

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 335 Session of
2011

INTRODUCED BY KILLION, CALTAGIRONE, CARROLL, D. COSTA, GEIST,
GIBBONS, GINGRICH, HARKINS, KAVULICH, KORTZ, MAJOR, MARSHALL,
MICOZZIE, MILLARD, MILLER, PICKETT, REICHLEY, ROSS,
VULAKOVICH, WAGNER AND WATSON, JANUARY 31, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 31, 2011

AN ACT

1 Providing for the acquisition of property by the Commonwealth
2 and local government units to mitigate flood hazards.

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4 The General Assembly of the Commonwealth of Pennsylvania

5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Flood Hazard

8 Mitigation Act.

9 Section 2. Legislative intent.

10 The purpose of this act is to reduce future risk of flood

11 damages, while promoting the goals of preserving land for open

12 space, recreational, wetland and related purposes, by providing

13 a means by which the Commonwealth and its local government units

14 may acquire property that is either located in areas having

15 special flood hazards or other areas of flood risk or property

16 that is substantially damaged by flood.

17 Section 3. Definitions.

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

19 have the meanings given to them in this section unless the

20 context clearly indicates otherwise:

21 "Flood Mitigation Assistance Program." The Federal program

22 authorized by sections 1366 and 1367 of the National Flood

23 Insurance Act of 1968 (Public Law 90-448, 42 U.S.C. §§ 4104c and

24 4104d) and the regulations appertaining thereto.

25 "Hazard Mitigation Grant Program." The Federal program

26 pursuant to which hazard mitigation grants are made under the

27 provisions of section 404 of The Robert T. Stafford Disaster

28 Relief and Emergency Assistance Act (Public Law 93-288, 42

29 U.S.C. § 5170c) and the regulations appertaining thereto.

30 "Interest in real property." Any right in real property,

1 improvements thereto or water, whatsoever, including a fee
2 simple, easement, remainder, future interest, transferable
3 development right, lease, license, restriction or covenant of
4 any sort, option or contractual interest or right concerning the
5 use of or power to transfer property.

6 "Local government unit." Any of the following:

7 (1) A county.

8 (2) A county authority having among the purposes for
9 which it was created the mitigation of flood hazards.

10 (3) A municipal corporation as defined in 1 Pa.C.S. §
11 1991 (relating to definitions) or any similar general purpose
12 unit of local government.

13 (4) A unit created by joint action of two or more local
14 government units which is authorized to be created by the
15 General Assembly, including cooperation by two or more local
16 government units under 53 Pa.C.S. Ch. 23 Subch. A (relating
17 to intergovernmental cooperation).

18 "Mitigation of flood hazards." The acquisition of interests
19 in property located in areas having special flood hazards or
20 other areas of flood risk and of property substantially damaged
21 by flood in accordance with or supplementary to the Hazard
22 Mitigation Grant Program or the Flood Mitigation Assistance
23 Program, provided that the property so acquired is used in a
24 manner compatible with open space, recreational or wetland
25 management practices, including parks for outdoor recreational
26 activities, nature reserves, cultivation, grazing, camping,
27 buffer zones and other uses consistent with the use restrictions
28 of the Hazard Mitigation Grant Program and the Flood Mitigation
29 Assistance Program.

30 Section 4. Acquiring property interests to mitigate flood

1 hazards.

2 (a) Authorization.--

3 (1) The Commonwealth or a local government unit may
4 acquire, by purchase, contract, condemnation, gift, devise or
5 otherwise, interests in real property for the mitigation of
6 flood hazards.

7 (2) Acquisitions of interests in real property by a
8 local government unit under this act are limited to interests
9 in real property situate within its boundaries.

10 (b) Demolition and relocation.--The authority to acquire
11 interests in real property under this act shall include the
12 authority to provide for the demolition of structures on or the
13 relocation of structures from the property acquired.

14 Section 5. Public hearing.

15 Interests in real property may not be acquired under this act
16 unless a public hearing is held, after notice both to the owners
17 of interests in real property to be acquired and to the local
18 government unit in which land is situate. At the public hearing,
19 the entity acquiring the property interests shall set forth the
20 interests to be taken and their proposed use, and persons and
21 municipalities affected by the acquisition shall have an
22 opportunity to present relevant evidence.

23 Section 6. Property acquired in fee simple.

24 If the owner of an interest in real property to be acquired
25 under this act prefers to have the Commonwealth or the local
26 government unit acquire the property in fee simple, the
27 Commonwealth or the local government unit shall be required to
28 acquire the property in fee simple.

29 Section 7. Local taxing options.

30 (a) General rule.--For the purpose of providing revenue to

1 make acquisitions for the mitigation of flood hazards or retire
2 the indebtedness incurred in the mitigation of flood hazards, a
3 local government unit shall have the following local tax
4 options:

5 (1) In addition to the statutory rate limits on real
6 estate taxes provided for counties, a county may, by
7 ordinance, impose a tax on real property not exceeding the
8 millage authorized by referendum as required by subsection
9 (b).

10 (2) In addition to the statutory rate limits provided
11 for the respective class of local government units, a local
12 government unit, excluding a county and county authority,
13 may, by ordinance, impose either a tax on real property not
14 exceeding the millage authorized by referendum under
15 subsection (b) or a tax on the earned income of the residents
16 of that local government unit not exceeding the rate
17 authorized by referendum under subsection (b).

