
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 200 Session of
1995

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HALUSKA, KING, ROHRER, WOZNIAK, PRESTON, FICHTER AND
MIHALICH, FEBRUARY 13, 1995

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
FEBRUARY 13, 1995

AN ACT

1 Providing for wetlands conservation and management; further
2 providing for eminent domain; providing for penalties and
3 remedies; establishing the Wetlands Conservation Fund;
4 conferring powers and duties upon the Department of
5 Environmental Resources; and making an appropriation.

6 TABLE OF CONTENTS

7 Chapter 1. Preliminary Provisions
8 Section 101. Short title.
9 Section 102. Declaration of policy.
10 Section 103. Definitions.
11 Chapter 3. Conservation and Management
12 Section 301. Prohibition.
13 Section 302. Permits.
14 Section 303. Notice and hearing relating to certain permit
15 applications.

1 Section 304. Wetlands identification and classification.
2 Section 305. Inverse condemnation.
3 Chapter 5. Enforcement
4 Section 501. Administrative penalty.
5 Section 502. Injunction.
6 Chapter 7. Administration
7 Section 701. Fund.
8 Section 702. Administrative provisions.
9 Chapter 21. Miscellaneous Provisions
10 Section 2101. Preemption.
11 Section 2102. Appropriation.
12 Section 2103. Effective date.

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

15 CHAPTER 1

16 PRELIMINARY PROVISIONS

17 Section 101. Short title.

18 This act shall be known and may be cited as the Wetlands
19 Conservation and Management Act.

20 Section 102. Declaration of policy.

21 The General Assembly finds and declares as follows:

22 (1) Wetlands play an integral role in maintaining the
23 quality of life through material contributions to economy,
24 food supply, water supply and quality, wood supply, flood
25 control, fish, wildlife and plant resources. Wetlands are
26 critical to the health, safety, recreation and economic well-
27 being of citizens of this Commonwealth.

28 (2) Wetlands serve important ecological and natural
29 resource functions, such as providing essential nesting and
30 feeding habitat for waterfowl, other wildlife and many rare

1 and endangered species; providing fisheries habitat;
2 enhancement of water quality; and natural flood control.

3 (3) Much of the Commonwealth's resource has sustained
4 significant degradation, resulting in the need for effective
5 programs to limit the loss of ecologically significant
6 wetlands and for long-term restoration and enhancement of the
7 wetlands resource base.

8 (4) An effective wetlands conservation and management
9 program must reflect a balanced approach that conserves and
10 enhances important wetlands values and functions while
11 observing private property rights; recognizes the need for
12 essential public infrastructure, such as highways, ports,
13 airports, sewer systems and public water supply systems; and
14 provides the opportunity for sustained economic growth.

15 (5) While wetlands provide many varied economic and
16 environmental benefits, they also present health risks in
17 some instances where they act as breeder grounds for insects
18 that are carriers of human and animal diseases.

19 (6) Variations in wetlands values or functions should be
20 considered in determining the character and extent of
21 regulation of activities occurring in wetlands areas.

22 (7) Sufficient regulatory incentives are required for
23 conservation, restoration or enhancement activities.

24 (8) Conservation of resources on an ecosystem basis
25 should be encouraged to the fullest extent practicable.

26 (9) Public and private interests should be balanced in
27 determining the conditions under which activity in wetlands
28 areas may occur.

29 Section 103. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Activity in wetlands." Any of the following:

4 (1) Discharge of dredged or fill material into wetlands.

5 (2) Draining, channelization or excavation of wetlands.

6 "Creation of wetlands." Bringing a wetland into existence at
7 a site where it did not formerly occur for the purpose of
8 compensation.

9 "Department." The Department of Environmental Resources of
10 the Commonwealth.

11 "Enhancement of wetlands." Increasing the value of wetlands'
12 functions.

13 "Fastlands." Lands located behind permitted human-made
14 structures.

15 "Fund." The Wetlands Conservation Fund established in
16 section 701.

17 "Growing seasons." For each plant hardiness zone, the period
18 between the average date of last frost in spring and the average
19 date of first frost in autumn.

20 "Incidentally created wetlands." Lands that exhibit wetlands
21 characteristics where any characteristic is the unintended
22 result of human-induced alterations of hydrology.

23 "Maintenance." Activities undertaken to assure continuation
24 of a wetland or the accomplishment of project goals after a
25 restoration or creation of wetlands has been technically
26 completed. The term includes water level manipulations and
27 control of nonnative plant species.

