 the Department of Community and Economic Development.

22 (d) Approval.--The Department of Community and Economic  
23 Development may approve an application under subsection (c). If  
24 the Department of Community and Economic Development chooses to  
25 approve an application under subsection (c), the application  
26 must be approved no later than March 1. The Department of  
27 Community and Economic Development shall notify the  
28 nonparticipating applicant of the approved application  
29 accompanied by a certificate of the authorized tax credit amount  
30 established in this act no later than April 1. The Department of

1 Community and Economic Development may promulgate any rule or  
2 regulation deemed necessary to expeditiously approve or deny  
3 applications.

4 Section 6. Use of tax credit.

5 (a) Rate.--A tax credit may be applied against up to 30% of  
6 the nonparticipant's qualified tax liability incurred while  
7 implementing a microhydropower generator in the taxable year for  
8 which the tax credit was approved.

9 (b) Carryforward, transfer and refund.--The credit provided  
10 in this section may be carried over or transferred and applied  
11 to no more than two taxable years following the first taxable  
12 year for which the nonparticipant or pass-through entity was  
13 entitled to claim the credit. The credit provided under this  
14 section may not be refunded if not used within the period  
15 provided under this subsection.

16 (c) Applicability.--The tax credit shall be applied against  
17 the nonparticipant's qualified tax liability only after all  
18 other statutory tax credits and deductions available to the  
19 nonparticipant have been used. Notwithstanding the tax credit  
20 provided in this act, a nonparticipant may be eligible for  
21 grants provided under Federal acts and regulations and grants  
22 provided under acts and regulations of this Commonwealth.

23 (d) Pass-through entity.--If a tax credit certificate is  
24 issued to a pass-through entity, the pass-through entity may  
25 elect in writing, according to procedures established by the  
26 Department of Community and Economic Development, to transfer  
27 all or a portion of the credit to shareholders, members or  
28 partners in proportion to the share of the entity's distributive  
29 income to which the shareholders, members or partners are  
30 entitled or in any other manner designated by the pass-through



1 entity in accordance with the pass-through entity's governance  
2 documents and without regard to how distributive income, losses  
3 or credits are allocated for other tax purposes.

4 (e) Shareholders, members or partners of a pass-through  
5 entity.--The following shall apply:

6 (1) A shareholder, member or partner of a pass-through  
7 entity to whom the credit is transferred under subsection (d)  
8 shall immediately claim the credit in the taxable year in  
9 which the transfer is made.

10 (2) If a shareholder, member or partner of a pass-  
11 through entity does not utilize the entirety of the tax  
12 credit transferred to them by a pass-through entity, the  
13 shareholder, member or partner may not carryback, obtain a  
14 refund of or sell or assign the credit under subsection (b).

15 (3) Notwithstanding the provisions of paragraph (1), if  
16 a shareholder, member or partner of a pass-through entity  
17 does not utilize the entirety of the tax credit transferred  
18 by a pass-through entity under this section, the shareholder,  
19 member or partner may carry forward the remainder of the  
20 unused tax credit to succeeding taxable years as provided  
21 under subsection (b).

22 (f) Expiration.--This section shall expire for taxable years  
23 beginning after December 31, 2031.

24 Section 7. Effective date.

25 This act shall take effect in 60 days.