

AMENDMENTS TO HOUSE BILL NO. 254

Sponsor: REPRESENTATIVE VITALI

Printer's No. 217

1 Amend Bill, page 1, lines 1 through 19; page 2, lines 1
2 through 16; by striking out all of said lines on said pages and
3 inserting

4 Authorizing the Department of Environmental Protection, in
5 consultation with the Department of General Services to lease
6 certain submerged lands within Erie County and associated
7 wind, water and solar resources for the assessment,
8 development, construction and operation of utility scale
9 offshore wind, solar or kinetic energy generation facilities;
10 providing for collection of certain lease and royalty
11 payments; establishing the Lake Erie Large-Scale Energy
12 System Development Fund; and providing for distributions and
13 transfers from the fund.

TABLE OF CONTENTS

14
15 Chapter 1. Preliminary Provisions
16 Section 101. Short title.
17 Section 102. Legislative declaration.
18 Section 103. Definitions.
19 Chapter 3. Leasing of Submerged Lands and Associated Wind,
20 Water and Solar Resources
21 Section 301. Authority and duties of department.
22 Section 302. Qualifications of lessees.
23 Section 303. Waters of this Commonwealth.
24 Section 304. Term of leases.
25 Section 305. Lease agreements.
26 Section 306. Feasibility study.
27 Section 307. Improvements.
28 Section 308. Covenants.
29 Section 309. Federal and State law and permits.
30 Chapter 5. Administration
31 Section 501. Regulations.
32 Section 502. Sublease by department prohibited.
33 Section 503. Transfer of interest prohibited.
34 Section 504. Construction.
35 Section 505. Interagency responsibilities.
36 Chapter 7. Royalty Payments and Distributions
37 Section 701. Royalty payments.

1 Section 702. Lake Erie Large-Scale Energy System Development
2 Fund.
3 Section 703. Distributions and transfers.
4 Section 704. Submerged lands lease consideration.
5 Chapter 9. Miscellaneous Provisions
6 Section 901. Effective date.

7 Amend Bill, page 2, lines 19 through 30; pages 3 through 10,
8 lines 1 through 30; page 11, lines 1 through 8; by striking out
9 all of said lines on said pages and inserting

10 CHAPTER 1

11 PRELIMINARY PROVISIONS

12 Section 101. Short title.

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

15 Section 102. Legislative declaration.

16 The General Assembly declares that the Commonwealth owns and
17 holds in trust as public natural resources under section 27 of
18 Article I of the Constitution of Pennsylvania, the portion of
19 Lake Erie located in Pennsylvania, including the bed of Lake
20 Erie and the associated wind, air, water and solar resources.

21 Section 103. Definitions.

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

25 "Department." The Department of Environmental Protection of
26 the Commonwealth.

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

29 "Large-scale energy system" or "system." A wind energy
30 generation system at more than five megawatts as measured by the
31 nameplate capacity of the system or a solar or kinetic energy
32 system of at least five megawatts as measured by the nameplate
33 capacity of the system, ancillary facilities and structures,
34 including any electrical collection and transmission facilities,
35 submerged electrical transmission cables and other related
36 structures.

37 CHAPTER 3

38 LEASING OF SUBMERGED LANDS AND USE OF THE
39 ASSOCIATED WIND, WATER AND SOLAR RESOURCES

40 Section 301. Authority and duties of department.

41 (a) Authorization.--The department, acting on behalf of the
42 Commonwealth and in consultation with the Department of General
43 Services may, in accordance with this act:

44 (1) Lease submerged lands equal to or greater than 25
45 acres, but not in excess of 10,000 contiguous acres, within
46 the bed of Lake Erie in Erie County.

47 (2) In association with the lease of the submerged lands
48 in paragraph (1), allow the use of the wind, water and solar

1 resources of Lake Erie in Pennsylvania.

2 (b) Areas to be leased.--The department shall develop a map
3 designating the areas of the bed of Lake Erie that may be
4 considered for leasing for large-scale energy system development
5 in consultation with the Department of Conservation and Natural
6 Resources, the Pennsylvania Fish and Boat Commission and the
7 Pennsylvania Game Commission. The department shall ensure that
8 the areas that may be leased:

9 (1) are concentrated in the central and western portion
10 of Lake Erie;

11 (2) avoid development in nearshore areas;

12 (3) avoid shipping lanes; and

13 (4) avoid areas of Lake Erie and pathways where
14 migratory species are concentrated.

