

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 254 Session of 2023

INTRODUCED BY MERSKI, SIEGEL, BURGOS, MADDEN, PROBST, SANCHEZ, GUENST, KRAJEWSKI, VITALI, DELLOSO, NEILSON, OTTEN, HARKINS, ISAACSON AND WAXMAN, MARCH 10, 2023

AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 19, 2024

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 AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, IN <--  
18 CONSULTATION WITH THE DEPARTMENT OF GENERAL SERVICES TO LEASE  
19 CERTAIN SUBMERGED LANDS WITHIN ERIE COUNTY AND ASSOCIATED  
20 WIND, WATER AND SOLAR RESOURCES FOR THE ASSESSMENT,  
21 DEVELOPMENT, CONSTRUCTION AND OPERATION OF UTILITY SCALE  
22 OFFSHORE WIND, SOLAR OR KINETIC ENERGY GENERATION FACILITIES;  
23 PROVIDING FOR COLLECTION OF CERTAIN LEASE AND ROYALTY  
24 PAYMENTS; ESTABLISHING THE LAKE ERIE LARGE-SCALE ENERGY  
25 SYSTEM DEVELOPMENT FUND; AND PROVIDING FOR DISTRIBUTIONS AND  
26 TRANSFERS FROM THE FUND.

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16 SECTION 702. LAKE ERIE LARGE-SCALE ENERGY SYSTEM DEVELOPMENT  
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19 SECTION 704. SUBMERGED LANDS LEASE CONSIDERATION.  
20 CHAPTER 9. MISCELLANEOUS PROVISIONS  
21 SECTION 901. EFFECTIVE DATE.

22 The General Assembly of the Commonwealth of Pennsylvania  
23 hereby enacts as follows:

24 ~~CHAPTER 1~~ <--

25 ~~PRELIMINARY PROVISIONS~~

26 ~~Section 101. Short title.~~

27 ~~This act shall be known and may be cited as the Lake Erie~~  
28 ~~Energy Development Act.~~

29 ~~Section 102. Legislative declaration.~~

30 ~~The General Assembly declares that the Commonwealth owns~~

1 ~~lands within the bed of Lake Erie, all of which lands are~~  
2 ~~located in Erie County.~~

3 ~~Section 103. Definitions.~~

4 ~~The following words and phrases when used in this act shall~~  
5 ~~have the meanings given to them in this section unless the~~  
6 ~~context clearly indicates otherwise:~~

7 ~~"Department." The Department of General Services of the~~  
8 ~~Commonwealth.~~

9 ~~"Fund." The Lake Erie Large Scale Energy System Development~~  
10 ~~Fund established under section 702.~~

11 ~~"Large scale energy system" or "system." A wind energy~~  
12 ~~generation system at more than 500 megawatts as measured by the~~  
13 ~~nameplate capacity of the system or a solar energy system of at~~  
14 ~~least 12 megawatts as measured by the nameplate capacity of the~~  
15 ~~system.~~

16 CHAPTER 3

17 LEASING OF SUBMERGED LANDS

18 ~~Section 301. Authority and duties of department.~~

19 ~~(a) Authorization. The department, acting on behalf of the~~  
20 ~~Commonwealth, may lease submerged lands equal to or greater than~~  
21 ~~25 acres, but not in excess of 10,000 contiguous acres, within~~  
22 ~~the bed of Lake Erie in Erie County.~~

23 ~~(b) Areas to be leased. The department shall develop a map~~  
24 ~~designating the areas of the bed of Lake Erie that may be leased~~  
25 ~~for large scale energy system development. The department shall~~  
26 ~~ensure that the areas that may be leased:~~

27 ~~(1) are concentrated in the central and western portion~~  
28 ~~of Lake Erie;~~

29 ~~(2) avoid development in nearshore areas;~~

30 ~~(3) avoid shipping lanes; and~~

1           ~~(4) avoid areas of Lake Erie where migratory birds are~~  
2           ~~concentrated.~~

3           ~~(c) Competitive process. The department shall develop and~~  
4           ~~implement a competitive process for the leasing of submerged~~  
5           ~~lands for the development of large scale energy systems to~~  
6           ~~convert wind or solar energy to electricity. The competitive~~  
7           ~~process shall include, at a minimum:~~

8           ~~(1) A demonstration by the bidders of their expertise,~~  
9           ~~experience and financial capacity to conduct a feasibility~~  
10           ~~study and to develop such a system.~~

11           ~~(2) A certification that the bidder has the financial~~  
12           ~~capability to cover all costs associated with the feasibility~~  
13           ~~study and interconnecting to an energy distribution system.~~

14           ~~(3) A demonstration by the bidders of the benefits to be~~  
15           ~~accrued by the Commonwealth, including:~~

16           ~~(i) The number of full time jobs to be created.~~

17           ~~(ii) The overall economic impact of the proposed~~  
18           ~~system.~~

19           ~~(iii) The environmental benefits of the system.~~

20           ~~(iv) The overall need for the system.~~

21           ~~(v) The amount of power to be provided by the~~  
22           ~~proposed system.~~

23           ~~(vi) An initial assessment of community and public~~  
24           ~~acceptance of the proposed system.~~

25           ~~Section 302. Qualifications of lessees.~~

26           ~~A lease and a subsequent long term lease approved under this~~  
27           ~~act shall be restricted to a lessee who:~~

28           ~~(1) Demonstrates the expertise and capability to develop~~  
29           ~~large scale energy systems in a marine environment.~~

30           ~~(2) Has been deemed to be the most qualified bidder~~

1 ~~based upon the criteria listed in section 301(c) and any~~  
2 ~~other additional criteria that may be developed by the~~  
3 ~~department.~~

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

8 ~~Section 303. Waters of this Commonwealth.~~

9 ~~A lease and any subsequent long term lease approved under~~  
10 ~~this act shall ensure reasonable accommodation for fishing,~~  
11 ~~maritime commerce, energy transmission rights of way and other~~  
12 ~~current and future commercial and recreational uses of the~~  
13 ~~waters of this Commonwealth held in the public trust.~~

