

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 472

Session of 1981

COMPLIMENTS
JEANETTE F. REIBMAN
State Senator

INTRODUCED BY REIBMAN, MELLOW AND LINCOLN, MARCH 16, 1981

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 16, 1981

AN ACT

1 Establishing the Pennsylvania Water Authority Act, granting
2 powers and duties and providing for exemption from certain
3 taxation and from State regulation.

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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 "Water
13 Authority Act."

14 Section 2. Definitions.

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

18 "Authority." The Pennsylvania Water Authority.

19 "Commission." The Public Utility Commission.

20 "Department." The Department of Environmental Resources.

21 "Hydroelectric facility." Any facility owned or operated by
22 a public utility or municipal authority which generates and
23 transmits electricity through the direct employment of the flow
24 of water.

25 "Municipal authority." Any public agency created under the
26 act of May 2, 1945 (P.L.382, No.164), known as the "Municipality
27 Authorities Act of 1945," which exists in part or in whole to
28 produce electricity at a hydroelectric facility or to supply
29 water.

30 "Public utility." Any agency licensed and regulated by the

1 Public Utility Commission which exists in part or in whole to
2 produce electricity at a hydroelectric facility or to supply
3 water.

4 "Water supply system." A facility owned or operated by a
5 public utility or municipal authority which in part or in whole
6 stores, distributes or sells water for residential, commercial
7 or industrial use.

8 Section 3. Declaration of policy.

9 (a) The purpose of this act is to promote the improvement or
10 rehabilitation of existing hydroelectric facilities and water
11 supply systems; to develop such new hydroelectric and water
12 supply projects as the authority deems necessary, desirable or
13 appropriate to contribute to the adequacy, economy and
14 reliability of the supply of electric power and energy or to
15 conserve fuel and to support such new water supply systems as
16 the authority deems necessary, desirable or appropriate to
17 produce an adequate supply of water for residential, commercial
18 and industrial use.

19 (b) It is declared to be the policy of the Commonwealth to
20 recognize, protect and enhance the balanced and multiple use and
21 conservation of the water resources of the Commonwealth, for
22 navigation, water supply, power and energy, food control and
23 environmental purposes consistent with comprehensive plans and
24 programs for water management.

25 Section 4. Pennsylvania Water Authority.

26 For the purpose of effectuating the policies declared in
27 section 3, there is hereby created a corporate municipal
28 instrumentality of the Commonwealth to be known as the
29 Pennsylvania Water Authority, referred to as the authority in
30 this act, which shall be a body corporate and politic, a

1 political subdivision of the Commonwealth exercising
2 governmental and public powers perpetual in duration capable of
3 suing and being sued and having a seal and which shall have the
4 powers and duties hereinafter enumerated together with such
5 others as may hereafter be conferred upon it by law. The
6 authority shall report annually to the Governor and the
7 Legislature upon its operations and transactions.

8 Section 5. Directors.

9 (a) The authority shall consist of five directors appointed
10 by the Governor and confirmed by the Senate. Of the initial
11 appointments to the authority, one shall be for a term of one
12 year, one for two years, one for three years, one for four years
13 and one for five years. All subsequent terms shall be for a term
14 of five years. A director shall continue to serve until his
15 successor has been confirmed. The Governor shall designate one
16 director to serve as chairman. In the event of a vacancy
17 occurring in the office of a director by death, resignation or
18 otherwise, the Governor shall, with the advice and consent of
19 the Senate, appoint his successor who shall hold office for the
20 unexpired term. Three directors shall constitute a quorum for
21 the purpose of organizing the authority and conducting the
22 business thereof.

23 (b) The director chosen as chairman, as provided in this
24 section, shall receive a salary of \$17,500 per annum. Each other
25 director shall receive a salary of \$15,000 per annum.

26 Section 6. Officers and employees; expenses.

27 The directors shall from time to time select such officers,
28 other than chairman and employees as they may require for the
29 performance of their duties and shall prescribe the duties and
30 compensation of each officer and employee. They shall adopt

1 bylaws and rules and regulations suitable to the purposes of
2 this act. As long as and to the extent that the authority is
3 dependent upon appropriations for the payment of its expenses,
4 it shall incur no obligations for salary, office or other
5 expenses prior to the making of appropriations adequate to meet
6 the same.

7 Section 7. General powers and duties of the authority.

8 (a) The authority shall serve to guide and direct the
9 development of the waters of the Commonwealth for use in water
10 supply or for the production of hydroelectric power. The
11 authority shall cooperate with the appropriate river basin
12 commissions and agencies of the Federal, State and local
13 governments as necessary.

