

No. 1992-149

AN ACT

SB 275

Amending the act of March 1, 1988 (P.L.82, No.16), entitled "An act providing for the establishment, implementation and administration of the Pennsylvania Infrastructure Investment Authority; imposing powers and duties on a board of trustees; transferring the rights, powers, duties and obligations of the Water Facilities Loan Board to the Pennsylvania Infrastructure Investment Authority; providing for the issuance of notes and bonds; providing for financial assistance and for a comprehensive water facilities plan; authorizing a referendum to incur indebtedness; making an appropriation; and making repeals," extending the act to include storm water projects.

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

Section 1. Section 2 of the act of March 1, 1988 (P.L.82, No.16), known as the Pennsylvania Infrastructure Investment Authority Act, is amended to read:

Section 2. Legislative intent.

The General Assembly finds and declares that:

(1) The health of millions of citizens of this Commonwealth is at risk due to substandard and deteriorated water supply and sewage disposal systems.

(2) Many water and sewage systems in this Commonwealth are aging, outmoded, inadequate, deteriorating and operating above capacity, and many areas have to limit their growth solely due to lack of proper water supply and sewage disposal.

(3) The economic revitalization of this Commonwealth is being stifled by a lack of clean water and adequate sewage facilities.

(4) Many Pennsylvania communities have antiquated or inadequate storm water systems thereby resulting in storm water flows which threaten the public health and safety due to flooding, overloaded sewer lines, soil erosion, sinkhole development and expansion and reduction in surface water and groundwater quality.

[[4]] (5) Financing of water and sewage projects *and storm water projects* at affordable cost is not currently available in many areas of this Commonwealth.

(6) The lack of affordable financing to implement storm water management plan recommendations has resulted in compliance by only 17 counties with the requirements of the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act.

[(5)] (7) In order to assist in financing projects to protect the health and safety of the citizens of this Commonwealth and to promote the economic development of Pennsylvania, the General Assembly has determined that it is necessary to establish the Pennsylvania Infrastructure Investment Authority and to provide funding of the authority programs.

Section 2. The definition of "project" in section 3 of the act is amended and the section is amended by adding a definition to read:

Section 3. Definitions.

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

* * *

"Project." The eligible costs associated with the acquisition, construction, improvement, expansion, extension, repair or rehabilitation of all or part of any facility or system, whether publicly or, *in the case of paragraph (1) or (2)*, privately owned[, for the collection, treatment or disposal of wastewater, including industrial waste, or for the supply, treatment, storage or distribution of drinking water.]:

(1) *for the collection, treatment or disposal of wastewater, including industrial waste;*

(2) *for the supply, treatment, storage or distribution of drinking water;*

(3) *for the control of storm water, which may include, but need not be limited to, the transport, storage and the infiltration of storm water; or*

(4) *for the best management practices to address point or nonpoint source pollution associated with storm water runoff or any other innovative techniques identified in the county-prepared watershed plans pursuant to the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act.*

* * *

"Storm water." *Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.*

* * *

Section 3. Section 5 of the act is amended to read:
Section 5. Revenues of authority.

(a) Sources of revenues.—The authority may receive money from sources of revenue, including, but not limited to, the following:

(1) State funds appropriated to the authority.

(2) Federal funds appropriated to or granted to the authority.

(3) Proceeds from the sale of bonds of the authority authorized under section 7.

(4) Proceeds from the sale of bonds issued on or after the effective date of this act from the remaining unused authorization in addition to any other funds that remain unencumbered on the effective date of this act from the act of July 12, 1981 (P.L.263, No.88), entitled "An act authorizing the incurring of indebtedness, with approval of the electors, of \$300,000,000 for the repair, construction, reconstruction, rehabilitation, extension and improvement of community water supply systems, and for the repair, reconstruction or rehabilitation of flood control facilities, dams and port facilities and providing the allotment of proceeds from borrowing hereunder," approved by the electorate on November 3, 1981.

(5) Proceeds from the sale of bonds not to exceed a total sum of \$150,000,000 issued for site development under the provisions of Article XVI-B of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. This paragraph shall expire on December 31, 1989, except that the board may fund projects approved prior to December 31, 1989.

(6) Proceeds from the sale of any Commonwealth general obligation bonds issued under sections 16 and 17.

(7) Proceeds from the sale of any Commonwealth general obligation bonds issued under section 12 of the act of March 16, 1992 (P.L.10, No.5), known as the Small Water Systems Assistance Act.

~~[(7)]~~ (8) Proceeds from the sale of authority assets.