28 "Mitigation banking." Restoration of wetlands, enhancement
29 of wetlands, preservation of wetlands or creation of wetlands
30 for the purpose of providing compensation for wetland

1 degradation or loss.

2 "Normal farming, silviculture, aquaculture and ranching
3 activities." Normal ongoing practices identified by the
4 Department of Agriculture, taking into account existing
5 practices and other practices identified in consultation with
6 the affected industry or community.

7 "Prior converted cropland." Land that:

8 (1) does not serve wetlands functions;

9 (2) has been drained or physically altered to remove
10 excess water; and

11 (3) has been cropped before December 23, 1985.

12 "Restoration." An activity undertaken to return a wetland
13 from a disturbed or altered condition with lesser acreage or
14 fewer wetlands functions to a previous condition with greater
15 acreage or wetlands functions.

16 "Temporary impact." The disturbance or alteration of
17 wetlands caused by activities under circumstances where, within
18 three years following commencement of the activities, the
19 wetlands:

20 (1) are returned to the conditions in existence prior to
21 the commencement of the activity; or

22 (2) display conditions sufficient to ensure that,
23 without human action, they will return to the conditions in
24 existence prior to the commencement of the activity.

25 "Type A wetlands." Wetlands that are of critical
26 significance to the long-term conservation of the ecosystem of
27 which they are a part and which meet the following requirements:

28 (1) The wetlands serve critical wetlands functions,
29 including the provision of critical habitat for a
30 concentration of avian, aquatic or wetland dependent

1 wildlife.

2 (2) The wetlands consist of or may be a portion of ten
3 or more contiguous acres and have an inlet or outlet for
4 relief of water flow.

5 (3) There exists a scarcity within the watershed or
6 aquatic ecosystem of identified ecological functions served
7 by the wetlands such that the use of the wetlands would
8 seriously jeopardize the availability of these identified
9 wetlands functions.

10 (4) There is no overriding public interest in the use of
11 the wetlands for purposes other than conservation.

12 (5) The nature and scope of wetlands functions are such
13 that minimization and compensation are not feasible means for
14 conserving wetlands values and functions.

15 "Type B wetlands." Wetlands that provide habitat for a
16 significant population of avian, aquatic or wetland dependent
17 wildlife or provide other significant wetlands functions,
18 including significant enhancement or protection of water quality
19 and significant natural flood control.

20 "Type C wetlands." Wetlands that:

21 (1) serve limited wetlands functions;

22 (2) serve marginal wetlands functions but which exist in
23 such abundance that regulation of activities is not necessary
24 for conserving important wetlands values and functions;

25 (3) are prior converted cropland;

26 (4) are fastlands;

27 (5) are wetlands within industrial complexes or other
28 intensely developed areas that do not serve significant
29 wetlands functions as a result of such location; or

30 (6) are incidentally created wetlands.

1 "Wetlands." Lands which have a predominance of hydric soils
2 and which are inundated by surface water at a frequency and
3 duration sufficient to support, and which under normal
4 circumstances do support, a prevalence of vegetation typically
5 adapted for life in saturated soil conditions. The term includes
6 swamps, marshes and bogs.

7 "Wetlands functions." The roles wetlands serve which are of
8 value. The term includes flood water storage, flood water
9 conveyance, ground water discharge, erosion control, wave
10 attenuation, water quality protection, scenic and aesthetic use,
11 food chain support, fishery, wetlands plant habitat, aquatic
12 habitat and habitat for wetland dependent wildlife.

13 CHAPTER 3

14 CONSERVATION AND MANAGEMENT

15 Section 301. Prohibition.

16 (a) General rule.--Except as provided in subsection (b), a
17 person may not undertake an activity in wetlands without a
18 permit from the department.

19 (b) Exception.--The following activities in wetlands do not
20 require a permit:

21 (1) Normal farming, silviculture, aquaculture and
22 ranching activities.

23 (2) Maintenance, including emergency reconstruction of
24 recently damaged parts of currently serviceable structures
25 such as dams, levees, water control structures, causeways,
26 bridge abutments or approaches and transportation structures.

27 (3) Construction or maintenance of farm, stock or
28 aquaculture ponds or irrigation canals and ditches or
29 maintenance of drainage ditches and tile fields.

