

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1712 Session of 2015

INTRODUCED BY R. BROWN, BOBACK, D. COSTA, HEFFLEY, MAJOR, MILLARD, D. PARKER, PICKETT, TALLMAN, WATSON, GILLEN, CARROLL, DUSH, ZIMMERMAN, ORTITAY, TOPPER, MOUL, M. K. KELLER AND JOZWIAK, NOVEMBER 30, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JANUARY 27, 2016

AN ACT

1 Establishing the Private Dam Financial Assurance Program and the
2 Private Dam Financial Assurance Fund.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Private Dam
7 Financial Assurance Program Act.

8 Section 2. Definitions.

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

12 "COMMON INTEREST COMMUNITY." INCLUDES A COOPERATIVE, <--
13 CONDOMINIUM AND PLANNED COMMUNITY WHERE AN INDIVIDUAL BY VIRTUE
14 OF OWNERSHIP INTEREST IN ANY PORTION OF REAL ESTATE IS OR MAY
15 BECOME OBLIGATED BY COVENANT, EASEMENT OR AGREEMENT IMPOSED UPON
16 THE OWNER'S INTEREST TO PAY ANY AMOUNT FOR REAL PROPERTY TAXES,

1 INSURANCE, MAINTENANCE, REPAIR, IMPROVEMENT, MANAGEMENT,  
2 ADMINISTRATION OR REGULATION OF ANY PART OF THE REAL ESTATE  
3 OTHER THAN THE PORTION OR INTEREST OWNED SOLELY BY THE  
4 INDIVIDUAL.

5 "Community association." Any person or incorporated  
6 community under 68 Pa.C.S. ~~Subparts~~ SUBPTS. B (relating to <--  
7 condominiums), C (relating to cooperatives) and D (relating to  
8 planned communities) OR COMMON INTEREST COMMUNITY. <--

9 "Department." The Department of Community and Economic  
10 Development of the Commonwealth.

11 "Eligible cost." Any cost to be incurred by an owner  
12 enrolled in the program for ~~maintenance of and repairs to~~ THE <--  
13 MAINTENANCE, REPAIR, REHABILITATION OR PERMANENT BREACH OF the  
14 owner's dam. The term includes CONSTRUCTION ACTIVITIES, <--  
15 engineering fees, demolition, excavation, reclamation and  
16 related costs.

17 "Fund." The Private Dam Financial Assurance Fund established  
18 under section 6.

19 "Owner." A person ~~or community association that owns a~~ <--  
20 ~~regulated dam in this Commonwealth. The term does not include an~~  
21 ~~owner of a commercial hydroelectric power generation facility.~~  
22 WHO OWNS, CONTROLS, OPERATES, MAINTAINS OR MANAGES A REGULATED <--  
23 PRIVATE DAM IN THIS COMMONWEALTH.

24 "Person." Includes a natural person, partnership,  
25 association ~~or corporation.~~, COMMUNITY ASSOCIATION OR <--  
26 CORPORATION. THE TERM DOES NOT INCLUDE AN AGENCY OF THE FEDERAL,  
27 STATE, COUNTY OR MUNICIPAL GOVERNMENT OR AN INTERSTATE  
28 GOVERNMENT.

29 "Program." The Private Dam Financial Assurance Program  
30 established under section 3.

1 "REGULATED PRIVATE DAM." A PRIVATELY OWNED DAM SUBJECT TO <--  
2 THE REQUIREMENTS OF SECTION 11 OF THE ACT OF NOVEMBER 26, 1978  
3 (P.L.1375, NO.325), KNOWN AS THE DAM SAFETY AND ENCROACHMENTS  
4 ACT.

5 Section 3. Private Dam Financial Assurance Program.

6 (a) Establishment.--The department, in consultation with the  
7 Department of Environmental Protection, is authorized to  
8 establish the Private Dam Financial Assurance Program to provide  
9 financial assurance ~~for owners to assist in meeting any~~ <--  
10 ~~financial obligations under~~ ASSISTANCE TO OWNERS OF REGULATED <--  
11 PRIVATE DAMS TO MEET ANY PROOF OF FINANCIAL RESPONSIBILITY  
12 REQUIREMENTS PROMULGATED PURSUANT TO SECTION 11 OF the act of  
13 November 26, 1978 (P.L.1375, No.325), known as the Dam Safety  
14 and Encroachments Act, and any regulations promulgated under  
15 that act.