14 ~~Section 304. Term of lease.~~

15 ~~(a) Term of initial lease.~~

16 ~~(1) The initial term of a lease shall be for a term of~~  
17 ~~up to seven years. The department may upon sufficient~~  
18 ~~justification renew the lease for an additional three year~~  
19 ~~term.~~

20 ~~(2) In the event a lessee does not develop the parcel or~~  
21 ~~contiguous parcels of submerged lands by installing a large~~  
22 ~~scale energy system within the initial seven year lease~~  
23 ~~period, the lease shall terminate.~~

24 ~~(b) Term of long term lease.~~

25 ~~(1) A lessee under subsection (a) may be eligible to~~  
26 ~~enter into a long term lease for the facilities to be~~  
27 ~~constructed.~~

28 ~~(2) The department, based upon satisfactory evidence~~  
29 ~~that the lessee is capable of long term operation of the~~  
30 ~~large scale energy system, may enter into a long term lease~~

1 ~~with an initial term of up to 35 years for the construction,~~  
2 ~~operation, maintenance and removal of a large scale energy~~  
3 ~~system and any associated transmission facilities in Lake~~  
4 ~~Erie.~~

5 ~~(3) The initial long term lease may be extended for all~~  
6 ~~or any portion of the leased premises for additional terms of~~  
7 ~~up to 35 years.~~

8 ~~(4) In addition to termination of a lease under~~  
9 ~~subsection (a) (2), the long term lease shall contain a~~  
10 ~~provision for termination if the lessee has not initiated~~  
11 ~~construction of the large scale energy system within a~~  
12 ~~reasonable period of time to be established in the terms of~~  
13 ~~the lease.~~

14 ~~(5) The department may permit, as an option to the long~~  
15 ~~term lease, the ability of the lessee to lease contiguous~~  
16 ~~parcels. The department shall have the authority to determine~~  
17 ~~the size of the contiguous parcels but not to exceed~~  
18 ~~increments of 10,000 acres.~~

19 ~~Section 305. Lease agreements.~~

20 ~~(a) Approvals. A lease and any other documents authorized~~  
21 ~~by this act shall be approved as to form and legality by the~~  
22 ~~Attorney General and the Office of General Counsel in accordance~~  
23 ~~with law and shall be executed by the department, which~~  
24 ~~approvals shall not be unreasonably withheld, in the name of the~~  
25 ~~Commonwealth.~~

26 ~~(b) Lessee rights under lease. A lease shall grant the~~  
27 ~~lessee the right to use the premises in accordance with this act~~  
28 ~~for the purposes of conducting a feasibility study and~~  
29 ~~development of large scale energy systems.~~

30 ~~Section 306. Feasibility study.~~

1       ~~(a) General rule. Prior to commencing construction of the~~  
2 ~~system, a lessee shall conduct a feasibility study to assess the~~  
3 ~~ability of the large scale energy system to be viable and to~~  
4 ~~assess the environmental impacts and siting considerations~~  
5 ~~necessary to the successful development of such a system.~~

6       ~~(b) Environmental impact. The environmental impacts to be~~  
7 ~~addressed shall include the impacts to fishing and migratory~~  
8 ~~bird and mammal routes.~~

9       ~~(c) Siting considerations. The siting considerations to be~~  
10 ~~assessed shall include:~~

11             ~~(1) Ice impacts.~~

12             ~~(2) Wind speed.~~

13             ~~(3) Ship traffic.~~

14             ~~(4) Viewshed impacts.~~

15       ~~(d) Use of study. The department shall utilize the results~~  
16 ~~of the feasibility study, as part of the review process~~  
17 ~~associated with the approval or disapproval, to proceed with the~~  
18 ~~construction of a large scale energy system.~~

19 ~~Section 307. Improvements.~~

20       ~~Development of the parcels authorized to be leased by this~~  
21 ~~act shall be for large scale energy systems, including~~  
22 ~~electrical collection and transmission facilities, submerged~~  
23 ~~electrical transmission cables and other related structures.~~

24 ~~Section 308. Covenants.~~

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



1 ~~immediately.~~

2 ~~Section 309. Federal and State law and permits.~~

3 ~~No feasibility study, construction, installation or operation~~  
4 ~~of large scale energy systems or other related structures on the~~  
5 ~~lands subject to lease shall occur without adherence to Federal~~  
6 ~~and State laws and prior receipt of all applicable Federal and~~  
7 ~~State permits.~~

8 CHAPTER 5

9 ADMINISTRATION

10 ~~Section 501. Regulations.~~

11 ~~The department shall, for purposes of leasing the bed of Lake~~  
12 ~~Erie for large scale energy system development, adopt~~  
13 ~~regulations which at a minimum:~~

14 ~~(1) Determine minimum standards for the technology used~~  
15 ~~to construct large scale energy systems on and to transmit~~  
16 ~~electricity from the areas of Lake Erie leased for that~~  
17 ~~purpose.~~

18 ~~(2) Establish procedures for the conduct of feasibility~~  
19 ~~studies by large scale energy system developers related to,~~  
20 ~~but not limited to, the siting, economics and environmental~~  
21 ~~issues of a system.~~

22 ~~(3) Establish reasonable fees to cover the costs~~  
23 ~~incurred by the department and directly related to the~~  
24 ~~preparation, review, execution of lease or other agreements~~  
25 ~~associated with this act.~~

26 ~~(4) Establish a process for the developer of the large~~  
27 ~~scale energy system to demonstrate community and public~~  
28 ~~acceptance of the proposed system.~~

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

1           ~~(6) Prohibit lessees from entering into subleases.~~

2   ~~Section 502. Sublease by department prohibited.~~

3           ~~The department may not enter into subleases or nondisturbance~~  
4 ~~agreements on any of the submerged lands of Lake Erie.~~

