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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 743**

Session of  
1977

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INTRODUCED BY KURY, MURRAY, MELLOW, HOLL, WOOD AND MOORE,  
APRIL 19, 1977

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REFERRED TO ENVIRONMENTAL RESOURCES, APRIL 19, 1977

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AN ACT

1 Providing for the regulation of land and water use for flood  
2 control purposes, imposing duties and conferring powers on  
3 the Department of Community Affairs, the Department of  
4 Environmental Resources, and municipalities, providing for  
5 penalties and enforcement and making appropriations.

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30       The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 CHAPTER 1

3 PRELIMINARY PROVISIONS

4 Section 101. Short title.

5 This act shall be known and may be cited as the "Flood Plain  
6 Management Act."

7 Section 102. Statement of legislative findings.

8 (a) Flooding of large areas of land within the Commonwealth  
9 causes unnecessary loss of life, destroys private and public  
10 property, damages means of livelihood and economic resources;  
11 disrupts commerce, communication, utility and governmental  
12 services; causes pollution and unsanitary conditions; carries  
13 solid waste, sewage and other materials injurious to health and  
14 property; all of which is detrimental to the health, safety and  
15 welfare of the people of the Commonwealth.

16 (b) Extensive expenditures of public funds have been  
17 allocated to costly flood control projects, repair and  
18 maintenance of public facilities and property, and relief and  
19 rescue efforts, to reduce the disastrous effects of recurrent  
20 flooding.

21 (c) The exclusive use of flood control measures, such as  
22 engineering projects, has failed to significantly reduce the  
23 human suffering and economic losses caused by recurrent  
24 flooding.

25 (d) A comprehensive and coordinated program of flood plain  
26 management, based upon the National Flood Insurance Program, is  
27 fundamental to the health, safety, welfare and protection of the  
28 people of the Commonwealth.

29 Section 103. Statement of policy and purposes.

30 The policy and purpose of this act is to:

1 (1) Encourage planning and development in flood plains  
2 which are consistent with sound land use practices.

3 (2) Protect people and property in flood plains from the  
4 dangers and damage of floodwaters and from materials carried  
5 by such floodwaters.

6 (3) Prevent and eliminate urban and rural blight which  
7 results from the damages of flooding.

8 (4) Authorize a comprehensive and coordinated program of  
9 flood plain management, based upon the National Flood  
10 Insurance Program, designed to preserve and restore the  
11 efficiency and carrying capacity of the streams and flood  
12 plains of the Commonwealth.

13 (5) Assist municipalities in qualifying for the National  
14 Flood Insurance Program.

15 (6) Provide for and encourage local administration and  
16 management of flood plains.

17 (7) Minimize the expenditure of public and private funds  
18 for flood control projects and for relief, rescue and  
19 recovery efforts.

20 Section 104. Definitions.

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

24 "Department." The Department of Community Affairs of the  
25 Commonwealth of Pennsylvania.

26 "Flood." A general but temporary condition of partial or  
27 complete inundation of normally dry land areas from the overflow  
28 of streams, rivers or other waters of the Commonwealth.

29 "Flood plain management regulations." Zoning ordinances,  
30 subdivision regulations, building codes, health regulations,

1 special purpose ordinances and other applications of police  
2 power. The term describes such State or local regulations, in  
3 any combination thereof, which provide standards for the purpose  
4 of flood damage, prevention and reduction.

5 "Floodproofing." Structural or other changes or adjustments  
6 to properties or obstructions for the reduction or elimination  
7 of flood damages to such properties and obstructions or to the  
8 contents of any structure.

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

13 "Obstruction." Any structure or assembly of materials above  
14 or below the surface of land or water, and an activity which  
15 might impede, retard or change flood flows. The planting,  
16 cultivation and harvesting of field and orchard crops or the  
17 grazing of livestock, including the maintenance of necessary  
18 appurtenant agricultural fencing, shall not be considered an  
19 "obstruction" under this definition and shall not be subject to  
20 regulation under this act.

