
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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GUENST, KRAJEWSKI, VITALI, DELLOSO, NEILSON, OTTEN AND
HARKINS, MARCH 10, 2023

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MARCH 10, 2023

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

19 CHAPTER 1

20 PRELIMINARY PROVISIONS

21 Section 101. Short title.

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

24 Section 102. Legislative declaration.

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

28 Section 103. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

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

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

11 CHAPTER 3

12 LEASING OF SUBMERGED LANDS

13 Section 301. Authority and duties of department.

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

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

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

24 (2) avoid development in nearshore areas;

25 (3) avoid shipping lanes; and

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

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

1 convert wind or solar energy to electricity. The competitive
2 process shall include, at a minimum:

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

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

9 (3) A demonstration by the bidders of the benefits to be
10 accrued by the Commonwealth, including:

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

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

14 (iii) The environmental benefits of the system.

15 (iv) The overall need for the system.

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

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

20 Section 302. Qualifications of lessees.

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

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

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

29 (3) Files with the department a bond payable to the
30 Commonwealth to cover the entire cost associated with the

1 removal of facilities developed pursuant to this act and
2 located in submerged lands of Lake Erie.

3 Section 303. Waters of this Commonwealth.

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

9 Section 304. Term of lease.

10 (a) Term of initial lease.--

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

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

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

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

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

30 (3) The initial long-term lease may be extended for all

1 or any portion of the leased premises for additional terms of
2 up to 35 years.

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

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

14 Section 305. Lease agreements.

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

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

25 Section 306. Feasibility study.

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

1 (b) Environmental impact.--The environmental impacts to be
2 addressed shall include the impacts to fishing and migratory
3 bird and mammal routes.

4 (c) Siting considerations.--The siting considerations to be
5 assessed shall include:

6 (1) Ice impacts.

7 (2) Wind speed.

8 (3) Ship traffic.

9 (4) Viewshed impacts.

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

14 Section 307. Improvements.

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

19 Section 308. Covenants.

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

27 Section 309. Federal and State law and permits.

28 No feasibility study, construction, installation or operation
29 of large-scale energy systems or other related structures on the
30 lands subject to lease shall occur without adherence to Federal

1 and State laws and prior receipt of all applicable Federal and
2 State permits.

3 CHAPTER 5

4 ADMINISTRATION

5 Section 501. Regulations.

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

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

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

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

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

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

26 (6) Prohibit lessees from entering into subleases.

27 Section 502. Sublease by department prohibited.

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

30 Section 503. Transfer of interest prohibited.

1 Except as provided in section 301, this act does not
2 authorize or otherwise allow for or include any transfer of any
3 mineral or other surface or subsurface interest associated with
4 the submerged lands of Lake Erie.

5 Section 504. Construction.

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

12 Section 505. Interagency responsibilities.

13 The department shall work cooperatively with:

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

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

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

24 (ii) Whether a bidder has sufficient resources.

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

28 CHAPTER 7

29 ROYALTY PAYMENTS AND

30 DISTRIBUTIONS

1 Section 701. Royalty payments.

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

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

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

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

19 Section 703. Distributions and transfers.

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

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

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

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

1 (4) Twenty percent of the fund shall be transferred to
2 the Conservation District Fund for distribution to county
3 conservation districts consistent with guidelines established
4 by the State Conservation Commission.

5 CHAPTER 21
6 MISCELLANEOUS PROVISIONS

7 Section 2101. Effective date.

8 This act shall take effect in 120 days.