

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1233 Session of
1980

INTRODUCED BY ORLANDO, MELLOW, KELLEY, DWYER, MANBECK, BODACK,
LYNCH, MURRAY, ANDREWS, KURY AND HOLL, FEBRUARY 5, 1980

REFERRED TO ENVIRONMENTAL RESOURCES, FEBRUARY 5, 1980

AN ACT

1 Providing for the regulation of structure setbacks in bluff
2 recession hazard areas throughout the Commonwealth to limit
3 property damage and shoreline erosion recession, imposing
4 duties and conferring powers on the Department of
5 Environmental Resources and municipalities, providing for
6 penalties and enforcement.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the "Bluff
11 Recession and Setback Act."

12 Section 2. Purpose and policy.

13 The policy and purpose of this act is to:

14 (1) Encourage planning and development in bluff areas
15 which is consistent with sound land use practices.

16 (2) Protect people and property in bluff areas from the
17 dangers and damage associated with the inevitable recession
18 of bluffs.

19 (3) Prevent and eliminate urban and rural blight which
20 results from the damages of bluff erosion and recession.

21 (4) Minimize the expenditure of public and private funds
22 for shoreline protection and bluff stabilization structures
23 and activities.

24 (5) Authorize a comprehensive and coordinated program to
25 regulate development activities through the use of setback
26 ordinances in bluff recession hazard areas, designed to
27 preserve and restore the natural ecological systems, and to
28 prevent continuing destruction of private property and
29 structures.

30 (6) Encourage local administration and management of

bluffs consistent with the Commonwealth's duty as trustee of natural resources, and the people's constitutional right to the preservation of the natural, scenic, aesthetic and historic values of the environment.

Section 3. 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:

"Bluff." Any high bank or bold headland with a broad, precipitous, almost perpendicular, sometimes rounded cliff face, overlooking a large body of water.

"Bluff line." The edge or crest of the bluff.

"Bluff recession." The loss of material along the bluff face caused by the direct or indirect action by one or a combination of groundwater seepage, water currents, wind generated water waves or high water levels.

"Bluff recession hazard area." An area or zone where the rate of progressive bluff recession creates a substantial threat to the safety or stability of nearby or future structures or utility facilities.

"Bluff setback ordinance and regulations." Building codes, zoning ordinances, subdivision regulations, health regulations, special purpose ordinances, and other applications of the police power, which provide standards for the location of structures and facilities in bluff recession hazard areas.

"Department." The Department of Environmental Resources of the Commonwealth of Pennsylvania.

"Development":

(1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:

1 (i) a group of two or more buildings; or

2 (ii) the division or allocation of land or space
3 between or among two or more existing or prospective
4 occupants by means of, or for the purpose of streets,
5 common areas, leaseholds, condominiums, building groups
6 or other features.

7 (2) A subdivision of land.

8 "Municipality." A city, borough, town or township, or any
9 county or other governmental unit when acting as an agent
10 thereof, or any combination thereof acting jointly.

11 "Person." An individual, partnership, public or private
12 association or corporation, firm, trust estate, municipality,
13 governmental unit, public utility or any other legal entity
14 whatsoever which is recognized by law as the subject of rights
15 and duties. Whenever used in any section prescribing or imposing
16 a penalty, the term "person" shall include the members of a
17 partnership, the officers, members, servants and agents of an
18 association, officers, agents and servants of a corporation, but
19 shall exclude any department, board, bureau or agency of the
20 Commonwealth.

21 "Structure." Any man-made object having an ascertainable
22 stationary location on or in land or water, whether or not
23 affixed to the land.

24 "Structure life span." The useful life of the structure
25 considering both economic and physical factors.

26 "Substantial improvement." Any repair, reconstruction or
27 improvement of a structure, the cost of which equals or exceeds
28 50% of the market value of the structure either:

29 (1) before the improvement or repair is started; or

30 (2) if the structure has been damaged, and is being

1 restored, before the damage occurred or any repairs,
2 reconstructions or improvements of a structure occurring over
3 a five-year period, the aggregate cost of which equals or
4 exceeds 50% of the market value of the structure either:

5 (i) before the first improvement or repair is
6 started; or

7 (ii) if the structure has been damaged, and is being
8 restored, before the damage occurred.

