

## No. 103

## AN ACT

## HB 796

Amending the act of January 19, 1968 (1967 P.L.996, No.443), entitled "An act authorizing the creation of indebtedness of five hundred million dollars for the conservation and reclamation of land and water resources; defining the powers and duties of certain offices, agencies and political subdivisions; providing for the allotment of proceeds hereunder including Commonwealth grants; prescribing standards and making appropriations," granting the Secretary of Environmental Resources the right to enter certain premises for the purpose of conserving and reclaiming land and water resources; providing for liens upon such land; providing for the promulgation of rules and regulations and providing for rights of recovery for abatement of emergency conditions.

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

Section 1. Clause (1) of subsection (a) of section 16, act of January 19, 1968 (1967 P.L.996, No.443), known as "The Land and Water Conservation and Reclamation Act," amended July 12, 1972 (P.L.857, No.193), is amended to read:

Section 16. Allotment of Moneys.—(a) The moneys received by the Commonwealth from the issuance and sale of bonds and notes pursuant to this act when appropriated by the General Assembly from the development fund shall be allotted for the following specific purposes:

(1) To the Department of Environmental Resources the sum of two hundred million dollars (\$200,000,000) for the elimination of land and water scars created by past **[coal]** mining practices, one hundred fifty million dollars (\$150,000,000) of which shall be used for the prevention, control and elimination of stream pollution from mine drainage and may include the restoration of abandoned strip mine areas, twenty million dollars (\$20,000,000) of which shall be used for the prevention, control and elimination of air pollution from abandoned burning coal refuse banks provided such land and bank material is publicly owned, and thirty million dollars (\$30,000,000) of which shall be used for the prevention of surface subsidence above abandoned mine operations, for the control and extinguishment of surface and underground fires from abandoned mines and for administration expenses attendant thereto.

**[Pending the acquisition by the Commonwealth, a county or a municipality, when necessary, of any land or other property interest required to combat stream pollution, air pollution, subsidence or mine fires, whenever] If** the Secretary of Environmental Resources makes a finding of fact that: (i) a mine fire, refuse bank fire, stream pollution resulting from **[an abandoned strip mine area,] mine drainage** or subsidence resulting from mining is at a stage where in the public interest immediate action should be taken; and (ii) **[in the cases of mine fires, refuse**

bank fires or subsidence, an emergency exists and no other person or agency will act to combat the condition; and (iii)] the owners of the property upon which entry must be made to combat the mine fire, refuse bank fire, stream pollution resulting from **[an abandoned strip mine area,] mine drainage** or subsidence resulting from mining are not known, are not readily available or will not give permission for the Secretary of Environmental Resources, political subdivisions of the Commonwealth or municipalities, their agents, employes or contractors to enter upon such premises [, or the delay entailed in reaching said owners and in securing from them the right to enter upon the premises in the case of mine fires, refuse bank fires and subsidence constitutes a clear and immediate danger to the life or property of others].

Then, upon giving notice *by mail* to the owners if known or *if not known* by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality in which the land lies, **[and filing with the prothonotary of the court of common pleas of the county in which said premises lie of such intention of entry or taking, in conformity with the provisions of the "Eminent Domain Code,"]** the Secretary of Environmental Resources, political subdivisions of the Commonwealth or municipalities, their agents, employes or contractors, shall have the right to enter upon the premises *and any other land in order to have access to the premises* to combat the mine fire, refuse bank fire, stream pollution resulting from **[an abandoned strip mine area,] mine drainage** or subsidence resulting from mining and to do all *things* necessary or expedient to do so. *Such entry shall not be construed as an act of condemnation of property or of trespass thereon.* The moneys expended for such work and the benefits accruing to any such premises so entered upon shall **[immediately become a charge] be chargeable** against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry. *Provided however, that this provision is not intended to create new rights of action or eliminate existing immunities.*

*The Secretary of the Department of Environmental Resources, political subdivisions of the Commonwealth or municipalities, their agents, employes or contractors, shall have the right to enter upon any lands for the purpose of conducting a study or exploratory work to determine if stream pollution from mine drainage, air pollution from abandoned burning coal refuse banks, subsurface subsidence or surface and underground fires exists and to determine the feasibility of correcting such conditions. Such entry shall not be construed as an act of condemnation of property or of trespass thereon.*

Within six months after the completion of any of the work *to abate non-emergency pollution conditions from past mining practices* herein contemplated on any *privately owned* property, the Secretary of Environmental Resources shall itemize the moneys so expended and **[shall] may** file a statement thereof in the office of the prothonotary of the county.

