

No. 198

AN ACT

HB 2360

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.

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

Section 1. Short Title.—This act shall be known and may be cited as the “Pennsylvania Solid Waste - Resource Recovery Development Act.”

Section 2. Legislative Purpose.—The purposes of this act are:

(1) To promote the construction, and the application of solid waste disposal/processing and resource recovery systems which preserve and enhance the quality of air, water, and land resources.

(2) To provide financial assistance to municipalities, and development agencies in the planning and development of resource recovery and solid waste disposal/processing programs.

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

“Construction,” with respect to any 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.

“County” means any county of this Commonwealth.

“Department” means the Department of Environmental Resources of the Commonwealth of Pennsylvania and its authorized representative.

“Development agency” means a municipality, or a group thereof or a municipal authority.

“Development project” means the construction of a solid waste disposal/processing system or a resource recovery system.

“Federal agency” means and includes the United States of America, the President of the United States of America, and any department of, or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

“Municipality” means any county, city, borough, town or township of the Commonwealth of Pennsylvania.

“Person” means any individual, partnership, corporation, association, or other legal entity whatsoever which is recognized by law as the subject of rights and duties.

“Recovered resources” means materials or energy recovered from solid wastes.

“Resource recovery system” means a system which provides for the extraction and utilization of materials and values from solid waste including the separation, recycling, and recovery of all solid waste for which markets have been obtained prior to construction but not less than fifty percent (50%) by dry weight, of the total solid waste throughput of the system, and including the disposal of nonmarketable waste residues.

“Responsible buyer” means any person, partnership, or corporation deemed by the department after investigation, to be financially responsible to assume all obligations prescribed by the department in the acquisition and operation of a development project.

“Responsible tenant” means any person, partnership, or corporation deemed by the department, after investigation, to be financially responsible to assume all obligations prescribed by the department in the acquisition and operation of a development project.

“Sewage” means any substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.

“Solid waste” means garbage, refuse, and other discarded materials including solid waste materials resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

“Solid waste disposal/processing system” means a system that provides for the treatment, processing, or final disposal of solid waste as part of an official solid waste management plan.

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:

(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.

(2) To cooperate with solid waste - resource recovery development agencies in their efforts to promote the expansion of solid waste processing/disposal and resource recovery systems.

(3) To employ such persons as necessary to carry out the provisions of this act and to prescribe their duties.

(4) To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business, and to avail itself of all rights and remedies, both at law and in equity, arising out of such contracts.

(5) Without limitation of the foregoing, accept grants from, and to enter into contracts or other transactions with any Federal agency.

(6) To take title by foreclosure to any development project where such acquisition is necessary to protect any 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 and to sell, transfer and convey any such development project 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 development project to a responsible tenant or tenants; the department shall not lease 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 development project where such purchase or payment is necessary to protect any 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, and any moneys derived from the sale of any first mortgages shall be deposited by the department in the fund.

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

(9) To submit an annual report to the Joint Legislative Air and Water Pollution Control and Conservation Committee summarizing the status, activities, and accomplishments of the department in administering this act.

(10) To consult with technical advisors properly qualified by education or experience in financial administration, solid waste management, resource recovery systems design and construction, market analyses, or any other field of endeavor which is pertinent to the effectuation of the purposes of this act.

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

(12) To institute legal proceedings in a court of competent jurisdiction for the enforcement of any order of the department under this act for which there has been no timely appeal or which has been sustained on appeal, or for the recovery of penalties or damages under this act.

(13) To institute actions at law against any person to recover any funds spent by said person for any purpose not authorized by the department under this act, or under the rules, regulations, and agreements adopted or made thereunder.

(14) To institute prosecutions under this act.

(15) To do all things necessary or convenient to carry out the powers granted by this act.

Section 5. Powers and Duties of the Environmental Hearing Board.—The Environmental Hearing Board shall have the power and its duties shall be to hear and determine all appeals from actions of the department taken in accordance with the provisions of this act. Any and all actions taken by the Environmental Hearing Board with reference to any such appeal shall be in the form of an adjudication, and all such actions shall be subject to the provisions of the act of June 4, 1945 (P.L.1388, No.442), known as the “Administrative Agency Law.”

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 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.