9 For the purposes of this definition "substantial improvement" is
10 considered to occur when the first alteration of any wall,
11 ceiling, floor or other structure part of the building
12 commences, whether or not that alteration affects the external
13 dimensions of the structure. The term does not, however, include
14 any project for improvement of a structure to comply with
15 existing State or local health, sanitary or safety
16 specifications which are solely necessary to assure safe living
17 conditions; or any alterations of a structure listed on the
18 National Register of Historic Places or a State inventory of
19 historic places.

20 Section 4. Designation of areas with bluff recession hazards.

21 (a) The department shall conduct studies necessary to
22 identify areas in the Commonwealth subject to bluff recession
23 hazards.

24 (b) The department shall notify the chief executive officer
25 of each municipality which is tentatively identified as
26 containing one or more areas subject to bluff recession hazards.
27 Each such municipality shall be invited to submit within 60 days
28 of notification by the department any technical data or comments
29 on the proposed identification of a bluff recession hazard. The
30 department shall submit its report, together with the comments

1 of the affected municipality, to the Environmental Quality
2 Board.

3 (c) Following receipt of the department's report, and after
4 public notice and public hearings, the Environmental Quality
5 Board shall by regulation identify and designate those areas and
6 municipalities subject to bluff recession hazards.

7 Section 5. Bluff setback requirements.

8 (a) In any area designated as having a bluff recession
9 hazard, no person shall construct, install, or engage in
10 substantial improvement to any structure, or any utility
11 facility such as but not limited to water, sewage, electric,
12 gas, oil or telephone facilities, in violation of the bluff
13 setback requirements established pursuant to this section.

14 (b) The Environmental Quality Board shall, by regulation,
15 establish minimum bluff setback requirements for bluff recession
16 hazard areas. In setting such standards, the board shall
17 consider the applicable bluff recession rates, the appropriate
18 life span of various classes of structures, and other relevant
19 factors affecting the public safety and bluff stability.

20 Section 6. Municipal bluff setback regulations.

21 (a) Within six months following designation by the
22 Environmental Quality Board of an area and municipality subject
23 to bluff recession hazards, each designated municipality shall
24 adopt or amend, and shall implement such ordinances and
25 regulations as are necessary to regulate construction and
26 development activities in areas subject to bluff recession
27 hazards in a manner consistent with the minimum bluff setback
28 requirements established pursuant to section 5. Such ordinances
29 and regulations shall require permits for all proposed
30 construction, installation or substantial improvement of

1 structures, or water, sewage, electric or gas utility services
2 located in designated bluff recession hazard areas.

3 (b) The adoption and administration by municipalities of
4 bluff setback ordinances and regulations which are necessary to
5 comply with this act shall be governed by the provisions of the
6 act of July 31, 1968 (P.L.805, No.247), known as the
7 "Pennsylvania Municipalities Planning Code," or other applicable
8 enabling legislation; provided that a municipality may adopt
9 bluff setback ordinances and regulations for a bluff recession
10 hazard area without adopting ordinances and regulations
11 governing any other area of the municipality, notwithstanding
12 any provision of the "Pennsylvania Municipalities Planning Code"
13 or other applicable enabling legislation.

14 (c) No provision of this act shall be construed as in any
15 way limiting the power of any municipality to adopt more
16 restrictive ordinances, codes or regulations governing
17 construction and development in bluff recession hazard areas
18 than the minimum bluff setback requirements established pursuant
19 to section 5.

20 Section 7. Department oversight of municipal compliance.

21 (a) The department shall review and approve all municipal
22 bluff setback ordinances and regulations, and amendments
23 thereto. The department shall approve the ordinances and
24 regulations if it determines that they comply with the minimum
25 requirements of this act. If the department disapproves an
26 ordinance or regulation, it shall notify the affected
27 municipality in writing, stating the reasons for disapproval.

28 (b) If the department fails to either approve or disapprove
29 an ordinance or regulation, or amendment thereto, within 90 days
30 following submission by the municipality to the department, the

1 ordinance or regulation shall be deemed to be approved.

2 (c) The department shall periodically review the
3 implementation and administration by municipalities of bluff
4 setback ordinances and regulations in order to assure
5 coordinated and consistent enforcement of the setback
6 requirements established pursuant to this act.

7 (d) Following public notice and public hearing, the
8 Environmental Quality Board shall adopt, and periodically review
9 and amend, regulations establishing:

10 (1) Criteria and standards for the coordinated and
11 consistent enforcement of bluff setback requirements by
12 municipalities.

