

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2312 Session of
2020

INTRODUCED BY MULLINS, YOUNGBLOOD, KINSEY, HILL-EVANS AND
McCLINTON, FEBRUARY 24, 2020

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 24, 2020

AN ACT

1 Providing for power plant host community benefit agreements
2 between municipalities and owners of certain electric
3 generating facilities, for power plant host community impact
4 fees paid by affected facilities and fee uses; establishing
5 public participation requirements; and providing for
6 administrative fees and for duties of the Department of
7 Environmental Protection.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Power Plant
12 Host Community Benefit Agreement and Fee Act.

13 Section 2. Definitions.

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

17 "Affected facility." An electric generating facility with a
18 capacity of at least 10 megawatts. The term shall not include
19 the portion of an electric generating facility that uses
20 alternative energy sources.

1 "Alternative energy sources." Energy derived from:

2 (1) Solar photovoltaic and solar thermal energy.

3 (2) Wind power.

4 (3) Low-impact hydropower.

5 (4) Geothermal energy.

6 (5) Biologically derived methane gas.

7 (6) Fuel cells.

8 (7) Biomass energy.

9 (8) Coal mine methane.

10 "Department." The Department of Environmental Protection of

11 the Commonwealth.

12 "Governing body." A board of county commissioners, city

13 council, borough or incorporated town council, commissioners of

14 a township of the first class, supervisors of a township of the

15 second class, board of school directors of a school district or

16 their successor forms of government.

17 Section 3. Plan approvals and permits.

18 The department shall not grant to the owner of an affected

19 facility a final plan approval or final operating permit

20 required under section 6.1 of the act of January 8, 1960 (1959

21 P.L.2119, No.787), known as the Air Pollution Control Act, for a

22 stationary air contamination source that is an electric

23 generating facility with a capacity of at least 10 megawatts

24 unless the owner of the affected facility is in full compliance

25 with section 4.

26 Section 4. Power plant host community benefit agreements.

27 (a) Consultation required.--The owner of an affected

28 facility and the governing body of the municipality, the county

29 and the school district in which the affected facility is

30 proposed to be located, expanded or subject to the renewal of an

1 existing permit shall enter into discussions to evaluate the
2 need for and potential terms of a power plant host community
3 benefit agreement.

4 (b) Public hearing.--Prior to negotiating the final terms of
5 a power plant host community benefit agreement, an affected
6 facility and the municipality, county and school district in
7 which the affected facility is located shall, in compliance with
8 section 8, provide a public opportunity for residents of the
9 municipality, county and school district to be heard regarding
10 the need for and potential terms of a power plant host community
11 benefit agreement.

12 (c) Notice of agreement.--If the owner of an affected
13 facility and the municipality in which the affected facility is
14 located enter into a power plant host community benefit
15 agreement, a signed and notarized copy of the agreement shall be
16 transmitted to the department. The department shall transmit the
17 agreement to the Legislative Reference Bureau for publication in
18 the Pennsylvania Bulletin.

19 (d) Agreement not reached.--If a municipality has approved
20 all necessary zoning and building permits for an affected
21 facility and the owner of the affected facility and the
22 municipality in which the affected facility is located fails to
23 enter into a power plant host community benefit agreement, the
24 following shall apply:

25 (1) The owner of the affected facility and the
26 municipality shall notify the department of the failure to
27 enter into the agreement.

28 (2) The owner of the affected facility remains subject
29 to the provisions of this act, including payment of the
30 required power plant host community impact fees under section

1 5.

2 (e) Municipal permits not approved.--If a municipality has
3 not approved all necessary zoning and building permits for an
4 affected facility, the provisions of subsection (d) do not
5 apply.

6 (f) Construction.--Nothing in this act shall be construed to
7 limit the authority of a municipality in which the affected
8 facility is located to withhold approval of any applicable
9 zoning, building or other local permits or approvals required to
10 construct or operate the affected facility in the absence of a
11 power plant host community benefit agreement.

