

LEGISLATIVE REFERENCE BUREAU

AMENDMENTS TO SENATE BILL NO. 411

Sponsor:

Printer's No. 431

1 Amend Bill, page 1, lines 1 through 5, by striking out all of
2 said lines and inserting

3 Amending Title 27 (Environmental Resources) of the Pennsylvania
4 Consolidated Statutes, in good Samaritan, further providing
5 for findings, for definitions, for eligibility and project
6 inventory, for landowner liability limitation and exceptions,
7 for project liability limitation and exceptions, for
8 exceptions and for water supply replacement; and making
9 editorial changes.

10 Amend Bill, page 1, lines 8 through 18; pages 2 through 8,
11 lines 1 through 30; page 9, lines 1 through 27, by striking out
12 all of said lines on said pages and inserting

13 Section 1. Section 8102(5) of Title 27 of the Pennsylvania
14 Consolidated Statutes is amended to read:

15 § 8102. Findings.

16 The General Assembly finds and declares as follows:

17 * * *

18 (5) Numerous landowners, citizens, watershed associations,
19 environmental organizations, private entities and governmental
20 entities who do not have a legal responsibility to reclaim the
21 abandoned lands or to abate the water pollution are interested
22 in addressing these problems but are reluctant to engage in such
23 reclamation and abatement activities because of potential
24 liabilities associated with the reclamation and abatement
25 activities.

26 * * *

27 Section 2. The definitions of "eligible land and water,"
28 "water pollution abatement facilities" and "water pollution
29 abatement project" in section 8104 of Title 27 are amended and
30 the section is amended by adding definitions to read:

31 § 8104. Definitions.

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

35 * * *

1 "Beneficial use." Any use of water for a purpose that
2 results in an economic or environmental benefit, including the
3 supply of water for use by an industrial or commercial facility
4 operating in accordance with the laws of this Commonwealth.

5 * * *

6 "Eligible land and water." Land and water adversely affected
7 by mining or oil or gas extraction [and left or abandoned in an
8 unreclaimed or inadequately reclaimed condition or left
9 discharging water pollution and] for which no person has a
10 continuing reclamation or water pollution abatement obligation.
11 The term [shall also include] includes land and water adversely
12 affected by mining or oil or gas extraction [and left in an
13 unreclaimed or inadequately reclaimed condition or left
14 discharging water pollution] for which the Department of
15 Environmental Protection has forfeited and collected the
16 operators bonds and there is no outstanding litigation
17 concerning the bond forfeiture, or for which a treatment trust
18 fund naming the department as the beneficiary has been
19 established.

20 * * *

21 "Mine drainage" or "mine pool water." Water contained in a
22 mine pool, or a surface discharge of water caused by mining
23 activities that pollutes or may create a threat of pollution to
24 waters of this Commonwealth.

25 * * *

26 "Mine operator." The permittee of an active or closed mine
27 that treats mine drainage or mine pool water under a permit
28 issued by the department.

29 * * *

30 "Reclamation project operator." A person who undertakes or
31 performs a reclamation project approved by the department.

32 "Treated mine drainage." Water from an active or closed mine
33 that is treated by the mine operator under a permit issued by
34 the department. Treated mine drainage that meets the effluent
35 limits for the National Pollutant Discharge Elimination System
36 permit for the source mine is not a solid waste as defined in
37 section 103 of the act of July 7, 1980 (P.L.380, No.97), known
38 as the Solid Waste Management Act, and the regulations
39 promulgated thereunder.

40 * * *

41 "Water pollution abatement facilities." The methods for
42 treatment or abatement of water pollution located on eligible
43 lands and water. These methods include, but are not limited to,
44 a structure, system, practice, technique or method constructed,
45 installed or followed to reduce, treat or abate such water
46 pollution, and facilities to withdraw mine drainage or mine pool
47 water for use in gas well development or another beneficial use.

48 "Water pollution abatement project." Any of the following:

49 (1) A plan for treatment or abatement of water pollution
50 located on eligible lands and water. These plans include, but
51 are not limited to, the practices to be followed and the

1 installation, operation and maintenance of facilities to
2 reduce, treat or abate such water pollution.