5   ~~Section 503. Transfer of interest prohibited.~~

6           ~~Except as provided in section 301, this act does not~~  
7 ~~authorize or otherwise allow for or include any transfer of any~~  
8 ~~mineral or other surface or subsurface interest associated with~~  
9 ~~the submerged lands of Lake Erie.~~

10 ~~Section 504. Construction.~~

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

17 ~~Section 505. Interagency responsibilities.~~

18           ~~The department shall work cooperatively with:~~

19           ~~(1) The Department of Environmental Protection to ensure~~  
20 ~~that all of the systems meet all applicable environmental~~  
21 ~~standards and comply with all environmental permit~~  
22 ~~requirements.~~

23           ~~(2) The Pennsylvania Public Utility Commission to~~  
24 ~~establish that the proposed large scale energy system is~~  
25 ~~viable, both economically and from an energy production~~  
26 ~~perspective. The Pennsylvania Public Utility Commission shall~~  
27 ~~assist the department in assessing all of the following:~~

28           ~~(i) The system's impact on ratepayers.~~

29           ~~(ii) Whether a bidder has sufficient resources.~~

30           ~~(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~~

5 ~~DISTRIBUTIONS~~

6 ~~Section 701. Royalty payments.~~

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

14 ~~Section 702. Lake Erie Large Scale Energy System Development~~  
15 ~~Fund.~~

16 ~~(a) Establishment. The Lake Erie Large Scale Energy System~~  
17 ~~Development Fund is established in the State Treasury. The money~~  
18 ~~of the fund is appropriated on a continuing basis for the~~  
19 ~~distributions and transfers provided under section 703.~~

20 ~~(b) Deposits. All royalty payments from the production of~~  
21 ~~electricity from large scale energy systems situated on lands~~  
22 ~~owned by the Commonwealth in Lake Erie shall be deposited into~~  
23 ~~the fund.~~

24 ~~Section 703. Distributions and transfers.~~

25 ~~On the last business day of each calendar quarter, the State~~  
26 ~~Treasurer shall make the following distributions and transfers~~  
27 ~~from the fund:~~

28 ~~(1) Twenty percent of the fund shall be distributed to~~  
29 ~~the department for payment to Erie County.~~

30 ~~(2) Twenty percent of the fund shall be distributed to~~

1 ~~the Pennsylvania Fish and Boat Commission for programs,~~  
2 ~~projects or other activities related to Lake Erie.~~

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

6 ~~(4) Twenty percent of the fund shall be transferred to~~  
7 ~~the Conservation District Fund for distribution to county~~  
8 ~~conservation districts consistent with guidelines established~~  
9 ~~by the State Conservation Commission.~~

10 ~~CHAPTER 21~~

11 ~~MISCELLANEOUS PROVISIONS~~

12 ~~Section 2101. Effective date.~~

13 ~~This act shall take effect in 120 days.~~

14 ~~CHAPTER 1~~ <--

15 ~~PRELIMINARY PROVISIONS~~

16 SECTION 101. SHORT TITLE.

17 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE LAKE ERIE  
18 ENERGY DEVELOPMENT ACT.

19 SECTION 102. LEGISLATIVE DECLARATION.

20 THE GENERAL ASSEMBLY DECLARES THAT THE COMMONWEALTH OWNS AND  
21 HOLDS IN TRUST AS PUBLIC NATURAL RESOURCES UNDER SECTION 27 OF  
22 ARTICLE I OF THE CONSTITUTION OF PENNSYLVANIA, THE PORTION OF  
23 LAKE ERIE LOCATED IN PENNSYLVANIA, INCLUDING THE BED OF LAKE  
24 ERIE AND THE ASSOCIATED WIND, AIR, WATER AND SOLAR RESOURCES.

25 SECTION 103. DEFINITIONS.

26 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL  
27 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
28 CONTEXT CLEARLY INDICATES OTHERWISE:

29 "DEPARTMENT." THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF  
30 THE COMMONWEALTH.

1 "FUND." THE LAKE ERIE LARGE-SCALE ENERGY SYSTEM DEVELOPMENT  
2 FUND ESTABLISHED UNDER SECTION 702.

3 "LARGE-SCALE ENERGY SYSTEM" OR "SYSTEM." A WIND ENERGY  
4 GENERATION SYSTEM AT MORE THAN FIVE MEGAWATTS AS MEASURED BY THE  
5 NAMEPLATE CAPACITY OF THE SYSTEM OR A SOLAR OR KINETIC ENERGY  
6 SYSTEM OF AT LEAST FIVE MEGAWATTS AS MEASURED BY THE NAMEPLATE  
7 CAPACITY OF THE SYSTEM, ANCILLARY FACILITIES AND STRUCTURES,  
8 INCLUDING ANY ELECTRICAL COLLECTION AND TRANSMISSION FACILITIES,  
9 SUBMERGED ELECTRICAL TRANSMISSION CABLES AND OTHER RELATED  
10 STRUCTURES.

11 CHAPTER 3

12 LEASING OF SUBMERGED LANDS AND USE OF THE  
13 ASSOCIATED WIND, WATER AND SOLAR RESOURCES  
14 SECTION 301. AUTHORITY AND DUTIES OF DEPARTMENT.

15 (A) AUTHORIZATION.--THE DEPARTMENT, ACTING ON BEHALF OF THE  
16 COMMONWEALTH AND IN CONSULTATION WITH THE DEPARTMENT OF GENERAL  
17 SERVICES MAY, IN ACCORDANCE WITH THIS ACT:

18 (1) LEASE SUBMERGED LANDS EQUAL TO OR GREATER THAN 25  
19 ACRES, BUT NOT IN EXCESS OF 10,000 CONTIGUOUS ACRES, WITHIN  
20 THE BED OF LAKE ERIE IN ERIE COUNTY.

