AN ACT

1 Establishing the Landslide Insurance and Assistance Program
2 within the Pennsylvania Emergency Management Agency;
3 providing for related powers and duties of the Pennsylvania
4 Emergency Management Agency; establishing and providing for
5 the powers and duties of the Landslide Insurance and
6 Assistance Board; providing for duties of the Auditor
7 General; establishing the Landslide Insurance Fund and the
8 Landslide Assistance Fund; imposing a penalty; and making
9 appropriations.

10 TABLE OF CONTENTS

11 Chapter 1.  Preliminary Provisions
12 Section 101.  Short title.
13 Section 102.  Declaration of policy.
14 Section 103.  Definitions.
15 Chapter 3.  Program Generally
16 Section 301.  Program goals.
17 Section 302.  Board.
18 Section 303.  Appeals.
19 Section 304.  Program generally.
20 Section 305.  Program authority.
21 Section 306.  Land-use controls and rate structure.
Chapter 5. Landslide Insurance Fund

Section 501. Landslide Insurance Fund.

Section 502. Schedule of premiums.

Section 503. Surplus.

Section 504. Insurance program.

Section 505. Application for increase in insurance.

Section 506. Automatic inflation protection increase.

Section 507. Audit by Auditor General.

Section 508. Claims against insurance fund.

Section 509. Defenses against claims and procedure.

Section 510. Subrogation to rights of claimants.

Section 511. Insurance companies may cover risk.

Section 512. Escrow of premium payments.

Section 513. Properties in violation of State or local law.

Chapter 7. Mitigation Assistance

Section 701. Mitigation assistance.

Section 702. Landslide Assistance Fund.

Section 703. Construction permits.

Chapter 9. Program Administration and Funding

Section 901. Regulations.

Section 902. Agency report.

Section 903. Program funding.

Section 904. Reimbursement.

Section 905. Appropriations.

Section 906. Cost of administration.

Section 907. Commissions.


Section 1101. Effective date.

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

20180SB1131PN1673  - 2 -
CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Landslide Insurance and Assistance Program Act.

Section 102. Declaration of policy.

The General Assembly finds and declares as follows:

(1) Geologists have studied with increasing concern the underground movement of the geological formations in this Commonwealth and its impeding effects on the vertical and horizontal natural and manmade surfaces.

(2) Landslides and slope movement have historically been the norm throughout most parts of this Commonwealth.

(3) Landslides and slope movement occur without regard for municipal boundaries, ordinances, planning codes, politics and economies, making it difficult for local officials to deal effectively with the development and implementation of methods and standards to control the devastation these natural forces can cause.

(4) Landslides and slope movement have caused an enormous amount of damage to homes and roadways in this Commonwealth, particularly the southwestern region of the State.

(5) Landslides and slope movement will continue to plague southwestern Pennsylvania.

(6) Landslides affect every state in the nation, causing an estimated $2 billion to $4 billion in damages per year.

(7) Landslide damage caused by flooding is not covered by the National Flood Insurance Program.

(8) While landslide damage caused by mining practices is
covered by the Coal and Clay Mine Subsidence Insurance Fund and mudslide damage is covered by the National Flood Insurance Program, other types of landslide damage are usually not covered by insurance.

(9) Problems associated with landslide damage are becoming more widespread.

(10) It would be to the advantage of residents of the landslide-prone areas of this Commonwealth to form a common bond to combat distress resulting from landslides.

Section 103. Definitions.

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


"Assistance fund." The Landslide Assistance Fund established under section 702.

"Board." The Landslide Insurance and Assistance Board established under section 302.

"Community." Either of the following:

(1) A political subdivision that has zoning and building code jurisdiction over an area having landslide hazards.

(2) A political subdivision that is designated to develop and administer a mitigation plan.

"Extremely hazardous area." An area where all of the following factors that contribute to landslides occur in the same location:

(1) Steep slopes.

(2) Soils prone to landslides.

(3) Landslide features.

"Further review area." An area for which additional site-
specific review is needed based on a geological map or model identifying the area as including a site prone to experience a landslide.

"GIS." Geographic information systems.

"Hazardous area." An area where one of the following factors that contributes to landslides occurs:

(1) Steep slopes.

(2) Soils prone to landslides.

(3) Landslide features.

"Insurance fund." The Landslide Insurance Fund established under section 501.

"Landslide." Any detached mass of soil, rock, earth or debris that moves down a slope and is of sufficient size to cause damage. The term includes sinkholes.

"Landslide features." The term includes rockfall areas, creep, red beds and historic landslides.