16 (b) Financial responsibility.--An owner that is enrolled in  
17 the program is deemed to have met ~~all financial obligations for~~ <--  
18 ~~the owner's dam under the Dam Safety and Encroachments Act and~~  
19 ~~any regulations promulgated under that act.~~ PROOF OF FINANCIAL <--  
20 RESPONSIBILITY REQUIREMENTS PROMULGATED PURSUANT TO SECTION 11  
21 OF THE DAM SAFETY AND ENCROACHMENTS ACT FOR THE OWNER'S DAM.

22 (c) Eligibility.--Financial assurance ASSISTANCE through the <--  
23 program shall be made available to ~~owners. To participate in the~~ <--  
24 ~~program, an owner must:~~

25 ~~(1) Be in compliance with the Operation and Maintenance~~  
26 ~~Manual of the Department of Environmental Protection.~~

27 ~~(2) Pay a one time registration fee of \$1,000 per dam.~~

28 ~~(3) Have a current approved emergency action plan~~  
29 ~~required by the Army Corps of Engineers and administered by~~  
30 ~~the Department of Environmental Protection, in conjunction~~

1 ~~with the Pennsylvania Emergency Management Agency.~~

2 ~~(4) Pay an annual fee equal to 1% of the bond amount~~  
3 ~~required by the Department of Environmental Protection under~~  
4 ~~the Dam Safety and Encroachments Act and any regulations~~  
5 ~~promulgated under that act.~~ AN OWNER PROVIDED THAT THE OWNER: <--

6 (1) DEMONSTRATES COMPLIANCE WITH THE DAM SAFETY AND  
7 ENCROACHMENTS ACT AND THE REGULATIONS PROMULGATED UNDER THAT  
8 ACT, AS DETERMINED BY THE DEPARTMENT OF ENVIRONMENTAL  
9 PROTECTION, INCLUDING ANNUAL INSPECTION REPORTING, PAYMENT OF  
10 REGISTRATION FEES AND COMPLIANCE WITH AN APPROVED EMERGENCY  
11 ACTION PLAN.

12 (2) PAYS A ONE-TIME PROGRAM ENROLLMENT FEE OF \$1,000 PER  
13 DAM TO THE FUND.

14 (3) PAYS AN ANNUAL FEE TO THE FUND IN AN AMOUNT EQUAL TO  
15 1% OF THE BOND AMOUNT REQUIRED BY THE DEPARTMENT OF  
16 ENVIRONMENTAL PROTECTION UNDER PROOF OF FINANCIAL  
17 RESPONSIBILITY REQUIREMENTS PROMULGATED PURSUANT TO SECTION  
18 11 OF THE DAM SAFETY AND ENCROACHMENTS ACT.

19 (d) ~~Application~~ PROGRAM APPLICATION.--Owners seeking <--  
20 assurance under this act ~~shall submit an~~ MUST SUBMIT A COMPLETE <--  
21 PROGRAM application on forms provided by the department. THE <--  
22 DEPARTMENT SHALL DEVELOP THE APPLICATION FORM IN CONSULTATION  
23 WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION. THE DEPARTMENT  
24 SHALL CONSULT WITH THE DEPARTMENT OF ENVIRONMENTAL PROTECTION TO  
25 DETERMINE OWNER ELIGIBILITY UNDER THIS ACT.

26 Section 4. Revolving loan program.

27 (a) Establishment.--The department, in consultation with the  
28 Department of Environmental Protection, is authorized to  
29 establish a revolving loan program for PRIVATE DAM owners <--  
30 enrolled in the program to provide assistance ~~for eligible costs~~<--

1 ~~for repairs and maintenance to dams.~~

2 (b) Loan criteria.--The department, IN CONSULTATION WITH THE <--  
3 DEPARTMENT OF ENVIRONMENTAL PROTECTION, shall establish criteria  
4 to award loans under the revolving loan program. Participation  
5 in the program shall be considered collateral for any loans  
6 awarded under this section.

7 (c) Loan amounts.--No loan amount UNDER THE PROGRAM shall <--  
8 exceed 50% of the eligible costs, and no loan shall exceed  
9 \$500,000.

