
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY SONNEY, CONKLIN, ENGLISH, A. HARRIS, W. KELLER,
KORTZ, LAWRENCE, MILLARD AND MURT, FEBRUARY 24, 2017

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 24, 2017

AN ACT

1 Authorizing the Department of General Services to lease
2 submerged lands in excess of 25 acres within Erie County for
3 the assessment, development, construction and operation of
4 utility scale offshore wind, solar or kinetic energy
5 generation facilities; providing for collection of certain
6 lease and royalty payments; establishing the Lake Erie Large-
7 Scale Energy System Development Fund; and providing for
8 distributions and transfers from the fund.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Short title.

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

14 Section 2. Definitions.

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

18 "Department." The Department of General Services of the
19 Commonwealth.

20 "Fund." The Lake Erie Large-Scale Energy System Development

1 Fund established under this act.

2 "Large-scale energy system" or "system." A wind energy
3 generation system at more than 500 megawatts as measured by the
4 nameplate capacity of the system or a solar energy system of at
5 least 12 megawatts as measured by the nameplate capacity of the
6 system.

7 Section 3. Lands within the Lake Erie Basin.

8 (a) Legislative declaration.--The General Assembly declares
9 that the Commonwealth owns lands within the bed of Lake Erie,
10 all of which lands are located in Erie County.

11 (b) Authorization.--

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

16 (2) The department shall develop a map designating the
17 areas of the bed of Lake Erie that may be leased for large-
18 scale energy system development. The department shall ensure
19 that the areas that may be leased are concentrated in the
20 central and western portion of Lake Erie, avoid development
21 in nearshore areas, avoid shipping lanes and avoid areas of
22 Lake Erie where migratory birds are concentrated.

23 (3) The department shall develop and implement a
24 competitive process for the leasing of submerged lands for
25 the development of large-scale energy systems to convert wind
26 or solar energy to electricity. The competitive process shall
27 include, at a minimum:

28 (i) A demonstration by the bidders of their
29 expertise, experience and financial capacity to conduct a
30 feasibility study and to develop such a system.

1 (ii) A certification that the bidder has the
2 financial capability to cover all costs associated with
3 the feasibility study and interconnecting to an energy
4 distribution system.

5 (iii) A demonstration by the bidders of the benefits
6 to be accrued by the Commonwealth, including, but not
7 limited to:

8 (A) The number of full-time jobs to be created.

9 (B) The overall economic impact of the proposed
10 system.

11 (C) The environmental benefits of the system.

12 (D) The overall need for the system.

13 (E) The amount of power to be provided by the
14 proposed system.

15 (F) An initial assessment of community and
16 public acceptance of the proposed system.

17 Section 4. Lease conditions.

18 (a) Qualifications of lessees.--A lease and a subsequent
19 long-term lease approved under this act shall be restricted to
20 lessees who:

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

23 (2) Have been deemed to be the most qualified bidder
24 based upon the criteria listed in section 3(b)(3) and any
25 other additional criteria that may be developed by the
26 department.

27 (3) File with the department a bond payable to the
28 Commonwealth to cover the entire cost associated with the
29 removal of facilities developed pursuant to this act and
30 located in submerged lands of Lake Erie.

1 (b) Waters of this Commonwealth.--A lease and any subsequent
2 long-term lease approved under section 3 shall ensure reasonable
3 accommodation for fishing, maritime commerce, energy
4 transmission rights-of-way and other current and future
5 commercial and recreational uses of the waters of this
6 Commonwealth held in the public trust.

7 (c) Term of lease.--

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

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

16 (d) Term of long-term lease.--

17 (1) A person awarded a lease under this act may be
18 eligible to enter into a long-term lease for the facilities
19 to be constructed.

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

27 (3) The initial long-term lease may be extended for all
28 or any portion of the leased premises for additional terms of
29 up to 35 years.

30 (4) In addition to termination of the lease under

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

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

11 (e) Feasibility study.--

12 (1) Prior to commencing construction of the system, a
13 developer awarded a lease shall conduct a feasibility study
14 to assess the ability of the large-scale energy system to be
15 viable and to assess the environmental impacts and siting
16 considerations necessary to the successful development of
17 such a system.