"Mitigation." An activity relative to landslides that prevents an emergency from occurring, reduces the likelihood of an emergency occurring or lessens the damaging effects of unavoidable emergencies.

"Mitigation plan." A plan designed by a community that when implemented provides mitigation.

"Program." The Landslide Insurance and Assistance Program established under section 304.

CHAPTER 3

PROGRAM GENERALLY

Section 301. Program goals.

The goals of the program are as follows:

(1) To provide actuarially sound insurance coverage.

(2) To make program policies universally available and
competitively priced.

(3) To make use of the most effective scientific and technological advances available, including technology such as GIS.

(4) To process claims promptly, fairly and consistently.

(5) To provide tools and incentives for landslide loss reduction, including the assistance fund.

(6) To collaborate with other organizations that operate in the public interest to assist in achieving program goals.

Section 302. Board.

(a) Board established.--The Landslide Insurance and Assistance Board is established within the Pennsylvania Emergency Management Agency.

(b) Members.--The board shall consist of the following members:

(1) The Secretary of Banking and Securities or a designee.

(2) The Secretary of Community and Economic Development or a designee.

(3) The Secretary of Conservation and Natural Resources or a designee.

(4) The Secretary of Environmental Protection or a designee.

(5) The Insurance Commissioner or a designee.

(6) The Secretary of Human Services or a designee.

(7) The Secretary of the Commonwealth or a designee.

(8) The Secretary of Transportation or a designee.

(9) The State Treasurer or a designee.

(10) The Director of the agency or a designee.

(11) The Executive Director of the Pennsylvania Housing
Finance Agency or a designee.

(c) Chairperson.--The director of the agency or the designee shall serve as the chairperson of the board.

(d) General counsel.--The Attorney General shall, ex officio, be the general counsel of the board and shall appoint an attorney or attorneys as may be deemed necessary to aid the board in its functioning.

(e) Employees.--All employees of the board shall be employed by and located in the agency and shall be subject to the administrative jurisdiction and authority of the agency.

Section 303. Appeals.

Any party aggrieved by an action of the board shall have the right to appeal in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

Section 304. Program generally.

(a) Establishment.--The Landslide Insurance and Assistance Program is established within the agency.

(b) Program components.--The program shall consist of the following components:

(1) A grant program.

(2) A revolving loan program.

(3) An insurance program.

(c) Purposes.--The grant program and the revolving loan program are established for the primary purposes of mitigation and repairing minor structural damage. The board shall employ the grant program and the revolving loan program as tools to aid in the success of the insurance fund.

Section 305. Program authority.

(a) Intergovernmental cooperation.--The program shall:

(1) Work closely with Federal, State and local agencies
and any other government agencies, including those of other
states, to accomplish program goals.

(2) Create and implement a Statewide landslide
mitigation plan that would encourage and support local
mitigation efforts.

(3) Investigate sites to define hazards.

(4) Recommend legislation, regulations, ordinances and
zoning to mitigate slope instability contributed by
excavation and drainage.

(5) Work with local governments to evaluate risk
associated with certain homesite development.

(6) Share the most up-to-date geological surveys, in the
form of maps, GIS data or other useful forms, and related
information, free of charge to government agencies and
appropriate representatives of communities, and at a
reasonable cost to all other persons. Receipts under this
paragraph shall be deposited in the assistance fund.

(7) Inform the Department of Transportation which
highways are at greatest risk from landslides.

(8) Notify local governments in areas with the greatest
risk from landslides.

(9) Have the authority to consult, receive information
and enter into any agreements or other arrangements in order
to identify and publish information with respect to all
landslide-prone areas, establish or update landslide-risk
zone data and make estimates with respect to the rates of
probable landslide-caused loss for the various landslide-risk
zones for each of these areas.

(10) Publish any change to landslide insurance map
panels.
(11) Ensure that the program is consistent in landslide control, landslide forecasting and landslide damage prevention.

(b) Studies and investigations.--

(1) The program is authorized to carry out necessary studies and investigations, utilizing to the maximum extent practicable the existing facilities and services of other Federal and Commonwealth departments or agencies, local governmental agencies and any other organizations, with respect to the adequacy of State and local measures in landslide-prone areas as to:

   (i) Land management and use.
   (ii) Landslide control.
   (iii) Zoning.
   (iv) Landslide damage prevention.

(2) The program may enter into any contracts, agreements or other appropriate arrangements to carry out its authority under this section. The studies and investigations shall include the following:

   (i) Laws.
   (ii) Regulations.
   (iii) Ordinances.
   (iv) Zoning.
   (v) Building codes.
   (vi) Building permits.
   (vii) Subdivision or other building restrictions.