30 (4) Construction, maintenance or removal of temporary

1 sedimentation basins on a construction site or mining site
2 which does not include placement of fill material into
3 wetlands.

4 (5) Construction or maintenance of farm roads, forest
5 roads or temporary roads for moving mining equipment, if the
6 roads are constructed and maintained in accordance with best
7 management practices to assure that flow and circulation
8 patterns and chemical and biological characteristics of the
9 waters are not impaired, that the reach of the waters is not
10 reduced and that any adverse effect on the aquatic
11 environment will be otherwise minimized.

12 (6) Activities undertaken on farmed wetlands. If there
13 is a change in the use of farmed wetlands for the purpose of
14 undertaking an activity that is not exempt under this
15 subsection, the exception granted by this paragraph is
16 inapplicable to the extent that the farmed wetlands are
17 classified under section 303.

18 (7) Activities undertaken in incidentally created
19 wetlands. This paragraph does not apply to incidentally
20 created wetlands which have exhibited wetlands functions for
21 more than five years.

22 (c) Previous permits.--Permits previously issued by the
23 department for activities and structures affecting wetlands
24 pursuant to the act of November 26, 1978 (P.L.1375, No.325),
25 known as the Dam Safety and Encroachments Act, shall be deemed
26 to be permits under this act.

27 Section 302. Permits.

28 (a) Application.--A person seeking to undertake an activity
29 in wetlands for which a permit is required under section 301(a)
30 shall make application to the department identifying the site of

1 activity and describing the proposed activity. The applicant may
2 also provide such additional information regarding such proposed
3 activity as necessary or appropriate for determining the
4 classification of the wetlands or whether and under what
5 conditions the proposed activity may be permitted to occur. The
6 department may prescribe, by regulation, permit fees.

7 (b) Determination.--

8 (1) Upon application under subsection (a), the
9 department shall classify the wetlands under application as
10 Type A, Type B or Type C.

11 (i) The department is authorized and directed to
12 establish regulations that govern the delineation of
13 lands as wetlands for purposes of this paragraph and
14 section 303. The regulations shall be established after
15 consultation with other State agencies, including the
16 Pennsylvania Fish and Boat Commission, and the
17 Pennsylvania Game Commission and Federal agencies,
18 including the United States Fish and Wildlife Service,
19 the Environmental Protection Agency and the United States
20 Soil Conservation Service. The delineation regulations
21 shall be no more restrictive than the Federal delineation
22 standards or guidelines.

23 (ii) The regulations shall ensure that lands are
24 delineated as wetlands only if the lands are found to be
25 wetlands as defined in this act. The regulations may not
26 cause any of the following results:

27 (A) The delineation of lands as wetlands unless
28 clear evidence of wetland hydrology, hydrophytic
29 vegetation and hydric soil is found to be present
30 during the period in which delineation is made.

1 Delineation shall be conducted during the growing
2 season unless otherwise requested by the applicant.

3 (B) The classification of vegetation as
4 hydrophytic if the vegetation is equally adapted to
5 dry or wet soil conditions or is more typically
6 adapted to dry conditions than wet soil conditions.

7 (C) The classification of lands as wetlands
8 unless some obligate wetlands vegetation is found to
9 be present during the period of delineation except if
10 such vegetation has been removed for the purpose of
11 evading jurisdiction under this section, this clause
12 shall not apply.

13 (D) The conclusion that wetlands hydrology is
14 present unless water is found to be present at the
15 surface of the lands for at least 21 consecutive days
16 during the growing season in which delineation is
17 made and for 21 consecutive days in the growing
18 seasons in a majority of the years for which records
19 are available.

20 (E) The classification of lands as wetlands that
21 are temporarily or incidentally created as a result
22 of an adjacent development activity.

23 (iii) Regulations shall provide that normal
24 circumstances shall be determined on the basis of the
25 factual circumstances in existence at the time of
26 application under subsection (a) or at the time of
27 classification under section 303, whichever is
28 applicable, if those circumstances have not been altered
29 by an activity prohibited under section 301.

30 (2) If the wetlands under application are classified as

1 Type A, the permit shall be denied.

2 (3) If the wetlands under application are classified as
3 Type C, the classification constitutes the permit.

4 (4) If the wetlands under application are classified as
5 Type B, the department shall make a determination on the
6 permit on the basis of the following criteria, to ensure the
7 watershed or aquatic ecosystem of which the wetlands are a
8 part does not suffer significant loss or degradation of
9 wetlands functions:

10 (i) Quality and quantity of ecologically significant
11 functions served by the areas to be affected.