(b) Such rules and regulations shall be adopted pursuant to the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the “Commonwealth Documents Law,” upon such notice and after such public hearings as the Environmental Quality Board deems appropriate.

Section 7. 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 development project of such development agency has accomplished or will accomplish the purposes of this act, the department may contract to loan such development agency an amount not in excess of the percentage of the cost of such 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 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, 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 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 years and shall bear interest at such rate as shall be determined by the Environmental Quality Board 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.

Moneys so loaned by the department to development agencies shall be withdrawn from the 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 by the department to a development agency for a 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 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 loaning of any funds to a development agency for a development project, such agency shall submit to the department a loan application in a form required by the department and containing such information as the department may require.

(b) Loan 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 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 9. Appropriation; Development Fund.—The sum of twenty million dollars (\$20,000,000) is hereby specifically appropriated to the department for the purposes set forth in this act for the fiscal year 1974-1975.

There is hereby created a special account in the Treasury of the Commonwealth to be known as the "Solid Waste - Resource Recovery Development Fund" to which shall be accredited the above provided appropriation and any subsequent appropriations made by the Legislature to the department, as well as such other deposits as provided in this section.

The department shall also requisition, from time to time, from the fund such amounts as shall be allocated and appropriated by the department for loans to development agencies for development

projects. When and as the amounts so allocated and appropriated by the department as loans to development agencies are repaid to the department pursuant to the terms of the mortgages and other agreements made and entered into by the department, the department shall pay such amounts into the fund, it being the intent of this act that the fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied to the purposes of this act.

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

Section 10. Money of the Department.—All interest and principal repaid by the loan recipients shall be paid to the State Treasurer for deposit in the fund. Said moneys shall be deposited in the first instance (by the State Treasurer) in one or more banks or trust companies, in one or more special accounts, and each of such special accounts shall be continuously secured by a pledge or direct obligations of the United States of America or of the Commonwealth, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such accounts. Such securities shall either be deposited with the department or be held by a trustee or agent satisfactory to the department. All banks and trust companies are authorized to give such security for such deposits. The moneys in said account shall be paid out on the warrant or other order of the secretary of the department, or of such other person or persons as the department may authorize to execute such warrants or orders.

Section 11. Interest in Contracts or Agreements.—No employee of the department shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the department for any matter, cause or thing whatsoever by reason whereof any liability or indebtedness shall be in any way created against the department. If any contract or agreement shall be made in violation of the provisions of this section, the same shall be null and void, and no action shall be maintained thereon against the department.

Section 12. Limitation of Powers.—The Commonwealth does hereby pledge to and agree with the United States and any other Federal agency that in the event that any Federal agency shall construct or loan or contribute any funds for the construction, extension, improvement or enlargement of any development project, or any portion thereof, the Commonwealth will not alter or limit the rights and powers of the department in any manner which would be inconsistent with the due performance of any agreements between the department and such Federal agency, and the department shall continue to have and may

exercise all powers herein granted, so long as the same shall be necessary or desirable for the carrying out of the purposes of this act.

Section 13. Fines and Penalties.—(a) Any person who attempts to or obtains financial aid for a project hereunder by false or misleading information or who shall by fraud attempt to obtain moneys or shall fraudulently attempt to or does prevent the collection of moneys due to the department shall, for each offense, be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand five hundred dollars (\$2,500) or undergo imprisonment not exceeding one year, or both.

(b) Any person who attempts to or does apply funds received from the department under this act to any purpose or activity other than those purposes and activities approved by the department, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than three hundred dollars (\$300) and, in default of the payment of such fine and costs, shall undergo imprisonment for not more than thirty days.

(c) All fines and penalties imposed under the provisions of this section shall be paid into the "Solid Waste - Resource Recovery Development Fund."

Section 14. Severability Clause.—The provisions of this act are severable and if any provision or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of the act.

Section 15. Appropriation; Administrative Expenses.—The sum of one hundred thousand dollars (\$100,000) is hereby appropriated to pay all expenses incurred in the administration of this act.

Section 16. Effective Date.—This act shall take effect November 1, 1974.

APPROVED—The 20th day of July, A. D. 1974.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 198.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

*Secretary of the Commonwealth.*