

No. 108

AN ACT

HB 854

Amending the act of July 20, 1974 (P.L.572, No.198), entitled "An act establishing the Pennsylvania Solid Waste - Resource Recovery Development Fund, authorizing the Department of Environmental Resources to administer the fund and carry out the purposes of the act, to adopt rules, regulations, and procedures; imposing duties on loan applicants and recipients; imposing powers and duties on the Environmental Hearing Board and the Environmental Quality Board; providing remedies; prescribing penalties; and making an appropriation," providing for demonstration projects; providing for grants; imposing powers and duties on the Department of Environmental Resources and the Environmental Quality Board and making an appropriation.

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

Section 1. The definition of "Construction" in section 3, act of July 20, 1974 (P.L.572, No.198), known as the "Pennsylvania Solid Waste - Resource Recovery Development Act," is amended to read:

Section 3. Definitions.—As used in this act:

"Construction," with respect to any *demonstration or* development project means (i) the erection or building of new structures, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, but shall not include land costs or interests therein, and (ii) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (excluding trucks and other motor vehicles used in collection of solid waste from residences, commercial establishments, industries and other sources of generation, but including tractors, cranes, trucks, transfer and other machinery necessary for the proper utilization and operation of the facility after completion of the project); and includes engineering design studies, drawings, and specifications and (iii) the inspection and supervision of the process of carrying out the project to completion.

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Section 2. Section 3 of the act is amended by adding a definition to read:

Section 3. Definitions.—As used in this act:

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"Demonstration project," means a pilot or full scale activity, conducted as a Solid Waste Management System or a component thereof in a municipality or municipalities designed to show the technical and economic feasibility of a new and improved technique, process or system applicable to a resource recovery project.

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Section 3. The introductory paragraph and clauses (1), (6), (7), (8) and (11) of section 4 of the act are amended to read:

Section 4. Powers and Duties of the Department.—The department is hereby authorized to serve as the administrator of the **Pennsylvania Solid Waste - Demonstration Grants-in-Aid Fund** and Solid Waste - Resource Recovery Development Fund and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including the following powers, in addition to others herein granted:

(1) To make, upon proper application of solid waste - resource recovery agencies, loans to such development agencies of moneys held in the Solid Waste - Resource Recovery Development Fund for development projects and to provide for the repayment and redeposit of such allocations and loans in the manner hereinafter provided, **and upon proper application make grants to such development agencies of moneys held in the Solid Waste - Demonstration Fund for demonstration projects, and to establish the priority of such loans and grants.**

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(6) To take title by foreclosure **or by the exercise of applicable conditions of the grant award contract** to any **demonstration or** development project where such acquisition is necessary to protect any **grant or** loan previously made therefore by the department and to pay all costs arising out of such foreclosure and acquisition from moneys held in the **[fund] Development Fund or Demonstration Fund, whichever is applicable** and to sell, transfer and convey any such **demonstration project or** development project **or components thereof** to any responsible buyer; in the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the department may, in order to minimize financial losses and sustain employment, lease such **demonstration project or** development project to a responsible tenant or tenants; the department shall not lease **demonstration projects or** development projects except under the conditions and for the purpose cited in this section.

(7) To purchase first mortgages and to make payments on first mortgages on any **demonstration project or** development project where such purchase or payment is necessary to protect any **grant or** loan previously made therefore by the department, and to sell, transfer, convey and assign any such first mortgage. Moneys so used by the department in the purchase of any first mortgages, or any payments thereon, shall be withdrawn from the **[fund] Development Fund or the Demonstration Fund, whichever is applicable**, and any moneys derived from the sale of any first mortgages shall be deposited by the department in the **appropriate** fund.

(8) To audit, inspect, and review all books, records, and reports maintained by recipients of **grants or** loans made pursuant to this act.

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(11) To issue enforcement orders to **grant or** loan recipients whose books, records, or reports have not been maintained in the manner required by the department.

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Section 4. Section 4 of the act is amended by adding a clause to read:

Section 4. Powers and Duties of the Department.—The department is hereby authorized to serve as the administrator of the Pennsylvania Solid Waste - Resource Recovery Development Fund and shall have and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this act, including the following powers, in addition to others herein granted:

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(16) To establish priorities for grants based on the following guidelines:

(i) Whether the project is consistent with State, regional and local planning.

(ii) The degree to which the project can be expected to demonstrate results that will have general application to solid waste management problems within the Commonwealth.

(iii) Whether plans exist to continue the project as an ongoing service after the demonstration period.

(iv) The degree to which project objectives are attainable and measurable within the scope of the project.

(v) The projected quantity and quality of material and/or energy recovered.

(vi) The projected economic viability of the project.

(vii) The possible duplication of other existing or proposed projects.

(viii) The degree of improvement to the environment attainable from the project.

Section 5. Subsection (a) of section 6 and sections 7 and 8 of the act are amended to read:

Section 6. Powers and Duties of the Environmental Quality Board.—(a) The Environmental Quality Board shall have the power and its duties shall be to adopt rules and regulations to accomplish the purposes of this act, including but not limited to the setting of a uniform interest rate to be applied to loans administered under this act. Such interest rate shall be [reviewed] **established at three percent (3%)** annually. [on the anniversary of the effective date of this act, and in no case shall the rate of interest be set at less than the interest rate paid by the Commonwealth on the last general obligation bonds issued prior to the date of such review.]