3 (2) A plan for the withdrawal of mine drainage or mine
4 pool water located on eligible lands and water, provided that
5 the use is for gas well development or another beneficial
6 use. These plans include the installation, operation and
7 maintenance of facilities to withdraw such mine drainage or
8 mine pool water.

9 "Water pollution abatement project operator." A person who
10 undertakes or performs a water pollution abatement project
11 approved by the department.

12 Section 3. Section 8105(a), (b) and (d) of Title 27 are
13 amended to read:

14 § 8105. Eligibility and project inventory.

15 (a) General rule.--A landowner or person who [voluntarily]
16 provides equipment, funding, materials or services [at no charge
17 or at cost] for a reclamation project or a water pollution
18 abatement project in accordance with this chapter may be immune
19 from civil liability and may raise the protections afforded by
20 this chapter in any subsequent legal proceeding which is brought
21 to enforce environmental laws or otherwise impose liability. A
22 landowner or other person is only eligible for the protections
23 and immunities provided by sections 8106 (relating to landowner
24 liability limitation and exceptions) and 8107 (relating to
25 project liability limitation and exceptions) if a detailed
26 written plan of the proposed reclamation project or water
27 pollution abatement project is submitted to and approved by the
28 department. The project plan shall include the objective of the
29 project and a description of the work that will be performed to
30 accomplish the objective and must identify the project location,
31 project boundaries, the project participants and the owners of
32 the land.

33 (b) Notice.--Upon receipt of each project plan, the
34 department shall require a water pollution abatement project
35 operator or a reclamation project operator to either give
36 written notice by certified mail to adjacent property owners and
37 riparian land owners located downstream of the proposed project
38 or [will] provide public notice of the proposed project in a
39 newspaper of general circulation, published in the locality of
40 the proposed project, once a week for four consecutive weeks
41 [and]. The department shall give public notice in the
42 Pennsylvania Bulletin. [The person proposing the project may
43 also provide public notice. Any] All notice under this
44 subsection shall indicate that any person having an interest
45 which may be adversely affected by the proposed project has the
46 right to file with the department written objection to the
47 proposed project within 30 days after receipt of the written
48 notice or the last publication of the above notice, which shall
49 conclude the public comment period. The department shall provide
50 to the person proposing the project a copy of each written
51 objection received during the public comment period.

1 * * *

2 (d) Departmental review.--The department shall review each
3 proposed reclamation project and approve the project if the
4 department determines the proposed project:

5 (1) will result in the regrading of the land to stable
6 contours that blend in and complement the drainage pattern of
7 the surrounding terrain with no highwalls, spoil piles or
8 depressions to accumulate water;

9 (2) will result in the appropriate revegetation of the
10 site; and

11 (3) is not likely to result in water pollution as
12 defined in section 1 of the act of June 22, 1937 (P.L.1987,
13 No.394), known as The Clean Streams Law.

14 The department shall review each proposed water pollution
15 abatement project and approve the project if the department
16 determines the proposed project is likely to improve the water
17 quality of mine drainage or mine pool water on eligible land and
18 water or will likely have a beneficial impact on water resources
19 in this Commonwealth and is not likely to make the water
20 pollution worse.

21 * * *

22 Section 4. Sections 8106 heading, (a) and (c) and 8107 of
23 Title 27 are amended and the sections are amended by adding
24 subsections to read:

25 § 8106. [Landowner liability] Liability limitation and
26 exceptions.

27 (a) General rule.--Except as specifically provided in
28 subsections (b) and (c), a landowner who provides access to the
29 land[, without charge or other consideration,] which results in
30 the implementation of a reclamation project or a water pollution
31 abatement project:

32 (1) Shall be immune from liability for any injury or
33 damage suffered by the person implementing the reclamation
34 project or the water pollution abatement project while the
35 person is within the project work area.

36 (2) Shall be immune from liability for any injury to or
37 damage suffered by a third party which arises out of or
38 occurs as a result of an act or omission of a person
39 implementing a reclamation project or water pollution
40 abatement project which occurs during the implementation of
41 the reclamation project or the water pollution abatement
42 project.

