

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

AS AMENDED ON THIRD CONSIDERATION, MARCH 11, 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

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

5 Section 3. Definitions.

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

9 "Bluff." Any high bank or bold headland with a broad,
10 precipitous, ~~almost perpendicular, sometimes rounded~~ cliff face, ←—
11 overlooking a ~~large body of water~~ LAKE. ←—

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

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

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

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

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

28 "Development":

29 (1) The improvement of one lot or two or more contiguous
30 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 "LAKE." A BODY OF FRESH WATER COVERING AT LEAST 9,000 SQUARE ←
9 MILES.

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

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

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

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

28 "Substantial improvement." Any repair, reconstruction or
29 improvement of a structure, the cost of which equals or exceeds
30 50% of the market value of the structure either:

- 1 (1) before the improvement or repair is started; or
2 (2) if the structure has been damaged, and is being
3 restored, before the damage occurred or any repairs,
4 reconstructions or improvements of a structure occurring over
5 a five-year period, the aggregate cost of which equals or
6 exceeds 50% of the market value of the structure either:
7 (i) before the first improvement or repair is
8 started; or
9 (ii) if the structure has been damaged, and is being
10 restored, before the damage occurred.

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

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

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

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

1 on the proposed identification of a bluff recession hazard. The
2 department shall submit its report, together with the comments
3 of the affected municipality, to the Environmental Quality
4 Board.

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

9 Section 5. Bluff setback requirements.

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

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

22 (C) THE ENVIRONMENTAL QUALITY BOARD SHALL ADOPT REGULATIONS <—
23 PROVIDING STANDARDS AND PROCEDURES FOR VARIANCES TO THE BLUFF
24 SETBACK REQUIREMENTS. SUCH REGULATIONS SHALL REQUIRE AT A
25 MINIMUM THAT THE APPLICANT DEMONSTRATE AND THE ADMINISTERING
26 AGENCY DETERMINE THAT:

27 (1) A PARCEL ESTABLISHED PRIOR TO A BLUFF RECESSION
28 HAZARD AREA DESIGNATION DOES NOT HAVE ADEQUATE DEPTH
29 CONSIDERING THE MINIMUM BLUFF SETBACK REQUIREMENTS TO PROVIDE
30 FOR ANY REASONABLE USE OF THE LAND; OR THE PROPOSED STRUCTURE

1 OR UTILITY FACILITIES REQUIRE ACCESS TO THE BODY OF WATER AND
2 THERE IS NO FEASIBLE ALTERNATIVE FOR OBTAINING SUCH ACCESS.

3 (2) SOUND LAND USE PRACTICES WILL BE APPLIED TO THE
4 DESIGN, PLACEMENT, CONSTRUCTION AND USE OF THE STRUCTURE OR
5 UTILITY FACILITIES TO CONTROL RUNOFF, EROSION AND
6 ACCELERATION OF BLUFF RECESSION.

7 (3) THE STRUCTURE OR UTILITY FACILITIES WILL, TO THE
8 MAXIMUM EXTENT FEASIBLE, COMPLY WITH THE BLUFF SETBACK
9 REQUIREMENTS AND WILL OTHERWISE BE DESIGNED AND CONSTRUCTED
10 IN A MANNER WHICH ADEQUATELY PROTECTS AGAINST POTENTIAL
11 DANGERS FROM BLUFF RECESSION, AND WILL INCORPORATE ALL
12 FEASIBLE MEASURES TO MINIMIZE RISKS TO LIFE AND PROPERTY.

13 (D) THE DEPARTMENT MAY GRANT VARIANCES TO THE BLUFF SETBACK
14 REQUIREMENTS IN THE PERIOD PRIOR TO FORMAL APPROVAL OF A
15 MUNICIPAL BLUFF SETBACK ORDINANCE AND REGULATIONS. FOLLOWING
16 APPROVAL BY THE DEPARTMENT OF A MUNICIPALITY'S BLUFF SETBACK
17 ORDINANCE AND REGULATIONS, VARIANCES SHALL BE GRANTED BY THE
18 DESIGNATED MUNICIPALITY.

19 Section 6. Municipal bluff setback regulations.

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

1 located in designated bluff recession hazard areas.

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

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

19 Section 7. Department oversight of municipal compliance.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (e) Any municipality or municipal officer who violates or
20 fails to comply with an order of the department issued pursuant
21 to subsection (d), from which no appeal has been taken, or which
22 has been sustained on appeal, or which has been appealed but
23 where no supersedeas has been granted, shall be deemed to be in
24 contempt of such order. Upon petition and certification of such
25 order by the department, the Commonwealth Court or the court of
26 common pleas of the county where the municipality is located,
27 shall, if it finds that the respondent municipality or officer
28 is not in compliance with the order, adjudge the respondent in
29 contempt of the order and shall assess civil penalties of an
30 amount not less than \$100 nor greater than \$1,000 per violation

1 plus \$200 for each continuing day of violation. Where the
2 respondent has not as of the date of hearing before the court
3 complied with the order of the department or board, the court
4 shall specifically order the respondent to immediately and fully
5 comply with such order, and may issue any further order as may
6 be appropriate.

7 Section 9. Coordination with environmental protection programs.

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

12 Section 10. Inspections.

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

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

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

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

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

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

8 Section 11. Grants and reimbursements to municipalities.

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

19 The grant shall be limited to:

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

27 (ii) Fifty per cent of the allowable costs for
28 administration of an ordinance incurred by any
29 municipality. Allowable costs for administration of bluff
30 setback ordinance shall not include those costs which are

1 offset by reasonable permit fees imposed by the
2 municipality.

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

7 Section 12. Criminal penalties.

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

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

1 (c) Each day of continued violation of any provision of this
2 act or any bluff setback ordinances or regulation shall
3 constitute a separate offense under subsections (a) and (b).
4 Section 13. Civil remedies.

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

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

24 Section 14. Appeals.

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

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

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

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

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

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

12 Section 15. Repealer and savings clause.

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

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

19 Section 16. Effective date.

20 This act shall take effect immediately.