
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 356

Session of
1975

INTRODUCED BY DUFFIELD, CIANFRANI, STAUFFER, HOWARD, JUBELIRER,
ROSS, MESSINGER, ORLANDO, SCANLON, MURPHY, O'PAKE, HAGER AND
HANKINS, FEBRUARY 25, 1975

REFERRED TO ENVIRONMENTAL RESOURCES, FEBRUARY 25, 1975

AN ACT

1 Providing for the regulation of land and water use for flood
2 control purposes, imposing duties and conferring powers on
3 the Department of Community Affairs, municipalities and
4 counties, establishing an advisory committee, providing for
5 enforcement and penalties, and making an appropriation.

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

8 ARTICLE I

9 PRELIMINARY PROVISIONS

10 Section 101. Short Title.--This act shall be known and may
11 be cited as the "Pennsylvania Flood Plain Management Act."

12 Section 102. Statement of Legislative Findings.--The General
13 Assembly finds that:

14 (1) Flooding of large areas of the land within the
15 Commonwealth causes unnecessary loss of life, ravages and
16 destroys private and public property, damages means of
17 livelihood and economic resources, and disrupts commerce,
18 communication, and governmental services; flooding causes
19 unsanitary and unwholesome living and environmental conditions

1 by preventing the normal absorption of sewage materials into the
2 soils and by permitting the infusion of contaminants into
3 available water supplies; and public and private property in the
4 Commonwealth is damaged by debris solid waste, sewage and other
5 materials carried by flood water; all of which is detrimental to
6 the health, safety and welfare of the occupants of floodways and
7 to the people of the Commonwealth.

8 (2) Extensive expenditures of public funds have been
9 allocated to costly flood control projects, repair and
10 maintenance of public facilities and property, and relief and
11 rescue efforts, to reduce disastrous effects of recurrent
12 flooding.

13 (3) The exclusive use of flood control measures, such as
14 engineering projects, has failed to adequately reduce the
15 economic losses and human suffering caused by recurrent
16 flooding.

17 (4) Development in flood areas has the effect of reducing
18 the carrying, storage and retention capacity of soils and the
19 floodways, which, unless regulated, increases flood heights and
20 velocities on normally dry land areas adjacent to and upstream
21 and downstream from such development and increases the scope and
22 extent of destruction from the powerful flood flows;
23 obstructions in the waters of the Commonwealth have the further
24 effect of causing continual diversion of the natural regime of
25 the waters, thereby harming fish and aquatic life and causing
26 erosion and other damage to adjacent land areas in the floodway.

27 (5) Although flood-proofing and proper maintenance of
28 existing and proposed sanitary facilities to other structures,
29 and the protection of the contents of such structures, can
30 minimize the public outlay of funds for rescue and relief and

1 alleviate the destruction caused by flood and improper use of
2 the waters of the Commonwealth, a comprehensive program of flood
3 and area management, including the reasonable regulation of new
4 construction, is fundamental to the public health, safety, and
5 welfare and the protection of the people of the Commonwealth,
6 their resources and the environment.

7 Section 103. Statement of Policy and Purposes.--The policy
8 and purpose of this act is to:

9 (1) Encourage planning, development, and construction in
10 flood prone areas which is consistent with sound water and land
11 use practices and the economic well being of the citizens of the
12 Commonwealth.

13 (2) Authorize a comprehensive program of flood area
14 management designed to preserve the efficiency and carrying
15 capacity of the floodways of the Commonwealth; to conserve the
16 unique natural functions and related human uses of flood areas,
17 including natural run-off characteristics and ground water
18 replenishment functions of land surfaces; preserve and maintain
19 the ground water level, and preserve and maintain areas of
20 undisturbed drainage; preserve and maintain the natural regime,
21 current, and cross-section of the waters of the Commonwealth; to
22 assist communities in qualifying for Federal flood insurance
23 benefits; and to protect property and people in the flood areas
24 from damage from flood waters and from materials carried by such
25 floodwaters, by regulating proposed construction and alterations
26 to existing construction to insure the protection of the public
27 health, safety and welfare in the event of flood.

28 (3) Protect unknowing and unsuspecting real property owners
29 from the dangers of flooding; regulate obstructions in flood
30 areas and flood area zones that aggravate flood damage to other

1 properties, and thereby protect property values; and control and
2 eliminate urban and rural blight which results from the ravages
3 of flood.

4 (4) Encourage local administration and management of flood
5 areas consistent with State supervision, with the enumerated
6 legislative findings, policy and purposes of this act, and with
7 the objective of managing flood area lands and subsurface and
8 surface waters as interrelated and precious resources in
9 accordance with sound and long-range land and water use planning
10 and the people's constitutional right to the preservation of
11 natural, economic, scenic, aesthetic, recreational and historic
12 values of the environment, taking full and explicit account of
13 nonmonetary and intangible values as well as the economic well
14 being of the citizens of the Commonwealth.

15 Section 104. Definitions.--As used in this act:

16 "Construct" means erect, construct, reconstruct, locate,
17 relocate, extend, remove, excavate, structurally alter, build,
18 place or deposit, but excludes any operations relating to
19 maintenance or restoration to prior condition.