21 "One hundred-year flood." The highest level of flooding  
22 that, on the average, is likely to occur every 100 years, that  
23 is, that has a 1% chance of occurring each year.

24 "One hundred-year flood plain" or "flood plain." The 100-  
25 year floodway and that maximum area of land that is likely to be  
26 flooded by a 100-year flood shown on flood plain maps approved  
27 or promulgated by the United States Department of Housing and  
28 Urban Development.

29 "Person." An individual, partnership, public or private  
30 association or corporation, firm, trust, estate, municipality,

1 governmental unit, public utility or any other legal entity  
2 whatsoever which is recognized by law as the subject of rights  
3 and duties.

4 "Public utility service." The rendering of the following  
5 services for the public:

6 (1) gas, electricity or steam production, generation,  
7 transmission or distribution;

8 (2) water diversion, pumping, impoundment or  
9 distribution;

10 (3) railroad transportation of passengers or property;

11 (4) operation of a canal, turnpike, tunnel, bridge,  
12 wharf or similar structure;

13 (5) transportation of natural or artificial gas, crude  
14 oil, gasoline or petroleum products, materials for  
15 refrigeration or other fluid substances by pipeline or  
16 conduit;

17 (6) telephone or telegraph communications; and

18 (7) sewage collection, treatment or disposal.

19 "Watershed." The entire region or area drained by a river or  
20 other body of water, whether natural or artificial.

21 CHAPTER 2

22 MUNICIPAL PARTICIPATION IN NATIONAL FLOOD INSURANCE PROGRAM

23 Section 201. Required participation in National Flood Insurance  
24 Program.

25 (a) Each municipality which has been notified by the United  
26 States Department of Housing and Urban Development that it has  
27 been identified as having an area or areas which are subject to  
28 flooding shall participate in the National Flood Insurance  
29 Program.

30 (b) If a municipality is not participating in the National

1 Flood Insurance Program at the time this act becomes effective,  
2 such municipality shall apply for eligibility and fully comply  
3 with the requirements for participation within six months of the  
4 effective date of this act, or six months from the date of  
5 notification by the United States Department of Housing and  
6 Urban Development that it has been identified as having an area  
7 or areas subject to flooding, whichever is first.

8 (c) If a municipality, for whatever reason, is suspended  
9 from the National Flood Insurance Program, once having gained  
10 eligibility, such municipality shall regain eligibility within  
11 90 days of the date of receipt of its notice of suspension.

12 Section 202. Adoption of flood plain management regulations.

13 Each municipality shall adopt such flood plain management  
14 regulations, and amendments thereto, as are necessary to comply  
15 with the requirements of the National Flood Insurance Program  
16 within six months after a flood plain map is approved or  
17 promulgated for the municipality by the United States Department  
18 of Housing and Urban Development.

19 Section 203. Relationship of flood plain management regulations  
20 to the Municipalities Planning Code and other  
21 applicable enabling legislation.

22 (a) The adoption and administration by municipalities of  
23 flood plain management regulations, or amendments thereto, which  
24 are necessary to comply with the requirements of the National  
25 Flood Insurance Program shall be governed by the provisions of  
26 the act of July 31, 1968 (P.L.805, No.247), known as the  
27 "Pennsylvania Municipalities Planning Code," or other applicable  
28 enabling legislation; provided, that a municipality may adopt  
29 flood plain management regulations for the flood plain without  
30 adopting ordinances, codes or regulations for any other area of

1 the municipality, notwithstanding any provision of the  
2 Municipalities Planning Code or other applicable enabling  
3 legislation.

4 Section 204. Requirements of the National Flood Insurance  
5 Program deemed minimum standards.

6 The flood plain management regulations adopted by a  
7 municipality in order to comply with the requirements of the  
8 National Flood Insurance Program shall be deemed minimum  
9 standards for the management of the flood plains, and no  
10 provision of this act shall be construed as in any way limiting  
11 the power of any municipality to adopt more restrictive  
12 ordinances, codes or regulations for the management of flood  
13 plains.

