

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1598 Session of 2021

INTRODUCED BY BOBACK, SAPPEY, PICKETT, HELM, HENNESSEY AND SAINATO, JUNE 10, 2021

SENATOR STEFANO, VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, IN SENATE, AS AMENDED, SEPTEMBER 21, 2021

AN ACT

1 Amending the act of October 4, 1978 (P.L.851, No.166), entitled
2 "An act providing for the regulation of land and water use
3 for flood control purposes, imposing duties and conferring
4 powers on the Department of Community Affairs, the Department
5 of Environmental Resources, and municipalities, providing for
6 penalties and enforcement and making appropriations,"
7 replacing references to the Department of Community Affairs
8 with the Pennsylvania Emergency Management Agency; in
9 miscellaneous and appropriations, repealing provisions
10 related to appropriations; MAKING A RELATED REPEAL; and <--
11 making editorial changes.

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

14 Section 1. The title of the act of October 4, 1978 (P.L.851,
15 No.166), known as the Flood Plain Management Act, is amended to
16 read:

AN ACT

18 Providing for the regulation of land and water use for flood
19 control purposes, imposing duties and conferring powers on
20 the [Department of Community Affairs] Pennsylvania Emergency
21 Management Agency, the Department of Environmental

1 [Resources] Protection, and municipalities, providing for
2 penalties and enforcement and making appropriations.

3 Section 2. The definition of "department" in section 104 of
4 the act is repealed:

5 Section 104. Definitions.

6 The following words and phrases when used in this act shall
7 have, unless the context clearly indicates otherwise, the
8 meanings given to them in this section:

9 ["Department." The Department of Community Affairs of the
10 Commonwealth of Pennsylvania.]

11 * * *

12 Section 3. Sections 205, 206, 207, 301, 302(b), 401, 402,
13 403, 404, 501 and 502 of the act are amended to read:

14 Section 205. [Department review] Review and approval of
15 municipal flood plain management regulations.

16 (a) The [department] Pennsylvania Emergency Management
17 Agency shall, in consultation with the Department of
18 Environmental [Resources] Protection, review and approve all
19 municipal flood plain management regulations, and amendments
20 thereto, for the purpose of assuring that such regulations
21 comply with the requirements of the National Flood Insurance
22 Program and that such regulations are coordinated and uniformly
23 enforced throughout each watershed.

24 (b) The [department] Pennsylvania Emergency Management
25 Agency, in consultation with the Department of Environmental
26 [Resources] Protection, shall adopt, and periodically review and
27 amend, regulations including but not limited to:

28 (1) Criteria and standards for the coordination and
29 uniform enforcement of municipal flood plain management
30 regulations under the National Flood Insurance Program.

1 (2) Procedures, requirements and standards for
2 submission, review and approval of municipal flood plain
3 management regulations pursuant to this section.

4 (c) Prior to adoption of [department] Pennsylvania Emergency
5 Management Agency regulations pursuant to this section, the
6 [department] Pennsylvania Emergency Management Agency shall hold
7 at least one public hearing, after public notice, in each major
8 river basin of the Commonwealth. Prior to any amendment of
9 [department] Pennsylvania Emergency Management Agency
10 regulations, the [department] Pennsylvania Emergency Management
11 Agency shall hold at least one public hearing after public
12 notice.

13 Section 206. Municipalities [required to comply] compliance
14 with [department] Pennsylvania Emergency Management
15 Agency regulations.

16 Each municipality participating in the National Flood
17 Insurance Program shall comply with any regulations adopted by
18 the [department] Pennsylvania Emergency Management Agency
19 pursuant to this chapter within six months of the effective date
20 of such regulations. A municipality shall be deemed to have
21 complied with [department] Pennsylvania Emergency Management
22 Agency regulations if it has received [department] Pennsylvania
23 Emergency Management Agency approval as provided for in this
24 chapter. The [department] Pennsylvania Emergency Management
25 Agency shall not adopt regulations more strict than the
26 regulations of the National Flood Insurance Program and shall
27 not require the regulations of the municipalities to be more
28 strict than the regulations of the National Flood Insurance
29 Program: Provided, however, That these limitations shall not
30 apply to section 207 or the special hazards under sections 301

1 and 302.

2 Section 207. Regulations to prohibit development which has been
3 determined as dangerous to human life.

4 The regulations promulgated by the [department] Pennsylvania
5 Emergency Management Agency shall prohibit the construction or
6 substantial improvement of structures in an area which has been
7 determined by the Environmental Quality Board as a flood hazard
8 area on a flood insurance rate map promulgated by the Department
9 of Housing and Urban Development which may endanger human life.