20 "Department" means the Department of Community Affairs of
21 the Commonwealth of Pennsylvania.

22 "Design flood" means the highest level of flooding that, on
23 the average has a 1% chance of occurring each year.

24 "Design floodway" means the channel or bed of a river or
25 other body of water, whether natural or artificial, and the
26 adjacent land areas required to carry and discharge a design
27 flood.

28 "Flood" means the temporary condition of inundation of
29 normally dry land areas by the naturally or artificially induced
30 flow or overflow of waters of the Commonwealth.

1 "Flood area" means a 100-year floodway or flood prone area,
2 and shall include all waters of the Commonwealth, except storm
3 sewers, underground waters, farm ponds and other privately owned
4 ponds of less than five acres in area.

5 "Flood area permit" means a permit issued by a municipality
6 or the department which authorizes the construction,
7 modification, removal, abandonment or destruction of an
8 obstruction in a regulated flood area.

9 "Flood area zone" means a district or portion of the
10 regulated flood area.

11 "Flood-prone area" means that land area which is subject to
12 flooding by waters of the Commonwealth, on the average, once
13 every 100 years, that is, which has a 1% chance of being flooded
14 each year.

15 "Flood-proofing" means structural or other changes or
16 adjustments to properties or obstructions for the reduction or
17 elimination of flood damages to such properties and structures,
18 to water and sanitary facilities, or to the contents of any
19 structure. Such techniques may, without limitation, include the
20 use of identified materials in construction or repair, flood-
21 warning systems, construction of shallow basins for the
22 detention of storm water runoff, anchorage of the obstruction,
23 and elevation.

24 "Governmental unit" means any county, municipality, political
25 subdivision, or the Commonwealth, and any corporation,
26 department, authority, agency or board thereof or any agent
27 thereof.

28 "Municipality" means a city, town, township, municipal
29 authority or borough, or any county or other governmental unit
30 when acting as agent thereof, or any combination thereof acting

1 jointly.

2 "Obstruction" means (i) any structure, fill, or object
3 constructed or placed in a flood area, including in, along,
4 across or projecting into any waters of the Commonwealth; (ii)
5 anything in a flood area which acting alone or in combination
6 with existing or future uses could adversely affect existing
7 drainage courses or facilities; (iii) any matter or activity in,
8 along, across or projecting into any flood area, whether
9 floating or stationary, which might impede, retard or change the
10 course or regime of any stream, or alter the runoff
11 characteristics of the surface of the land, or change, increase,
12 or diminish the current or cross-section of any waters of the
13 Commonwealth either by itself or by catching or collecting
14 debris carried by such waters; and (iv) any structure or object
15 in a flood area which is constructed where the natural flow of
16 the water could carry the same downstream. For the purposes of
17 this definition, "matter or activity" includes, but is not
18 limited to, excavations, sand and gravel dredging and activities
19 related thereto, piles, channel relocations, conduits, culverts,
20 landfills, fills, pipelines, transmission lines, deposits, storm
21 drains and deposits of solid waste, but does not include any
22 agricultural activities or pursuits.

23 "Official plan" means any flood area management plan
24 submitted by a municipality and approved by the department.

25 "Owner" means any person who has dominion over, control of,
26 or title to an obstruction or the land on which an obstruction
27 is constructed or is to be constructed.

28 "Person" means an individual, partnership, public or private
29 association or corporation, firm, trust, estate, or any other
30 legal entity whatsoever which is recognized by law as the

1 subject of rights and duties. Whenever used in any section
2 prescribing or imposing a penalty, the term "person" shall
3 include the members of a partnership, the officers, members,
4 servants and agents of an association, the shareholders,
5 officers, agents and servants of a corporation, but shall
6 exclude the officers of a municipality or county, department,
7 board, bureau or agency of the Commonwealth.

8 "Public utility service" means (i) producing, generating,
9 transmitting, distributing or furnishing natural or artificial
10 gas, electricity, or steam for the production of light, heat, or
11 power to or for the public; (ii) diverting, developing, pumping,
12 impounding, distributing, or furnishing water to or for the
13 public; (iii) transporting passengers or property by railroad;
14 (iv) operation of a canal, turnpike, tunnel, bridge, wharf, or a
15 similar structure for the public; (v) transporting or conveying
16 natural or artificial gas, crude oil, gasoline, or petroleum
17 products, materials for refrigeration, or other fluid substance,
18 by pipeline or conduit; (vi) conveying or transmitting messages
19 or communications by telephone or telegraph for the public; and
20 (vii) sewage collection, treatment, or disposal for the public.

21 "Regulated flood area" means that portion of the flood area
22 which has been designated as subject to regulation pursuant to
23 this act, any provisions of this act, either by regulation of
24 the department or by approval of an official plan by the
25 department.