in which the land lies *together with a notarized appraisal by an independent appraiser of the value of the land before and after the abatement of the pollution conditions herein contemplated, if the moneys so expended shall result in a significant increase in property value.* Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land. The lien shall not exceed [an] *the* amount determined by [a board of viewers, appointed as provided in the "Eminent Domain Code,"] *the appraisal* to be the *increase in the* market value of the land *as a result of the abatement of the pollution* immediately after the Department of Environmental Resources has completed its work, and the lien shall extend only to that portion of the premises directly involved in the work of the Department of Environmental Resources under this act. *The landowner may proceed as provided by the "Eminent Domain Code" to petition for a board of view within sixty days of the filing of the lien, to determine the increase in the market value of that portion of the premises directly involved in the work herein contemplated as a result of the abatement of the pollution conditions. The amount reported by the board of viewers to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision of the viewers may appeal as provided in the "Eminent Domain Code."*

*The lien provided herein shall be entered in the judgment index and shall be given the effect of a judgment against the said land. The lien shall be enforced by the direct issuance of a writ of execution without prosecution to judgment of a writ of scire facias in the manner provided by law for the enforcement, collection and revival of municipal liens.*

*The Department of Environmental Resources is authorized to expend funds, as appropriated in this section for the emergency abatement of a mine fire, refuse bank fire, stream pollution resulting from mine drainage or subsidence resulting from mining whenever created if the Secretary of Environmental Resources makes a finding of fact that: (i) an emergency exists constituting an extreme danger to the public; and (ii) no other person or agency will act to combat the condition. The department, political subdivisions of the Commonwealth or municipalities, their agents, employes or contractors shall have the right to enter upon the premises where the emergency exists and any other land to have access to the premises to combat the mine fire, refuse bank fire, stream pollution resulting from mine drainage or subsidence resulting from mining and to do all things necessary or expedient to do so. Such entry shall not be construed as an act of condemnation of property or of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and refuse piles located thereon and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: Provided, however, That this provision is*

*not intended to create new rights of action or eliminate existing immunities.*

*All moneys expended under this act for the emergency abatement of mine fires, refuse bank fires, stream pollution from mine drainage or subsidence may be recovered in full from the landowner, or any other person if they were liable under law for abating the conditions resulting in the emergency. The moneys expended for the emergency abatement of these conditions is hereby declared to constitute a debt which may be recovered in any action at law to compel payment of debts. If the landowner of the premises, or any other person is not liable under any law to abate the aforesaid emergency conditions then, within either six months after the completion of any of the work herein contemplated or within six months after a final court determination of the absence of liability, the Secretary of Environmental Resources may file a lien upon the terms and conditions provided herein.*

(I) The Department of Environmental Resources shall have the power and authority, if not granted it otherwise, to engage in the work aforesaid and to do all things necessary and expedient to effect such programs. *The Department of Environmental Resources shall have the power and authority to enter into co-operative abatement projects under this act with the United States of America and its agencies and other states and their agencies. In addition to any other remedies provided for in this act, the Attorney General, at the request of the department, may initiate, in the Commonwealth Court or the court of common pleas of the county in which the land lies, an action in equity for an injunction to restrain any interference with the exercise of the rights of entry provided herein or the conduct of any project contemplated herein.*

(II) The Department of Environmental Resources shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: Provided, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the act of June 22, 1937 (P.L.1987, No.394), as amended, known as "The Clean Streams Law," and no control or treatment hereunder shall be in any way less than that required under the act of June 22, 1937 (P.L.1987, No.394), as amended, known as "The Clean Streams Law." The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant. In the operation of such plant or plants the Department of Environmental Resources shall have the power to permit coal mine operators or owners to discharge their mine drainage to such plant or plants and the Secretary of Environmental Resources shall have the authority to charge coal mine operators or owners for the treatment of such mine drainage. The charge to the coal mine operators or owners for the treatment of such mine drainage shall be based upon their proportional share of the capital and operating cost and the quantity and quality of the

pollutant. Further, the Secretary of Environmental Resources shall have the authority to sell any by-product or products resulting from the operation of such plants. Any such moneys so received shall be placed in the General Fund and are hereby appropriated to the Department of Environmental Resources.

(III) The Secretary of Environmental Resources shall have the power and authority to establish rules and regulations and establish rates to implement the foregoing paragraph. Such rules and regulations may provide for the escrowing of payments made prior to the construction or operation of the plant or plants.

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Section 2. Section 21 of the act is amended to read:

Section 21. **[Effective Date.—This act shall take effect immediately.]**  
***Severability.—If any provisions of this act or the application of such provision to any person or circumstances shall be held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.***

Section 3. This act shall take effect immediately.

APPROVED—The 24th day of June, A. D. 1976.

MILTON J. SHAPP