

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2338 Session of 2024

INTRODUCED BY FIEDLER, O'MARA, STEELE, SCHLOSSBERG, HILL-EVANS, D. WILLIAMS, WEBSTER, CURRY, KRAJEWSKI, SCOTT, VITALI, SANCHEZ, BOYD, DONAHUE, SHUSTERMAN, T. DAVIS, KENYATTA, BOROWSKI, ROZZI, SAPPEY, GUENST, HANBIDGE, HOHENSTEIN, KHAN, McANDREW, WARREN AND MERSKI, MAY 28, 2024

AS REPORTED FROM COMMITTEE ON CONSUMER PROTECTION, TECHNOLOGY AND UTILITIES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 11, 2024

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled  
2 "An act providing for and reorganizing the conduct of the  
3 executive and administrative work of the Commonwealth by the  
4 Executive Department thereof and the administrative  
5 departments, boards, commissions, and officers thereof,  
6 including the boards of trustees of State Normal Schools, or  
7 Teachers Colleges; abolishing, creating, reorganizing or  
8 authorizing the reorganization of certain administrative  
9 departments, boards, and commissions; defining the powers and  
10 duties of the Governor and other executive and administrative  
11 officers, and of the several administrative departments,  
12 boards, commissions, and officers; fixing the salaries of the  
13 Governor, Lieutenant Governor, and certain other executive  
14 and administrative officers; providing for the appointment of  
15 certain administrative officers, and of all deputies and  
16 other assistants and employes in certain departments, boards,  
17 and commissions; providing for judicial administration; and  
18 prescribing the manner in which the number and compensation  
19 of the deputies and all other assistants and employes of  
20 certain departments, boards and commissions shall be  
21 determined," in Energy Development Authority and emergency  
22 powers, further providing for definitions, for Energy  
23 Development Authority, for powers and duties and for  
24 authority indebtedness.

25 The General Assembly of the Commonwealth of Pennsylvania  
26 hereby enacts as follows:

1 Section 1. The definitions of "cost" and "project" in  
2 section 2801-C of the act of April 9, 1929 (P.L.177, No.175),  
3 known as The Administrative Code of 1929, are amended to read:

4 Section 2801-C. Definitions.--The following words and  
5 phrases when used in this article shall have the meanings given  
6 to them in this section unless the context clearly indicates  
7 otherwise:

8 \* \* \*

9 "Cost" means the expense of construction and the expense of  
10 acquisition of all structures, equipment, fixtures, lands and  
11 other property rights and interests in land necessary to a  
12 project. The term also includes the expense of demolishing,  
13 removing or relocating any buildings, equipment, fixtures or  
14 structures on lands acquired or to be acquired, including the  
15 expense of acquiring any lands to which such buildings, equipment, fixtures or structures may be moved or relocated;  
16 storm water management; sewage treatment, waste treatment and  
17 pollution control facilities; [railroad sidings, spurs or branch  
18 lines]; all labor, materials, machinery, fixtures and  
19 equipment[, fixtures]; financing charges; interest on all bonds  
20 prior to and during construction, and for a period of one year  
21 thereafter; engineering, financial and legal services; plans,  
22 specifications, studies, surveys necessary or incidental to  
23 determining the feasibility or practicability of constructing a  
24 project; administrative expenses; reserves for interest and for  
25 extension, enlargements, additions and improvements; and such  
26 other expenses as may be necessary or incidental to the  
27 construction of the project and the placing of the same in  
28 operation[.], including expenses for energy audits,  
29 environmental and geotechnical surveys, permits and other

1 necessary approvals, planning and financing.