21 (2) IN ASSOCIATION WITH THE LEASE OF THE SUBMERGED LANDS  
22 IN PARAGRAPH (1), ALLOW THE USE OF THE WIND, WATER AND SOLAR  
23 RESOURCES OF LAKE ERIE IN PENNSYLVANIA.

24 (B) AREAS TO BE LEASED.--THE DEPARTMENT SHALL DEVELOP A MAP  
25 DESIGNATING THE AREAS OF THE BED OF LAKE ERIE THAT MAY BE  
26 CONSIDERED FOR LEASING FOR LARGE-SCALE ENERGY SYSTEM DEVELOPMENT  
27 IN CONSULTATION WITH THE DEPARTMENT OF CONSERVATION AND NATURAL  
28 RESOURCES, THE PENNSYLVANIA FISH AND BOAT COMMISSION AND THE  
29 PENNSYLVANIA GAME COMMISSION. THE DEPARTMENT SHALL ENSURE THAT  
30 THE AREAS THAT MAY BE LEASED:

- 1 (1) ARE CONCENTRATED IN THE CENTRAL AND WESTERN PORTION
- 2 OF LAKE ERIE;
- 3 (2) AVOID DEVELOPMENT IN NEARSHORE AREAS;
- 4 (3) AVOID SHIPPING LANES; AND
- 5 (4) AVOID AREAS OF LAKE ERIE AND PATHWAYS WHERE
- 6 MIGRATORY SPECIES ARE CONCENTRATED.

7 (C) BIDDING PROCESS.--THE DEPARTMENT HAS THE POWER TO MAKE  
8 AND EXECUTE LEASES IN THE NAME OF THE COMMONWEALTH, IN  
9 CONSULTATION WITH THE DEPARTMENT OF GENERAL SERVICES, FOR THE  
10 EVALUATION, DEVELOPMENT AND OPERATION OF LARGE-SCALE ENERGY  
11 SYSTEMS IN LAKE ERIE, WHENEVER IT APPEARS TO THE SATISFACTION OF  
12 THE DEPARTMENT THAT IT WOULD BE IN THE BEST INTERESTS OF THIS  
13 COMMONWEALTH. ANY PROPOSED LEASES UNDER THIS ACT EXCEEDING  
14 \$1,000 IN VALUE SHALL BE ADVERTISED ONCE A WEEK FOR THREE WEEKS  
15 ON THE DEPARTMENT'S PUBLICLY ACCESSIBLE INTERNET WEBSITE AND IN  
16 THE PENNSYLVANIA BULLETIN IN ADVANCE OF AWARDING THE LEASES. THE  
17 LEASES MAY THEN BE AWARDED TO THE HIGHEST AND BEST BIDDER, WHO  
18 MUST GIVE BOND FOR THE PROPER PERFORMANCE OF THE LEASES AS THE  
19 DEPARTMENT DESIGNATES. THE REQUIREMENT OF COMPETITIVE BIDDING  
20 MAY BE WAIVED, AND THE DEPARTMENT MAY ENTER INTO LEASES WITH  
21 APPROVAL OF THE GOVERNOR, AND UPON SUCH TERMS AND CONDITIONS AS  
22 THE DEPARTMENT DEEMS TO BE IN THE BEST INTEREST OF THIS  
23 COMMONWEALTH, WHICH AT A MINIMUM SHALL INCLUDE:

24 (1) A DEMONSTRATION BY THE BIDDERS OF THEIR EXPERTISE,  
25 EXPERIENCE AND FINANCIAL CAPACITY TO CONDUCT A FEASIBILITY  
26 STUDY AND TO DEVELOP SUCH A SYSTEM.

27 (2) A CERTIFICATION THAT THE BIDDER HAS THE FINANCIAL  
28 CAPABILITY TO COVER ALL COSTS ASSOCIATED WITH THE FEASIBILITY  
29 STUDY AND INTERCONNECTING TO AN ENERGY DISTRIBUTION SYSTEM.

30 (3) A DEMONSTRATION BY THE BIDDERS OF THE BENEFITS TO BE

1 ACCRUED BY THE COMMONWEALTH, INCLUDING:

2 (I) THE NUMBER OF FULL-TIME JOBS TO BE CREATED.

3 (II) THE OVERALL ECONOMIC IMPACT OF THE PROPOSED  
4 SYSTEM.

5 (III) THE ENVIRONMENTAL BENEFITS OF THE SYSTEM.

6 (IV) THE OVERALL NEED FOR THE SYSTEM.

7 (V) THE AMOUNT OF POWER TO BE PROVIDED BY THE  
8 PROPOSED SYSTEM.

9 (VI) AN INITIAL ASSESSMENT OF COMMUNITY AND PUBLIC  
10 ACCEPTANCE OF THE PROPOSED SYSTEM.

11 SECTION 302. QUALIFICATIONS OF LESSEES.

12 THE INITIAL FEASIBILITY STUDY LEASES AND LONG-TERM LEASES  
13 APPROVED UNDER THIS ACT SHALL BE RESTRICTED TO LESSEES THAT:

14 (1) DEMONSTRATE THE EXPERTISE AND CAPABILITY TO DEVELOP  
15 LARGE-SCALE ENERGY SYSTEMS IN A MARINE ENVIRONMENT.

16 (2) HAVE BEEN DEEMED TO BE QUALIFIED BIDDERS BY THE  
17 DEPARTMENT.

18 (3) FILE WITH THE DEPARTMENT A BOND PAYABLE TO THE  
19 COMMONWEALTH TO COVER THE ENTIRE COST ASSOCIATED WITH THE  
20 REMOVAL OF FACILITIES DEVELOPED PURSUANT TO THIS ACT AND  
21 LOCATED IN SUBMERGED LANDS OF LAKE ERIE.