12 (ii) Opportunities to reduce impacts through cost-
13 effective design to avoid or minimize use of wetlands
14 areas.

15 (iii) Costs of mitigation requirements and social,
16 recreational and economic benefits associated with the
17 proposed activity.

18 (iv) Ability of the permittee to mitigate wetlands
19 loss or degradation as measured by wetlands functions.

20 (v) Environmental benefit that may occur through
21 mitigation efforts, including restoring, preserving,
22 enhancing or creating wetlands functions.

23 (vi) Marginal impact of the proposed activity on the
24 watershed of which the wetlands are a part.

25 (5) If the department does not complete the
26 determination under this subsection within 90 days of receipt
27 of the application, the permit shall be deemed granted.

28 (c) Procedure.--The provisions of 2 Pa.C.S. Ch. 5 Subch. A
29 (relating to practice and procedure of Commonwealth agencies)
30 and Ch. 7 Subch. A (relating to judicial review of Commonwealth

1 agency action) shall apply to this section.

2 Section 303. Notice and hearing relating to certain permit
3 applications.

4 (a) Duties of department.--If the department is conducting a
5 wetlands environmental assessment study, the department shall do
6 all of the following:

7 (1) If the department, upon review of a permit
8 application, determines that wetlands replacement or
9 mitigation should be a condition of permit approval, the
10 department, after consultation with other administrative
11 agencies, including the Pennsylvania Fish and Boat Commission
12 and the Pennsylvania Game Commission, may locate land which
13 is under the control of such an agency and which is suitable
14 for wetlands replacement or mitigation. This paragraph shall
15 not apply if the applicant requests that wetlands replacement
16 or mitigation activity not occur on public land.

17 (2) If there is wetlands replacement or mitigation on
18 public or nonpublic land or if the department is conducting a
19 wetlands environmental assessment study, the department shall
20 do all of the following:

21 (i) Notify all affected parties, including
22 municipalities which encompass in whole or in part the
23 permit or study area. This notice shall be given by
24 certified mail. Affected parties shall include residents
25 and property owners as well as businesses impacted by the
26 permit or study.

27 (ii) At the request of any party or municipality,
28 conduct at least one public hearing on the permit or
29 study.

30 (iii) Allow for a 30-day public comment period to

1 receive written statements relating to the permit or
2 study.

3 (b) Notice.--At least 30 days prior to conducting a hearing
4 under this section, the department shall publish notice of same
5 in a newspaper of general circulation in the proposed permit
6 area.

7 (c) Testimony.--If a public hearing is held, a person may
8 testify within the time provided or submit written comments, or
9 both. The department shall consider testimony relevant to the
10 requirements of this act.

11 (d) Summary of comments.--After a hearing, the department
12 shall prepare a summary of the written and oral comments
13 submitted at the hearing, a summary of any comments received
14 during a public comment period, the department's responses to
15 the comments and the reasons therefor. The department shall
16 provide copies of this summary to persons who submitted comments
17 and to other persons who request a copy.

18 (e) Meetings.--Whether or not the department holds a public
19 hearing, the department may conduct an informal meeting, public
20 meeting or series of meetings.

21 Section 304. Wetlands identification and classification.

22 (a) Identification.--The department, in consultation with
23 other Federal and State agencies, shall undertake a project to
24 identify and classify wetlands in this Commonwealth. The
25 department shall complete the project within five years of the
26 effective date of this act under section 2103(2).

27 (b) Classification.--In conducting the project under this
28 section, the department shall identify and classify wetlands in
29 accordance with standards for delineation of wetlands
30 established under section 302(b)(1).

1 (c) Notice and hearing.--In conducting the project under
2 this section, the department shall provide notice and an
3 opportunity for a public hearing in each county before the
4 completion of the identification and classification of wetlands
5 in that particular county.

6 (d) Publication.--After completion of the identification and
7 classification of wetlands, the department shall promptly
8 publish the information on identification and classification in
9 the Pennsylvania Bulletin and in a newspaper of general
10 circulation in each county and take other steps reasonably
11 necessary to ensure that the information is available to the
12 public.

13 (e) Report.--The department shall report to the General
14 Assembly on implementation of the project to be conducted under
15 this section within two years after the effective date of this
16 act under section 2103(2) and annually thereafter.