2 \* \* \*

3 "Project" means [an] a structure, fixture, real and other  
4 property and property rights and interests, facility,  
5 undertaking or activity, entirely or largely located or  
6 conducted in Pennsylvania, which cannot be effectively funded  
7 using privately available resources, relating to:

8 (1) basic and applied research concerning energy use,  
9 renewable energy resources and energy extraction, transmission,  
10 storage or conversion;

11 (2) limited scale demonstration of innovative or  
12 commercially unproven technology to promote the production, use  
13 or conservation of energy; [or]

14 (3) activities to promote or remove obstacles to the  
15 utilization and transportation of Pennsylvania energy resources,  
16 including but not limited to limited scale synthetic fuel  
17 facilities and the conversion or technological improvement of  
18 industrial, commercial or agricultural systems to utilize  
19 Pennsylvania indigenous energy resources, including coal or  
20 renewable energy resources: Provided, That no such facility  
21 unreasonably interferes with private waste recycling  
22 industries[.];

23 (4) the development, generation, conservation, management,  
24 delivery or storage of renewable energy resources for  
25 residential, commercial, industrial, governmental, agricultural,  
26 transportation or cogeneration use; or

27 (5) the strengthening of the resiliency of infrastructure  
28 that supports the development, generation, conservation,  
29 management, delivery, storage or efficient use of energy.

30 Section 2. Section 2803-C(b) (1), (2), (3) and (4) and (d) of

1 the act are amended and the section is amended by adding a  
2 subsection to read:

3 Section 2803-C. Energy Development Authority.--\* \* \*

4 (b) The authority shall be governed and all of its corporate  
5 powers exercised by a board of directors which shall be composed  
6 of the following individuals:

7 (1) [Nine] Five members to be appointed by the Governor[,  
8 one of whom shall be designated as chairman]. At least two  
9 members shall be members of the general public. The members  
10 initially appointed shall serve for terms of two, three and four  
11 years, respectively, the particular term of each to be  
12 designated by the Governor at the time of appointment. The terms  
13 of all of their successors shall be four years each, except that  
14 any person appointed to fill a vacancy shall serve only for the  
15 unexpired term. Every member's term shall extend until his  
16 successor is appointed and qualified. Any appointment of a  
17 member of the authority shall be subject to the advice and  
18 consent of a majority of all of the members of the Senate. Any  
19 appointed member of the authority shall be eligible for  
20 reappointment.

21 (2) The Secretary of Environmental [Resources] Protection or  
22 his designee.

23 (3) The Secretary of [Banking] Conservation and Natural  
24 Resources or his designee.

25 (4) The Secretary of [Commerce] Community and Economic  
26 Development or his designee.

27 \* \* \*

28 (d) The board of directors shall provide for the holding of  
29 regular and special meetings. [Ten] Eight directors attending  
30 shall constitute a quorum for the transaction of any business

1 and at least [six] five votes shall be required to adopt any  
2 action, except that at least [nine] seven votes shall be  
3 required to approve financial assistance for any project.

4 (e) The Governor shall designate a member of the board to  
5 serve as chairperson. The members shall select from among  
6 themselves other officers as the members deem necessary.

7 Section 3. Section 2806-C(2), (11), (14) and (18) of the act  
8 are amended and the section is amended by adding paragraphs to  
9 read:

10 Section 2806-C. Powers and Duties.--The authority, as a  
11 public corporation and governmental instrumentality exercising  
12 public powers of the Commonwealth, is hereby granted and shall  
13 have and may exercise all powers necessary or appropriate to  
14 carry out and effectuate the purposes of this article, including  
15 the following powers, in addition to others herein granted:

16 \* \* \*

17 (2) To have ~~perpetual~~, UNTIL DECEMBER 31, 2035, existence <--  
18 [for a term of fifty years, or until its existence shall be  
19 terminated by law].

20 \* \* \*

21 (11) To lease, lease with an option to purchase, sell by  
22 installment sale or otherwise, or to otherwise dispose of, any  
23 or all of its projects, or any or all of its real and other  
24 property and property rights and interests necessary for a  
25 project, in whole or in part, for such rentals or amounts and  
26 upon such terms and conditions as the authority may deem proper.

27 \* \* \*

28 (14) To make grants, loans and loan guarantees to fund  
29 [research] projects, including pilot programs for projects.

