

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 743

Session of 1977

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

SENATOR SMITH, APPROPRIATIONS, RE-REPORTED AS AMENDED, JANUARY 30, 1978

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.

TABLE OF CONTENTS

7 Chapter 1. Preliminary Provisions

8 Section 101. Short title.

9 Section 102. Statement of legislative findings.

10 Section 103. Statement of policy and purposes.

11 Section 104. Definitions.

12 Chapter 2. Municipal Participation in National Flood Insurance
13 Program

14 Section 201. Required participation in National Flood
15 Insurance Program.

16 Section 202. Adoption of flood plain management regulations.

17 Section 203. Relationship of flood plain management
18 regulations to the Pennsylvania Municipalities
19 Planning Code and other applicable enabling

1 legislation.
2 Section 204. Requirements of the National Flood Insurance
3 Program deemed minimum standards.

4 Section 205. Department review and approval of municipal
5 flood plain management regulations.

6 Section 206. Municipalities required to comply with
7 department regulations.

8 Chapter 3. Regulation of Particular Obstructions

9 Section 301. Obstructions posing special hazards in flood
10 plains.

11 Section 302. Exclusive State jurisdiction over certain
12 obstructions in flood plains.

13 Chapter 4. Powers and Duties

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

17 Section 402. Additional powers and duties of the Department
18 of Community Affairs, Department of Environ-
19 mental Resources and municipalities.

20 Section 403. Inspections.

21 Chapter 5. Enforcement; Appeals

22 Section 501. Enforcement of Chapter 2.

23 Section 502. Civil remedies.

24 Section 503. Appeals.

25 Chapter 6. Miscellaneous; Appropriations

26 Section 601. Preservation of existing rights and remedies.

27 Section 602. Appropriations.

28 Section 603. Repealer and savings clause.

29 Section 604. Effective date.

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 Pennsylvania Municipalities Planning Code
21 and other applicable enabling legislation.

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

1 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 AS ←
12 APPROPRIATED BY THE GENERAL ASSEMBLY for studies and research
13 with respect to the planning and 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.

30 SECTION 404. GRANTS AND REIMBURSEMENTS TO MUNICIPALITIES AND

<—

1 COUNTIES.

2 (A) THE DEPARTMENT OF COMMUNITY AFFAIRS IS AUTHORIZED TO
3 ADMINISTER GRANTS TO MUNICIPALITIES AND COUNTIES TO ASSIST OR
4 REIMBURSE THEM FOR COSTS IN PREPARING OFFICIAL PLANS AND ACTUAL
5 ADMINISTRATIVE COSTS AND REVISIONS TO OFFICIAL PLANS FOR FLOOD
6 PLAIN MANAGEMENT REQUIRED BY THIS ACT, AND FOR CARRYING OUT
7 RELATED STUDIES, SURVEYS, INVESTIGATIONS, RESEARCH AND ANALYSES.
8 GRANTS AND REIMBURSEMENTS SHALL BE MADE FROM AND TO THE EXTENT
9 OF FUNDS APPROPRIATED BY THE GENERAL ASSEMBLY FOR SUCH PURPOSES,
10 AND SHALL BE MADE IN ACCORDANCE TO RULES AND REGULATIONS ADOPTED
11 BY THE DEPARTMENT OF COMMUNITY AFFAIRS AND IN ACCORDANCE WITH
12 THE FOLLOWING:

13 (1) THE GRANT SHALL BE EQUAL TO:

14 (I) 50% OF THE ALLOWABLE COSTS FOR PREPARATION OF
15 OFFICIAL PLANS OR REVISIONS THERETO INCURRED BY ANY
16 MUNICIPALITY OR COUNTY WHICH PRIOR TO THE EFFECTIVE DATE
17 OF THIS ACT ADOPTED A FLOOD AREA MANAGEMENT PROGRAM WHICH
18 COMPLIES WITH TITLE 24, SECTION 1910.3(C) OR 1910.3(D) OF
19 THE REGULATIONS OF THE DEPARTMENT OF HOUSING AND URBAN
20 DEVELOPMENT, FEDERAL INSURANCE ADMINISTRATION; OR

