

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1837 Session of
2011

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SEPTEMBER 14, 2011

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
SEPTEMBER 14, 2011

AN ACT

1 Providing for the acquisition of property by local government
2 units to mitigate flood hazards.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Flood Hazard
9 Mitigation Act.

10 Section 2. Legislative intent.

11 The purpose of this act is to reduce future risk of flood
12 damages, while promoting the goals of preserving land for storm
13 water management, open space, recreational, wetland and related
14 purposes, by providing a means by which local government units
15 may acquire property that is either located in areas having
16 special flood hazards or other areas of flood risk or property
17 that is substantially damaged by flood.

18 Section 3. Definitions.

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

22 "Flood Mitigation Assistance Program." The Federal program
23 authorized by sections 1366 and 1367 of the National Flood
24 Insurance Act of 1968 (Public Law 90-448, 42 U.S.C. § 4104c) and
25 the regulations appertaining thereto.

26 "Hazard Mitigation Grant Program." The Federal program under
27 which hazard mitigation grants are made under the provisions of
28 section 404 of The Robert T. Stafford Disaster Relief and
29 Emergency Assistance Act (Public Law 93-288, 42 U.S.C. § 5170c)
30 and the regulations appertaining thereto.

1 "Interest in real property." Any right in real property,
2 improvements thereto or water, whatsoever, including, but not
3 limited to, a fee simple, easement, remainder, future interest,
4 transferable development right, lease, license, restriction or
5 covenant of any sort, option or contractual interest or
6 concerning the use of or power to transfer property.

7 "Local government unit." Any of the following:

8 (1) A county.

9 (2) A county authority having among the purpose for
10 which it was created the mitigation of flood hazards.

11 (3) A municipal corporation as defined in 1 Pa.C.S. §
12 1991 (relating to definitions) or any similar general purpose
13 unit of local government.

14 (4) A unit created by joint action of two or more local
15 government units which is authorized to be created by the
16 General Assembly, including cooperation by two or more local
17 government units under 53 Pa.C.S. Ch. 23 Subch. A (relating
18 to intergovernmental cooperation).

19 "Mitigation of flood hazards." The acquisition of interests
20 in property located in areas having special flood hazards or
21 other areas of flood risk and property substantially damaged by
22 flood in accordance with or supplementary to the Hazard
23 Mitigation Grant Program or the Flood Mitigation Assistance
24 Program, provided that the property so acquired is used in a
25 manner compatible with storm water management, open space,
26 recreational or wetland management practices, including parks
27 for outdoor recreational activities, nature reserves,
28 cultivation, grazing, camping, storm water management control
29 devices, buffer zones and other uses consistent with the use
30 restrictions of the Hazard Mitigation Grant Program and the

1 Flood Mitigation Assistance Program.

2 Section 4. Acquiring property interests to mitigate flood
3 hazards.

4 (a) Authorization.--

5 (1) A local government unit may acquire, by purchase,
6 contract, condemnation, gift, devise or otherwise, interests
7 in real property for the mitigation of flood hazards.

8 (2) Acquisitions of interests in real property by a
9 local government unit under this act are limited to interests
10 in real property situate within its boundaries.

11 (b) Demolition and relocation.--The authority to acquire
12 interests in real property under this act shall include the
13 authority to provide for the demolition of structures on or the
14 relocation of structures from the property acquired.

15 Section 5. Public hearing.

16 Interests in real property may not be acquired under this act
17 unless a public hearing is held, after notice both to the owners
18 of interests in real property to be acquired and to the local
19 government unit in which land is situate. At the public hearing,
20 the entity acquiring the property interests shall set forth the
21 interests to be taken and their proposed use, and persons and
22 municipalities affected by the acquisition shall have an
23 opportunity to present relevant evidence.

24 Section 6. Property acquired in fee simple.

25 If the owner of an interest in real property to be acquired
26 under this act prefers to have the local government unit acquire
27 the property in fee simple, the local government unit shall be
28 required to acquire the property in fee simple.

29 Section 7. Local taxing options.

30 (a) General rule.--To provide revenue to make acquisitions

1 for the mitigation of flood hazards or retire the indebtedness
2 incurred in the mitigation of flood hazards, a local government
3 unit shall have the following local tax options:

4 (1) In addition to the statutory rate limits on real
5 estate taxes provided for counties, a county may, by
6 ordinance, impose a tax on real property not exceeding the
7 millage authorized by referendum as required by subsection
8 (b).

9 (2) In addition to the statutory rate limits provided
10 for the respective class of local government units, a local
11 government unit, excluding a county and county authority,
12 may, by ordinance, impose either a tax on real property not
13 exceeding the millage authorized by referendum under
14 subsection (b) or a tax on the earned income of the residents
15 of that local government unit not exceeding the rate
16 authorized by referendum under subsection (b).

17 (b) Referendum.--

18 (1) The local taxing option authorized by this section
19 shall not be exercised unless the governing body of the local
20 government unit shall, by ordinance, first provide for a
21 referendum on the question of the imposition of the
22 additional tax at a specific rate and a majority of those
23 voting on the referendum question vote in favor of the
24 imposition of the tax. The ordinance of the governing board
25 of the local government unit providing for a referendum on
26 the question shall be filed with the county board of
27 elections.