15 (c) Bidding process.--The department has the power to make
16 and execute leases in the name of the Commonwealth, in
17 consultation with the Department of General Services, for the
18 evaluation, development and operation of large-scale energy
19 systems in Lake Erie, whenever it appears to the satisfaction of
20 the department that it would be in the best interests of this
21 Commonwealth. Any proposed leases under this act exceeding
22 \$1,000 in value shall be advertised once a week for three weeks
23 on the department's publicly accessible Internet website and in
24 the Pennsylvania Bulletin in advance of awarding the leases. The
25 leases may then be awarded to the highest and best bidder, who
26 must give bond for the proper performance of the leases as the
27 department designates. The requirement of competitive bidding
28 may be waived, and the department may enter into leases with
29 approval of the Governor, and upon such terms and conditions as
30 the department deems to be in the best interest of this
31 Commonwealth, which at a minimum shall include:

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

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

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

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

41 (ii) The overall economic impact of the proposed
42 system.

43 (iii) The environmental benefits of the system.

44 (iv) The overall need for the system.

45 (v) The amount of power to be provided by the
46 proposed system.

47 (vi) An initial assessment of community and public
48 acceptance of the proposed system.

49 Section 302. Qualifications of lessees.

50 The initial feasibility study leases and long-term leases
51 approved under this act shall be restricted to lessees that:

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

3 (2) Have been deemed to be qualified bidders by the
4 department.

5 (3) File with the department a bond payable to the
6 Commonwealth to cover the entire cost associated with the
7 removal of facilities developed pursuant to this act and
8 located in submerged lands of Lake Erie.

9 (4) Demonstrate compliance with fair wage standards,
10 including compliance with the provisions of the act of August
11 15, 1961 (P.L.987, No.442), known as the Pennsylvania
12 Prevailing Wage Act, related to all work undertaken under
13 this act.

14 Section 303. Waters of this Commonwealth.

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

20 Section 304. Term of leases.

21 (a) Term of initial feasibility leases.--

22 (1) The term of initial feasibility leases shall be for
23 a term of up to seven years. The department may upon
24 sufficient justification renew the initial feasibility leases
25 for additional three-year terms.

26 (2) In the event a lessee does not develop the parcel
27 studied or contiguous parcels of submerged lands by
28 installing a large-scale energy system in accordance with a
29 subsequent long-term lease as provided in subsection (b), the
30 lease shall terminate.

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

32 (1) A lessee under subsection (a) may be eligible to
33 enter into a long-term lease for a large-scale energy system.

34 (2) The department, based upon satisfactory evidence
35 that the lessee is capable of long-term operation of the
36 large-scale energy system, may enter into a long-term lease
37 with an initial term of up to 35 years for the construction,
38 operation, maintenance and removal of a large-scale energy
39 system and any associated transmission facilities in Lake
40 Erie.

41 (3) The initial long-term lease may be extended for all
42 or any portion of the leased premises for additional terms of
43 up to 35 years upon finding that it serves the best interest
44 of the Commonwealth.

45 (4) The long-term lease shall contain a provision for
46 termination if the lessee has not completed construction of
47 the large-scale energy system within a reasonable period of
48 time to be established in the terms of the lease.

49 (5) The department may allow, as an option to the long-
50 term lease, the ability of the lessee to lease contiguous
51 parcels. The department shall have the authority to determine

1 the size of the contiguous parcels but not to exceed
2 increments of 10,000 acres.

3 Section 305. Lease agreements.

4 (a) Approvals.--The leases authorized by this act shall be
5 approved as to form and legality by the Attorney General and the
6 Office of General Counsel, which approvals may not be
7 unreasonably withheld, in accordance with law and shall be
8 executed by the department in the name of the Commonwealth.

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

13 Section 306. Feasibility study.

14 (a) General rule.--Prior to entering into a long-term lease
15 in accordance with section 304(b), an initial lessee shall
16 conduct a feasibility study to assess the ability of the large-
17 scale energy system to be viable and to assess the
18 environmental, navigational, public safety, structural and any
19 other impacts and siting considerations necessary to the
20 successful development of such a system.