10 (d) ~~Application~~ LOAN APPLICATION.--Owners seeking program <--  
11 loans must submit ~~an~~ A COMPLETE LOAN application to the <--  
12 department. The LOAN application FORM shall be ~~on a form~~ <--  
13 provided by the department. THE LOAN APPLICATION FORM SHALL BE <--  
14 DEVELOPED, IN CONSULTATION WITH THE DEPARTMENT OF ENVIRONMENTAL  
15 PROTECTION, and shall include all of the following:

16 (1) The name of the applicant.

17 (2) A brief description of the project to be funded.

18 (3) A demonstrated estimate of the eligible costs of the  
19 project.

20 (4) Any other information as the department OR <--  
21 DEPARTMENT OF ENVIRONMENTAL PROTECTION may require.

22 (e) Repayment.--Loans shall have a repayment period of up to  
23 10 years.

24 (f) Interest.--~~Interest~~ LOAN INTEREST rates shall be fixed <--  
25 AT AN INTEREST RATE IN EFFECT at the time the loan is made and <--  
26 shall be equal to the Five-Year United States Treasury Note on  
27 the date the ~~application is made~~ LOAN IS AWARDED. <--

28 (g) Fee.--The department may charge a loan origination fee  
29 not to exceed 2.5% of the approved loan amount.

30 (h) Penalties.--The department, IN CONSULTATION WITH THE <--

1 DEPARTMENT OF ENVIRONMENTAL PROTECTION, shall establish  
2 penalties for loan recipients who fail to meet their repayment  
3 obligations under the loan terms.

4 Section 5. Annual report.

5 The department, IN CONSULTATION WITH THE DEPARTMENT OF <--  
6 ENVIRONMENTAL PROTECTION, shall prepare an annual report for the  
7 General Assembly concerning activities and expenditures made  
8 under this act for the preceding year. The report shall include  
9 information concerning all loans made to owners and loan  
10 applications denied.

11 Section 6. Private Dam Financial Assurance Fund.

12 (a) Establishment of fund.--The Private Dam Financial  
13 Assurance Fund is established in the State Treasury. All  
14 payments and fees collected by the department under this act  
15 shall be paid into the fund. Money deposited into the fund and  
16 any interest it accrues are appropriated to the department for  
17 use in accordance with this act- AND TO THE DEPARTMENT OF <--  
18 ENVIRONMENTAL PROTECTION FOR COSTS ASSOCIATED WITH THE ENTRY,  
19 CORRECTION, REPAIR, OPERATION, MAINTENANCE, INSPECTION,  
20 MONITORING OR REMOVAL OF A DAM AS NECESSARY IN RESPONSE TO:

21 (1) THE FAILURE OF AN OWNER ENROLLED IN THE PROGRAM TO  
22 COMPLY WITH THE ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325),  
23 KNOWN AS THE DAM SAFETY AND ENCROACHMENTS ACT, OR ANY  
24 REGULATION, PERMIT OR ORDER ISSUED UNDER THAT ACT, WHERE THE  
25 FAILURE OF THE OWNER TO COMPLY CREATES AN UNSAFE CONDITION  
26 UNDER THE DAM SAFETY AND ENCROACHMENTS ACT AND THE  
27 REGULATIONS THEREUNDER; OR

28 (2) ABANDONMENT OF THE DAM BY AN OWNER ENROLLED IN THE  
29 PROGRAM.

30 (B) FUND BALANCE AND LOAN PROGRAM.--AT ANY TIME THAT THE

1 FUND HAS A BALANCE EQUAL TO OR GREATER THAN \$1,500,000 AND THE  
2 DEPARTMENT OF ENVIRONMENTAL PROTECTION HAS NOT IDENTIFIED THE  
3 NEED FOR AN AMOUNT IN EXCESS OF \$1,500,000 TO CORRECT THE  
4 FAILURE OF OWNERS TO COMPLY WITH THE DAM SAFETY AND  
5 ENCROACHMENTS ACT, THE DEPARTMENT MAY BEGIN ACCEPTING AND  
6 APPROVING OWNER LOAN APPLICATIONS FOR ELIGIBLE COSTS SO LONG AS  
7 A BALANCE OF AT LEAST \$1,000,000 REMAINS IN THE FUND.

8 ~~(b)~~ (C) Supplements to fund.--The fund may be supplemented <--  
9 by appropriations from Federal, State or local government or  
10 from any private source.

11 Section 7. Effective date.

12 This act shall take effect immediately.