14 (b) The authority is authorized, subject to the conditions
15 of this act, to construct, acquire, operate, maintain, dispose
16 of and aid such hydroelectric projects, including generation,
17 transmission and related facilities, as it deems necessary or
18 desirable to provide and maintain an adequate and dependable
19 supply of electric power and energy for the present and future
20 needs of the citizens of the Commonwealth.

21 (c) The authority is authorized, subject to the provisions
22 of this act, to construct, acquire, operate, maintain, dispose
23 of and aid such water supply projects as it deems necessary or
24 desirable to provide and maintain an adequate and dependable
25 supply of water for residential, commercial and industrial use.
26 The chief priority of the authority in water supply projects
27 shall be to ensure that residents of the Commonwealth are
28 assured of an adequate supply of safe, clean drinking water.

29 (d) The authority is authorized, subject to the provisions
30 of this act, to provide such technical or financial assistance

1 as it may deem necessary to improve dams which are integral to a
2 hydroelectric or water supply facility or system in order for
3 that dam to meet the appropriate standards established by the
4 act of November 26, 1978 (P.L.1375, No.325), known as the "Dam
5 Safety and Encroachments Act." Aid may also be available to
6 develop alternatives to the use of such substandard dams in
7 hydroelectric or water supply facilities or systems.

8 (e) The exercise of any power by the authority shall be upon
9 the following conditions:

10 (1) Prior to the adoption of any plan or any part or
11 revision thereof, for the acquisition, construction or
12 development of any hydroelectric facility, the authority
13 shall consult with water users, public and private retail
14 power supply entities and interested public agencies and
15 shall conduct public hearings upon at least 15 days' notice.

16 (2) The authority may acquire or construct facilities
17 for the transmission of hydroelectric power and energy
18 produced by it where such facilities are not otherwise
19 available upon reasonable terms.

20 (3) The planning, acquisition, construction, development
21 and operation of any hydroelectric or water facility by the
22 authority shall be conducted in a manner consistent with the
23 State water plan and any comprehensive river basin plans
24 adopted by any Federal/State compact or interstate river
25 basin commission.

26 Section 8. Specific powers and duties.

27 (a) The authority is authorized and directed to:

28 (1) Cooperate with the appropriate agencies and
29 officials of the Commonwealth of Pennsylvania and the United
30 States Government to assure that any hydroelectric or water

1 supply project undertaken under this act shall be consistent
2 with any State or Federal plans for the improvement of
3 commerce, navigation, water supply, recreation and flood
4 control relating to such waters and shall be so planned and
5 constructed as to be adaptable to such plans.

6 (2) Construct, acquire, operate or maintain any
7 hydroelectric or water supply project, or any multiple
8 purpose project including hydroelectric facilities, in
9 cooperation or conjunction with any appropriate Federal,
10 State or interstate agency or any other appropriate entity,
11 either public or private.

12 (3) Apply to the appropriate agencies of the
13 Commonwealth of Pennsylvania and the United States Government
14 for such licenses, permits or approval of its plans or
15 projects as necessary and to accept such licenses, permits or
16 approvals as may be tendered to it by such agencies.

17 (4) Accept such Federal or other public or governmental
18 assistance as is now or may thereafter become available to
19 it.

20 (5) Enter into contracts with agencies or officials of
21 the Commonwealth of Pennsylvania or the United States
22 Government or public or private electric power supply
23 entities relating to the construction or operation of any
24 project authorized by this act.

25 (6) Exercise all the powers necessary or convenient to
26 carry out and effectuate the purposes and provisions of this
27 act and as incidental thereto to own, lease, build, operate,
28 maintain and dispose of real and personal property of every
29 kind and character, to acquire real property and any or every
30 interest therein for its lawful purposes by purchase or by

1 condemnation as hereinafter provided, to borrow money and
2 secure the same by bonds or liens upon revenue of any
3 property or contracts held or to be held by it, to sell
4 electric power and generally to do any and everything
5 necessary or convenient to carry out the purposes of this
6 act, provided that the authority shall have no power at any
7 time to pledge the credit of the Commonwealth nor shall any
8 of its obligations or securities be deemed to be obligations
9 of the Commonwealth.

10 (7) Aid, through technical assistance, loans, grants and
11 bond indentures, local, public and private hydroelectric or
12 water supply agencies, including appropriate municipal
13 authorities, in the establishment, improvement or expansion
14 of such hydroelectric or water supply systems according to
15 criteria established by the authority.