21 (b) Environmental impact.--In addition to the evaluation of
22 environmental impacts associated with all other Federal and
23 State authorizations required, the environmental impacts to be
24 assessed and mitigated to the satisfaction of the department
25 shall include:

26 (1) The impacts to fishing and migratory bird and mammal
27 routes.

28 (2) The impacts to the ecosystems and habitats within
29 and adjacent to Lake Erie.

30 (3) Ecological impacts, including to fish-spawning beds
31 and other habitats of importance, for all species, including
32 ecologically valued species and sportfish, such as steelhead
33 and lake trout, which are important to the local economy of
34 the Lake Erie region.

35 (c) Siting considerations.--The siting considerations to be
36 considered and addressed shall include:

37 (1) Site conditions such as wind speed, ice, lakebed,
38 waves and currents.

39 (2) Geophysical conditions and geohazards, including,
40 but not limited to, impacts on sediment transport, beach
41 replenishment and bluff protection.

42 (3) Ports and infrastructure, such as the availability
43 of support facilities in Pennsylvania and the region,
44 existing supply chain and supply chain strategies, and an
45 analysis of harms and benefits to navigation and the
46 recreation industry.

47 (4) Fixed and floating technology options.

48 (5) Interconnection, such as access to onshore energy
49 infrastructure, including existing local generation assets,
50 electric load and the potential interconnection and
51 integration of the electric grid.

1 (6) Cost projection modeling and financing assumptions.

2 (7) Economic development and opportunities for
3 employment and workforce development.

4 (8) Federal and State permitting considerations,
5 including the potential to disturb cultural, archaeological
6 and historical resources.

7 (9) In addition to environmental impact analysis,
8 environmental risk, benefit and mitigation analysis, such as
9 impacts on or improvement to cumulative impacts on air
10 quality, water quality and the local ecology.

11 (10) Ecological and human health and safety
12 considerations, such as reduction or mitigation of noise,
13 vibration and harmonics, flicker or other impacts to those
14 living or working near the site, including recreational or
15 commercial fisheries, tourism and viewshed.

16 (11) Public support and an equity benefit analysis.

17 (d) Use of study.--The department shall utilize the results
18 of the feasibility study, as part of the review process
19 associated with lease approval or disapproval under this act.
20 Section 307. Improvements.

21 Development of the parcels authorized to be leased by this
22 act shall be for large-scale energy systems, including
23 electrical collection and transmission facilities, submerged
24 electrical transmission cables and other related structures.
25 This act does not authorize the department to grant any property
26 interest outside of the bed of Lake Erie. A lessee under this
27 act shall obtain all rights of ways, easements and other
28 necessary property rights outside of the bed of Lake Erie
29 necessary for conducting its operations under a lease entered
30 into under this act.

31 Section 308. Covenants.

32 The conditions imposed under this act shall be covenants that
33 run with the land and shall be binding upon the lessee. Should
34 the lessee permit the parcels authorized to be leased under this
35 act, or any portion thereof, to be used in a manner inconsistent
36 with the conditions contained in this act, all rights and
37 interests in the lease authorized by this act shall terminate
38 immediately.

39 Section 309. Federal and State law and permits.

40 No feasibility study, construction, installation or operation
41 of large-scale energy systems or other related structures on the
42 lands subject to lease shall occur without adherence to Federal
43 and State laws and prior receipt of all applicable Federal and
44 State permits, certifications, authorizations or other
45 approvals.

46 CHAPTER 5

47 ADMINISTRATION

48 Section 501. Regulations.

49 The Environmental Quality Board may, for purposes of the
50 leasing of the bed of Lake Erie for large-scale energy system
51 development under this act, adopt regulations which at a

1 minimum:

2 (1) Determine minimum standards for the technology used
3 to construct large-scale energy systems on and to transmit
4 electricity from the areas of Lake Erie leased for that
5 purpose.

6 (2) Establish procedures for the conduct of feasibility
7 studies by large-scale energy system developers related to,
8 but not limited to, the siting, economics and environmental
9 issues of a system.