13 (2) Requirements and procedures for the submission,
14 review and approval of municipal bluff setback ordinances and
15 regulations.

16 (3) Requirements and procedures for maintenance of
17 records concerning municipal implementation and
18 administration of bluff setback ordinances and regulations,
19 and for periodic submission of such records or reports to the
20 department for review.

21 (e) Where conditions affecting a bluff recession hazard area
22 are changed, including changes created by artificial erosion and
23 recession control projects, the Environmental Quality Board
24 shall review and as appropriate amend regulations under this
25 section.

26 Section 8. Failure to adopt or implement bluff setback
27 ordinances.

28 (a) The department may institute an action in mandamus in
29 the Commonwealth Court to compel a municipality to adopt and
30 submit bluff setback ordinances and regulations which comply

1 with the requirements of this act.

2 (b) If the department finds that a municipality has failed
3 to implement and enforce, in a consistent and effective manner,
4 the bluff setback ordinances and regulations required by this
5 act, the department shall provide written notice of violation to
6 the municipality.

7 (c) Within 60 days of the receipt of a notice of violation,
8 the municipality shall report to the department regarding the
9 action which it is taking to correct the violation and to comply
10 with the requirements of this act.

11 (d) If within 90 days of the receipt of a notice of
12 violation, the department determines that the municipality has
13 failed to comply with the requirements of this act, the
14 department shall issue an administrative order to the
15 municipality and its officers specifying the actions necessary
16 to correct the violation and to achieve full compliance with the
17 requirements of this act. Any order issued under this section
18 shall take effect upon receipt of notice unless the other
19 specifies otherwise.

20 (e) Any municipality or municipal officer who violates or
21 fails to comply with an order of the department issued pursuant
22 to subsection (d), from which no appeal has been taken, or which
23 has been sustained on appeal, or which has been appealed but
24 where no supersedeas has been granted, shall be deemed to be in
25 contempt of such order. Upon petition and certification of such
26 order by the department, the Commonwealth Court or the court of
27 common pleas of the county where the municipality is located,
28 shall, if it finds that the respondent municipality or officer
29 is not in compliance with the order, adjudge the respondent in
30 contempt of the order and shall assess civil penalties of an

1 amount not less than \$100 nor greater than \$1,000 per violation
2 plus \$200 for each continuing day of violation. Where the
3 respondent has not as of the date of hearing before the court
4 complied with the order of the department or board, the court
5 shall specifically order the respondent to immediately and fully
6 comply with such order, and may issue any further order as may
7 be appropriate.

8 Section 9. Coordination with environmental protection programs.

9 The department and municipalities shall coordinate the
10 implementation of this act with the administration of the
11 environmental protection programs for erosion and sedimentation
12 control, stormwater management and water obstructions.

13 Section 10. Inspections.

14 (a) An agent or employee of the Department of Environmental
15 Resources or of a municipality administering bluff setback
16 ordinances and regulations shall have the power to, upon
17 presentation of proper credentials:

18 (1) Enter any land for the purpose of surveying bluff
19 recession hazard areas.

20 (2) Enter any land in a bluff recession hazard area for
21 the purpose of ascertaining the location of structure or
22 structures.

23 (3) Enter land or any structure located in a bluff
24 recession hazard area for the purpose of ascertaining the
25 compliance or noncompliance with the bluff setback ordinance
26 and regulations adopted pursuant to this act.

27 (b) Whenever an agent or employee of the Department of
28 Environmental Resources or a municipality charged with the
29 enforcement of the provisions of this act has been refused
30 access to property for the purposes of conducting a survey or

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

9 Section 11. Grants and reimbursements to municipalities.

10 (a) The department is authorized to administer grants to
11 municipalities to assist or reimburse them for costs in
12 preparing or amending bluff setback ordinances and actual
13 administrative enforcement and implementation costs as required
14 by this act. Grants and reimbursements shall be made from and to
15 the extent of Federal funding augmentation under the Federal
16 Coastal Zone Management Act as appropriated by the General
17 Assembly for such purposes and shall be made in accordance to
18 rules and regulations adopted by the department in accordance
19 with the following:

20 The grant shall be limited to:

21 (i) Seventy-five per cent of the allowable costs for
22 preparation of a bluff setback ordinance, and
23 administrative, enforcement, and implementation costs
24 required by this act; and revisions of a bluff setback
25 ordinance incurred by any municipality, which prior to
26 the effective date of this act, adopted a bluff setback
27 ordinance.