~~[(8)]~~ (9) Repayment of loan principal.

~~[(9)]~~ (10) Payment of interest on loans made by the authority.

~~[(10)]~~ (11) Interest earned on the investments of authority moneys.

(b) Control of revenues; investment of funds.—The board shall have exclusive control and management of all moneys of the authority and full power to invest moneys not required for immediate use in any securities or other investments in which funds of the Commonwealth are authorized to be invested and in any other type of security or investment if, prior to the acquisition of the securities or investments, the board determines by resolution that such type of security or investment is in the best interests of the authority and the State Treasurer approves of such type of security or other investment.

(c) General fund and other separate funds or accounts.—

(1) The board shall establish a general fund from which it may authorize expenditures for any of the purposes of this act.

(2) The board shall establish a Water Pollution Control Revolving Fund administered in accordance with the requirements of section 212 of the Water Quality Act of 1987 (Public Law 100-4, 101 Stat. 21), and may establish such other separate revolving funds and accounts when determined by the board to be necessary or convenient. The board may deposit no more than ~~[\$375,000,000]~~ \$725,000,000 in funds and accounts established under this paragraph from the sources specified in subsection (a)(4), (5) ~~[and (6)], (6) and (7)]~~. This limitation shall not apply to any Federal funds.

(3) The board may also establish such nonrevolving funds and accounts as it deems necessary or convenient. Any funds from sources specified in subsection (a)(4), (5) ~~[and], (6) and (7)]~~ which are not deposited in the board's revolving funds and accounts shall be deposited into these nonrevolving funds and accounts.

(d) Loan repayment.—Subject to any agreement with the holders of bonds, repayments of loan principal, together with any interest thereon, shall be deposited with the authority. Repayments from loans made from revolving funds and accounts may be deposited in such funds and accounts as the board shall determine. Repayments from other loans shall be deposited in nonrevolving funds and accounts for the purpose of repayment of general obligation bonds of the Commonwealth issued under the authority

of this act. Loans made by the Water Facilities Loan Board prior to the effective date of this act and repayment of the principal of and interest on those loans shall be controlled by the provisions of Title 32 of the Pennsylvania Consolidated Statutes (relating to forests, waters and State parks) and the regulations promulgated thereunder. The board shall maintain such separate funds and accounts as may be necessary for the deposit of payments made under authority or requirement of State or Federal law.

Section 4. Section 6(4) of the act is amended by adding subparagraphs to read:

Section 6. Powers and duties of authority.

The authority shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including, but not limited to, the following:

(4) * * *

(iv) Notwithstanding subparagraph (i) and in order to facilitate the speedy implementation of the Storm Water Control Program, the board shall have the power and authority to promulgate, adopt and use guidelines which shall be published in the Pennsylvania Bulletin. The guidelines shall be subject to review pursuant to section 204(b) of the Commonwealth Attorneys Act and shall not be subject to review pursuant to the Regulatory Review Act and shall be effective for a period not to exceed two years from the effective date of this amendatory act.

(v) After expiration of the two-year period, all guidelines relating to the Storm Water Control Program shall expire and shall be replaced by regulations which shall have been promulgated, adopted and published as provided by law.

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Section 5. Section 10(a)(2), (b), (c), (d), (i), (j) and (l) of the act are amended and the section is amended by adding a subsection to read:

Section 10. Financial assistance.

(a) Criteria for obtaining assistance.—In reviewing applications for financial assistance, the authority shall consider:

* * *

(2) Whether the proposed project will lead to an effective or complete solution to the problems experienced with the water *management and control* supply [or], sewage treatment *or storm water* system to be aided, including compliance with State and Federal laws, regulations or standards.

* * *

(b) Financing priorities.—In assigning priorities for projects, the board shall consult with the Department of Commerce and the department. In addition to any requirements of Federal law imposed on the use of Federal funds, the board shall determine priorities based on factors which include, but are not limited to:

(1) Benefits to public health.

(2) The contribution to and impact of the project on economic development as well as social and environmental values.

- (3) Benefits to public safety or welfare.
- (4) Improvement in the ability of an applicant to come into compliance with State and Federal statutes, regulations and standards.
- (5) Improvement in the adequacy or efficiency of the water *management and control* supply [or], sewage treatment *or storm water* system.
- (6) The cost-effectiveness of the project.
- (7) Whether the governmental unit to be served by a sewage treatment system is subject to construction or connection limitations issued by the department and the date that any such limitation was issued.
- (8) Whether the project encourages consolidation of water or sewer systems, where such consolidation would enable the customers of the systems to be more effectively and efficiently served.
- (9) *Whether a storm water project is sponsored by more than one municipality and is located at strategic locations determined by the basin-wide studies undertaken under the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act, or other joint municipal or county efforts.*
- (10) *Whether a project will resolve known drainage or storm water-related problems.*

(b.1) Storm water projects.—

(1) In the case of storm water projects, only a governmental unit may qualify for financial assistance under this act.