22 (4) DEMONSTRATE COMPLIANCE WITH FAIR WAGE STANDARDS,  
23 INCLUDING COMPLIANCE WITH THE PROVISIONS OF THE ACT OF AUGUST  
24 15, 1961 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA  
25 PREVAILING WAGE ACT, RELATED TO ALL WORK UNDERTAKEN UNDER  
26 THIS ACT.

27 SECTION 303. WATERS OF THIS COMMONWEALTH.

28 A LEASE AND ANY SUBSEQUENT LONG-TERM LEASE APPROVED UNDER  
29 THIS ACT SHALL ENSURE REASONABLE ACCOMMODATION FOR FISHING,  
30 MARITIME COMMERCE, ENERGY TRANSMISSION RIGHTS-OF-WAY AND OTHER

1 CURRENT AND FUTURE COMMERCIAL AND RECREATIONAL USES OF THE  
2 WATERS OF THIS COMMONWEALTH HELD IN THE PUBLIC TRUST.  
3 SECTION 304. TERM OF LEASES.

4 (A) TERM OF INITIAL FEASIBILITY LEASES.--

5 (1) THE TERM OF INITIAL FEASIBILITY LEASES SHALL BE FOR  
6 A TERM OF UP TO SEVEN YEARS. THE DEPARTMENT MAY UPON  
7 SUFFICIENT JUSTIFICATION RENEW THE INITIAL FEASIBILITY LEASES  
8 FOR ADDITIONAL THREE-YEAR TERMS.

9 (2) IN THE EVENT A LESSEE DOES NOT DEVELOP THE PARCEL  
10 STUDIED OR CONTIGUOUS PARCELS OF SUBMERGED LANDS BY  
11 INSTALLING A LARGE-SCALE ENERGY SYSTEM IN ACCORDANCE WITH A  
12 SUBSEQUENT LONG-TERM LEASE AS PROVIDED IN SUBSECTION (B), THE  
13 LEASE SHALL TERMINATE.

14 (B) TERM OF LONG-TERM LEASE.--

15 (1) A LESSEE UNDER SUBSECTION (A) MAY BE ELIGIBLE TO  
16 ENTER INTO A LONG-TERM LEASE FOR A LARGE-SCALE ENERGY SYSTEM.

17 (2) THE DEPARTMENT, BASED UPON SATISFACTORY EVIDENCE  
18 THAT THE LESSEE IS CAPABLE OF LONG-TERM OPERATION OF THE  
19 LARGE-SCALE ENERGY SYSTEM, MAY ENTER INTO A LONG-TERM LEASE  
20 WITH AN INITIAL TERM OF UP TO 35 YEARS FOR THE CONSTRUCTION,  
21 OPERATION, MAINTENANCE AND REMOVAL OF A LARGE-SCALE ENERGY  
22 SYSTEM AND ANY ASSOCIATED TRANSMISSION FACILITIES IN LAKE  
23 ERIE.

24 (3) THE INITIAL LONG-TERM LEASE MAY BE EXTENDED FOR ALL  
25 OR ANY PORTION OF THE LEASED PREMISES FOR ADDITIONAL TERMS OF  
26 UP TO 35 YEARS UPON FINDING THAT IT SERVES THE BEST INTEREST  
27 OF THE COMMONWEALTH.

28 (4) THE LONG-TERM LEASE SHALL CONTAIN A PROVISION FOR  
29 TERMINATION IF THE LESSEE HAS NOT COMPLETED CONSTRUCTION OF  
30 THE LARGE-SCALE ENERGY SYSTEM WITHIN A REASONABLE PERIOD OF



1 TIME TO BE ESTABLISHED IN THE TERMS OF THE LEASE.

2 (5) THE DEPARTMENT MAY ALLOW, AS AN OPTION TO THE LONG-  
3 TERM LEASE, THE ABILITY OF THE LESSEE TO LEASE CONTIGUOUS  
4 PARCELS. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO DETERMINE  
5 THE SIZE OF THE CONTIGUOUS PARCELS BUT NOT TO EXCEED  
6 INCREMENTS OF 10,000 ACRES.

7 SECTION 305. LEASE AGREEMENTS.

8 (A) APPROVALS.--THE LEASES AUTHORIZED BY THIS ACT SHALL BE  
9 APPROVED AS TO FORM AND LEGALITY BY THE ATTORNEY GENERAL AND THE  
10 OFFICE OF GENERAL COUNSEL, WHICH APPROVALS MAY NOT BE  
11 UNREASONABLY WITHHELD, IN ACCORDANCE WITH LAW AND SHALL BE  
12 EXECUTED BY THE DEPARTMENT IN THE NAME OF THE COMMONWEALTH.

13 (B) LESSEE RIGHTS UNDER LEASE.--A LEASE SHALL GRANT THE  
14 LESSEE THE RIGHT TO USE THE PREMISES IN ACCORDANCE WITH THIS ACT  
15 FOR THE PURPOSES OF CONDUCTING A FEASIBILITY STUDY AND  
16 DEVELOPMENT OF LARGE-SCALE ENERGY SYSTEMS.

17 SECTION 306. FEASIBILITY STUDY.

18 (A) GENERAL RULE.--PRIOR TO ENTERING INTO A LONG-TERM LEASE  
19 IN ACCORDANCE WITH SECTION 304(B), AN INITIAL LESSEE SHALL  
20 CONDUCT A FEASIBILITY STUDY TO ASSESS THE ABILITY OF THE LARGE-  
21 SCALE ENERGY SYSTEM TO BE VIABLE AND TO ASSESS THE  
22 ENVIRONMENTAL, NAVIGATIONAL, PUBLIC SAFETY, STRUCTURAL AND ANY  
23 OTHER IMPACTS AND SITING CONSIDERATIONS NECESSARY TO THE  
24 SUCCESSFUL DEVELOPMENT OF SUCH A SYSTEM.