17 (f) Update.--The department shall periodically update the
18 wetlands inventory maps and make them available to the public.
19 Notice of updates to the wetlands inventory maps shall be made
20 in the same manner as described in subsection (d).

21 (g) Recording.--Any classification of lands as wetlands
22 under this act shall be recorded on the proper records and deeds
23 in the county in which wetlands are located.

24 Section 305. Inverse condemnation.

25 (a) Eligibility.--The denial of a permit under section
26 302(b)(4) constitutes a compensable injury without a declaration
27 of taking within the meaning of section 502(e) of the act of
28 June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent
29 Domain Code.

30 (b) Limitation of action.--An action under subsection (a)

1 must be brought within two years of receipt of notice of the
2 classification. The provisions of 42 Pa.C.S. § 5527 (relating to
3 six year limitation) and § 5530 (relating to twenty-one year
4 limitation) do not apply to actions under subsection (a).

5 CHAPTER 5

6 ENFORCEMENT

7 Section 501. Administrative penalty.

8 (a) General rule.--If the department determines that a
9 person has intentionally or negligently violated this act, the
10 department may assess an administrative penalty of not more than
11 \$1,000 against the person. Each day of violation constitutes a
12 separate violation under this section.

13 (b) Procedure.--The provisions of 2 Pa.C.S. Ch. 5 Subch. A
14 (relating to practice and procedure of Commonwealth agencies)
15 and Ch. 7 Subch. A (relating to judicial review of Commonwealth
16 agency action) shall apply to this section.

17 Section 502. Injunction.

18 A person aggrieved by a violation of this act may seek an
19 injunction against the violation in a court of competent
20 jurisdiction.

21 CHAPTER 7

22 ADMINISTRATION

23 Section 701. Fund.

24 (a) Establishment.--The Wetlands Conservation Fund is
25 established as a separate fund in the State Treasury.

26 (b) Source.--The source of the fund shall be all of the
27 following:

28 (1) Permit fees under section 302(a).

29 (2) Penalties under section 501.

30 (3) One percent of the Commonwealth's share of the tax

1 under Article XI-C of the act of March 4, 1971 (P.L.6, No.2),
2 known as the Tax Reform Code of 1971.

3 (4) Annual appropriations.

4 (c) Purpose.--The purposes of the fund are:

5 (1) To pay for condemnation under section 305.

6 (2) To administer this act.

7 Section 702. Administrative provisions.

8 (a) General rule.--The department shall administer this act
9 and the fund.

10 (b) Final regulations.--Within one year of the effective
11 date of this act under section 2103(2), the department shall
12 promulgate regulations for the issuance of permits under section
13 302. The regulations shall, in accordance with this act, provide
14 for all of the following:

15 (1) Standards and procedures for the classification and
16 delineation of wetlands and procedures for administrative
17 review of any classification or delineation.

18 (2) Standards and procedures for the individual permit
19 applications under section 302(a).

20 (3) General enforcement of this act.

21 (4) Other matters that the department deems necessary or
22 appropriate to implement requirements of this act.

23 (5) Requirements governing the establishment of
24 mitigation banks.

25 (c) Temporary regulations.--The department shall, within 90
26 days of the effective date of this act under section 2103(2),
27 issue interim regulations consistent with this act to take
28 effect immediately. The interim regulations shall be binding
29 until the issuance of final regulations under subsection (a).

30 The department shall provide adequate procedures for waiver of

1 any provisions of interim regulations to avoid special hardship,
2 inequity or unfair distribution of burdens or to advance the
3 purpose of this section.

4 (d) Fund.--The department shall administer this act and the
5 fund.

6 CHAPTER 21

7 MISCELLANEOUS PROVISIONS

8 Section 2101. Preemption.

9 This act preempts ordinances of political subdivisions which
10 are in conflict with this act.

11 Section 2102. Appropriation.

12 The sum of \$, or as much thereof as may be necessary, is
13 hereby appropriated to the Wetlands Conservation Fund for the
14 fiscal year July 1, 1995, to June 30, 1996. This shall be a
15 continuing appropriation and shall not lapse at the end of the
16 fiscal year.

17 Section 2103. Effective date.

18 This act shall take effect as follows:

19 (1) Section 301 of this act shall take effect in 240
20 days.

21 (2) The remainder of this act shall take effect in 60
22 days.