26 "Waters of the Commonwealth" means any and all rivers,
27 streams, creeks, impoundments, lakes, dammed water and all other
28 bodies or channels of conveyance of surface or underground
29 waters or parts thereof, whether natural or artificial, wholly
30 or partly within or forming part of the boundary of this

1 Commonwealth: Provided, That for the purpose of this act,
2 "waters of the Commonwealth" shall exclude farm ponds and other
3 privately owned ponds of less than 5 acres in area.

4 "Watershed" means the entire region or area drained by a
5 river or other body of water, whether natural or artificial.

6 ARTICLE II

7 FLOOD AREA MANAGEMENT AND REGULATION

8 Section 201. Department of Community Affairs; Regulations;
9 Standards and Procedures.--The department shall have the power
10 and its duty shall be to adopt regulations to insure
11 comprehensive flood area management in the Commonwealth and to
12 establish minimum standards for delineation and management of
13 flood areas by the municipalities and the department. The
14 department, in consultation with and after review by the
15 advisory committee as provided by section 202 of this act,
16 shall:

17 (1) As soon as practicable, establish by rule or regulation:

18 (i) Criteria and procedures for delineation of regulated
19 flood area zones in the Commonwealth; considering, among other
20 factors, the size or flood-carrying capacities of the floodway
21 and adjacent land areas, and the relative risk and frequency of
22 flooding of any land area;

23 (ii) Minimum standards for the design, construction, and
24 maintenance of obstructions within each flood area zone;
25 designation of those obstructions which may be allowed as of
26 right, prohibited, or conditionally allowed; minimum standards
27 for development and construction within each flood area zone;
28 minimum standards for the operation and maintenance of dams,
29 levies, fills and similar obstructions; and designation of those
30 flood area zones, or parts thereof, in which the construction of

1 obstructions or any categories of obstructions shall be
2 prohibited;

3 (iii) Minimum required flood-proofing techniques for
4 proposed and existing obstructions within the flood area zone;

5 (iv) The scheduled dates for submission to the department of
6 an official plan for flood area management by each municipality,
7 recognizing the extent of historical and recent flood damage to
8 lives and property within each municipality; the rate and type
9 of development taking place in each municipality; the floodways
10 of the Commonwealth having the greatest flood damage potential;
11 and other relevant considerations;

12 (v) Procedures and standards for the administration of flood
13 area permits by municipalities and by the department.

14 (2) Adopt such other rules and regulations as are necessary
15 to implement the purposes and provisions of this act.

16 Section 202. Advisory Committee.--(a) An advisory committee
17 consisting of 15 members shall be appointed by the Governor,
18 membership of which shall include one representative of the
19 Department of Community Affairs, Department of Environmental
20 Resources, Office of State Planning and Development, Public
21 Utility Commission, Pennsylvania State Association of Township
22 Supervisors, Pennsylvania State Association of Township
23 Commissioners, Pennsylvania State Association of Boroughs,
24 Pennsylvania League of Cities, Pennsylvania Municipal
25 Authorities Association, Pennsylvania School Boards Association,
26 Pennsylvania Association of County Commissioners, General
27 Contractors Association of Pennsylvania, Pennsylvania Council of
28 Farm Organizations, Pennsylvania Builders Association, and
29 Pennsylvania Vacationland Developers Association.

30 (b) The advisory committee shall review and recommend to the

1 department the adoption, amendment or repeal of such rules,
2 regulations, standards and procedures as it deems necessary and
3 advisable for the implementation of the act.

4 (c) The members of the committee shall not receive any
5 compensation for their services but shall be reimbursed for
6 their actual and necessary expenses incurred in the performance
7 of their duties.

8 Section 203. Municipalities; Official Plan; Regulation.--(a)
9 The governing body of every municipality shall administer flood
10 area management in the Commonwealth in conformity with the
11 regulations of the department and provisions of this act and
12 subject to the approval of the department.

13 (b) Each municipality shall have the power and its duty
14 shall be to:

15 (1) Submit to the department on or before the date
16 established by the department and pursuant to the provisions of
17 this act, an official plan for flood area management within the
18 territorial jurisdiction of the municipality and such revisions
19 as shall periodically be required by the department. The
20 official plan shall include, without limitation: (i) the results
21 of engineering studies, historical data, and surveys undertaken
22 in conformity with established department standards and
23 procedures and other information identifying and documenting the
24 location and boundaries of all flood area and flood area zones
25 within the municipality; (ii) proposed program implementation
26 plans including a proposed budget, indicating personnel needs
27 and qualifications; a proposed method of implementing department
28 regulations pertaining to floodway use; procedures and standards
29 for the evaluation of permits; categories of obstructions which
30 the municipality proposes to regulate; existing municipal rules

1 and regulations or ordinances regulating flood area land use;
2 proposed regulations or ordinances; and proposed implementation
3 of other flood area management policies; (iii) procedures for
4 reviewing, revising, and updating its official and
5 implementation plans; and (iv) certification that the proposed
6 plan has been reviewed by the appropriate county or regional
7 planning agencies, and the comments of such agencies regarding
8 the consistency of the proposed plan with plans for the region;
9 and (v) certification that the proposed plan is consistent with
10 other relevant environmental and land use plans adopted by the
11 municipality, the county in which the municipality is located
12 and the Commonwealth.