25 (B) ENVIRONMENTAL IMPACT.--IN ADDITION TO THE EVALUATION OF  
26 ENVIRONMENTAL IMPACTS ASSOCIATED WITH ALL OTHER FEDERAL AND  
27 STATE AUTHORIZATIONS REQUIRED, THE ENVIRONMENTAL IMPACTS TO BE  
28 ASSESSED AND MITIGATED TO THE SATISFACTION OF THE DEPARTMENT  
29 SHALL INCLUDE:

30 (1) THE IMPACTS TO FISHING AND MIGRATORY BIRD AND MAMMAL

1 ROUTES.

2 (2) THE IMPACTS TO THE ECOSYSTEMS AND HABITATS WITHIN  
3 AND ADJACENT TO LAKE ERIE.

4 (3) ECOLOGICAL IMPACTS, INCLUDING TO FISH-SPAWNING BEDS  
5 AND OTHER HABITATS OF IMPORTANCE, FOR ALL SPECIES, INCLUDING  
6 ECOLOGICALLY VALUED SPECIES AND SPORTFISH, SUCH AS STEELHEAD  
7 AND LAKE TROUT, WHICH ARE IMPORTANT TO THE LOCAL ECONOMY OF  
8 THE LAKE ERIE REGION.

9 (C) SITING CONSIDERATIONS.--THE SITING CONSIDERATIONS TO BE  
10 CONSIDERED AND ADDRESSED SHALL INCLUDE:

11 (1) SITE CONDITIONS SUCH AS WIND SPEED, ICE, LAKEBED,  
12 WAVES AND CURRENTS.

13 (2) GEOPHYSICAL CONDITIONS AND GEOHAZARDS, INCLUDING,  
14 BUT NOT LIMITED TO, IMPACTS ON SEDIMENT TRANSPORT, BEACH  
15 REPLENISHMENT AND BLUFF PROTECTION.

16 (3) PORTS AND INFRASTRUCTURE, SUCH AS THE AVAILABILITY  
17 OF SUPPORT FACILITIES IN PENNSYLVANIA AND THE REGION,  
18 EXISTING SUPPLY CHAIN AND SUPPLY CHAIN STRATEGIES, AND AN  
19 ANALYSIS OF HARMS AND BENEFITS TO NAVIGATION AND THE  
20 RECREATION INDUSTRY.

21 (4) FIXED AND FLOATING TECHNOLOGY OPTIONS.

22 (5) INTERCONNECTION, SUCH AS ACCESS TO ONSHORE ENERGY  
23 INFRASTRUCTURE, INCLUDING EXISTING LOCAL GENERATION ASSETS,  
24 ELECTRIC LOAD AND THE POTENTIAL INTERCONNECTION AND  
25 INTEGRATION OF THE ELECTRIC GRID.

26 (6) COST PROJECTION MODELING AND FINANCING ASSUMPTIONS.

27 (7) ECONOMIC DEVELOPMENT AND OPPORTUNITIES FOR  
28 EMPLOYMENT AND WORKFORCE DEVELOPMENT.

29 (8) FEDERAL AND STATE PERMITTING CONSIDERATIONS,  
30 INCLUDING THE POTENTIAL TO DISTURB CULTURAL, ARCHAEOLOGICAL

1 AND HISTORICAL RESOURCES.

2 (9) IN ADDITION TO ENVIRONMENTAL IMPACT ANALYSIS,  
3 ENVIRONMENTAL RISK, BENEFIT AND MITIGATION ANALYSIS, SUCH AS  
4 IMPACTS ON OR IMPROVEMENT TO CUMULATIVE IMPACTS ON AIR  
5 QUALITY, WATER QUALITY AND THE LOCAL ECOLOGY.

6 (10) ECOLOGICAL AND HUMAN HEALTH AND SAFETY  
7 CONSIDERATIONS, SUCH AS REDUCTION OR MITIGATION OF NOISE,  
8 VIBRATION AND HARMONICS, FLICKER OR OTHER IMPACTS TO THOSE  
9 LIVING OR WORKING NEAR THE SITE, INCLUDING RECREATIONAL OR  
10 COMMERCIAL FISHERIES, TOURISM AND VIEWSHED.

11 (11) PUBLIC SUPPORT AND AN EQUITY BENEFIT ANALYSIS.

12 (D) USE OF STUDY.--THE DEPARTMENT SHALL UTILIZE THE RESULTS  
13 OF THE FEASIBILITY STUDY, AS PART OF THE REVIEW PROCESS  
14 ASSOCIATED WITH LEASE APPROVAL OR DISAPPROVAL UNDER THIS ACT.  
15 SECTION 307. IMPROVEMENTS.

16 DEVELOPMENT OF THE PARCELS AUTHORIZED TO BE LEASED BY THIS  
17 ACT SHALL BE FOR LARGE-SCALE ENERGY SYSTEMS, INCLUDING  
18 ELECTRICAL COLLECTION AND TRANSMISSION FACILITIES, SUBMERGED  
19 ELECTRICAL TRANSMISSION CABLES AND OTHER RELATED STRUCTURES.  
20 THIS ACT DOES NOT AUTHORIZE THE DEPARTMENT TO GRANT ANY PROPERTY  
21 INTEREST OUTSIDE OF THE BED OF LAKE ERIE. A LESSEE UNDER THIS  
22 ACT SHALL OBTAIN ALL RIGHTS OF WAYS, EASEMENTS AND OTHER  
23 NECESSARY PROPERTY RIGHTS OUTSIDE OF THE BED OF LAKE ERIE  
24 NECESSARY FOR CONDUCTING ITS OPERATIONS UNDER A LEASE ENTERED  
25 INTO UNDER THIS ACT.

26 SECTION 308. COVENANTS.

27 THE CONDITIONS IMPOSED UNDER THIS ACT SHALL BE COVENANTS THAT  
28 RUN WITH THE LAND AND SHALL BE BINDING UPON THE LESSEE. SHOULD  
29 THE LESSEE PERMIT THE PARCELS AUTHORIZED TO BE LEASED UNDER THIS  
30 ACT, OR ANY PORTION THEREOF, TO BE USED IN A MANNER INCONSISTENT

1 WITH THE CONDITIONS CONTAINED IN THIS ACT, ALL RIGHTS AND  
2 INTERESTS IN THE LEASE AUTHORIZED BY THIS ACT SHALL TERMINATE  
3 IMMEDIATELY.