(2) A storm water project located within a watershed for which a county has not adopted a watershed storm water management plan and ordinances required to implement the plan, as required by the Storm Water Management Act, shall be ineligible for financial assistance under this act, except that:

(i) a storm water project within a watershed which includes land in more than one county and for which the department has required that a joint plan for the entire watershed be submitted by the affected counties shall be ineligible for financial assistance under this act only if the county in which the project is located is found to have failed to cooperate in the development of the joint plan; and

(ii) a storm water project specifically designed to maintain and/or improve existing water quality and to comply with the National Pollutant Discharge Elimination System (NPDES) storm water permitting requirements shall be eligible for financial support under this act.

This paragraph shall not apply to a project located in a municipality which has enacted a storm water management ordinance that requires land owners and any person engaged in the alteration or development of land to implement measures to ensure that the maximum rate of storm water runoff is no greater after the development than prior to development activities or to manage the quantity, velocity and direction of resulting storm water runoff in a manner which otherwise adequately protects the health and property of residents from possible injury as required by the Storm Water Management Act.

(3) A storm water project located within a municipality which is not implementing ordinances pursuant to a county-prepared and department-approved watershed plan shall be ineligible.

(c) Decision of board.—Establishment of priority for financial assistance under subsection (b) or (d) shall not be deemed to be a final action under 2 Pa.C.S. (relating to administrative law and procedure), nor shall it confer a right or duty upon the board or any other person. A decision as to an applicant's eligibility under subsection (a) may be appealed pursuant to 2 Pa.C.S., but the priority assigned the project may not be raised in that appeal.

(d) Small projects.—

(1) The board shall establish a program of assistance to water supply and sewage disposal systems serving communities with a population of 12,000 people or less or systems having hookups of 1,000 or less.

(2) The board shall establish a program to financially assist storm water projects by municipalities with a population of 12,000 people or less. In addition to other factors which the board in its discretion may consider in assigning priorities under this program, preference shall be given where the municipality undertaking the project:

(i) has no natural watercourse within its boundaries;

(ii) relies on methods of storm water control which do not comply with Federal or State rules, regulations or standards; or

(iii) has been found to be subject to karst sinkhole development or other geologic condition which poses a danger to person or property and which may be aggravated by uncontrolled storm water flows.

* * *

(i) Limitation.—The provisions of other law notwithstanding, all projects eligible for assistance under this act shall be determined to be site development projects as referenced in the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. In no case shall total assistance to any single project total more than \$11,000,000, or \$20,000,000 if a project serves more than one municipality, except that the board by a vote of at least nine members may authorize loans in excess of \$20,000,000 to comprehensive projects providing or proposing consolidated service to a region encompassing all or parts of four or more municipalities. **Total assistance to a storm water project shall not exceed \$1,000 for each resident of the municipality or municipalities being served by the project or \$10,000,000, whichever is less.**

(j) Continuing education of operators.—No agreement with individuals or entities shall be valid in the absence of an agreement by the individuals or entities seeking assistance under this act to assure that the system operators are participating or will participate in continuing education programs developed by the Department of Environmental Resources. If the board determines that the system operator of a system receiving assistance is not participating in continuing education programs, the board shall take all steps necessary to cease all financial assistance and recover all prior payments, including, but not limited to, the immediate repayment of any outstanding loans

and interest and any grants. *The provisions of this subsection shall not apply to cases where financial assistance is provided for storm water projects.*

* * *

(l) Financial analysis.—The financial analysis used by the board to determine the need of all applicants for financial assistance shall include, but not be limited to, the following:

(1) Fair and reasonable costs of wastewater treatment or of supplying drinking water *or of controlling storm water* incurred by comparable systems.

(2) The incomes of affected ratepayers and their ability to pay increased rates necessary to complete the proposed projects.

(3) Other sources of financing available to individuals or entities seeking assistance under this act.

(4) A determination that any financial assistance provided by this act will not be used to supplant financial resources already available to the applicant.

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Section 6. This act shall take effect in 60 days.

APPROVED—The 16th day of December, A. D. 1992.

ROBERT P. CASEY