13 (2) After approval of its official plan, administer the
14 management of the flood areas within its territorial
15 jurisdiction in accordance with the terms and conditions and
16 subject to the restrictions set forth in its official plan.

17 (c) Whenever a municipality shall fail or refuse to
18 administer the provisions of this act or of an official plan
19 approved pursuant to this section, or shall fail to comply with
20 the standards, rules and regulations adopted by the department
21 relating to the administration and implementation of official
22 plans, the department may partially or totally modify, suspend,
23 or revoke approval of the official plan for such municipality,
24 and may either (i) require that the county in which such
25 municipality is located act as agency of the municipality for
26 the purpose of administering and implementing a flood area
27 management program in that municipality, or, as a last resort,
28 (ii) assume administration of the flood area management program
29 for such municipality.

30 (d) After the adoption of an official plan by a municipality

1 whose land is subject to an official plan and flood area
2 ordinances adopted by the county pursuant to subsection (c), and
3 upon a finding by the department that such plan complies with
4 the requirements of this act and the standards adopted by the
5 department, the flood area regulations and ordinances adopted by
6 the municipality shall act as a repeal protanto of the flood
7 area regulations and ordinances adopted by the county within the
8 municipality, and the municipality shall thereafter administer
9 the management of flood areas within its territorial
10 jurisdiction in accordance with the terms and conditions and
11 subject to the restrictions set forth in its official plan.

12 (e) (1) Any municipality may by agreement, designate the
13 county or regional planning agency, as its agent for the
14 development of the flood area management plan and may, by
15 ordinance, adopt by reference the flood area management plan and
16 ordinances developed by the county or regional planning agency.

17 (2) Any municipality may, by ordinance, designate the county
18 as the official administrative agency for the implementation of
19 the official plan and issuance of flood area permits within the
20 municipality.

21 Section 204. Department of Community Affairs; Coordination
22 and Supervision.--The power to coordinate and supervise the
23 management of flood areas in the Commonwealth shall be vested in
24 the department, including the power and duty to:

25 (1) Insure that flood area management and regulations in
26 adjoining municipalities are compatible throughout the watershed
27 and consistent with the policies of this act.

28 (2) Review, process and approve all official plans and
29 periodic revisions thereof pursuant to the procedures and
30 standards adopted by department regulations and consistent with

1 the purposes of this act.

2 (3) Require that counties act as agents of municipalities
3 where municipalities fail or refuse to perform as required under
4 this act and the regulations and standards adopted pursuant
5 hereto.

6 (4) Issue flood area permits in any municipality which does
7 not have an approved official plan or where the department has
8 assumed regulatory jurisdiction in any municipality over any
9 category of obstruction or over any flood area zone.

10 (5) Issue flood area permits for such categories of
11 obstructions or in such flood area zones, as are determined by
12 departmental rules and regulations to be a proper subject of
13 exclusive regulation by the department, including but not
14 limited to any obstruction owned or maintained by a person
15 engaged in the rendering of a public utility service.

16 (6) Acquire in the name of the Commonwealth, by purchase,
17 gift, or lease such lands or other property as are determined by
18 the department to be necessary to and consistent with
19 implementation of the purposes of this act or to be necessary to
20 effect any duty or responsibility of the department under any
21 Act of Assembly: Provided, however, That no amount shall be
22 expended for the purchase or lease of such land or property
23 except from funds specifically appropriated for such purchase or
24 lease by the General Assembly.

25 Section 205. Flood Area Permit.--(a) Permit requirements are
26 as follows:

27 Upon adoption and approval of an official plan for flood area
28 management within the territorial jurisdiction of any
29 municipality pursuant to sections 203 and 204, no person or
30 owner or his authorized agent shall construct, request

1 competitive bid proposals for construction, modify, remove,
2 abandon or destroy an obstruction in a flood area within said
3 municipality unless such person or owner or his authorized agent
4 has first applied for and obtained a permit from the department
5 or a municipality, as applicable.

6 (b) Conditions and terms are as follows:

7 (1) The department shall, by regulation, establish
8 procedures, standards, requirements, and general terms and
9 conditions for the application and approval of flood area
10 permits, including provisions for the payment of reasonable,
11 non-refundable filing fees, and time limitations for approval or
12 denial of flood area permits, but nothing in this section shall
13 prohibit the department or a municipality from imposing such
14 additional or special conditions upon a flood area permit as it
15 deems necessary to carry out the purposes of this act.

16 (2) The department may, by regulation, require the posting
17 of a sufficient performance bond or other security as a
18 condition upon the issuance of any category or categories of
19 flood area permits issued by a municipality or the department.
20 Such bonds shall be in favor of the issuing agency and shall be
21 made with such good and sufficient securities or collateral, as
22 defined by the department and found acceptable by the issuing
23 agency, as are necessary to insure compliance with the flood
24 area permit issued pursuant to the provisions of this act. Such
25 bonds or securities shall be cancelled or returned to the
26 permittee pursuant to the rules and regulations promulgated by
27 the department.