14 Section 205. Department review and approval of municipal flood  
15 plain management regulations.

16 (a) The department shall, in consultation with the  
17 Department of Environmental Resources, review and approve all  
18 municipal flood plain management regulations, and amendments  
19 thereto, for the purpose of assuring that such regulations  
20 comply with the requirements of the National Flood Insurance  
21 Program and that such regulations are coordinated and uniformly  
22 enforced throughout each watershed.

23 (b) The department, in consultation with the Department of  
24 Environmental Resources, shall adopt, and periodically review  
25 and amend, regulations including but not limited to:

26 (1) Criteria and standards for the coordination and  
27 uniform enforcement of municipal flood plain management  
28 regulations under the National Flood Insurance Program.

29 (2) Procedures, requirements and standards for  
30 submission, review and approval of municipal flood plain

1 management regulations pursuant to this section.

2 (c) Prior to adoption of department regulations pursuant to  
3 this section, the department shall hold at least one public  
4 hearing, after public notice, in each major river basin of the  
5 Commonwealth. Prior to any amendment of department regulations,  
6 the department shall hold at least one public hearing after  
7 public notice.

8 Section 206. Municipalities required to comply with department  
9 regulations.

10 Each municipality participating in the National Flood  
11 Insurance Program shall comply with any regulations adopted by  
12 the department pursuant to this chapter within six months of the  
13 effective date of such regulations. A municipality shall be  
14 deemed to have complied with department regulations if it has  
15 received department approval as provided for in this chapter.

### 16 CHAPTER 3

#### 17 REGULATION OF PARTICULAR OBSTRUCTIONS

18 Section 301. Obstructions posing special hazards in flood  
19 plains.

20 (a) The department shall by regulation publish a list of  
21 obstructions which it determines present a special hazard to the  
22 health and safety of the public or occupants or may result in  
23 significant pollution, increased flood levels or flows or debris  
24 endangering life and property, if such obstructions are located  
25 in all or a designated portion of the flood plain. These  
26 obstructions include, but are not limited to: hospitals, nursing  
27 homes, jails, facilities for the production or storage of  
28 hazardous materials and facilities necessary for emergency  
29 response.

30 (b) Construction of any structure or commencement of any

1 activity listed as a special hazard by department regulations in  
2 a flood plain or such portion of the flood plain designated by  
3 the regulations shall be prohibited except in accordance with a  
4 special exception issued pursuant to this section.

5 (c) A municipality administering flood plain management  
6 regulations may issue a special exception if the applicant  
7 demonstrates and the municipality determines that the structure  
8 or activity will be located, constructed and maintained in a  
9 manner which:

10 (1) will fully protect the health and safety of the  
11 public or occupants;

12 (2) will prevent any significant possibility of  
13 pollution, increased flood levels or flows, or debris  
14 endangering life and property; and

15 (3) will comply with the requirements of the National  
16 Flood Insurance Program.

17 Approval of any special exception shall be conditioned upon  
18 compliance with all feasible floodproofing and other  
19 requirements necessary to minimize damage, and the hindrance of  
20 flood flows and to minimize potential danger to life and  
21 property.

22 (d) Written notice of municipal approval of a special  
23 exception shall be filed with the department. The special  
24 exception shall become effective 30 days following the receipt  
25 of notice by the department unless the special exception is  
26 disapproved by the department. If the department disapproves a  
27 special exception, it shall notify the municipality and  
28 applicant of the reasons for disapproval.