(c) State and local measures.--On the basis of studies and investigations under subsection (b) and other information as the agency deems necessary, the program shall develop comprehensive criteria designed to encourage, where necessary, the adoption of
adequate State and local measures which, to the maximum extent feasible, will:

1. Constrict the development of land which is exposed to landslide damage where appropriate.
2. Guide the development of proposed construction away from locations which are threatened by landslide hazards.
3. Assist in reducing damage caused by landslides.
4. Otherwise improve the long-range land management and use of landslide-prone areas.

(d) Technical assistance.--The program shall work closely with and provide any necessary technical assistance to State and local governmental agencies to encourage the application of the criteria and the adoption and enforcement of the measures under this section.

Section 306. Land-use controls and rate structure.
Local governments may initiate land-use controls for the benefit of their residents. The following shall apply:

1. No new landslide insurance coverage shall be provided to new construction without preapproval by an appropriate local public body, which shall have the option of adopting adequate land use and control measures with effective enforcement provisions.
2. A community rating system shall be employed by the board as an incentive for community landslide management.
3. Rate structures shall provide incentives for measures that reduce the risk of landslide damage and evaluate the measures. The program shall provide incentives in the form of credits on premium rates for landslide insurance coverage in communities that the agency determines have adopted and enforced measures that reduce the risk of
landslide damage.

(4) The credits on premium rates for flood insurance coverage shall be based on the estimated reduction in flood and erosion damage risks resulting from the measures adopted by the community under the program. If a community has received mitigation or other assistance under the program, the credits may be used in a manner determined by the agency to recover the amount of assistance provided for the community.

CHAPTER 5

LANDSLIDE INSURANCE FUND

Section 501. Landslide Insurance Fund.

(a) Establishment.--The Landslide Insurance Fund is established as a separate fund in the Treasury Department. The insurance fund shall be administered by the board for the purpose of insuring subscribers against the damages to their structures resulting from landslides if the damage is not covered by other insurance programs or coverage.

(b) Administration.--The insurance fund shall be administered by the board without liability on the part of the Commonwealth beyond the amount of the insurance fund except as provided under this act and shall be applied to the payment of damage as described under subsection (a).

(c) State Treasurer as custodian of insurance fund.--The State Treasurer shall be the custodian of the insurance fund, and all disbursements from the insurance fund shall be paid at the request of the board. For making payments without audit, the State Treasurer shall not be under any liability. The State Treasurer may deposit any portion of the insurance fund not needed for immediate use as other State money is lawfully

20180SB1131PN1673 - 11 -
deposited. The interest shall be placed to the credit of the insurance fund.

Section 502. Schedule of premiums.

At any time during each year, the board shall prepare and publish a schedule of premiums or rates of insurance for subscribers. The schedule shall be printed and distributed free of charge to any person upon application. Any subscriber may, at the subscriber's option, pay to the insurance fund the amount of premium appropriate and, upon payment of the premium, shall be insured for the year for which the premium is paid. The insurance shall cover all payments becoming due for which the premium is paid. The premium shall be adequate to enable payment of all sums, which may become due and payable under this act, and adequate reserve sufficient to carry all policies and claims to maturity. In establishing the premiums payable by any subscriber, the board may take into account the condition of the premises of the subscriber with respect to the possibility of landslide damage as shown by the report of any inspector appointed by the board or by the agency. The board may change the amount of premiums payable by any of the subscribers as circumstances may require and the condition of the premises of the subscribers in respect to the possibility of a landslide may justify. The board may increase the premiums of any subscriber whose loss experience warrants a change. The insurance of any subscriber shall not be effective until the premium so fixed and determined has been paid in full.

Section 503. Surplus.

The board shall set aside 5% of all premiums collected for the creation of a surplus until the surplus is sufficiently large to cover catastrophic hazard of all the subscribers to the
insurance fund and to guarantee the solvency of the insurance fund. At such point, the board shall reevaluate the set-aside and investment of the surplus and make a recommendation to the General Assembly.

Section 504. Insurance program.

(a) Application and certification.--Any owner of a structure located within a landslide-prone region that desires to become a subscriber to the insurance fund for the purpose of insuring a structure in the region against damage from landslides shall make a complete application as prescribed by the board to the board, its agents or insurance producers. Upon receipt of an application, the board shall make an investigation as may be necessary if the application complies with the rules and regulations of the board. Within 60 days after the request for an application is received, the board shall issue a certificate showing the acceptance of the application and the amount of premium payable by the applicant for one, two or three years, as the board may establish.