16 (b) Notwithstanding any limitations herein before expressed,
17 the authority is authorized and directed forthwith or from time
18 to time as it shall deem advisable and within the limitations of
19 the appropriations made available for it to initiate and pursue
20 all inquiries, investigations, surveys and studies which it may
21 deem necessary or desirable as preliminary to the effectuation
22 of the other powers and duties conferred upon it by this act.

23 (c) Neither the authority nor any director, officer or
24 agency thereof shall have any power to waive or surrender for
25 any purpose whatsoever any right of the Commonwealth, whether
26 sovereign or proprietary in character in and to the waterways of
27 the Commonwealth, their waters, powers, channels, beds or uses
28 or the right of the Commonwealth to assert such rights at any
29 future time: Provided, however, That nothing contained herein
30 shall be construed as limiting the power of the authority to

1 accept licenses issued by the Federal Energy Regulatory
2 Commission pursuant to the provisions of the Federal Power Act,
3 as amended, and the terms and conditions therein imposed
4 pursuant to law.

5 Section 9. Sales of power, energy and water.

6 (a) Hydroelectric and water projects developed and operated
7 by the authority pursuant to this act shall be considered to be
8 exclusively for the benefit of the people of the Commonwealth
9 and especially of the consumers of the preference entities
10 listed in subsection (b) to whom the power can be most
11 economically made available.

12 (b) In the sales and distribution of power generated by
13 projects operated by the authority, preference shall be given to
14 municipalities, municipal authorities, rural electric
15 cooperatives and State agencies and installations.

16 (c) Sales to such entities listed in subsection (b) shall be
17 at prices representing the cost of production, capital and
18 operating charges, plus a fair cost of transmission as
19 determined by the directors. Sales to municipalities, municipal
20 authorities, political subdivisions and rural electric
21 cooperatives shall be subject to conditions which shall assure
22 the resale of such power or water to domestic consumers at the
23 lowest possible price.

24 (d) The authority may provide in any contract or contracts
25 which it may make for the sale, transmission and distribution of
26 the power or water that the purchaser, transmitter or
27 distributor shall construct, maintain and operate on such terms
28 as the authority may deem proper, such connecting lines as may
29 be necessary for transmission of the power or water from main
30 transmission lines to such entities.

1 (e) Contracts for the sale, transmission and distribution of
2 power or water generated by such projects shall provide:

3 (1) Payment of all operating and maintenance expenses of
4 the project.

5 (2) Interest on and amortization and reserve charges
6 sufficient within 50 years of the date of issuance to retire
7 the bonds of the power authority issued for the project.

8 (3) Continuous control and operation of the project by
9 the authority or any cooperating Federal, State or interstate
10 agency or any other appropriate public or private entity.

11 (4) The effectuation of the policies declared in this
12 act.

13 (5) Full and complete disclosure to the authority of all
14 factors of cost in the transmission and distribution of power
15 and water so that rates to consumers may be fixed initially
16 in the contract and may be adjusted from time to time on the
17 basis of true cost data provided that in fixing such cost of
18 production, transmission and distribution, no account shall
19 be given to any franchise value, going value or goodwill
20 based upon the existence of the contract in the availability
21 of the power or water for sale by the transmitting or
22 distributing company or any company associated therewith.

23 (6) Periodic revisions of the service and rates to
24 consumers on the basis of accurate cost data obtained by such
25 accounting methods and systems as shall be approved by the
26 directors and in furtherance and effectuation of the policy
27 declared in this act.

28 (7) The rate at which power or water is sold by the
29 authority shall not be governed by the Pennsylvania Public
30 Utility Commission or its successors and that, in the event

1 any power or water purchased by the authority shall be
2 resold, such sale shall be made at rates on higher than those
3 at which power or water was purchased from the authority:
4 Provided, however, That the entity reselling the power or
5 water may recover the costs of transmission and other fair
6 and proper costs associated with the resale of the power or
7 water.

8 (8) The rate structures agreed upon in such contract may
9 provide different rates for different localities, classes of
10 consumers and amounts of current consumed and for changes in
11 the rates resulting from variation in operating cost and
12 fixed charges.

13 (9) For the cancellation and termination of any such
14 contract upon violation of the terms thereof by the
15 purchasing, transmitting or distributing public body or
16 company or any subsidiary or associate thereof.

17 (10) For such security for performance as the authority
18 may deem practicable and advisable including provisions
19 assuring the continuance of service by the purchasing,
20 transmitting or distributing public agencies or companies or
21 their use of their facilities for such service or the
22 continuance of an outlet and adequate market for the power or
23 water produced by such projects.

24 (11) Such other terms not inconsistent with the
25 provisions and policy of this act as the authority may deem
26 advisable.

27 Section 10. Contracts negotiated by the authority.

28 (a) Awarding of contracts for construction, reconstruction,
29 repairs or work of any nature or for supplies and materials.