30 \* \* \*

1 (18) To receive appropriations and apply for and accept  
2 grants, gifts, donations, bequests and settlements from any  
3 public, quasi-public, nonprofit or private source[.], including  
4 the Federal Government, the Commonwealth or any political  
5 subdivision of the Commonwealth, corporations, associations,  
6 partnerships, nonprofit corporations, charitable organizations,  
7 foundations, estates and individuals. For purposes of this  
8 paragraph, a "grant" shall include the Federal tax refund  
9 generated by the authority's elective payment of an applicable  
10 tax credit under the Inflation Reduction Act of 2022 (Public Law  
11 117-169, 136 Stat. 1818). To the extent permitted by Federal  
12 law, a "grant" shall also include a tax credit, or the total or  
13 partial dollar value of a tax refund generated by the elective  
14 payment of a tax credit, that is transferred, assigned, paid,  
15 conveyed to or shared with the authority by a public, quasi-  
16 public, nonprofit or private entity. Funds received by the  
17 authority shall be deposited in the Energy Development Fund and  
18 used for the purposes of the authority.

19 (19) To establish, through bylaws and any amendments to the  
20 bylaws, its fiscal year.

21 (20) To consider assistance to low-income and moderate-  
22 income individuals and disadvantaged communities, assistance to  
23 small businesses and local governmental entities and job  
24 creation, retention and training in establishing and  
25 effectuating its priorities.

26 (21) To plan, design, develop, finance, construct, own,  
27 operate, maintain and improve projects, including pilot programs  
28 for projects, either alone or jointly with other entities,  
29 provided that the authority, or a wholly owned subsidiary of the  
30 authority, shall maintain majority ownership of a project at all

1 times unless or until it terminates its interest in the project  
2 consistent with this section. The power under this paragraph  
3 shall extend to projects on real property which the authority  
4 does not own or in which the authority does not have a property  
5 right or interest, subject to agreement by the owner of the real  
6 property, right or interest.

7 (22) To provide capital, leverage private capital, provide  
8 credit enhancements, make investments and provide other forms of  
9 financial assistance for the development or deployment of  
10 renewable energy resources in this Commonwealth, either directly  
11 or by contract with an external administrator acting under the  
12 oversight of the authority. The authority or its contractor may  
13 invest in or finance projects alone or in conjunction with other  
14 investors such as community development financial institutions,  
15 insured credit unions and depository institutions and nonprofit  
16 organizations that perform lending activities. Neither the  
17 authority or its contractor may provide typical banking  
18 functions or take deposits other than deposits from repayments  
19 and other revenue received from financial assistance provided  
20 under this section.

21 (23) To acquire, own, lease or maintain real and other  
22 property and property rights and interests necessary for a  
23 project.

24 (24) To apply for and receive, and assist a public, quasi-  
25 public, nonprofit or private entity in applying for and  
26 receiving, a Federal tax refund generated by the elective  
27 payment of an applicable tax credit under the Inflation  
28 Reduction Act of 2022. The authority may charge a reasonable fee  
29 for providing assistance and shall deposit all fees collected  
30 into the Energy Development Fund to be used for the purposes of

1 the authority.

2 Section 4. Section 2807-C(j) introductory paragraph of the  
3 act is amended to read:

4 Section 2807-C. Authority Indebtedness.--\* \* \*

5 (j) In the event that the authority shall default in the  
6 payment of principal [of] or premium, if any, or interest on any  
7 issue of bonds after the principal premium or interest shall  
8 become due, whether at maturity, upon call for redemption or  
9 otherwise and such default shall continue for a period of thirty  
10 days or in the event that the authority shall fail or refuse to  
11 comply with the provisions of this act or shall default in any  
12 agreement made with the holders of the bonds, the holders of  
13 twenty-five percent (25%) in aggregate principal amount of the  
14 bonds then outstanding of such issues, by instrument or  
15 instruments filed in the Office of the Prothonotary of the  
16 Commonwealth Court, may appoint a trustee to represent the  
17 bondholders for the purpose herein provided. Such trustee and  
18 any trustee under any indenture or other agreement, may, and  
19 upon written request of the holders of twenty-five percent  
20 (25%), or such other percentage as may be specified in any  
21 indenture or other agreement aforesaid, in principal amount of  
22 the particular issues of bonds then outstanding, shall, in his  
23 or its own name:

24 \* \* \*

25 Section 5. This act shall take effect immediately.