12 Section 5. Power plant host community impact fees.

13 (a) General rule.--The owner of an affected facility that
14 begins operation under a new or expanded permit after the
15 effective date of this act shall, at a minimum, pay the amount
16 of up-front and annual power plant host community impact fees
17 specified in this section in order to operate in this
18 Commonwealth. Nothing in this act shall preclude an affected
19 facility and municipality, county and school district from
20 entering into an agreement that establishes up-front and annual
21 fees in greater amounts and provides for other financial and
22 nonfinancial terms and considerations.

23 (b) Minimum standards for power plant host community impact
24 fees.--

25 (1) The owner of each affected facility shall make an
26 up-front payment of \$1,000 per megawatt of electric
27 generating capacity to the municipality in which the affected
28 facility is located. The payment shall be made prior to the
29 generation of any electricity to be supplied to an electric
30 transmission and distribution system. The municipality shall

1 use the funds in accordance with section 6.

2 (2) The owner of each affected facility shall make an
3 up-front payment of \$200 per megawatt of electric generating
4 capacity to the county in which the affected facility is
5 located. The payment shall be made prior to the generation of
6 any electricity to be supplied to an electric transmission
7 and distribution system. Subject to section 6, the county
8 shall use the money to set up an air quality monitoring
9 program and a water quality monitoring program for the area
10 in the vicinity of the affected facility in conjunction with
11 the municipality and in consultation with the department.

12 (3) The owner of each affected facility shall make an
13 annual payment of \$700 per megawatt of electric generating
14 capacity to the municipality in which the affected facility
15 is located. The payment shall be made by December 31 of the
16 first year in which the generation of electricity commences
17 under the terms of a new or expanded permit. For each
18 succeeding year, the annual payment shall be increased by an
19 additional 2% or the percentage increase, if any, in the
20 Consumer Price Index for All Urban Consumers (CPI-U) as
21 calculated and published by the United States Department of
22 Labor for the most recent 12-month period for which figures
23 have been officially reported, whichever is greater. The
24 municipality shall use the funds in accordance with section
25 6.

26 (4) The owner of each affected facility shall make an
27 annual payment of \$500 per megawatt of electric generating
28 capacity to the school district in which the affected
29 facility is located. The payment shall be made by December 31
30 of the first year in which the generation of electricity

1 commences under the terms of a new or expanded permit. For
2 each succeeding year, the annual payment shall be increased
3 by an additional 2% or the percentage increase, if any, in
4 the Consumer Price Index for All Urban Consumers (CPI-U) as
5 calculated and published by the United States Department of
6 Labor for the most recent 12-month period for which figures
7 have been officially reported, whichever is greater. The
8 school district shall use the funds in accordance with
9 section 6.

10 (5) The owner of each affected facility shall make an
11 annual payment of \$500 per megawatt of electric generating
12 capacity to the county in which the affected facility is
13 located. The payment shall be made by December 31 of the
14 first year in which the generation of electricity commences
15 under the terms of a new or expanded permit. For each
16 succeeding year, the annual payment shall be increased by an
17 additional 2% or the percentage increase, if any, in the
18 Consumer Price Index for All Urban Consumers (CPI-U) as
19 calculated and published by the United States Department of
20 Labor for the most recent 12-month period for which figures
21 have been officially reported, whichever is greater. The
22 county shall use the funds in accordance with section 6.

23 Section 6. Uses of power plant host community impact fees.

24 (a) Counties and municipalities.--A municipality or county
25 that receives funds under section 5 shall use the funds only for
26 the following purposes associated with hosting a power plant
27 facility within the municipality or county as follows:

28 (1) Construction, reconstruction, maintenance and repair
29 of roadways, bridges and public infrastructure.

30 (2) Water, storm water and sewer systems, including

1 construction, reconstruction, maintenance and repair, and the
2 use of green infrastructure to diminish and control storm
3 water.

4 (3) Emergency preparedness and public safety, including
5 law enforcement and fire services, hazardous material
6 response, 911 service, equipment acquisition and other
7 services. At least 10% of the up-front funds received shall
8 be used for the purposes under this paragraph.