30 (1) All construction, reconstruction, repairs or work of

1 any nature made directly by the authority, where the entire
2 cost, value or amount of such construction, reconstruction,
3 repairs or work, including labor and materials, shall exceed
4 \$5,000, except construction, reconstruction, repairs or work
5 done by employees of the authority, or by labor supplied
6 under agreement with any Federal or State agency, with
7 supplies and materials purchased as hereinafter provided,
8 shall be done only under contract or contracts to be entered
9 into by the authority with the lowest responsible bidder upon
10 proper terms, after due public notice has been given asking
11 for competitive bids as hereinafter provided. No contract
12 shall be entered into between the authority and any
13 contractor for construction or improvement or repair of any
14 project or portion thereof, unless the contractor shall give
15 an undertaking with a sufficient surety or sureties approved
16 by the authority and in an amount fixed by the authority, for
17 the faithful performance of the contract. All contracts of
18 surety shall provide, among other things, that the contractor
19 entering into a contract with the authority will pay for all
20 materials furnished and services rendered for the performance
21 of the contract and that any person or corporation furnishing
22 such materials or rendering such services may maintain an
23 action to recover for the same against the obligor in the
24 undertaking, as though such person or corporation was named
25 therein, provided the action is brought within one year after
26 the time the cause of the action occurred.

27 (2) All supplies and materials costing \$2,500 or more to
28 be purchased directly by the authority shall be purchased
29 only after due advertisement as hereinafter provided. The
30 authority shall accept the lowest bid or bids, kind, quality

1 and material being equal, but the authority shall have the
2 right to reject any or all bids or select a single item from
3 any bid. The provisions as to bidding shall not apply to the
4 purchase of patented and manufactured products offered for
5 sale in a noncompetitive market or solely by an authorized
6 dealer or a manufacturer.

7 (b) Awarding contracts for the sale of power, energy or
8 water by the authority.

9 (1) Whenever power, energy or water from any project
10 operated by the authority shall become available for sale
11 from the portion of said project owned by the authority, the
12 authority shall publish due public notice of such
13 availability. The notice shall indicate that the authority
14 will, for a period of 60 days after the date of the notice,
15 receive proposals from interested parties for the purchase of
16 the power and that the authority shall hold a public hearing
17 60 days from the date of the notice at which interested
18 parties may present testimony and other facts and data
19 relative to their proposals.

20 (2) After hearing testimony from the parties interested
21 in purchasing the power or water which is available for sale
22 by the authority and receiving all facts and data relative
23 thereto, the authority shall issue a preliminary order
24 proposing a contract or contracts for the sale of said power
25 or water.

26 (3) The co-parties to all contracts shall have 60 days
27 from the date of the preliminary order of the authority to
28 negotiate details of the contract with the authority.

29 (i) If the authority and its co-party agree on a
30 mutually acceptable contract, the authority shall issue a

1 final order granting the contract and instructing that it
2 be executed in the name of the authority by its chairman
3 and attested to by its secretary.

4 (ii) If the authority and its co-party do not agree
5 on a mutually acceptable contract within the prescribed
6 period of time, the authority shall reconsider other
7 proposals for the purchase of the power or water
8 available for sale or may ask for new proposals to be
9 made to it.

10 (4) Parties wishing to challenge proposed contracts or
11 terms thereof shall have 60 days to do so after the execution
12 of the final contract by the authority and its co-party using
13 the remedies available to it under the laws of the
14 Commonwealth.

15 (c) The words and phrases "advertisement" and "due public
16 notice" when used in this section, shall mean notice published
17 in six newspapers of general circulation published within the
18 Commonwealth unless the context clearly indicates otherwise:
19 Provided, That such notice may be waived where the authority
20 determines an emergency exists and such materials to be
21 furnished or services to be rendered must be immediately
22 purchased by the authority.

23 Section 11. Assistance to public utilities and municipal
24 authorities.

25 The authority may offer technical and financial aid to public
26 utilities licensed by the Pennsylvania Public Utility Commission
27 to provide hydroelectric power or supply water. It may offer
28 technical and financial aid to municipal hydroelectric
29 authorities or municipal water supply authorities. Technical aid
30 may be provided in the form of assistance in site acquisition

1 and development and facility design. Financial assistance may be
2 provided in the form of grants or loans from the authority.
3 Financial assistance may be available for building, rebuilding
4 or expansion. No funds shall be provided for site acquisition.
5 Priority for grants and loans shall be given to reconstruction
6 and rebuilding of existing facilities. Priority for grants and
7 loans shall be given to public utility companies and municipal
8 authorities serving fewer than 1,000 residential customers. In
9 no circumstances can the authority provide more than 75% of the
10 financial requirements of any single project.

