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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2128 Session of  
2021

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INTRODUCED BY HOWARD, N. NELSON, HILL-EVANS, SANCHEZ, CIRESI AND  
SIMS, DECEMBER 2, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, DECEMBER 2, 2021

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AN ACT

1 Amending the act of November 10, 1999 (P.L.491, No.45), entitled  
2 "An act establishing a uniform construction code; imposing  
3 powers and duties on municipalities and the Department of  
4 Labor and Industry; providing for enforcement; imposing  
5 penalties; and making repeals," providing for building  
6 permits and endangered and threatened species; and making an  
7 appropriation.

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

10 Section 1. The act of November 10, 1999 (P.L.491, No.45),  
11 known as the Pennsylvania Construction Code Act, is amended by  
12 adding a chapter to read:

13 CHAPTER 6

14 BUILDING PERMITS AND ENDANGERED

15 AND THREATENED SPECIES

16 Section 601. Definitions.

17 The following words and phrases when used in this chapter  
18 shall have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

20 "Applicant." A person seeking a building permit from a

1 municipality for proposed construction.

2 "Endangered or threatened species." Any of the following:

3 (1) An endangered species as defined under any of the  
4 following:

5 (i) 30 Pa.C.S. § 102 (relating to definitions).

6 (ii) 34 Pa.C.S. § 102 (relating to definitions).

7 (2) A threatened species as defined under any of the  
8 following:

9 (i) 30 Pa.C.S. § 102.

10 (ii) 34 Pa.C.S. § 102.

11 (3) A classification established under section 7(b) of  
12 the act of June 23, 1982 (P.L.597, No.170), known as the Wild  
13 Resource Conservation Act, and regulations promulgated in  
14 accordance with that act.

15 "Proposed construction." Any of the following:

16 (1) New construction of a residential building,  
17 nonresidential building or other structure in the  
18 municipality.

19 (2) An addition involving a nonresidential building or  
20 other structure in the municipality.

21 Section 602. Authorization.

22 Notwithstanding any provision of this act or any other  
23 provision of law, a municipality may not issue a building permit  
24 to an applicant unless all of the conditions under this chapter  
25 are satisfied.

26 Section 603. Required information.

27 (a) Purpose.--An applicant shall, in addition to satisfying  
28 other building permit conditions required by law, submit  
29 information for a determination of any negative effect on  
30 endangered or threatened species as a result of proposed

1 construction.

2 (b) Contents.--The information required under this section  
3 shall include the following:

4 (1) The name, mailing address, telephone number and  
5 other contact information of the applicant.

6 (2) The name, mailing address, telephone number and  
7 other contact information of the municipality in which the  
8 proposed construction is to be located.

9 (3) The location and nature of the proposed  
10 construction.

11 (c) Submittal.--The information required under this section  
12 shall be submitted to the following:

13 (1) The Pennsylvania Fish and Boat Commission.

14 (2) The Pennsylvania Game Commission.

15 (3) The Department of Conservation and Natural  
16 Resources.

17 (d) Additional information.--An entity specified under  
18 subsection (c) may require:

19 (1) A specific form on which to provide any or all of  
20 the required information.

21 (2) A sketch plan, preliminary plan or final plan,  
22 together with any engineering comments, regarding the  
23 proposed construction.

24 Section 604. Review and determination.

25 (a) Requirements.--Within 90 days of the submittal of the  
26 information under section 603, each entity under section 603(c)  
27 shall review the information and shall:

28 (1) Determine whether there exists any negative effect  
29 on endangered or threatened species as a result of the  
30 proposed construction. In making the determination, the

1 entity may:

2 (i) Require a site visit to the location of the  
3 proposed construction.

4 (ii) Engage in discussions with the applicant or any  
5 engineer or other professional involved in the proposed  
6 construction.

7 (iii) Work in collaboration and consultation with  
8 the other specified entities and other governmental  
9 entities at the Federal, State and local levels.