28 (3) No person shall construct, maintain or operate an
29 obstruction authorized pursuant to a flood area permit except in
30 accordance with the terms and conditions applicable hereto.

1 (c) In order to assure effective notice to prospective
2 purchasers of any real property, the department may, by
3 regulations require that all, or a specified category of flood
4 area permits shall be effective only upon the filing of such
5 permit, by the permittee, in the office of the recorder of deeds
6 for the county in which the subject property or obstruction, or
7 portion thereof, is located.

8 (d) A municipality or the department may modify, suspend or
9 revoke a permit, or refuse to renew or may withhold the issuance
10 of a permit where the permittee or applicant is engaging or has
11 engaged in any unlawful conduct as defined in this act.

12 (e) The department may, by rule or regulation, designate
13 certain classes or categories of obstructions for which flood
14 area permit requirements may be waived subject to such
15 conditions as the department shall prescribe.

16 Section 206. Appeals.--Any municipality aggrieved by the
17 rules and regulations, standards, and procedures of the
18 department, or any order of the department, shall have the right
19 of appeal in accordance with the provisions of the act of June
20 4, 1945 (P.L.1388, No.442), known as the "Administrative Agency
21 Law."

22 Section 207. Public Utility Service Permits.--In any case
23 where a permit is required to be obtained by a person engaged in
24 the furnishing of a public utility service, the department shall
25 not refuse an application, or revoke, modify, or suspend a
26 permit previously granted, unless it first obtains from the
27 Pennsylvania Public Utility Commission a certification that such
28 refusal, revocation, modification, or suspension will not
29 adversely affect public utility service to the public.

30

ARTICLE III

1 POWERS AND DUTIES

2 Section 301. Additional Powers and Duties of the Department
3 and Municipalities.--In addition to the powers and duties
4 established in other sections of this act, the department and
5 every municipality whose official plan has been approved shall
6 have the power and their duty shall be to:

7 (1) Investigate complaints, institute and conduct survey
8 programs to identify and define flood areas, make observations
9 of conditions which may or do affect the flood carrying capacity
10 of flood areas, and assess the degree of control or abatement of
11 flood area obstruction required.

12 (2) Institute legal proceedings in a court of competent
13 jurisdiction for the prevention or abatement of flood area
14 obstructions, or for enforcement of any order of the department
15 from which there has been no timely appeal, or which has been
16 sustained on appeal, or for recovery of penalties or damages in
17 accordance with this act.

18 (3) Institute prosecutions under this act.

19 (4) Conduct and supervise educational programs with respect
20 to flood hazards and flood area management, including
21 preparation and distribution of related information.

22 (5) Do any and all other acts not inconsistent with any
23 provision of this act which it may deem necessary or proper for
24 the effective enforcement of this act and the rules or
25 regulations which have been promulgated hereunder.

26 Section 302. Further Powers of the Department.--The
27 department shall have the power and its duty shall be to:

28 (1) Promote and recommend joint or regional flood area
29 planning, management, regulation and enforcement programs by
30 county and municipal governments.

1 (2) Cooperate with the Department of Environmental Resources
2 and with appropriate agencies of the United States or of other
3 states or any interstate agencies with respect to the planning,
4 management and control of flood area damage and where
5 appropriate formulate interstate flood area plans, or
6 agreements.

7 (3) In conjunction with the Department of Environmental
8 Resources, to serve as the agencies of the Commonwealth for the
9 receipt of moneys from the Federal Government or other public or
10 private agencies, or persons and expend such moneys for studies
11 and research with respect to planning, management, and control
12 of flood areas.

13 (4) Cooperate with the Department of Environmental Resources
14 to conduct or cause to be conducted, and supervise, studies and
15 research for the purpose of determining the causes, effects, and
16 hazards of floods and flood area obstructions, and methods for
17 the control, elimination and reduction of flood damages through
18 proper regulation, placement, and design of flood area
19 development.

20 Section 303. Coordination of Administration.--(a) In the
21 administration of this act, the Department of Community Affairs
22 and Department of Environmental Resources shall coordinate the
23 performance of their respective powers and duties in order to
24 avoid unnecessary duplication of efforts and to assure orderly
25 and efficient implementation of a flood area management program
26 throughout this Commonwealth.

27 (b) (1) In order to further the coordinated and effective
28 administration of this act, there shall be established a Flood
29 Area Management Committee, composed of staff from all State
30 departments and agencies concerned with flood area planning,

1 protection, and management, including but not limited to the
2 Department of Environmental Resources, Department of Community
3 Affairs, Department of Agriculture, Office of State Planning and
4 Development, Public Utility Commission, and such other State and
5 local agencies as the Governor shall direct. The members of said
6 committee shall be designated by the secretaries and directors
7 of the respective departments and agencies, with the approval of
8 the Governor.

9 (2) Said committee shall be responsible for the regular
10 exchange of information and plans regarding flood area
11 management, the development and review of standards,
12 regulations, model legislation, and manuals relating to flood
13 area management, and the recommendation of coordinated actions
14 by appropriate agencies in the implementation of this act.