10 Section 301. Obstructions posing special hazards in flood
11 plains.

12 (a) The [department] Pennsylvania Emergency Management
13 Agency shall by regulation publish a list of obstructions which
14 it determines present a special hazard to the health and safety
15 of the public or occupants or may result in significant
16 pollution, increased flood levels or flows or debris endangering
17 life and property, if such obstructions are located in all or a
18 designated portion of the flood plain. These obstructions are
19 limited to: hospitals, nursing homes, jails, new mobile home
20 parks, subdivision or substantial additions to mobile home parks
21 or subdivisions.

22 (b) Construction of any structure or commencement of any
23 activity listed as a special hazard by [department] Pennsylvania
24 Emergency Management Agency regulations in a flood plain or such
25 portion of the flood plain designated by the regulations shall
26 be prohibited except in accordance with a special exception
27 issued pursuant to this section.

28 (c) A municipality administering flood plain management
29 regulations may issue a special exception if the applicant
30 demonstrates and the municipality determines that the structure

1 or activity will be located, constructed and maintained in a
2 manner which:

3 (1) will fully protect the health and safety of the
4 public or occupants;

5 (2) will prevent any significant possibility of
6 pollution, increased flood levels or flows, or debris
7 endangering life and property; and

8 (3) will comply with the requirements of the National
9 Flood Insurance Program.

10 Approval of any special exception shall be conditioned upon
11 compliance with all feasible floodproofing and other
12 requirements necessary to minimize damage, and the hindrance of
13 flood flows and to minimize potential danger to life and
14 property.

15 (d) Written notice of municipal approval of a special
16 exception shall be filed with the [department] Pennsylvania
17 Emergency Management Agency. The special exception shall become
18 effective 30 days following the receipt of notice by the
19 [department] Pennsylvania Emergency Management Agency unless the
20 special exception is disapproved by the [department]
21 Pennsylvania Emergency Management Agency. If the [department]
22 Pennsylvania Emergency Management Agency disapproves a special
23 exception, it shall notify the municipality and applicant of the
24 reasons for disapproval.

25 Section 302. Exclusive State jurisdiction over certain
26 obstructions in flood plains.

27 * * *

28 (b) No person shall construct, modify, remove, abandon or
29 destroy any structure or engage in any activity specified in
30 subsection (a) in the 100-year flood plain unless such person

1 has first applied for and obtained a permit from the Department
2 of Environmental [Resources] Protection. The [department]
3 Department of Environmental Protection may impose such permit
4 terms and conditions as it deems necessary to carry out the
5 purposes of this act. The permit shall become effective 60 days
6 following the receipt of the application by the [department]
7 Department of Environmental Protection unless the application is
8 disapproved by the [department] Department of Environmental
9 Protection. If the [department] Department of Environmental
10 Protection disapproves the application it shall notify the
11 applicant of the reasons for disapproval.

12 * * *

13 Section 401. Powers and duties [of the Department of Community
14 Affairs and the Department of Environmental
15 Resources].

16 (a) The [Department of Community Affairs] Pennsylvania
17 Emergency Management Agency shall have the power and its duty
18 shall be to:

19 (1) Coordinate the administration of municipal flood
20 plain management regulations in the Commonwealth.

21 (2) Require the submission of municipal flood plain
22 management regulations and municipal records and reports, as
23 necessary to carry out the purposes of this act.

24 (3) Provide technical assistance for the purpose of
25 assisting municipalities in complying with the provisions of
26 this act.

27 (4) Draft, publish and approve, for use by
28 municipalities, model flood plain ordinances, codes and
29 regulations which comply with the requirements of the
30 National Flood Insurance Program and the regulations adopted

1 pursuant to this act.

2 (b) The [Department of Community Affairs] Pennsylvania
3 Emergency Management Agency and the Department of Environmental
4 [Resources] Protection shall exercise the joint powers and their
5 duties shall be to:

6 (1) Cooperate with appropriate agencies of the United
7 States or of other states or any interstate agencies with
8 respect to the planning and management of flood plains.

9 (2) Serve as the agencies of the Commonwealth for the
10 receipt of moneys from the Federal Government or other public
11 or private agencies or persons and expend such moneys as
12 appropriated by the General Assembly for studies and research
13 with respect to the planning and management of flood plains.

14 Section 402. Additional powers and duties [of the Department of
15 Community Affairs, Department of Environmental
16 Resources and municipalities].