18 (b) Referendum.--

19 (1) The local taxing option authorized by this section
20 shall not be exercised unless the governing body of the local
21 government unit shall, by ordinance, first provide for a
22 referendum on the question of the imposition of the
23 additional tax at a specific rate and a majority of those
24 voting on the referendum question vote in favor of the
25 imposition of the tax. The ordinance of the governing board
26 of the local government unit providing for a referendum on
27 the question shall be filed with the county board of
28 elections.

29 (2) The referendum shall be governed by the provisions
30 of the act of June 3, 1937 (P.L.1333, No.320), known as the

1 Pennsylvania Election Code.

2 (3) The election official shall cause the question to be
3 submitted to the electors of the local government unit at the
4 next primary, general or municipal election occurring not
5 less than the 13th Tuesday following the filing of the
6 ordinance with the county board of elections.

7 (4) At such election, the question shall be submitted to
8 the voters in the same manner as other questions are
9 submitted under the provisions of the Pennsylvania Election
10 Code. The question to be placed upon the ballot shall be
11 framed in the following form:

12 Do you favor the imposition of a (describe tax in millage
13 or rate) by (local government unit) to be used in the
14 mitigation of flood hazards to (purpose)?

15 Section 8. Procedure for acquisitions by local government
16 units.

17 (a) Recordkeeping.--

18 (1) When a local government unit acquires an interest in
19 real property as authorized under this act, it shall
20 establish and maintain a repository of records of the
21 interests in real property that have been or are acquired by
22 the local government unit.

23 (2) The local government unit shall record each interest
24 in real property acquired by the local government unit in the
25 office of the recorder of deeds for the county in which the
26 real property is located.

27 (b) Copy to school district.--A local government unit
28 acquiring an interest in real property shall submit to the
29 school district within which the real property is located a
30 copy, certified by the county recorder of deeds, of the deed

1 reflecting the acquisition.

2 Section 9. Borrowing and acquisitions on an installment basis.

3 (a) Authority to incur debt.--

4 (1) A local government unit that is governed by 53
5 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and
6 borrowing) may incur indebtedness under 53 Pa.C.S. Pt. VII
7 Subpt. B for the purposes of acquiring property interests
8 under the provisions of this act, and a local government unit
9 may authorize the establishment of a program to purchase the
10 property interests on an installment or other deferred basis.

11 (2) The obligation of the local government unit to make
12 payments on an installment or other deferred basis shall not
13 be subject to the requirements of 53 Pa.C.S. § 8142(b) or (c)
14 (relating to limitations on stated maturity dates).

15 (b) Interest to be paid to landowner.--A landowner who
16 enters into an installment agreement with a local government
17 unit shall receive, in addition to the selling price, interest
18 in an amount or at a rate set forth in the purchase agreement.

19 Section 10. Exercise of eminent domain.

20 The use of the power of eminent domain to acquire interests
21 in real property for the purposes of this act shall be exercised
22 under 26 Pa.C.S. (relating to eminent domain), and shall be
23 subject to restrictions and limitations imposed by Federal or
24 State law.

25 Section 11. Assessment.

26 Any interest in property acquired by the Commonwealth or a
27 local government unit under this act shall be held for public
28 purposes and be exempt from taxation. The assessment of private
29 interests in land subject to an interest in property acquired
30 under this act shall reflect any change in market value of the

property that may result from the acquisition of the property interest by the Commonwealth or the local government unit.

Section 12. Termination or disposition of property interests.

Property interests acquired under this act may be terminated or disposed of in a manner not inconsistent with any restrictions and limitations imposed by the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program.

Section 13. Utility rights-of-way and underground gas storage.

(a) General rule.--The ownership by the Commonwealth or a local government unit of a property interest acquired under this act shall not preclude the acquisition, by lease, purchase or eminent domain, and use of rights-of-way or underground gas storage rights in such property by a public utility or other body entitled to exercise the power of eminent domain. In the case of an acquisition by a public utility, such acquisition shall occur only if the Pennsylvania Public Utility Commission, after public hearing, shall find that the acquisition and use are necessary or proper for the service, accommodation, convenience or safety of the public. In the case of an acquisition by a body other than a public utility, the acquisition shall occur only if the Commonwealth or the local government unit, after public hearing, shall approve the acquisition.

(b) Notice of public hearing.--

(1) Notice of public hearing required by subsection (a) shall include a statement of the purpose of the public hearing and the date, time and place of the public hearing and be given by publication one time at least 20 days prior to the hearing, in a newspaper of general circulation in the area where the property is located, and written notice shall

1 be conspicuously posted at points deemed sufficient by the
2 body conducting the public hearing to notify potentially
3 interested citizens. The affected tract shall be posted at
4 least ten days prior to the hearing.

5 (2) If the Commonwealth or a local government unit owns
6 an interest in property that is the subject of the hearing,
7 and is not itself conducting the hearing, notice shall be
8 sent by United States first class mail at least 20 days prior
9 to the hearing to the Commonwealth or the local government
10 unit.

11 Section 14. Construction.

12 The authority granted to the Commonwealth and local
13 government units under this act shall be in addition to and not
14 in limitation of any other authority heretofore or hereafter
15 granted to the Commonwealth or a local government unit by any
16 other law and shall be construed to enlarge and not to reduce or
17 limit the power and authority of the Commonwealth and local
18 government units.

19 Section 30. Effective date.

20 This act shall take effect immediately.