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Section 7. **Grants and Loans to Development Agencies.**—When it has been determined by the department upon application of a Solid Waste or Resource Recovery Development Agency and hearing thereon in the manner hereinafter provided, that the establishment of a

particular **demonstration project or** development project of such development agency has accomplished or will accomplish the purposes of this act, the department may contract to **grant and/or** loan such development agency an amount not in excess of the percentage of the cost of such **demonstration project or** development project, as established or to be established as hereinafter set forth.

The department may contract to loan the development agency up to fifty percent (50%) of the cost of a solid waste disposal/processing system or a resource recovery system **and grant the development agency up to seventy-five percent (75%) of the cost of a demonstration project**, if it has determined that the agency holds funds or property in the amount of value of five percent (5%) or more of the cost of the development project **or demonstration project**, which funds or property shall be applied to the establishment of such project: Provided, That development agencies applying for loans for solid waste disposal/processing systems shall demonstrate to the department through engineering, economic, and other appropriate studies that solid waste generation and recovered materials market commitments are insufficient or unavailable to support a resource recovery system: And further provided, That (1) loans for new solid waste disposal/processing systems shall be made only to municipalities which are or are in counties of the seventh and eighth class and where said systems shall serve a minimum population of ten thousand persons, except in those cases of seventh and eighth class counties where the total population is less than ten thousand persons and in those cases said systems shall serve the total populace of those counties; (2) loans for existing solid waste disposal/processing systems shall be made only to municipalities which are or are in counties of the fifth through eighth classes: Provided, however, That after July 1, 1975 no more than fifty percent (50%) of the available fund can be used in any one year for solid waste disposal/processing systems.

In reviewing applications for loans, the department shall consider the amounts of polluting substances treated and/or eliminated, the overall environmental benefits to be accrued as a result of the projects, the amount of population served, and the extent of resource recovery to be included: And, provided further, That no loan shall be granted for a project which does not conform to the requirements of the act of July 31, 1968 (P.L.788, No.241), known as the "Pennsylvania Solid Waste Management Act," or a project which would jeopardize the economic stability of existing solid waste disposal/processing or resource recovery systems already approved by the department as part of officially adopted solid waste management plans, and provided no **grant or** loan shall be made to any municipality which is not a part of a department approved solid waste management plan.

Any such loan of the department shall be for **[ten] up to thirty** years and shall bear interest at **[such rate as shall be determined by the**

Environmental Quality Board] the established rate and shall be secured by bond or note of the development agency and by mortgage on the development project for which such loan was made, such mortgage to be second and subordinate only to the mortgage securing the first lien obligation issued to secure the commitment of funds from independent and responsible sources and used in the financing of the development project.

Any such grants of the department made for a demonstration project shall be encumbered for a period not to exceed three years.

Moneys so **granted or** loaned by the department to development agencies shall be withdrawn from the **Solid Waste - Demonstration Fund or Solid Waste - Resource Recovery Development Fund** and paid over to the development agency in such manner as shall be provided and prescribed by the rules and regulations of the department.

All payments of interest on said loans and the principal thereof shall be deposited by the department in the fund.

[Loans] Grants and loans by the department to a development agency for a **demonstration project or** development project shall be made only in the manner and to the extent as in this section provided except, however, in those instances wherein an agency of the Federal Government participates in the financing of a **demonstration project or** development project by loan, grant or otherwise of Federal funds. When any Federal agency does so participate the department may adjust the sequence ratios of financial participation by the development agency, the source of independent funds and the department in such manner as to insure the maximum benefit available to the development agency, the department, or both, by the participation of the Federal agency.

Where any Federal agency participating in the financing of a development project is not permitted to take as security for such participation a mortgage the lien of which is junior to the mortgage of the department, the department shall in such instances be authorized to take as security for its loan to the development agency a mortgage junior in lien to that of the Federal agency.

Section 8. Requirements of **[Loan] Applicants and Recipients.**—(a) Prior to the **granting or** loaning of any funds to a development agency for a **[development]** project, such agency shall submit to the department **[a loan] an** application in a form required by the department and containing such information as the department may require.

(b) **[Loan recipients] Recipients** shall maintain accurate fiscal and accounting records of all expenditures incurred and funds received in carrying out a development project pursuant to the provisions of this act.

(c) **[Loan recipients] Recipients** shall apply moneys received from the department under this act only to those purposes and activities authorized by **[loan] contract or** otherwise approved by the department.

Section 6. The act is amended by adding a section to read:

Section 9.1. Grant Appropriation; Solid Waste - Demonstration Grants-in-Aid Fund.—*The sum of two million dollars (\$2,000,000) is hereby appropriated from the Development Fund for use by the department for grants-in-aid when the department in any one year shall determine such moneys are required to carry out the intent and purposes of this act.*

There is hereby created a special account in the Treasury of the Commonwealth to be known as the "Solid Waste - Demonstration Fund" to which shall be accredited the above provided appropriation to the department.

If the department shall determine that moneys held for the credit of this fund are in excess of the amount needed by the department ~~in this or~~ any other fiscal year, such moneys shall be retained in the Development Fund and carried over into the succeeding fiscal year to carry out the purposes of this act.

Section 7. This act shall take effect immediately.

APPROVED—This 7th day of October, 1975, except for the appropriation of \$2,000,000 as provided in section 6 of the act. I withhold my approval from this item because funds are not available in the Development Fund for appropriation, and on that basis, Article 8, section 13(a) of the Pennsylvania Constitution prevents me from approving the appropriation.

However, I support the program contained in this act, and will submit to the General Assembly legislation to make funds available from the General Fund to carry out the purposes of this act.

MILTON J. SHAPP