28 (2) The referendum shall be governed by the provisions
29 of the act of June 3, 1937 (P.L.1333, No.320), known as the
30 Pennsylvania Election Code.

1 (3) The election official shall cause the question to be
2 submitted to the electors of the local government unit at the
3 next primary, general or municipal election occurring not
4 less than the 13th Tuesday following the filing of the
5 ordinance with the county board of elections.

6 (4) At such election, the question shall be submitted to
7 the voters in the same manner as other questions are
8 submitted under the provisions of the Pennsylvania Election
9 Code. The question to be placed upon the ballot shall be
10 framed in the following form:

11 Do you favor the imposition of a (describe tax in millage
12 or rate) by (local government unit) to be used in the
13 mitigation of flood hazards to (purpose)?

14 Section 8. Procedure for acquisitions by local government
15 units.

16 (a) Recordkeeping.--When a local government unit acquires an
17 interest in real property as authorized under this act, it shall
18 establish and maintain a repository of records of the interests
19 in real property that have been or are acquired by the local
20 government unit. The local government unit shall also record
21 each interest in real property acquired by the local government
22 unit in the office of the recorder of deeds for the county in
23 which the real property is located.

24 (b) Copy to school district.--A local government unit
25 acquiring an interest in real property shall submit to the
26 school district within which the real property is located a
27 copy, certificated by the county recorder of deeds, of the deed
28 reflecting the acquisition.

29 Section 9. Borrowing and acquisitions on installment basis.

30 (a) Authority to incur debt.--

1 (1) A local government unit that is governed by 53
2 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and
3 borrowing) may incur indebtedness under 53 Pa.C.S. Pt. VII
4 Subpt. B for the purposes of acquiring property interests
5 under the provisions of this act, and a local government unit
6 may authorize the establishment of a program to purchase the
7 property interests on an installment or other deferred basis.

8 (2) The obligation of the local government unit to make
9 payments on an installment or other deferred basis shall not
10 be subject to the requirements of 53 Pa.C.S. § 8142(b) or (c)
11 (relating to limitations on stated maturity dates).

12 (b) Interest to be paid to landowner.--A landowner who
13 enters into an installment agreement with a local government
14 unit shall receive, in addition to the selling price, interest
15 in an amount or at a rate stated in the purchase agreement.

16 Section 10. Exercise of eminent domain.

17 The use of the power of eminent domain to acquire interests
18 in real property for the purposes of this act shall be subject
19 to restrictions and limitations imposed by Federal and State
20 law.

21 Section 11. Assessment.

22 Any interest in property acquired by a local government unit
23 under this act shall be held for public purposes and be exempt
24 from taxation. The assessment of private interests in land
25 subject to an interest in property acquired under this act shall
26 reflect any change in market value of the property that may
27 result from the acquisition of the property interest by the
28 local government unit.

29 Section 12. Termination or disposition of property interests.

30 Property interests acquired under this act may be terminated

1 or disposed of in a manner not inconsistent with any
2 restrictions and limitations imposed by the Hazard Mitigation
3 Grant Program or the Flood Mitigation Assistance Program.

4 Section 13. Utility rights-of-way and underground gas storage.

5 (a) General rule.--The ownership by a local government unit
6 of a property interest acquired under this act shall not
7 preclude the acquisition, by lease, purchase or eminent domain,
8 and use of rights-of-way or underground gas storage rights in
9 such property by a public utility or other body entitled to
10 exercise the power of eminent domain subject to the following:

11 (1) In the case of an acquisition by a public utility,
12 the acquisition shall occur only if the Pennsylvania Public
13 Utility Commission, after public hearing, finds that the
14 acquisition and use are necessary or proper for the service,
15 accommodation, convenience or safety of the public.

16 (2) In the case of an acquisition by a body other than a
17 public utility, the acquisition shall occur only if the local
18 government unit, after public hearing, approves the
19 acquisition.

20 (b) Notice of the public hearing.--

21 (1) Notice of public hearing required under subsection
22 (a) shall include a statement of the purpose of the public
23 hearing and the date, time and place of the public hearing
24 and be given by publication one time at least 20 days prior
25 to the hearing in a newspaper of general circulation in the
26 area where the property is located. In addition, a written
27 notice shall be conspicuously posted at points deemed
28 sufficient by the body conducting the public hearing to
29 notify potentially interested citizens. The affected tract
30 shall be posted at least ten days prior to the hearing.

1 (2) If a local government unit owns an interest in
2 property that is the subject of the hearing, and is not
3 itself conducting the hearing, notice shall be sent by United
4 States first class mail at least 20 days prior to the hearing
5 to the local government unit.

6 Section 14. Construction.

7 The authority granted to the local government units under
8 this act shall be in addition to and not in limitation of any
9 other authority granted to a local government unit by any other
10 law and shall be construed to enlarge and not to reduce or limit
11 the power and authority of local government units.

12 Section 15. Effective date.

13 This act shall take effect immediately.