(b) Coverage premiums and requirements.--No insurance shall become effective until the premium has been paid. All premiums shall be made payable to the State Treasurer, and a receipt shall be issued. The receipt for a premium, together with a certificate of the board, shall be evidence that the applicant has become a subscriber to the insurance fund and is insured from the date of application. The following apply:

(1) The insurance may be subject to later reductions, and premiums adjusted accordingly, if the board determines that the amount of insurance coverage requested is in excess of the current replacement cost of the structure or the maximum amount of coverage established by the fund, whichever
is less.

(2) The insurance shall be void if, upon investigation of the structure, the board determines that either landslide damage occurred before the application was submitted or the applicant is responsible for not allowing the board to inspect the structure within 60 days of receipt of the application.

(3) The use of the most current science available to identify landslide-prone areas shall be employed. If the property is located in a further review area within a hazardous area, the property owner may be required to complete a site assessment with a licensed professional, which may include an onsite evaluation. The property owner shall be responsible for the cost of the assessment. The assessment may also be required before a local government accepts an application for a development permit.

(4) Notwithstanding any other provision of law, any structure repaired or restored to its original condition with money from the insurance fund shall not be eligible for duplicative disaster relief assistance from programs administered by the agency.

(5) In order to assist insurance producers and potential policyholders in identifying structures that could be at risk from landslides, the board shall publish and update in the Pennsylvania Bulletin a list of areas in this Commonwealth that are believed to be at risk for landslide damage.

(c) Penalty.--A person who knowingly furnishes or makes any false certificate, application or statement required under this section commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than $1,500 or to
imprisonment for not more than one year, or both.

Section 505. Application for increase in insurance.

Additions in the amount of insurance are subject to the same standards as initial applications.

Section 506. Automatic inflation protection increase.

The board shall make available to all subscribers an annual inflation protection option on the anniversary date of each policy issued only if the total insurance remains at or under the value of the structure itself. An inflation protection increase shall not be subject to a reinspection of the structure.

Section 507. Audit by Auditor General.

The Auditor General shall, at least once each year, make a complete examination and audit of the insurance fund, including all receipts and expenditures, cash on hand, investments and property held representing cash or cash disbursements. For these purposes, the Auditor General is authorized to employ agents and staff as the Auditor General may deem necessary. The expense incurred in making the examination and audit shall be certified to the insurance fund by the Auditor General and shall be paid from the program.

Section 508. Claims against insurance fund.

A subscriber to the insurance fund must file with the board a true statement of the subscriber's claim for any landslide damage and shall give to the board an opportunity to investigate and to determine whether the board will pay the claim.

Section 509. Defenses against claims and procedure.

In every case where a claim is made against the insurance fund, the insurance fund shall be entitled to every defense against the claim under the policy and shall be subrogated to
every right of the subscriber arising out of accidents against
any third persons. The insurance fund may, in the name of the
insurance fund, sue or be sued to enforce any right given
against or to a subscriber or other persons under this act.

Section 510. Subrogation to rights of claimants.

Nothing in this act shall relieve any person, partnership or
corporation otherwise liable from any liability for damages
sustained by a subscriber. The insurance fund shall be
subrogated to the rights of any property owner's insurance under
this act.

Section 511. Insurance companies may cover risk.

Any insurance company may issue policies covering the type of
risk provided for under this chapter subject to the prior
approval of the Insurance Commissioner as to policy form and
rates.

Section 512. Escrow of premium payments.

Mortgage lenders shall escrow the landslide insurance premium
payments if they offer the purchase of the insurance.

Section 513. Properties in violation of State or local law.

No new landslide insurance coverage shall be provided for any
property which the agency finds has been declared by a State or
local zoning authority or other authorized public body to be in
violation of State or local laws, regulations or ordinances
which are intended to discourage or otherwise restrict land
development or occupancy in landslide-prone areas.

CHAPTER 7

MITIGATION ASSISTANCE

Section 701. Mitigation assistance.

(a) Financial assistance generally.--The agency shall carry
out a program to provide financial assistance to communities and
individuals for planning and carrying out activities designed to reduce the risk of landslide damage to structures covered under contracts for landslide insurance. Financial assistance may be made available to communities and individuals in the form of grants or revolving loans for the carrying out of mitigation activities. Loans shall carry an interest rate of no more than 3%.

(b) Grants.--The agency may make grants under this section to communities to assist in developing mitigation plans.

(c) Eligibility.--To be eligible to receive financial assistance, a community shall develop a mitigation plan that describes the mitigation activities to be carried out with assistance provided under this section. The mitigation plan must be consistent with the criteria established by the agency and provide protection against landslide losses to structures for which contracts for flood insurance are available under this act. The mitigation plan shall be consistent with a comprehensive strategy for mitigation activities for the area affected by the mitigation plan that has been adopted by the community following a public hearing.