4 SECTION 309. FEDERAL AND STATE LAW AND PERMITS.

5 NO FEASIBILITY STUDY, CONSTRUCTION, INSTALLATION OR OPERATION  
6 OF LARGE-SCALE ENERGY SYSTEMS OR OTHER RELATED STRUCTURES ON THE  
7 LANDS SUBJECT TO LEASE SHALL OCCUR WITHOUT ADHERENCE TO FEDERAL  
8 AND STATE LAWS AND PRIOR RECEIPT OF ALL APPLICABLE FEDERAL AND  
9 STATE PERMITS, CERTIFICATIONS, AUTHORIZATIONS OR OTHER  
10 APPROVALS.

11 CHAPTER 5

12 ADMINISTRATION

13 SECTION 501. REGULATIONS.

14 THE ENVIRONMENTAL QUALITY BOARD MAY, FOR PURPOSES OF THE  
15 LEASING OF THE BED OF LAKE ERIE FOR LARGE-SCALE ENERGY SYSTEM  
16 DEVELOPMENT UNDER THIS ACT, ADOPT REGULATIONS WHICH AT A  
17 MINIMUM:

18 (1) DETERMINE MINIMUM STANDARDS FOR THE TECHNOLOGY USED  
19 TO CONSTRUCT LARGE-SCALE ENERGY SYSTEMS ON AND TO TRANSMIT  
20 ELECTRICITY FROM THE AREAS OF LAKE ERIE LEASED FOR THAT  
21 PURPOSE.

22 (2) ESTABLISH PROCEDURES FOR THE CONDUCT OF FEASIBILITY  
23 STUDIES BY LARGE-SCALE ENERGY SYSTEM DEVELOPERS RELATED TO,  
24 BUT NOT LIMITED TO, THE SITING, ECONOMICS AND ENVIRONMENTAL  
25 ISSUES OF A SYSTEM.

26 (3) ESTABLISH REASONABLE FEES TO COVER THE COSTS  
27 INCURRED BY THE DEPARTMENT AND DIRECTLY RELATED TO THE  
28 PREPARATION, REVIEW, EXECUTION OF LEASE OR OTHER AGREEMENTS  
29 ASSOCIATED WITH THIS ACT.

30 (4) ESTABLISH A PROCESS FOR THE DEVELOPER OF THE LARGE-

1 SCALE ENERGY SYSTEM TO DEMONSTRATE COMMUNITY AND PUBLIC  
2 ACCEPTANCE OF THE PROPOSED SYSTEM.

3 (5) ESTABLISH SITING, DESIGN AND OTHER TECHNICAL  
4 SPECIFICATIONS AND REQUIREMENTS.

5 (6) ESTABLISH ANY OTHER REQUIREMENTS THAT THE DEPARTMENT  
6 DETERMINES ARE NECESSARY TO IMPLEMENT OR ADMINISTER THIS ACT.

7 (7) PROHIBIT LESSEES FROM ENTERING INTO SUBLEASES.

8 SECTION 502. SUBLEASE BY DEPARTMENT PROHIBITED.

9 THE DEPARTMENT MAY NOT ENTER INTO SUBLEASES OR NONDISTURBANCE  
10 AGREEMENTS ON ANY OF THE SUBMERGED LANDS OF LAKE ERIE.

11 SECTION 503. TRANSFER OF INTEREST PROHIBITED.

12 EXCEPT AS PROVIDED IN SECTION 301, THIS ACT DOES NOT  
13 AUTHORIZE OR OTHERWISE ALLOW FOR OR INCLUDE ANY TRANSFER OF ANY  
14 MINERAL OR OTHER SURFACE OR SUBSURFACE INTEREST ASSOCIATED WITH  
15 THE SUBMERGED LANDS OF LAKE ERIE.

16 SECTION 504. CONSTRUCTION.

17 EXCEPT AS PROVIDED IN SECTION 301, NOTHING IN THIS ACT SHALL  
18 BE CONSTRUED TO AFFECT OR OTHERWISE LIMIT THE PROVISIONS OF THE  
19 ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE DAM  
20 SAFETY AND ENCROACHMENTS ACT, THAT MAY REQUIRE FURTHER MEASURES  
21 TO PROVIDE FOR PUBLIC ACCESS AND USE OF THE LAND AND ADJACENT  
22 WATER.

23 SECTION 505. INTERAGENCY RESPONSIBILITIES.

24 THE DEPARTMENT SHALL WORK COOPERATIVELY WITH:

25 (1) THE DEPARTMENT OF GENERAL SERVICES TO ENSURE THAT  
26 ALL OF THE SYSTEMS UNDER THIS ACT SATISFY ALL REQUIREMENTS  
27 UNDER THIS ACT, ALL REQUIREMENTS FOR FORM AND LEGALITY, ALL  
28 APPLICABLE ENVIRONMENTAL STANDARDS AND ALL ENVIRONMENTAL  
29 PERMIT REQUIREMENTS.

30 (2) THE PENNSYLVANIA PUBLIC UTILITY COMMISSION TO

1 ESTABLISH THAT THE PROPOSED LARGE-SCALE ENERGY SYSTEM IS  
2 VIABLE, BOTH ECONOMICALLY AND FROM AN ENERGY PRODUCTION  
3 PERSPECTIVE. THE PENNSYLVANIA PUBLIC UTILITY COMMISSION SHALL  
4 ASSIST THE DEPARTMENT IN ASSESSING ALL OF THE FOLLOWING:

5 (I) THE SYSTEM'S IMPACT ON RATEPAYERS.