15 Section 304. Inspections.--(a) An agent or employee of the
16 department, or of a municipality whose official plan has been
17 approved shall have the power and duty to, upon presentation of
18 proper credentials, (1) enter any land for the purpose of
19 surveying land and properties in flood areas; (2) enter any land
20 in a flood area for the purpose of ascertaining the location and
21 condition of structures or obstructions in flood areas; (3)
22 enter land or while under construction any building or structure
23 located in a flood area for the purpose of ascertaining the
24 compliance or noncompliance with the flood proofing rules or
25 regulations adopted by the department hereunder, or under an
26 official plan adopted and approved pursuant to this act.

27 (b) Whenever an agent or employee of the department or of a
28 municipality, charged with the enforcement of the provisions of
29 this act, has been refused access to property for the purposes
30 of conducting a survey or inspection as authorized by this

1 section or reasonably requires access to such property without
2 prior notice to the owner, such agent or employee may apply for
3 an inspection warrant to any Commonwealth official authorized by
4 law to issue a search or inspection warrant to enable him or her
5 to have access and inspect such property. It shall be sufficient
6 probable cause to issue an inspection warrant that the
7 inspection is necessary to properly enforce the provisions of
8 this act.

9 Section 305. Public Information.--All plans, maps, records,
10 reports, engineering data, permit applications, correspondence
11 and other public documents and information relating to flood
12 area management obtained or prepared by the department or any
13 municipality shall be available to the public.

14 Section 306. Flood Area Disaster and Relief Fund.--All civil
15 penalties collected under this act shall be paid into the
16 Treasury of the Commonwealth in a special fund known as the
17 "Flood Area Disaster and Relief Fund," hereby established, which
18 shall be administered by the department. An amount equal to each
19 civil penalty collected under this act shall be forwarded from
20 the Flood Area Disaster and Relief Fund to the municipality or
21 municipalities in which the violation occurred to be used by
22 said municipality or municipalities in achieving the purposes of
23 this act.

24 ARTICLE IV

25 ENFORCEMENT

26 Section 401. Unlawful Conduct.--It shall be unlawful for any
27 person to:

28 (1) Violate or assist in the violation of any of the
29 provisions of this act or of any rules and regulations adopted
30 hereunder, or any regulations or ordinances incorporated herein.

1 (2) Fail to comply with any order of the department or of a
2 municipality issued hereunder from which no appeal has been
3 taken which has been sustained on appeal, or which has been
4 appealed for which no supersedeas has been granted for the
5 period in which violation occurs.

6 (3) Conduct an activity authorized by a flood area permit
7 contrary to the terms of the permit or the rules and regulations
8 of the department.

9 (4) Attempt to obtain a permit by misrepresentation or
10 failure to disclose all relevant facts.

11 (5) In any manner hinder, obstruct, delay, resist, prevent,
12 or in any way interfere or attempt to interfere with the
13 department or any municipality in the performance of its duties
14 hereunder.

15 Section 402. Civil Remedies.--(a) Any activity or condition
16 declared by this act to be unlawful conduct shall be restrained
17 or prevented in the manner provided by law or equity for
18 abatement of public nuisances, and the expense thereof shall be
19 recoverable from the violator in such manner as may now or
20 hereafter be provided by law.

21 (b) In addition, suits to restrain or prevent any unlawful
22 conduct as defined in this act or to compel action to
23 discontinue any unlawful conduct may be instituted in equity or
24 at law in the name of the Commonwealth upon relation of the
25 Attorney General, or upon relation of any district attorney of
26 any county, upon relation of the solicitor of any municipality
27 affected, or upon relation of any person, after 30 days notice
28 has first been served upon the Attorney General of the intention
29 of the district attorney, solicitor, or person to so proceed.
30 Such proceedings may be prosecuted in the Commonwealth Court, or

1 in the court of common pleas of the county where the activity
2 has taken place, the condition exists, or the public affected,
3 and to that end jurisdiction is hereby conferred in law and
4 equity upon such courts: Provided, That except in cases of
5 emergency where, in the opinion of the court, the exigencies of
6 the cases require immediate abatement of said unlawful conduct,
7 the court may, in its decree, fix a reasonable time during which
8 the person responsible for the unlawful conduct may make
9 provision for the same. The expense of such proceedings shall be
10 recoverable from the violator in such manner as may now or
11 hereafter be provided by law.

12 Section 403. Enforcement Orders.--(a) The department or any
13 municipality whose official plan has been approved may issue
14 such orders as are necessary to aid in the enforcement of the
15 provisions of this act. Such orders shall include, but shall not
16 be limited to orders modifying, suspending or revoking permits
17 and official plans, and orders requiring persons to cease any
18 activity which is in violation of any provision of this act.
19 Such an order may be issued if the department or municipality
20 finds that the permittee, or any person or governmental unit is
21 in violation of any provision of this act, or of any rule,
22 regulation or order of the department or of any other regulation
23 or ordinance adopted pursuant to an approved official plan. The
24 department or municipality may, in its order, require compliance
25 with such terms and conditions as are necessary to effect the
26 purposes of this act.

