

**FLOOD PLAIN MANAGEMENT ACT - REPLACING REFERENCES TO THE  
DEPARTMENT OF COMMUNITY AFFAIRS WITH THE PENNSYLVANIA EMERGENCY  
MANAGEMENT AGENCY, REPEALING PROVISIONS RELATED TO  
APPROPRIATIONS, MAKING A RELATED REPEAL AND EDITORIAL CHANGES**  
**Act of Jul. 11, 2022, P.L. 738, No. 65** **Cl. 32**  
Session of 2022  
No. 2022-65

HB 1598

AN ACT

Amending the act of October 4, 1978 (P.L.851, No.166), entitled "An act providing for the regulation of land and water use for flood control purposes, imposing duties and conferring powers on the Department of Community Affairs, the Department of Environmental Resources, and municipalities, providing for penalties and enforcement and making appropriations," replacing references to the Department of Community Affairs with the Pennsylvania Emergency Management Agency; in miscellaneous and appropriations, repealing provisions related to appropriations; making a related repeal; and making editorial changes.

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

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

AN ACT

Providing for the regulation of land and water use for flood control purposes, imposing duties and conferring powers on the [Department of Community Affairs] **Pennsylvania Emergency Management Agency**, the Department of Environmental [Resources] **Protection**, and municipalities, providing for penalties and enforcement and making appropriations.

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 The definition of "department" in section 104 of the act is repealed:

Section 104. Definitions.

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

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

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

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

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

(b) The [department] **Pennsylvania Emergency Management Agency**, in consultation with the Department of Environmental

[Resources] **Protection**, shall adopt, and periodically review and amend, regulations including but not limited to:

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

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

(c) Prior to adoption of [department] **Pennsylvania Emergency Management Agency** regulations pursuant to this section, the [department] **Pennsylvania Emergency Management Agency** shall hold at least one public hearing, after public notice, in each major river basin of the Commonwealth. Prior to any amendment of [department] **Pennsylvania Emergency Management Agency** regulations, the [department] **Pennsylvania Emergency Management Agency** shall hold at least one public hearing after public notice.

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

Each municipality participating in the National Flood Insurance Program shall comply with any regulations adopted by the [department] **Pennsylvania Emergency Management Agency** pursuant to this chapter within six months of the effective date of such regulations. A municipality shall be deemed to have complied with [department] **Pennsylvania Emergency Management Agency** regulations if it has received [department] **Pennsylvania Emergency Management Agency** approval as provided for in this chapter. The [department] **Pennsylvania Emergency Management Agency** shall not adopt regulations more strict than the regulations of the National Flood Insurance Program and shall not require the regulations of the municipalities to be more strict than the regulations of the National Flood Insurance Program: Provided, however, That these limitations shall not apply to section 207 or the special hazards under sections 301 and 302.

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

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

Section 301. Obstructions posing special hazards in flood plains.

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

(b) Construction of any structure or commencement of any activity listed as a special hazard by [department] **Pennsylvania Emergency Management Agency** regulations in a flood plain or such portion of the flood plain designated by the regulations

shall be prohibited except in accordance with a special exception issued pursuant to this section.

(c) A municipality administering flood plain management regulations may issue a special exception if the applicant demonstrates and the municipality determines that the structure or activity will be located, constructed and maintained in a manner which:

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

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

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

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

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

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

\* \* \*

(b) No person shall construct, modify, remove, abandon or destroy any structure or engage in any activity specified in subsection (a) in the 100-year flood plain unless such person has first applied for and obtained a permit from the Department of Environmental [Resources] **Protection**. The [department] **Department of Environmental Protection** may impose such permit terms and conditions as it deems necessary to carry out the purposes of this act. The permit shall become effective 60 days following the receipt of the application by the [department] **Department of Environmental Protection** unless the application is disapproved by the [department] **Department of Environmental Protection**. If the [department] **Department of Environmental Protection** disapproves the application it shall notify the applicant of the reasons for disapproval.

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

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

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

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

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

(4) Draft, publish and approve, for use by municipalities, model flood plain ordinances, codes and regulations which comply with the requirements of the National Flood Insurance Program and the regulations adopted pursuant to this act.

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

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

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

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

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

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

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

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

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

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

Section 403. Inspections.

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

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

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

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

(b) Whenever an agent or employee of the [Department of Community Affairs] **Pennsylvania Emergency Management Agency**, the Department of Environmental [Resources] **Protection**, or municipality charged with the enforcement of the provisions of this act has been refused access to property for the purposes of conducting a survey or inspection as authorized by this section or reasonably requires access to such property without prior notice to the owner, such agent or employee may apply for an inspection warrant to any Commonwealth official authorized by law to issue a search or inspection warrant to enable him

or her to have access and inspect such property. It shall be sufficient probable cause to issue an inspection warrant that the inspection is necessary to properly enforce the provisions of this act.

Section 404. Grants and reimbursements to municipalities and counties.

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

(1) The grant shall be equal to:

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

(ii) 50% of the allowable costs for preparation of official plans, administrative, enforcement and implementation costs required by this act, and revisions of official plans incurred by any municipality or county not covered by subclause (i); and

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

(2) For the purposes of this section, such State grants shall be in addition to grants for similar purposes made to any municipality or county by the Federal Government: Provided, That the grants authorized by this section shall be limited such that the total of all State and Federal grants does not exceed 50% of the allowable costs incurred by the municipality or county.

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

(c) If, in any fiscal year, appropriations are insufficient to cover the costs or grants and reimbursements to all municipalities or counties eligible for such grants and reimbursements in that fiscal year, the [Department of Community Affairs] **Pennsylvania Emergency Management Agency** shall report such fact to the General Assembly and shall request appropriation of funds necessary to provide the grants authorized in this section. If such a deficiency appropriation is not enacted, any municipality or county which has not received the full amount of the grant for which it is eligible

under this section shall be as a first priority reimbursed from appropriations made in the next successive fiscal year.

Section 501. Penalties.

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

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

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

Section 502. Civil remedies.

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

(b) Suits to restrain, prevent or abate violation of this act or of any flood plain management regulations may be instituted in equity or at law by the [department] **Pennsylvania Emergency Management Agency**, the Department of Environmental [Resources] **Protection**, any affected county or municipality, or any aggrieved person. Such proceedings may be prosecuted in the Commonwealth Court, or in the court of common pleas of the county where the obstruction exists, conduct occurs, or the public affected, and to that end jurisdiction is hereby conferred in law and equity upon such courts. Except in cases of emergency where, in the opinion of the court, the circumstances of the case require immediate abatement of the unlawful obstruction or conduct, the court may, in its decree, fix a reasonable time during which the person responsible for the unlawful obstruction or conduct shall correct or abate the same. The expense of such proceedings shall be recoverable from the violator in such manner as may now or hereafter be provided by law.

Section 4. Section 602 of the act is repealed:

[Section 602. Appropriations.

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

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

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

Section 6. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment or repeal of the title, the definition of "department" in section 104, sections 205, 206, 207, 301, 302(b), 401, 402, 403, 404, 501, 502 and 602 of the act and section 5 of this act.

(2) Article V-B of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

Section 7. This act shall take effect in 60 days.

APPROVED--The 11th day of July, A.D. 2022.

TOM WOLF