(d) Procedure.--The agency shall notify a community submitting a mitigation plan of the approval or disapproval of the plan not later than 120 days after submission of the plan. If the agency does not approve a mitigation plan submitted under this section, the agency shall notify in writing the community submitting the plan of the reasons for the disapproval.

(e) Limitation.--Amounts provided under this section may be used only for mitigation activities specified in a mitigation plan approved by the agency. The agency may approve only mitigation plans that specify mitigation activities that are
technically feasible and cost effective and that are cost beneficial under Chapter 5.

(f) Approval.--The agency shall approve funding for mitigation plans based on criteria that include:

(1) Criteria under subsection (e).

(2) Proposed activities to address repetitive loss structures and structures that have incurred substantial damage.

(g) Matching funds.--The agency may require a community to match grant funds.

(h) Oversight.--The agency shall conduct oversight of recipients of mitigation assistance to ensure that the assistance is used in compliance with the approved mitigation plans of the recipients and that any matching fund requirements are fulfilled.

(i) Failure to comply.--If the agency determines that a community that has received mitigation assistance has not carried out the mitigation activities as set forth in the mitigation plan or has not secured required matching funds, the agency shall recapture any unexpended amounts and redeposit the amounts in the assistance fund.

Section 702. Landslide Assistance Fund.

The Landslide Assistance Fund is established as a restricted account in the Treasury Department. The assistance fund shall be administered by the agency and shall be comprised of money appropriated for purposes of this chapter. All money in the assistance fund and any accrued interest is appropriated to the agency on a continuing basis to carry out the provisions of this chapter.

Section 703. Construction permits.
No Commonwealth agency shall approve any financial assistance for the acquisition of land for construction purposes in any area that has been identified by the agency as an extremely hazardous zone without approval to proceed by the agency based on the results of a risk assessment.

CHAPTER 9

PROGRAM ADMINISTRATION AND FUNDING

Section 901. Regulations.

The agency, in conjunction with the board, may promulgate rules and regulations and establish other conditions of the policies as it deems just and expedient in keeping with the fulfillment of the purposes of this act, including reasonable classification of risks eligible for coverage under this act, limits of coverage and rules covering the adjustment and settlement of claims.

Section 902. Agency report.

The agency shall make an annual report on the program and on experience with landslide insurance sales through producers to the General Assembly. Each report shall include mitigation efforts, an analysis of the cost-effectiveness of the program, accomplishments or shortcomings of the program and recommendations for legislation regarding the program.

Section 903. Program funding.

The program shall be funded by the General Assembly through an appropriation of money to the agency until such time as the insurance fund and assistance fund are deemed self-sufficient by the General Assembly.

Section 904. Reimbursement.

The program shall reimburse any Commonwealth departments for agreed-upon costs of services that aid in administering the
Section 905. Appropriations.

(a) Insurance fund.--The sum of $2,500,000, or as much thereof as may be necessary, is appropriated to the Landslide Insurance Fund for the fiscal year July 1, 2018, through June 30, 2019.

(b) Assistance fund.--The sum of $2,500,000, or as much thereof as may be necessary, is appropriated to the Landslide Assistance Fund for the fiscal year July 1, 2018, through June 30, 2019.

(c) Agency.--Money in the insurance fund and in the assistance fund is appropriated to the agency in such amounts as may be determined annually by the Governor to be used for the specified purposes of this act.

(d) Additional appropriations.--If, upon completion of the annual examination and audit, it is determined that the total asset value of either the insurance fund or assistance fund is less than $2,500,000, any additional sum as may be necessary to increase the total asset value of the insurance fund or the insurance fund and the assistance fund to $2,500,000 shall be appropriated.

Section 906. Cost of administration.

The board shall keep an accurate account of money paid in premiums by the subscribers and disbursements on account of damages to premises. If, at the expiration of any year, there is a balance remaining after deducting the disbursements, the unearned premiums on undetermined risks and the percentage of premiums paid or payable to create or maintain the surplus provided under this act, and after setting aside an adequate reserve, the board may determine to allocate to the cost of
administering the insurance fund.

Section 907. Commissions.

Money from the insurance fund shall be available to pay a one-time commission, as determined by the board, to insurance producers who forward applications for landslide insurance to the board if a policy is issued pursuant to an application submitted by an insurance producer. The amount of the commission shall be determined by the board on an annual basis.

CHAPTER 11

MISCELLANEOUS PROVISIONS

Section 1101. Effective date.

This act shall take effect July 1, 2018, or immediately, whichever is later.