17 In conjunction with their responsibilities otherwise provided
18 under this act, the [Department of Community Affairs]
19 Pennsylvania Emergency Management Agency, the Department of
20 Environmental [Resources] Protection and every municipality
21 administering flood plain management regulations shall have the
22 additional power and its duty shall be to:

23 (1) Investigate complaints and conduct surveys of flood
24 plains and obstructions.

25 (2) Institute prosecutions and civil proceedings to
26 enforce the provisions of this act.

27 (3) Conduct educational programs with respect to flood
28 plain management.

29 (4) Establish reasonable fees for permit processing for
30 the program that the agency or municipality administers.

1 (5) Do any other acts not inconsistent with this act
2 which are necessary or proper for its effective
3 implementation.

4 Section 403. Inspections.

5 (a) An agent or employee of the [Department of Community
6 Affairs] Pennsylvania Emergency Management Agency, the
7 Department of Environmental [Resources] Protection, or of a
8 municipality administering flood plain management regulations
9 shall have the power and duty to, upon presentation of proper
10 credentials:

11 (1) Enter any land for the purpose of surveying flood
12 plains.

13 (2) Enter any land in a flood plain for the purpose of
14 ascertaining the location and condition of obstructions.

15 (3) Enter land or, while under construction, any
16 structure located in a flood plain for the purpose of
17 ascertaining the compliance or noncompliance with the flood
18 plain management regulations adopted pursuant to this act.

19 (b) Whenever an agent or employee of the [Department of
20 Community Affairs] Pennsylvania Emergency Management Agency, the
21 Department of Environmental [Resources] Protection, or
22 municipality charged with the enforcement of the provisions of
23 this act has been refused access to property for the purposes of
24 conducting a survey or inspection as authorized by this section
25 or reasonably requires access to such property without prior
26 notice to the owner, such agent or employee may apply for an
27 inspection warrant to any Commonwealth official authorized by
28 law to issue a search or inspection warrant to enable him or her
29 to have access and inspect such property. It shall be sufficient
30 probable cause to issue an inspection warrant that the

1 inspection is necessary to properly enforce the provisions of
2 this act.

3 Section 404. Grants and reimbursements to municipalities and
4 counties.

5 (a) The [Department of Community Affairs] Pennsylvania
6 Emergency Management Agency is authorized to administer grants
7 to municipalities and counties to assist or reimburse them for
8 costs in preparing official plans and actual administrative
9 enforcement and implementation costs and revisions to official
10 plans for flood plain management required by this act, and for
11 carrying out related studies, surveys, investigations, research
12 and analyses. Grants and reimbursements shall be made from and
13 to the extent of funds appropriated by the General Assembly for
14 such purposes, and shall be made in accordance to rules and
15 regulations adopted by the [Department of Community Affairs]
16 Pennsylvania Emergency Management Agency and in accordance with
17 the following:

18 (1) The grant shall be equal to:

19 (i) 50% of the allowable costs for preparation of
20 official plans, administrative, enforcement and
21 implementation costs required by this act, and revisions
22 of official plans incurred by any municipality or county
23 which prior to the effective date of this act adopted a
24 flood area management program which complies with Title
25 24, section 1910.3(c) or 1910.3(d) of the regulations of
26 the Department of Housing and Urban Development, Federal
27 Insurance Administration; or

28 (ii) 50% of the allowable costs for preparation of
29 official plans, administrative, enforcement and
30 implementation costs required by this act, and revisions

1 of official plans incurred by any municipality or county
2 not covered by subclause (i); and

3 (iii) 50% of the allowable costs for administration
4 of official plans incurred by any municipality or county.
5 Allowable costs for administration of official plans
6 shall not include those costs which are offset by
7 reasonable permit fees imposed by the municipality or
8 county.

9 (2) For the purposes of this section, such State grants
10 shall be in addition to grants for similar purposes made to
11 any municipality or county by the Federal Government:

12 Provided, That the grants authorized by this section shall be
13 limited such that the total of all State and Federal grants
14 does not exceed 50% of the allowable costs incurred by the
15 municipality or county.

16 (b) Nothing in this section shall be construed to impair or
17 limit application of this act to any municipality or person, or
18 to relieve any municipality or person of duties imposed under
19 this act.

20 (c) If, in any fiscal year, appropriations are insufficient
21 to cover the costs or grants and reimbursements to all
22 municipalities or counties eligible for such grants and
23 reimbursements in that fiscal year, the [Department of Community
24 Affairs] Pennsylvania Emergency Management Agency shall report
25 such fact to the General Assembly and shall request
26 appropriation of funds necessary to provide the grants
27 authorized in this section. If such a deficiency appropriation
28 is not enacted, any municipality or county which has not
29 received the full amount of the grant for which it is eligible
30 under this section shall be as a first priority reimbursed from

1 appropriations made in the next successive fiscal year.