28 (ii) Fifty per cent of the allowable costs for
29 administration of an ordinance incurred by any
30 municipality. Allowable costs for administration of bluff

1 setback ordinance shall not include those costs which are
2 offset by reasonable permit fees imposed by the
3 municipality.

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

8 Section 12. Criminal penalties.

9 (a) Any person other than the officers of a municipality,
10 county or governmental unit who violates the requirements of
11 section 5 or any bluff setback ordinance or regulation, is
12 guilty of a summary offense and, upon conviction, shall be
13 sentenced to pay a fine of not less than \$100 nor more than
14 \$1,000 for each separate offense, and, in default of the payment
15 of such fine, to imprisonment for a period of not more than 60
16 days. All summary proceedings under this act may be brought
17 before any district magistrate of the county where the violation
18 occurred, and jurisdiction is hereby conferred upon said
19 district magistrates subject to appeal by either party in the
20 manner provided by law. In the case of any appeal from any such
21 conviction in the manner provided by law for appeals from
22 summary conviction, it shall be the duty of the district
23 attorney of the county to represent the interests of the
24 Commonwealth.

25 (b) Any person who, within two years after a conviction in a
26 summary proceeding as provided in subsection (a), violates the
27 requirements of section 5 or any bluff setback ordinances or
28 regulations, is guilty of a misdemeanor of the third degree and,
29 upon conviction, shall be sentenced to pay a fine of not less
30 than \$500 nor more than \$5,000 for each separate offense or to

1 imprisonment for a period of not more than one year, or both.

2 (c) Each day of continued violation of any provision of this
3 act or any bluff setback ordinances or regulation shall
4 constitute a separate offense under subsections (a) and (b).

5 Section 13. Civil remedies.

6 (a) Any activity conducted in violation of section 5, or of
7 any bluff setback ordinances or regulations adopted hereunder,
8 is declared to be a public nuisance.

9 (b) Suits to restrain, prevent or abate violations of this
10 act or any bluff setback ordinances or regulations adopted
11 hereunder, may be instituted in equity or at law by the
12 department, any affected county or municipality, or any
13 aggrieved person. Such proceedings may be prosecuted in the
14 Commonwealth Court, or in the court of common pleas of the
15 county where the activity has taken place, the condition exists,
16 or the public affected, and to that end jurisdiction is hereby
17 conferred in law and equity upon such courts. Except in cases of
18 emergency where, in the opinion of the court, the circumstances
19 of the case require immediate abatement of the unlawful conduct,
20 the court may, in its decree, fix a reasonable time during which
21 the person responsible for the unlawful conduct shall correct or
22 abate the same. The expense of such proceedings shall be
23 recoverable from the violator in such manner as may now or
24 hereafter be provided by law.

25 Section 14. Appeals.

26 (a) Any person or municipality aggrieved by an action of the
27 department shall have the right within 30 days of the receipt of
28 notice of such action to appeal such action to the Environmental
29 Hearing Board, pursuant to section 1921-A of the act of April 9,
30 1929 (P.L.177, No.175), known as "The Administrative Code of

1 1929," and the "Administrative Agency Law."

2 (b) An appeal of any action under this act shall not act as
3 a supersedeas. A supersedeas may be granted by the Environmental
4 Hearing Board upon a showing by the petitioner:

5 (1) that irreparable harm to the petitioner or other
6 interested parties will result if supersedeas is denied;

7 (2) that there is a likelihood of the petitioner's
8 success on the merits; and

9 (3) that the grant of a supersedeas will not result in
10 irreparable harm to the Commonwealth.

11 The hearing board may grant such a supersedeas subject to
12 such security as it may deem proper.

13 Section 15. Repealer and savings clause.

14 (a) All acts or parts of acts inconsistent herewith are
15 hereby repealed to the extent of such inconsistency.

16 (b) The provisions of this act shall not affect any suit or
17 prosecution pending or to be instituted to enforce any right or
18 penalty or punish any offense under the authority of any act of
19 assembly or part thereof repealed by this act.

20 Section 16. Effective date.

21 This act shall take effect immediately.