6 (II) WHETHER A BIDDER HAS SUFFICIENT RESOURCES.

7 (III) WHETHER A BIDDER HAS THE ABILITY TO  
8 SUCCESSFULLY COMPLETE ALL OF THE ACTIVITIES NECESSARY FOR  
9 INTERCONNECTION TO THE ELECTRIC DISTRIBUTION SYSTEM.

10 CHAPTER 7

11 ROYALTY PAYMENTS AND DISTRIBUTIONS

12 SECTION 701. ROYALTY PAYMENTS.

13 EACH LESSEE OF A LONG-TERM LEASE UNDER THIS ACT SHALL BE  
14 SUBJECT TO THE PAYMENT TO THE COMMONWEALTH OF SUBMERGED LANDS  
15 OCCUPATION FEES, DEVELOPMENT RENTAL FEES, BONUSES AND ROYALTIES  
16 FROM THE ENERGY GENERATION AND ENERGY CREDITS TO BE DETERMINED  
17 IN THE LONG-TERM LEASE. THE OPERATOR OF THE SYSTEM SHALL SUBMIT  
18 THE ROYALTY PAYMENT ANNUALLY UNLESS AN ALTERNATIVE PAYMENT  
19 SCHEDULE IS APPROVED BY THE DEPARTMENT. THE OPERATOR SHALL  
20 SUBMIT THE INITIAL ROYALTY PAYMENT BEGINNING ON JANUARY 1 OF THE  
21 YEAR FOLLOWING THE SYSTEM'S BEING PLACED INTO PRODUCTION.

22 SECTION 702. LAKE ERIE LARGE-SCALE ENERGY SYSTEM DEVELOPMENT  
23 FUND.

24 (A) ESTABLISHMENT.--THE LAKE ERIE LARGE-SCALE ENERGY SYSTEM  
25 DEVELOPMENT FUND IS ESTABLISHED IN THE STATE TREASURY. THE FUND  
26 SHALL BE USED AS PROVIDED BY THIS ACT TO CONSERVE AND MAINTAIN  
27 LAKE ERIE PUBLIC NATURAL RESOURCES. THE MONEY IN THE FUND IS  
28 APPROPRIATED ON A CONTINUING BASIS FOR THE DISTRIBUTIONS AND  
29 TRANSFERS PROVIDED UNDER SECTION 703.

30 (B) DEPOSITS.--ALL DEVELOPMENT RENTAL, BONUS AND ROYALTY

1 PAYMENTS FROM ENERGY GENERATION AND ENERGY CREDITS FROM LARGE-  
2 SCALE ENERGY SYSTEMS SITUATED IN LAKE ERIE SHALL BE DEPOSITED  
3 INTO THE FUND.

4 SECTION 703. DISTRIBUTIONS AND TRANSFERS.

5 ON THE LAST BUSINESS DAY OF EACH CALENDAR QUARTER, THE STATE  
6 TREASURER SHALL MAKE THE FOLLOWING DISTRIBUTIONS AND TRANSFERS  
7 FROM THE FUND:

8 (1) TEN PERCENT OF THE FUND SHALL BE DISTRIBUTED TO THE  
9 DEPARTMENT FOR ITS ADMINISTRATION OF THE LEASES UNDER THIS  
10 ACT AND FOR WATERS OF THIS COMMONWEALTH CONSERVATION AND  
11 MAINTENANCE PROJECTS.

12 (2) TWENTY PERCENT OF THE FUND SHALL BE DISTRIBUTED TO  
13 THE DEPARTMENT FOR PAYMENT TO ERIE COUNTY FOR PUBLIC NATURAL  
14 RESOURCE CONSERVATION AND MAINTENANCE RELATED PROJECTS IN THE  
15 COUNTY.

16 (3) TWENTY PERCENT OF THE FUND SHALL BE DISTRIBUTED TO  
17 THE PENNSYLVANIA FISH AND BOAT COMMISSION FOR PROGRAMS,  
18 PROJECTS OR OTHER ACTIVITIES RELATED TO CONSERVATION AND  
19 MAINTENANCE PROJECTS ASSOCIATED WITH LAKE ERIE.

20 (4) THIRTY PERCENT OF THE FUND SHALL BE TRANSFERRED TO  
21 THE ENERGY DEVELOPMENT FUND TO SUPPORT EFFORTS BY THE  
22 PENNSYLVANIA ENERGY DEVELOPMENT AUTHORITY FOR ENERGY  
23 EFFICIENCY, RENEWABLE ENERGY OR CLEAN ENERGY PROJECTS THAT  
24 REDUCE AIR POLLUTION OR IMPROVE AIR QUALITY.

25 (5) TWENTY PERCENT OF THE FUND SHALL BE TRANSFERRED TO  
26 THE CONSERVATION DISTRICT FUND FOR DISTRIBUTION TO LAKE ERIE  
27 WATERSHED COUNTY CONSERVATION DISTRICTS CONSISTENT WITH  
28 GUIDELINES ESTABLISHED BY THE STATE CONSERVATION COMMISSION  
29 FOR PUBLIC NATURAL RESOURCE CONSERVATION AND MAINTENANCE  
30 PROJECTS.

1 SECTION 704. SUBMERGED LANDS LEASE CONSIDERATION.

2 SUBMERGED LANDS OCCUPATION FEES FOR THE USE AND OCCUPATION  
3 IN, ALONG, UNDER, ACROSS OR OVER THE BED OF LAKE ERIE AS  
4 DESCRIBED IN THIS ACT SHALL BE REASONABLE TO COMPENSATE FOR THE  
5 USE AND OCCUPATION OF THE BED OF LAKE ERIE AND SHALL BE  
6 DEPOSITED INTO THE CLEAN WATER FUND.

7 CHAPTER 9

8 MISCELLANEOUS PROVISIONS

9 SECTION 901. EFFECTIVE DATE.

10 THIS ACT SHALL TAKE EFFECT IN 120 DAYS.