27 (b) An order issued under this section shall take effect
28 upon notice, unless the order specifies otherwise.

29 (c) Any person violating or failing to comply with any order
30 of a municipality or of the department from which no appeal has

1 been taken or which has been sustained on appeal, or which has
2 been appealed but where no supersedeas has been granted for the
3 period in which the order has been violated, shall be deemed to
4 be in contempt of such order. Upon petition and certification of
5 such order by the department or the municipality, the
6 Commonwealth Court or the court of common pleas of the county
7 where the unlawful conduct occurred or is occurring, shall, if
8 it finds, after hearing or otherwise, that the respondent is not
9 in compliance with the order, adjudge the respondent in contempt
10 of the order and shall assess civil penalties of an amount not
11 less than \$100 nor greater than \$10,000 per violation plus \$500
12 for each continuing day of violation. Where the respondent has
13 not as of the date of hearing before the court complied with the
14 order of the department or municipality, the court shall
15 specifically order the respondent to immediately and fully
16 comply with such order, and may issue any further order as may
17 be appropriate.

18 (d) In order to insure effective notice to the prospective
19 purchaser of any real estate subject to such order, the
20 department or a municipality shall record any order of the
21 department or of the municipality with the prothonotary of the
22 county in which the subject property is located. It shall be the
23 duty of the prothonotary to enter such order in his or her
24 docket in the same manner as the entry of a judgment: Provided,
25 however, That no fee shall be charged for filing said order.

26 (e) The right of the department or of a municipality to
27 issue an order under this section is in addition to any penalty
28 which may be imposed or any action taken pursuant to this act.
29 The failure to comply with any such order is hereby declared to
30 be unlawful conduct and a nuisance.

1 Section 404. Civil Penalties.--(a) In addition to proceeding
2 under any other remedy available at law or in equity for (i) a
3 violation of a provision of this act, or of a rule and
4 regulation of the department, or of any ordinance or code of any
5 municipality issued hereunder; or (ii) for a violation of any
6 order of the department or of a municipality; or (iii) for
7 engaging in any unlawful conduct under the provision of this
8 act, the department, in an action instituted before it by any
9 county or municipality, or by an aggrieved person, may assess a
10 civil penalty upon any person for such violation. Such a
11 penalty may be assessed whether or not the violation was
12 willful. The civil penalty so assessed shall not exceed \$10,000,
13 plus \$500 for each day of continued violation. In determining
14 the amount of the civil penalty, the department shall consider
15 the willfulness of the violation, damage or injury to the
16 environment and flood areas of the Commonwealth, cost of
17 restoration, the cost to the Commonwealth of enforcing the
18 provisions of the act against such person, and other relevant
19 factors. The assessment of the civil penalty shall be made
20 after hearing, unless hearing is specifically waived by the
21 respondent. It shall be payable to the Flood Area Disaster and
22 Relief Fund and shall be collectible in any manner provided at
23 law for the collection of debts.

24 (b) If any person liable to pay any such penalty neglects or
25 refuses to pay the same after demand, the amount, together with
26 interest and any costs that may accrue, shall be a lien in favor
27 of the Commonwealth upon the property, both real and personal,
28 of such person but only after the amount of the lien has been
29 entered and docketed of record by the prothonotary of the county
30 where the property is situated. The department may, at any time,

1 transmit to the prothonotaries of the respective counties
2 certified copies of all such liens, and it shall be the duty of
3 each prothonotary to enter and docket the same of record in his
4 office, and to index the same as judgments are indexed, without
5 requiring the payment of costs as a condition precedent to the
6 entry thereof.

7 Section 405. Hearings and Appeals.--(a) Within 30 days of
8 the making of any rule or regulation, or the grant, denial,
9 modification, suspension or revocation of any permit by any
10 municipality or the department, or of the issuance of any order
11 by a municipality or the department, any person aggrieved by
12 such action shall have a right to a hearing before such
13 municipality or in the case of departmental action, before such
14 departmental hearing body as the department shall by rule or
15 regulation provide. Such hearing shall be held within 30 days
16 after the request therefore is received.

17 (b) Any person who, after a hearing at the municipal level
18 as required by this section, is aggrieved by the action or
19 decision of a municipality may appeal such action to the
20 departmental hearing body within 30 days of the action or final
21 decision of the municipality.

22 (c) An appeal to the departmental hearing body of any action
23 of a municipality or of the department shall not act as a
24 supersedeas, and no supersedeas shall be granted by the
25 department except that, upon a showing by the petitioner: (i)
26 that irreparable harm to the petitioner or other interested
27 parties will result if the supersedeas is denied; (ii) that
28 there is a likelihood of the petitioner's success on the merits,
29 and (iii) that the grant of a supersedeas will not result in
30 irreparable harm to the Commonwealth, a supersedeas may be

1 granted subject to such security as the department may deem
2 proper.

3 (d) Any person aggrieved by an adjudication of the
4 departmental hearing body may appeal to the Commonwealth Court
5 in accordance with the provisions of the act of June 4, 1945
6 (P.L.1388, No.442), known as the "Administrative Agency Law."