29 Section 302. Exclusive State jurisdiction over certain  
30 obstructions in flood plains.

1 (a) Except as otherwise provided in this section, the  
2 Department of Environmental Resources shall have exclusive  
3 jurisdiction under this act to regulate:

4 (1) any obstruction otherwise regulated under the Water  
5 Obstructions Act;

6 (2) any flood control project constructed, owned or  
7 maintained by a governmental unit;

8 (3) any highway or other obstruction, constructed, owned  
9 or maintained by the Commonwealth; and

10 (4) any obstruction owned or maintained by a person  
11 engaged in the rendering of a public utility service.

12 (b) No person shall construct, modify, remove, abandon or  
13 destroy any structure or engage in any activity specified in  
14 subsection (a) in the 100-year flood plain unless such person  
15 has first applied for and obtained a permit from the Department  
16 of Environmental Resources. The department may impose such  
17 permit terms and conditions as it deems necessary to carry out  
18 the purposes of this act.

19 (c) The Environmental Quality Board shall adopt such  
20 regulations and standards as are necessary to carry out this  
21 section in accordance with the purposes of this act, including  
22 provisions for the payment of reasonable nonrefundable filing  
23 fees.

24 (d) The Department of Environmental Resources may, in  
25 accordance with regulations adopted by the Environmental Quality  
26 Board, delegate its authority under this act and the Storm Water  
27 Management Act to regulate and permit obstructions having only  
28 local significance, other than those prescribed in subsection  
29 (a)(2), (3) and (4), to a municipality administering flood plain  
30 management regulations.

1 (e) The Department of Environmental Resources shall regulate  
2 those obstructions subject to exclusive State jurisdiction in a  
3 manner consistent to the maximum extent possible with the  
4 standards and criteria established in municipal flood plain  
5 management regulations.

6 (f) The Department of Environmental Resources may modify,  
7 suspend or revoke any permit issued under this act if it finds  
8 that the permittee has violated the permit terms and conditions  
9 or the provisions of this act and regulations adopted hereunder,  
10 or that any change has occurred in the physical condition of the  
11 site which will materially affect safe construction and  
12 maintenance of the structure or activity.

13 CHAPTER 4

14 POWERS AND DUTIES

15 Section 401. Powers and duties of the Department of Community  
16 Affairs and the Department of Environmental  
17 Resources.

18 (a) The Department of Community Affairs shall have the power  
19 and its duty shall be to:

20 (1) Coordinate the administration of municipal flood  
21 plain management regulations in the Commonwealth.

22 (2) Require the submission of municipal flood plain  
23 management regulations and municipal records and reports, as  
24 necessary to carry out the purposes of this act.

25 (3) Provide technical assistance for the purpose of  
26 assisting municipalities in complying with the provisions of  
27 this act.

28 (4) Draft, publish and approve, for use by  
29 municipalities, model flood plain ordinances, codes and  
30 regulations which comply with the requirements of the

1 National Flood Insurance Program and the regulations adopted  
2 pursuant to this act.

3 (b) The Department of Community Affairs and the Department  
4 of Environmental Resources shall exercise the joint powers and  
5 their duties shall be to:

6 (1) Cooperate with appropriate agencies of the United  
7 States or of other states or any interstate agencies with  
8 respect to the planning and management of flood plains.

9 (2) Serve as the agencies of the Commonwealth for the  
10 receipt of moneys from the Federal Government or other public  
11 or private agencies or persons and expend such moneys for  
12 studies and research with respect to the planning and  
13 management of flood plains.

14 Section 402. Additional powers and duties of the Department of  
15 Community Affairs, Department of Environmental  
16 Resources and municipalities.

17 In conjunction with their responsibilities otherwise provided  
18 under this act, the Department of Community Affairs, the  
19 Department of Environmental Resources and every municipality  
20 administering flood plain management regulations shall have the  
21 additional power and its duty shall be to:

22 (1) Investigate complaints and conduct surveys of flood  
23 plains and obstructions.

24 (2) Institute prosecutions and civil proceedings to  
25 enforce the provisions of this act.

26 (3) Conduct educational programs with respect to flood  
27 plain management.

28 (4) Establish reasonable fees for permit processing for  
29 the program that the agency or municipality administers.