11 Section 12. Acquisition of property.

12 (a) If, for any of the purposes hereunder including but not
13 limited to temporary construction purposes and the making of
14 additions or improvements, the authority shall find it necessary
15 or convenient for it to acquire any real property whether for
16 immediate or future use, then the authority may find and
17 determine that such property is required for a public use and
18 upon such due determination, such property shall be deemed to be
19 required for such public use until otherwise determined by the
20 authority and with the exceptions hereinafter specifically
21 noted. If the authority is unable to agree for the acquisition
22 of any such property or if the owner thereof shall be incapable
23 of disposing of the same or if after diligent search and inquiry
24 the name and residence of any such owner cannot be ascertained
25 or if any such property has been acquired or attempted to be
26 acquired and the title or other rights therein have been found
27 to be invalid or defective, the authority may acquire such
28 property by condemnation under and pursuant to the law relating
29 to condemnation in this Commonwealth.

30 (b) Under no circumstances shall the authority have the

1 power to condemn property already dedicated to a public use.

2 Section 13. Notes of the authority.

3 The authority shall have the power and is hereby authorized
4 from time to time to issue its negotiable notes in conformity of
5 applicable provisions of Title 13 Pa.C.S. § 1101 et seq.
6 (relating to the commercial code) for any corporate purpose and
7 renew from time to time any notes by the issuance of new notes
8 whether the notes to be renewed have or have not matured. The
9 authority may issue notes partly to renew notes or to discharge
10 other obligations then outstanding and partly for any other
11 purpose. The notes may be authorized, sold, executed and
12 delivered in the same manner as bonds. Any resolution or
13 resolutions authorizing notes of the authority or any issue
14 thereof may contain any provisions which the authority is
15 authorized to include in any resolution or resolutions
16 authorizing bonds of the authority or any issue thereof and the
17 authority may include in any notes any terms, covenants or
18 conditions which it is authorized to include in any bonds. All
19 notes shall be general obligations of the authority payable out
20 of any of its moneys or revenues subject only to any contractual
21 rights of the holders of any of its notes or other obligations
22 then outstanding.

23 Section 14. Bonds of the authority.

24 The authority shall have the power and is hereby authorized
25 from time to time to issue its negotiable bonds in conformity
26 with the applicable provisions of the act of July 12, 1972
27 (P.L.781, No.185), known as the "Local Government Unit Debt
28 Act."

29 Section 15. Investment of moneys of the authority.

30 Power of the authority to invest all moneys from whatever

1 source derived shall be the same as the power of a borough to
2 invest as exercised by its borough council pursuant to the act
3 of February 1, 1966 (1965 P.L. 1656, No. 581), known as "The
4 Borough Code."

5 Section 16. Exemption from taxation.

6 (a) The authority shall be required to pay no taxes or
7 assessment upon any of the property acquired by it nor upon its
8 activities in the operation and maintenance of its projects.

9 (b) The securities or other obligations issued by the
10 authority, their transfer and the income therefrom, shall at all
11 times be free from taxation by this Commonwealth.

12 Section 17. Repayment of Commonwealth appropriations.

13 All appropriations made by the Commonwealth to the authority
14 shall be treated as advances by the Commonwealth to the
15 authority and shall be repaid to it without interest either out
16 of the proceeds of securities or other obligations issued by the
17 authority for the construction of any project pursuant to the
18 provisions of this act or by the delivery of noninterest bearing
19 obligations of the authority to the Commonwealth for all or any
20 part of such advances or out of excess revenues from such
21 project.

22 Section 18. Exemption from regulation.

23 The authority shall be exempt in any and all respects from
24 the jurisdiction and control of the Pennsylvania Public Utility
25 Commission of this Commonwealth or its successor.

26 Section 19. Audit of the authority.

27 The accounts and books of the authority including its
28 receipts, disbursements, contracts, notes, bonds, investments
29 and other matters relating to its finances, operation and
30 affairs shall be examined and audited from time to time by the

1 Auditor General.

2 Section 20. Funding of the authority.

3 (a) The sum of \$3,000,000 is hereby specifically
4 appropriated to the authority to be deposited in a special
5 account to be created in the State Treasury to be known as the
6 Water Facilities Development Fund.

7 (b) As often as may be necessary, the authority shall
8 requisition from the appropriate funds such amounts as may be
9 necessary to provide for the payment of the administrative costs
10 related to this act.

11 Section 21. Effective date.

12 This act shall take effect immediately.