43 (3) Shall be immune from liability for any injury to or
44 damage suffered by a third party, including adjacent
45 landowners or downstream riparian landowners, which arises
46 out of or occurs as a result of a reclamation project or a
47 water pollution abatement project.

48 (4) Shall not be deemed to assume legal responsibility
49 for or incur liability for any pollution resulting from a
50 reclamation project or water pollution abatement project.

51 (5) Shall not be subject to a citizen suit filed

1 pursuant to section 601 of the act of June 22, 1937
2 (P.L.1987, No.394), known as The Clean Streams Law, for
3 pollution resulting from a reclamation project or water
4 pollution abatement project.

5 (6) Shall be immune from liability for the operation,
6 maintenance or repair of the water pollution abatement
7 facilities constructed or installed during the project unless
8 the landowner negligently damages or destroys the water
9 pollution abatement facilities or denies access to those
10 persons who operate, maintain or repair the water pollution
11 abatement facilities.

12 * * *

13 (c) Exceptions to landowner immunity.--Nothing in this
14 chapter shall limit [in any way] or affect a landowner's
15 liability which results from a reclamation project or water
16 pollution abatement project and which would otherwise exist:

17 (1) For injury or damage resulting from the landowner's
18 acts or omissions which are reckless or constitute gross
19 negligence or willful misconduct.

20 [(2) Where the landowner charges an access fee or
21 requires other consideration before allowing access to the
22 land for the purpose of implementing a reclamation project or
23 water pollution abatement project or to operate, maintain or
24 repair water pollution abatement facilities constructed or
25 installed during a water pollution abatement project.]

26 (3) For the landowner's unlawful activities.

27 [(4) For damage to adjacent landowners or downstream
28 riparian landowners which results from a reclamation project
29 or water pollution abatement project where written notice or
30 public notice of the proposed project was not provided.]

31 (d) Mine drainage immunity.--A mine operator who provides
32 treated mine drainage from a permitted mining activity site
33 shall be immune from liability for any cost, injury or damage
34 arising out of the use of the treated mine drainage if:

35 (1) the treated mine drainage is for use outside the
36 boundaries of the permitted mining activity site;

37 (2) the treated mine drainage is for the development of
38 a gas well or another beneficial use; and

39 (3) the mine operator is not the same person using the
40 treated mine drainage for gas well development or another
41 beneficial use.

42 (e) Water pollution abatement immunity.--A water pollution
43 abatement project operator who provides mine drainage or mine
44 pool water from eligible land and water shall be immune from
45 liability for any cost, injury or damage arising out of the use
46 of the mine drainage or mine pool water if:

47 (1) the mine drainage or mine pool water is for use
48 outside the boundaries of the water pollution abatement
49 project;

50 (2) the mine drainage or mine pool water is for the
51 development of a gas well or another beneficial use; and

1 (3) the water pollution abatement project operator is
2 not the same person using the mine drainage or mine pool
3 water for gas well development or another beneficial use.

4 (f) Acquisition of water.--A person who acquires mine
5 drainage or mine pool water from eligible land and water for use
6 in gas well development or another beneficial use may not be
7 held liable for the treatment or abatement of the mine drainage
8 or mine pool water due to the acquisition or usage.

9 (g) Liability limitation.--Except as provided in subsections
10 (d) and (e), nothing in this chapter shall limit the liability
11 of a person for unlawful spills or releases of mine drainage or
12 mine pool water caused by the person after its withdrawal of the
13 water that occurs on ineligible land and water in this
14 Commonwealth.

15 § 8107. Project liability limitation and exceptions.

16 (a) General rule.--Except as specifically provided in
17 subsection (b), a [person] reclamation project operator or water
18 pollution abatement project operator who provides equipment,
19 funding, materials or services at no cost [or at cost] to the
20 Commonwealth for a reclamation project or a water pollution
21 abatement project:

22 (1) Shall be immune from liability for any injury to or
23 damage suffered by a person which arises out of or occurs as
24 a result of the water pollution abatement facilities
25 constructed or installed during the water pollution abatement
26 project.