18 (2) The environmental impacts to be addressed shall
19 include, but not be limited to, the impacts to fishing and
20 migratory bird and mammal routes.

21 (3) The siting considerations to be assessed shall
22 include, but not be limited to:

23 (i) Ice impacts.

24 (ii) Wind speed.

25 (iii) Ship traffic.

26 (iv) Viewshed impacts.

27 (4) The department shall utilize the results of the
28 feasibility study, as part of the review process associated
29 with the approval or disapproval, to proceed with the
30 construction of a large-scale energy system.

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

6 (f) Improvements.--Development of the parcels authorized to
7 be leased by this act shall be for large-scale energy systems,
8 including electrical collection and transmission facilities,
9 submerged electrical transmission cables and other related
10 structures.

11 (g) Regulations.--The department shall, for purposes of
12 leasing the bed of Lake Erie for large-scale energy system
13 development, adopt 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

1 section.

2 (6) Prohibit lessees from entering into subleases.

3 (h) Covenants.--These conditions shall be covenants that run
4 with the land and shall be binding upon the lessee. Should the
5 lessee permit the parcels authorized to be leased under this
6 section, or any portion thereof, to be used in a manner
7 inconsistent with the conditions contained in this act, all
8 rights and interests in the lease authorized by this act shall
9 terminate immediately.

10 (i) Lease agreements.--

11 (1) Any lease and any other documents authorized by this
12 act shall be approved as to form and legality by the Attorney
13 General and the Office of General Counsel in accordance with
14 law and shall be executed by the department, which approvals
15 shall not be unreasonably withheld, in the name of the
16 Commonwealth.

17 (2) The lease shall grant the lessee the right to use
18 the premises in accordance with this act for the purposes of
19 conducting a feasibility study and development of large-scale
20 energy systems.

21 (j) Sublease by department prohibited.--The department may
22 not enter into subleases or nondisturbance agreements on any of
23 the submerged lands of this Commonwealth in accordance with this
24 act.

25 (k) Transfer of interest prohibited.--Except as provided in
26 section 3, this act does not authorize or otherwise allow for or
27 include any transfer of any mineral or other surface or
28 subsurface interest associated with Lake Erie submerged lands of
29 this Commonwealth.

30 Section 5. Construction.

1 Except as provided in section 3, nothing in this act shall be
2 construed to affect or otherwise limit the provisions of the act
3 of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety
4 and Encroachments Act, that may require further measures to
5 provide for public access and use of the land and adjacent
6 water.

7 Section 6. Interagency responsibilities.

8 The department shall work cooperatively with:

9 (1) The Department of Environmental Protection to ensure
10 that all of the systems meet all applicable environmental
11 standards and comply with all environmental permit
12 requirements.

13 (2) The Pennsylvania Public Utility Commission to
14 establish that the proposed large-scale energy system is
15 viable, both economically and from an energy production
16 perspective. The Pennsylvania Public Utility Commission shall
17 also assist the department in assessing the system's impact
18 on ratepayers, the ability of the proposed developer to have
19 sufficient resources and the ability to successfully complete
20 all the activities necessary for interconnection to the
21 electric distribution system.

22 Section 7. Royalty payments.

23 Each operator of a large-scale energy system shall be subject
24 to the payment to the Commonwealth of a 2% royalty on the gross
25 revenues of the system. The operator of the system shall submit
26 this payment annually unless an alternative payment schedule is
27 approved by the department. The operator shall submit the
28 initial royalty payment beginning on January 1 of the year
29 following the system's being placed into production.

30 Section 8. Lake Erie Large-Scale Energy System Development

1 Fund.

2 (a) Establishment.--The Lake Erie Large-Scale Energy System
3 Development Fund is established in the State Treasury. The money
4 of the fund is hereby appropriated on a continuing basis for the
5 distributions and transfers provided under section 9.

6 (b) Deposits.--All royalty payments from the production of
7 electricity from large-scale energy systems situated on lands
8 owned by the Commonwealth in Lake Erie shall be deposited in the
9 fund.

10 Section 9. Distributions and transfers.

11 On the last business day of each calendar quarter, the State
12 Treasurer shall make the following distributions and transfers
13 from the fund:

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

16 (2) 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 Lake Erie.

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

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

26 Section 10. Effective date.

27 This act shall take effect in 120 days.