30 (5) Do any other acts not inconsistent with this act

1       which are necessary or proper for its effective  
2       implementation.

3       Section 403.   Inspections.

4       (a)   An agent or employee of the Department of Community  
5       Affairs, the Department of Environmental Resources, or of a  
6       municipality administering flood plain management regulations  
7       shall have the power and duty to, upon presentation of proper  
8       credentials:

9           (1)   Enter any land for the purpose of surveying flood  
10       plains.

11          (2)   Enter any land in a flood plain for the purpose of  
12       ascertaining the location and condition of obstructions.

13          (3)   Enter land or, while under construction, any  
14       structure located in a flood plain for the purpose of  
15       ascertaining the compliance or noncompliance with the flood  
16       plain management regulations adopted pursuant to this act.

17       (b)   Whenever an agent or employee of the Department of  
18       Community Affairs, the Department of Environmental Resources, or  
19       municipality charged with the enforcement of the provisions of  
20       this act has been refused access to property for the purposes of  
21       conducting a survey or inspection as authorized by this section  
22       or reasonably requires access to such property without prior  
23       notice to the owner, such agent or employee may apply for an  
24       inspection warrant to any Commonwealth official authorized by  
25       law to issue a search or inspection warrant to enable him or her  
26       to have access and inspect such property. It shall be sufficient  
27       probable cause to issue an inspection warrant that the  
28       inspection is necessary to properly enforce the provisions of  
29       this act.

1 ENFORCEMENT: APPEALS

2 Section 501. Enforcement of Chapter 2.

3 (a) If the department finds that a municipality has failed  
4 to comply with any requirement of Chapter 2, or any department  
5 regulations adopted pursuant thereto, the department shall  
6 provide a written notice of violation to the municipality.

7 (b) If within 60 days of receipt of the notice of violation,  
8 the municipality has failed to comply with the requirement or  
9 regulation, the department may issue an order to the  
10 municipality and its officers requiring compliance with such  
11 requirement or regulation. Any order issued under this  
12 subsection shall take effect upon receipt of notice, unless the  
13 order specifies otherwise. Any appeal of an order issued under  
14 this subsection shall be in accordance with section 503.

15 (c) Any municipality or person failing to comply with an  
16 order issued pursuant to this section from which no appeal has  
17 been taken, which has been sustained on appeal, or for which no  
18 supersedeas has been granted, shall be deemed in contempt of  
19 such order. Upon petition and certification of the order by the  
20 department, the Commonwealth Court or the court of common pleas  
21 of the county in which the municipality is located shall, if it  
22 finds that the municipality and its officers are not in  
23 compliance with the order, adjudge the same in contempt and  
24 shall assess civil penalties of an amount not less than \$100 nor  
25 greater than \$10,000 per violation plus \$500 for each continuing  
26 day of violation.

27 (d) Where the municipality or its offices have not as of the  
28 date of hearing before the court complied with the department's  
29 order, the court shall specifically order full compliance with  
30 the department's order by a date set by the court and may issue

1 any further order as may be appropriate.

2 (e) Upon petition by the department, if the court finds  
3 after hearing that the municipality or its officers have failed  
4 to comply with any order issued pursuant to subsection (d) by  
5 the date set by the court, the court may, as a last resort,  
6 issue an order empowering the department to adopt and administer  
7 flood plain management regulations for the municipality.

8 (f) Whenever pursuant to subsection (e) the department  
9 adopts and administers flood plain management regulations for a  
10 municipality, such regulations shall apply notwithstanding any  
11 municipal flood plain management regulation; provided, that any  
12 zoning or other ordinance adopted by a municipality shall remain  
13 effective to the extent such ordinance is more restrictive than  
14 the flood plain management regulation adopted by the department.