2 Section 501. Penalties.

3 (a) If the [department] Pennsylvania Emergency Management
4 Agency finds that a municipality has failed to comply with any
5 requirement of Chapter 2, or any [department] Pennsylvania
6 Emergency Management Agency regulations adopted pursuant
7 thereto, the [department] Pennsylvania Emergency Management
8 Agency shall provide a written notice of violation to the
9 municipality.

10 (b) Within 60 days of receipt of the notice of violation,
11 the municipality shall report to the [department] Pennsylvania
12 Emergency Management Agency the action which it is taking to
13 comply with the requirement or regulation.

14 (c) If within 180 days of receipt of the notice of
15 violation, the municipality has failed to comply with such
16 requirement or regulation, as determined by the [department]
17 Pennsylvania Emergency Management Agency, the [Secretary of
18 Community Affairs] Pennsylvania Emergency Management Agency
19 shall notify the State Treasurer to withhold payment of all
20 funds payable to the municipality from the General Fund or any
21 other fund. Upon notification, the State Treasurer shall hold in
22 escrow all moneys due to such municipality from the Commonwealth
23 until such time as the [department] Pennsylvania Emergency
24 Management Agency notifies the State Treasurer that the
25 municipality has complied with such requirement or regulation.

26 Section 502. Civil remedies.

27 (a) Any obstruction or conduct in violation of this act or
28 of any flood plain management regulations is hereby declared a
29 public nuisance.

30 (b) Suits to restrain, prevent or abate violation of this

1 act or of any flood plain management regulations may be
2 instituted in equity or at law by the [department] Pennsylvania
3 Emergency Management Agency, the Department of Environmental
4 [Resources] Protection, any affected county or municipality, or
5 any aggrieved person. Such proceedings may be prosecuted in the
6 Commonwealth Court, or in the court of common pleas of the
7 county where the obstruction exists, conduct occurs, or the
8 public affected, and to that end jurisdiction is hereby
9 conferred in law and equity upon such courts. Except in cases of
10 emergency where, in the opinion of the court, the circumstances
11 of the case require immediate abatement of the unlawful
12 obstruction or conduct, the court may, in its decree, fix a
13 reasonable time during which the person responsible for the
14 unlawful obstruction or conduct shall correct or abate the same.
15 The expense of such proceedings shall be recoverable from the
16 violator in such manner as may now or hereafter be provided by
17 law.

18 Section 4. Section 602 of the act is repealed:

19 [Section 602. Appropriations.

20 (a) The sum of \$750,000, or as much thereof as may be
21 necessary, is hereby appropriated for the fiscal period
22 beginning July 1, 1978, and ending June 30, 1979, to the
23 Department of Community Affairs for the purposes of
24 administrative and general expenses in implementing the
25 provisions of this act.

26 (b) The sum of \$250,000, or as much thereof as may be
27 necessary, is hereby appropriated for the fiscal period
28 beginning July 1, 1978, and ending June 30, 1979, to the
29 Department of Environmental Resources for the purposes of this
30 act.]

1 Section 5. All activities initiated by the Department of
2 Community Affairs or the Department of Community and Economic
3 Development shall continue and remain in full force and effect
4 and may be completed by the Pennsylvania Emergency Management
5 Agency. Orders, regulations, rules and decisions which were made
6 by the Department of Community Affairs or the Department of
7 Community and Economic Development and which are in effect on
8 the effective date of this section shall remain in full force
9 and effect until revoked, vacated or modified by the
10 Pennsylvania Emergency Management Agency. Contracts, obligations
11 and collective bargaining agreements entered into by the
12 Department of Community Affairs or the Department of Community
13 and Economic Development are not affected nor impaired by the
14 replacement of the Department of Community and Economic
15 Development with the Pennsylvania Emergency Management Agency.

16 ~~Section 6. This act shall take effect in 60 days.~~ <--

17 SECTION 6. REPEALS ARE AS FOLLOWS: <--

18 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
19 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE AMENDMENT OR
20 REPEAL OF THE TITLE, THE DEFINITION OF "DEPARTMENT" IN
21 SECTION 104, SECTIONS 205, 206, 207, 301, 302(B), 401, 402,
22 403, 404, 501, 502 AND 602 OF THE ACT AND SECTION 5 OF THIS
23 ACT.

24 (2) ARTICLE V-B OF THE ACT OF APRIL 9, 1929 (P.L.177,
25 NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929, IS
26 REPEALED.

27 SECTION 7. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.