27 (2) Shall be immune from liability for any pollution
28 emanating from the water pollution abatement facilities
29 constructed or installed during the water pollution abatement
30 project unless the person affects an area that is
31 hydrologically connected to the water pollution abatement
32 project work area and causes increased pollution by
33 activities which are unrelated to the implementation of a
34 water pollution abatement project.

35 (3) Shall not be deemed to assume responsibility for or
36 incur liability for the operation, maintenance and repair of
37 the water pollution abatement facilities constructed or
38 installed during the water pollution abatement project[.] or
39 for the treatment or abatement of mine drainage or mine pool
40 water that is the object of the water pollution abatement
41 project.

42 (4) Shall not be subject to a citizen suit under section
43 601 of the act of June 22, 1937 (P.L.1987, No.394), known as
44 The Clean Streams Law, for pollution emanating from the water
45 pollution abatement facilities constructed or installed
46 during the water pollution abatement project.

47 (b) Exceptions.--

48 (1) Nothing in this chapter shall limit [in any way] the
49 liability of a [person] reclamation project operator or a
50 water pollution abatement project operator who provides
51 equipment, funding, materials or services [at no cost or at

1 cost] for a reclamation project or a water pollution
2 abatement project [which liability results from the
3 reclamation project or the water pollution abatement project
4 and which would otherwise exist]:

5 (i) For injury or damage resulting from the
6 [person's] water pollution abatement project operator's
7 or the reclamation project operator's acts or omissions
8 which are reckless or constitute gross negligence or
9 willful misconduct.

10 (ii) For the [person's] water pollution abatement
11 project operator's or the reclamation project operator's
12 unlawful activities.

13 [(iii) For damages to adjacent landowners or
14 downstream riparian landowners which result from a
15 reclamation project or a water pollution abatement
16 project where written notice or public notice of the
17 proposed project was not provided.]

18 (2) Nothing in this chapter shall limit in any way the
19 liability of a person who the department has found to be in
20 violation of any of the following acts:

21 (i) The act of May 31, 1945 (P.L.1198, No.418),
22 known as the Surface Mining Conservation and Reclamation
23 Act.

24 (ii) The act of April 27, 1966 (1st Sp.Sess.,
25 P.L.31, No.1), known as The Bituminous Mine Subsidence
26 and Land Conservation Act.

27 (c) Definitions.--As used in this section, the term "cost to
28 the Commonwealth" does not include the awarding of grant funds
29 by the department or a Commonwealth agency to a water pollution
30 abatement project operator who:

31 (1) provides equipment, funding, materials or services
32 to the Commonwealth for a reclamation project or a water
33 pollution abatement project; or

34 (2) implements any such project.

35 Section 5. Sections 8111(a) and 8112 of Title 27 are amended
36 to read:

37 § 8111. Exceptions.

38 (a) General rule.--Any person who under existing law [shall
39 be] is or may become responsible to reclaim the land adversely
40 affected by mining or oil or gas extraction, or treat or abate
41 the water pollution [or any person who for payment or
42 consideration or who receives some other benefit through a
43 contract or any person who through a consent order and agreement
44 or otherwise agrees or is ordered to perform or complete
45 reclamation or treat or abate water pollution as well as a
46 surety which provided a bond for the site] caused by mining or
47 oil or gas extraction shall not be eligible for nor shall that
48 person receive the benefit of the protections and immunities
49 available under this chapter, except as specifically provided
50 for in section 8106(d) (relating liability limitation and
51 exceptions).

1 * * *
2 § 8112. Water supply replacement.
3 A public or private water supply affected by contamination or
4 the diminution caused by the implementation of a reclamation
5 project or the implementation of a water pollution abatement
6 project shall be restored or replaced by the [department]
7 reclamation project operator or the water pollution abatement
8 project operator with an alternate source of water adequate in
9 quantity and quality for the purposes served by the water
10 supply.
11 Section 6. This act shall take effect in 60 days.