15 (g) Upon a determination by the department that the  
16 municipality has adopted and is able to administer flood plain  
17 management regulations which comply with the requirements of  
18 Chapter 2 and any department regulations adopted pursuant  
19 thereto, the department or the municipality may petition the  
20 court requesting that the court terminate its order empowering  
21 the department to adopt and administer flood plain management  
22 regulations for the municipality.

23 Section 502. Civil remedies.

24 (a) Any obstruction or conduct in violation of this act or  
25 of any flood plain management regulations is hereby declared a  
26 public nuisance.

27 (b) Suits to restrain, prevent or abate violation of this  
28 act or of any flood plain management regulations may be  
29 instituted in equity or at law by the department, the Department  
30 of Environmental Resources, any affected county or municipality,

1 or any person. Such proceedings may be prosecuted in the  
2 Commonwealth Court, or in the court of common pleas of the  
3 county where the obstruction exists, conduct occurs, or the  
4 public affected, and to that end jurisdiction is hereby  
5 conferred in law and equity upon such courts. Except in cases of  
6 emergency where, in the opinion of the court, the circumstances  
7 of the case require immediate abatement of the unlawful  
8 obstruction or conduct, the court may, in its decree, fix a  
9 reasonable time during which the person responsible for the  
10 unlawful obstruction or conduct shall correct or abate the same.  
11 The expense of such proceedings shall be recoverable from the  
12 violator in such manner as may now or hereafter be provided by  
13 law.

14 Section 503. Appeals.

15 (a) Any person aggrieved by any action of the Department of  
16 Community Affairs shall have the right within 30 days of receipt  
17 of notice of such action to appeal such action and request a  
18 hearing in accordance with the act of June 4, 1945 (P.L.1388,  
19 No.442), known as the "Administrative Agency Law."

20 (b) Any person aggrieved by an action of the Department of  
21 Environmental Resources in granting, modifying, suspending or  
22 revoking a permit or in issuing an order shall have the right  
23 within 30 days of receipt of notice of such action to appeal  
24 such action to the Environmental Hearing Board, pursuant to  
25 section 1921-A of the act of April 9, 1929 (P.L.177, No.175),  
26 known as "The Administrative Code of 1929," and the  
27 "Administrative Agency Law."

28 (c) An appeal of any action under this act shall not act as  
29 a supersedeas. A supersedeas may be granted by the agency  
30 hearing the appeal upon a showing by the petitioner:

- 1 (1) that irreparable harm to the petitioner or other  
2 interested parties will result if supersedeas is denied;  
3 (2) that there is a likelihood of the petitioner's  
4 success on the merits; and  
5 (3) that the grant of a supersedeas will not result in  
6 irreparable harm to the Commonwealth.

7 The agency hearing the appeal may grant such a supersedeas  
8 subject to such security as it may deem proper.

9 CHAPTER 6

10 MISCELLANEOUS; APPROPRIATIONS

11 Section 601. Preservation of existing rights and remedies.

12 (a) No provision of this act shall be construed to permit an  
13 activity or condition otherwise prohibited by law, or to affect  
14 the rights of the Commonwealth, persons, counties or  
15 municipalities to proceed in courts of law or equity to suppress  
16 nuisances or to enforce common law or statutory rights.

17 (b) It is hereby declared to be the purpose of this act to  
18 provide additional and cumulative remedies to abate nuisances.

19 Section 602. Appropriations.

20 (a) The sum of \$750,000, or as much thereof as may be  
21 necessary, is hereby appropriated for the fiscal period  
22 beginning July 1, 1977, and ending June 30, 1978, to the  
23 Department of Community Affairs for the purposes of  
24 administrative and general expenses in implementing the  
25 provisions of this act.

26 (b) The sum of \$250,000, or as much thereof as may be  
27 necessary, is hereby appropriated for the fiscal period  
28 beginning July 1, 1977, and ending June 30, 1978, to the  
29 Department of Environmental Resources for the purposes of this  
30 act.

1 Section 603. Repealer and savings clause.

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

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

8 Section 604. Effective date.

9 This act shall take effect immediately.