10 (iv) Provide recommendations on remedial action that  
11 may be taken to mitigate the negative effect on  
12 endangered or threatened species.

13 (2) Provide written confirmation of the effect on  
14 endangered or threatened species as a result of the proposed  
15 construction to:

16 (i) The applicant.

17 (ii) The municipality in which the proposed  
18 construction is to be located.

19 (b) Noncompliance by entity.--If an entity under section  
20 603(c) does not comply with the requirements specified under  
21 subsection (a):

22 (1) It shall be presumed that there exists no negative  
23 effect on endangered or threatened species as a result of the  
24 proposed construction.

25 (2) The municipality in which the proposed construction  
26 is to be located may issue a building permit to the applicant  
27 for the proposed construction.

28 Section 605. Determination of negative effect.

29 (a) Restriction on municipality.--If an entity under section  
30 603(c) determines that there exists a negative effect on

1 endangered or threatened species as a result of the proposed  
2 construction, the municipality in which the proposed  
3 construction is to be located may not issue a building permit  
4 for the proposed construction unless the applicant mitigates or  
5 eliminates the negative effect on endangered or threatened  
6 species, to the satisfaction of the entity that determined the  
7 existence of the negative effect.

8 (b) Resubmittal of information.--

9 (1) An applicant may be required by any of the following  
10 to resubmit the information under section 603 to reflect any  
11 efforts to mitigate or eliminate a negative effect on  
12 endangered or threatened species as a result of the proposed  
13 construction:

14 (i) The municipality in which the proposed  
15 construction is to be located.

16 (ii) An entity under section 603(c) that initially  
17 determined the existence of the negative effect.

18 (2) In the case of a resubmittal of information under  
19 this subsection, the requirements and conditions specified  
20 under section 604 apply.

21 Section 606. Fees.

22 (a) Authorization.--An entity under section 603(c) may  
23 charge a reasonable fee to cover the costs related to the review  
24 and determination under section 604 and a resubmittal of  
25 information under section 605(b).

26 (b) Considerations in determining fee.--The fee under  
27 subsection (a) may reflect the need for the following expenses  
28 incurred or anticipated to be incurred as a result of the review  
29 and determination:

30 (1) Additional staffing or training.

1           (2) Travel for a site visit.

2           (3) Other necessary administrative expenses.

3 Section 607. Notice.

4           Within 10 days of receiving the written confirmation from an  
5 entity under section 603(c) of the existence of a negative  
6 effect on endangered or threatened species as a result of  
7 proposed construction, the municipality in which the proposed  
8 construction is to be located shall provide written notice to  
9 the applicant that a building permit will not be issued for the  
10 proposed construction until the negative effect is mitigated or  
11 eliminated.

12 Section 608. Appeal.

13           If an applicant is aggrieved by the denial of the issuance of  
14 a building permit as a result of the determination by an entity  
15 under section 603(c) regarding the existence of a negative  
16 effect on endangered or threatened species as specified in this  
17 chapter, the applicant may, within 30 days of receiving the  
18 written notice under section 607, appeal the denial of the  
19 building permit as provided under section 501 or, if applicable,  
20 as otherwise provided under law.

21 Section 609. Appropriation.

22           The sum of \$20,000,000 is hereby appropriated from the  
23 General Fund to the entities under section 603(c) for the  
24 purpose of recruiting and training the necessary staff to  
25 administer the provisions of this chapter.

26 Section 610. Applicability.

27           This chapter does not apply to the following:

28           (1) The addition, alteration or repair of a residential  
29 building.

30           (2) The alteration or repair of a nonresidential

1       building or other structure.

2       Section 2. This act shall take effect as follows:

3           (1) The following shall take effect immediately:

4               (i) This section.

5               (ii) The addition of section 609 of the act.

6           (2) The remainder of this act shall take effect in 180  
7       days.