

October 1, 2019

Dear Members of the Pennsylvania General Assembly:

The undersigned members of the conservation, business, clean energy, environmental protection, and faith communities in Pennsylvania **ask for your OPPOSITION to House Bills 1100, 1102, 1106, and 1107**. In the coming weeks, you may be asked to vote for this package of bills known collectively as, “Energize PA.” In context, Energize PA is an effort to double down on nearly a decade of preferential policy support for the natural gas industry—first for production and transportation, now for consumption—and lock-in gas and petrochemical infrastructure. This legislation seeks to incentivize via the rollback critical protections, subsidizing polluting industries, and weakening of permit application processes.

House Bill 1100 (PN: 1593) – Establishing an Energy & Fertilizer Tax Credit (Rep. Kaufer)

In its simplest form, HB 1100 would establish the same tax credit provided to the Shell Cracker Plant for other large manufacturers that use Pennsylvania-resourced natural gas, but with lower requirements. Because of this large giveaway to the fossil fuel industry, we are strongly opposed to this legislation. The tax credit would provide a \$0.05 per gallon subsidy for the production of ammonia, urea, and methanol, up to a total of 20% of the petrochemical manufacturers’ tax liabilities for manufacturers that do the following:

- Builds a facility in Pennsylvania through an investment of at least \$1 billion;
- Hires at least 1,000 full-time equivalent jobs during the construction phase of the project (the cracker plant credit required at least 2,500 jobs);
- Purchases and uses Pennsylvania-sourced natural gas to manufacture petrochemicals or fertilizers.

The bill also allows a petrochemical company to sell or transfer their tax credit to another upstream or downstream petrochemical company if they assess they can’t use the tax credit any longer (e.g. the tax credit would result in a refund, they receive another tax credit they must use before this one is eligible, etc.).

House Bill 1102 (PN: 1595) – Establish *Keystone Energy Enhancement Zones* (Rep. Kail)

Whereas HB 1100 would subsidize, through the state tax code, the construction of petrochemical businesses building projects in the state, HB 1102 would subsidize these same businesses through local and municipal taxing authorities. Due to this hefty giveaway to the petrochemical industry, we strongly oppose this legislation. This bill is nearly identical to bills proposed by Speaker Turzai during the past two sessions. The bill has three main pieces to it:

1. The creation of a *Keystone Energy Authority*, a new government entity tasked with supporting the natural gas and petrochemical industries.
2. The creation of a *Keystone Energy Enhancement Fund* to provide a revenue stream for operating the Authority and Enhancement Zones program.
3. The establishment of *Keystone Energy Enhancement Zones* to provide tax subsidies to petrochemical businesses in Pennsylvania.

The *Keystone Energy Authority* would be a new government entity tasked with the goal of “furthering the development of manufacturing business, petrochemical business and other downstream business opportunities through the increased use of natural gas produced in this Commonwealth.” The *Authority* would fulfill this goal by executing the following powers:

- Develop and execute the Keystone Energy Enhancement Zone program;

- Act as the main point of contact with any petrochemical company applying with Pennsylvania for its *Keystone Energy Enhancement Zone*;
- Develop a report identifying the challenges that exist across the Commonwealth to expand natural gas transmission and distribution infrastructure, while also providing recommendations on how to address these challenges including legislative and regulatory policies;
- Identify corridors for safe and efficient siting of natural gas transmission and distribution pipelines to *Enhancement Zones*;
- Coordinate with all relevant regulatory agencies and recommend policies to streamline natural gas permits;
- Investigate and hold hearings on any issues important to the Authority carrying out its objectives;
- Execute its business like any other state authority, including making contracts and creating bylaws.

The Authority would hire a staff but be governed by a seven-person board serving two-year terms. One member would be appointed by the Governor and six would be appointed by the House and Senate leadership. The Authority would cease operations in 2032. The bill also creates a *Keystone Energy Enhancement Fund* (i.e. a special fund) so the legislature can direct revenue to the *Authority*. To start, the bill would transfer \$500,000 from the General Fund, presumably to hire staff and begin operations.