10 (3) Establish reasonable fees to cover the costs
11 incurred by the department and directly related to the
12 preparation, review, execution of lease or other agreements
13 associated with this act.

14 (4) Establish a process for the developer of the large-
15 scale energy system to demonstrate community and public
16 acceptance of the proposed system.

17 (5) Establish siting, design and other technical
18 specifications and requirements.

19 (6) Establish any other requirements that the department
20 determines are necessary to implement or administer this act.

21 (7) Prohibit lessees from entering into subleases.

22 Section 502. Sublease by department prohibited.

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

25 Section 503. Transfer of interest prohibited.

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

30 Section 504. Construction.

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

37 Section 505. Interagency responsibilities.

38 The department shall work cooperatively with:

39 (1) The Department of General Services to ensure that
40 all of the systems under this act satisfy all requirements
41 under this act, all requirements for form and legality, all
42 applicable environmental standards and all environmental
43 permit requirements.

44 (2) The Pennsylvania Public Utility Commission to
45 establish that the proposed large-scale energy system is
46 viable, both economically and from an energy production
47 perspective. The Pennsylvania Public Utility Commission shall
48 assist the department in assessing all of the following:

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

50 (ii) Whether a bidder has sufficient resources.

51 (iii) Whether a bidder has the ability to

1 successfully complete all of the activities necessary for
2 interconnection to the electric distribution system.

3 CHAPTER 7

4 ROYALTY PAYMENTS AND DISTRIBUTIONS

5 Section 701. Royalty payments.

6 Each lessee of a long-term lease under this act shall be
7 subject to the payment to the Commonwealth of submerged lands
8 occupation fees, development rental fees, bonuses and royalties
9 from the energy generation and energy credits to be determined
10 in the long-term lease. The operator of the system shall submit
11 the royalty payment annually unless an alternative payment
12 schedule is approved by the department. The operator shall
13 submit the initial royalty payment beginning on January 1 of the
14 year following the system's being placed into production.

15 Section 702. Lake Erie Large-Scale Energy System Development
16 Fund.

17 (a) Establishment.--The Lake Erie Large-Scale Energy System
18 Development Fund is established in the State Treasury. The fund
19 shall be used as provided by this act to conserve and maintain
20 Lake Erie public natural resources. The money in the fund is
21 appropriated on a continuing basis for the distributions and
22 transfers provided under section 703.

23 (b) Deposits.--All development rental, bonus and royalty
24 payments from energy generation and energy credits from large-
25 scale energy systems situated in Lake Erie shall be deposited
26 into the fund.

27 Section 703. Distributions and transfers.

28 On the last business day of each calendar quarter, the State
29 Treasurer shall make the following distributions and transfers
30 from the fund:

31 (1) Ten percent of the fund shall be distributed to the
32 department for its administration of the leases under this
33 act and for waters of this Commonwealth conservation and
34 maintenance projects.

35 (2) Twenty percent of the fund shall be distributed to
36 the department for payment to Erie County for public natural
37 resource conservation and maintenance related projects in the
38 county.

39 (3) Twenty percent of the fund shall be distributed to
40 the Pennsylvania Fish and Boat Commission for programs,
41 projects or other activities related to conservation and
42 maintenance projects associated with Lake Erie.

43 (4) Thirty percent of the fund shall be transferred to
44 the Energy Development Fund to support efforts by the
45 Pennsylvania Energy Development Authority for energy
46 efficiency, renewable energy or clean energy projects that
47 reduce air pollution or improve air quality.

48 (5) Twenty percent of the fund shall be transferred to
49 the Conservation District Fund for distribution to Lake Erie
50 Watershed county conservation districts consistent with
51 guidelines established by the State Conservation Commission

1 for public natural resource conservation and maintenance
2 projects.
3 Section 704. Submerged lands lease consideration.
4 Submerged lands occupation fees for the use and occupation
5 in, along, under, across or over the bed of Lake Erie as
6 described in this act shall be reasonable to compensate for the
7 use and occupation of the bed of Lake Erie and shall be
8 deposited into the Clean Water Fund.

9 CHAPTER 9

10 MISCELLANEOUS PROVISIONS

11 Section 901. Effective date.
12 This act shall take effect in 120 days.