9 (4) Environmental programs, including trails, parks and
10 recreation, open space, flood plain management, conservation
11 districts and agricultural preservation.

12 (5) Preservation and reclamation of surface and
13 subsurface waters and water supplies. At least 10% of the up-
14 front and annual funds received shall be used for the
15 purposes under this paragraph.

16 (6) Tax reductions, including homestead exclusions.

17 (7) Projects to increase the availability of safe and
18 affordable housing to residents.

19 (8) Records management, geographic information systems
20 and information technology.

21 (9) The delivery of social services.

22 (10) Judicial services.

23 (11) For deposit into the municipality's or county's
24 capital reserve fund if the funds are used solely for a
25 purpose set forth in this subsection.

26 (12) Programs and projects to provide energy assistance
27 to low-income households.

28 (13) Energy conservation programs.

29 (14) Air and water quality monitoring. At least 10% of
30 the up-front and annual funds received shall be used for the

1 purposes under this paragraph.

2 (15) Local or regional planning initiatives under the
3 act of July 31, 1968 (P.L.805, No.247), known as the
4 Pennsylvania Municipalities Planning Code.

5 (b) School districts.--A school district that receives funds
6 under section 5 shall use the funds received for general
7 operating expenses to offset expected reductions in property tax
8 revenue associated with hosting a power plant facility within
9 the school district. The school district may also use its funds
10 for the construction or maintenance of parks, trails or other
11 recreational facilities that may be located on school district
12 property or elsewhere in the county hosting the affected
13 facility and for student participation in air and water quality
14 monitoring.

15 (c) Multiple counties.--Payment of up-front and annual power
16 plant host community impact funds to a municipality or school
17 district which is situate in two or more counties shall be
18 allocated based on the ratio which the population of the
19 municipality or school district within each county bears to the
20 total population of the municipality or school district as last
21 officially certified.

22 Section 7. Administrative fees.

23 The owner of an affected facility that begins operation under
24 a new or expanded permit after the effective date of this
25 section shall pay an annual administrative fee of \$300 per
26 megawatt of electric generating capacity to the department. The
27 first payment shall be made within one month of the commencement
28 of generating electricity under the terms of a new or expanded
29 permit. Payments for the following year and each successive year
30 shall be made by June 30. The department shall use the

1 administrative fee to cover its expenses in administering this
2 act and for developing air and water quality monitoring programs
3 in consultation with the municipality and county hosting the
4 affected facility.

5 Section 8. Power plant host community public participation
6 requirements.

7 (a) Requirements for owners of affected facilities.--An
8 owner of an affected facility seeking a final plan approval or
9 final permit approval from the department as described in
10 section 3 shall submit a public participation plan to the
11 department on a form prescribed by the department. The
12 department shall either approve the plan or request changes in
13 the plan.

14 (b) Contents of public participation plan.--The public
15 participation plan shall provide for the following:

16 (1) The opportunity for residents of the municipality,
17 county and school district in which the affected facility is
18 located to participate in the process by which the department
19 approves a plan or permit, including the opportunity to ask
20 questions in a public meeting or forum.

21 (2) Identification of proposed dates for at least one
22 public meeting or forum.

23 (3) The means by which the public meeting or forum shall
24 be advertised and publicized.

25 (c) Requirements for host municipalities, counties and
26 school districts.--

27 (1) The municipality, county and school district in
28 which the affected facility is proposed to be located,
29 expanded or subject to the renewal of an existing permit,
30 shall each hold at least one separate public meeting or forum

1 to evaluate the need for and potential terms of a power plant
2 host community benefit agreement. The public meeting or forum
3 shall provide members of the public the opportunity to ask
4 questions.

5 (2) The municipality, county and school district
6 holding the public meeting or forum shall advertise the
7 meeting in public newspapers and online and take reasonable
8 steps to publicize and make residents of the municipality,
9 county and school district aware of the meeting.

10 Section 9. Effective date.

11 This act shall take effect in 60 days.