7 Section 406. Criminal Penalties.--(a) Any person engaging in
8 unlawful conduct as defined in this act is guilty of a summary
9 offense and, upon conviction, shall be sentenced to pay a fine
10 of not less than \$100 nor more than \$1,000 for each separate
11 offense, and, in default of the payment of such fine, to
12 imprisonment for a period of not more than 60 days.

13 (b) Any person who, after a conviction in a summary
14 proceeding within two years as provided in subsection (a),
15 engages in unlawful conduct as defined in this act is guilty of
16 a misdemeanor and, upon conviction, shall be sentenced to pay a
17 fine of not less than \$500 nor more than \$5,000 for each
18 separate offense or to imprisonment for a period of not more
19 than one year, or both.

20 (c) Each day of continued violation of any provisions of
21 this act or any rule or regulation or order of the department
22 issued pursuant to this act shall constitute a separate offense
23 under subsections (a) and (b). Any criminal penalty collected
24 under this act shall be paid to the municipality or
25 municipalities in which the violation occurred to be used by
26 said municipality or municipalities in achieving the purposes of
27 this act.

28 ARTICLE V

29 RIGHTS AND REMEDIES

30 Section 501. Preservation of Existing Rights and Remedies.--

1 The collection of any penalty under the provisions of this act
2 shall not be construed as estopping the Commonwealth or any
3 district attorney or solicitor of a municipality from proceeding
4 in courts of law or equity to abate nuisances under existing law
5 or to restrain, at law or in equity, unlawful conduct as defined
6 herein. It is hereby declared to be the purpose of this act to
7 provide additional and cumulative remedies to abate nuisances
8 and nothing contained in this act shall in any way abridge or
9 alter rights of action or remedies now or hereafter existing or
10 herein provided in equity or under the common law or statutory
11 law, criminal or civil including, without limitation, those
12 rights and remedies established by the act of June 25, 1913
13 (P.L.555, No.355), entitled "An act providing for the regulation
14 of dams, or other structures or obstructions, as defined herein,
15 in, along, across, or projecting into all streams and bodies of
16 water wholly or partly within, or forming part of the boundary
17 of, this Commonwealth; vesting certain powers and duties in the
18 Water Supply Commission of Pennsylvania, for this purpose; and
19 providing penalties for the violation of the provisions hereof,"
20 nor shall any provision in this act or the granting of any
21 permit under this act or any act done by virtue of this act be
22 construed as having any effect upon the rights of the
23 Commonwealth, persons, counties or municipalities to proceed in
24 courts of law or equity to suppress nuisances or to enforce
25 common law or statutory rights nor shall any permit be construed
26 to permit any act otherwise forbidden by any decree, order,
27 sentence or judgment of any court.

28 Section 502. Effect of Local Ordinances.--This act shall not
29 supersede any floodway or floodplain regulation or ordinance of
30 any governmental unit currently in effect or adopted prior to

1 the submission of an official plan which is more restrictive
2 than requirements imposed under this act: Provided, That any
3 regulation or ordinance or portion thereof which has been
4 approved by the department shall be incorporated herein and
5 enforceable under the provisions of this act.

6 Section 503. Repealer and Savings Clause.--(a) All acts or
7 parts of acts inconsistent herewith are hereby repealed to the
8 extent of such inconsistency.

9 (b) The provisions of this act shall not effect any suit or
10 prosecution pending or to be instituted to enforce any right or
11 penalty or punish any offense under the authority of any Act of
12 Assembly or part thereof repealed by this act.

13 Section 504. Grants and Reimbursements Authorized.--(a) The
14 department is authorized to administer grants to municipalities
15 to assist them in preparing official plans and revisions to
16 official plans for flood plain management required by this act,
17 and for carrying out related studies, surveys, investigations,
18 research, and analysis. Grants shall be made from funds
19 appropriated by the General Assembly for such purpose and shall
20 be made according to the following formula:

21 (1) Where a municipality acts independently the grant by the
22 department shall be equal to 75% of the costs incurred by the
23 municipality for such purposes.

24 (2) Where municipalities act jointly the grant by the
25 department shall be equal to 90% of the costs incurred by each
26 municipality for such purposes. Such grants shall not be
27 withheld from any municipality which is complying with the
28 provisions of this act. For the purposes of this subsection,
29 such grants shall be exclusive of grants for similar purposes
30 made to such municipalities by the Federal Government.

1 (b) Municipalities complying with the provisions of this act
2 in a manner deemed satisfactory by the department shall be
3 reimbursed annually by the department, from funds specifically
4 appropriated by the General Assembly for such purposes, in an
5 amount equal to one-half of the cost of such expenses incurred
6 by the municipality for the administration and enforcement of
7 the provisions of this act. For the purposes of this subsection,
8 such reimbursements by the department shall be exclusive of
9 reimbursements for similar purposes made to each such
10 municipality by the Federal Government.

11 Section 505. Effective Date.--This act shall take effect
12 immediately.