Lastly, the bill creates the *Keystone Energy Authority* that would administer up to 20 *Keystone Energy Enhancement Zones* throughout the Commonwealth that would provide a 10-year tax abatement for all local taxes to petrochemical companies building infrastructure in the zone. The zones also provide a similar ten-year tax exemption for state sales and personal income taxes accrued while a part of the zone. Municipalities must approve an ordinance or resolution agreeing to offer this tax abatement in order to be eligible to become a zone. They must also include deteriorated property and propose how local regulations will be eased for petrochemical businesses. A major requirement for businesses to be eligible for the tax abatement in a zone is that it must offer an apprenticeship program and follows relevant federal law related to hiring illegal aliens.

House Bill 1106 (PN: 1599) – Allows for “deemed approval” of permits (Rep. Puskaric)

For the last two years, numerous House and Senate legislators have introduced or attempted to advance so called “deemed approval” language for environmental permits. In essence, this language states that if DEP doesn’t take action on a permit application within a certain period of time, the permit is automatically approved. The policy language was in response to long permit review times at the southwest DEP regional office that has taken in the bulk of fracking-related permits since unconventional drilling took off in Pennsylvania.

HB 1106 is no different than past attempts to advance this language. We strongly oppose this bill for a number of reasons. In particular, the bill requires that for all environmental permits, general permits, and plan approvals, the DEP must:

- Take no more than 30 days to issue, modify, renew, transfer, or refuse to issue an environmental permit;
- Return any permit application that is found to be administratively incomplete within 10 days of its receipt;
- Engage with a “referee,” which is chosen from a list of three provided by the Environmental Hearing Board’s master list of referees, to resolve any dispute between the applicant and the DEP;
- Automatically approve a permit if it fails to adhere to the timelines written in the legislation.

Unfortunately, as has been shown in the past through DEP data and case studies, the delay in permit review falls largely on incomplete permit applications. A review by DEP in 2017 found that, for example, 60% of erosion and sedimentation permits were submitted incomplete. The assessment concluded that DEP simply, “cannot rely on licensed professionals to submit technically sound, legally defensible application materials in the very first submission.” Implementing a “deemed approval” process does not solve this root cause and actually increases the likelihood that deficient permits will be issued.

In fact, a program to address this issue already exists. DEP’s Permit Decision Guarantee Program, which was established in 2012, provides for an intensive process to ensure applications are submitted complete and permits are approved as quickly as possible. The program requires a pre-application meeting of all those involved in the permitting process so that everyone is aware of what is needed in the application. DEP then completes a first-level review of the application within 10 days. If complete, DEP provides its technical review, which must be completed within 130 to 150 days, depending on the permit. If DEP does not meet this deadline, the Secretary becomes involved to complete the process and issue a denial or approval. We strongly oppose HB 1106 as the bill does not address the core problem of outside engineers submitting incomplete applications and it provides a pathway for these deficient permits to be accepted.

House Bill 1107 (PN: 2506) – Establishes a *PA Permitting Commission* (Rep. O’Neal)

HB 1107 aims to address the same problem HB 1106 purports to fix—permit review delays—through the creation of a Permitting Commission. The Commission would be a new government entity tasked with administering “the permitting and plan approval processes vested in the [DEP] by law.” *In other words, the bill would remove the permitting review and approval process from DEP and create a new agency to take on those activities.* DEP would continue to enforce permits. Specifically, the Commission would:

- Develop and implement individual and general permitting and plan approval requirements for environmental laws;
- Take prompt action on applications to issue, modify, renew, or transfer permits;
- Develop simplified application, permit, and plan approval forms;
- Promulgate regulations allowing for permits by rule;
- Establish recordkeeping requirements and permit fees;
- Enter into agreements with County Conservation Districts to assist in permitting;
- Establish any necessary advisory committees, as needed.

The new *Commission* would be funded by transferring all appropriations, equipment, files, and other materials currently used by DEP to carry out permitting activities. Displaced DEP employees will be interviewed by the Commission before they interview outside candidates, but there are no guarantees of a transfer. The *Commission* will be governed by a five-member Board, appointed by the Governor and voted favorably by a two-thirds vote in the Senate. The members would serve 10-year terms. At least two of the members have to be professional engineers. The Board cannot exceed a 3-2 voting majority of the Governor’s party affiliation. We strongly oppose this bill as it would create a politicized commission to review and accept permits.

We ask that you VOTE NO on House Bills 1100, 1102, 1106, and 1107. Please do not hesitate to contact us if you have any questions or would like further information.

Sincerely,

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