21 (II) 50% OF THE ALLOWABLE COSTS FOR PREPARATION OF
22 OFFICIAL PLANS OR REVISIONS THERETO INCURRED BY ANY
23 MUNICIPALITY OR COUNTY NOT COVERED BY SUBSECTION (I); AND

24 (III) 50% OF THE ALLOWABLE COSTS FOR ADMINISTRATION
25 OF OFFICIAL PLANS INCURRED BY ANY MUNICIPALITY OR COUNTY.
26 ALLOWABLE COSTS FOR ADMINISTRATION OF OFFICIAL PLANS
27 SHALL NOT INCLUDE THOSE COSTS WHICH ARE OFFSET BY
28 REASONABLE PERMIT FEES IMPOSED BY THE MUNICIPALITY OR
29 COUNTY.

30 (2) FOR THE PURPOSES OF THIS SECTION, SUCH STATE GRANTS

1 SHALL BE IN ADDITION TO GRANTS FOR SIMILAR PURPOSES MADE TO
2 ANY MUNICIPALITY OR COUNTY BY THE FEDERAL GOVERNMENT:
3 PROVIDED, THAT THE GRANTS AUTHORIZED BY THIS SECTION SHALL BE
4 LIMITED SUCH THAT THE TOTAL OF ALL STATE AND FEDERAL GRANTS
5 DOES NOT EXCEED 50% OF THE ALLOWABLE COSTS INCURRED BY THE
6 MUNICIPALITY OR COUNTY.

7 (B) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR OR
8 LIMIT APPLICATION OF THIS ACT TO ANY MUNICIPALITY OR PERSON, OR
9 TO RELIEVE ANY MUNICIPALITY OR PERSON OF DUTIES IMPOSED UNDER
10 THIS ACT.

11 (C) IF, IN ANY FISCAL YEAR, APPROPRIATIONS ARE INSUFFICIENT
12 TO COVER THE COSTS OR GRANTS AND REIMBURSEMENTS TO ALL
13 MUNICIPALITIES OR COUNTIES ELIGIBLE FOR SUCH GRANTS AND
14 REIMBURSEMENTS IN THAT FISCAL YEAR, THE DEPARTMENT OF COMMUNITY
15 AFFAIRS SHALL REPORT SUCH FACT TO THE GENERAL ASSEMBLY AND SHALL
16 REQUEST APPROPRIATION OF FUNDS NECESSARY TO PROVIDE THE GRANTS
17 AUTHORIZED IN THIS SECTION. IF SUCH A DEFICIENCY APPROPRIATION
18 IS NOT ENACTED, ANY MUNICIPALITY OR COUNTY WHICH HAS NOT
19 RECEIVED THE FULL AMOUNT OF THE GRANT FOR WHICH IT IS ELIGIBLE
20 UNDER THIS SECTION SHALL BE AS A FIRST PRIORITY REIMBURSED FROM
21 APPROPRIATIONS MADE IN THE NEXT SUCCESSIVE FISCAL YEAR.

22 CHAPTER 5

23 ENFORCEMENT: APPEALS

24 Section 501. Enforcement of Chapter 2.

25 (a) If the department finds that a municipality has failed
26 to comply with any requirement of Chapter 2, or any department
27 regulations adopted pursuant thereto, the department shall
28 provide a written notice of violation to the municipality.

29 (b) If within 60 days of receipt of the notice of violation,
30 the municipality has failed to comply with the requirement or

1 regulation, the department may issue an order to the
2 municipality and its officers requiring compliance with such
3 requirement or regulation. Any order issued under this
4 subsection shall take effect upon receipt of notice, unless the
5 order specifies otherwise. Any appeal of an order issued under
6 this subsection shall be in accordance with section 503.

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

19 (d) Where the municipality or its offices have not as of the
20 date of hearing before the court complied with the department's
21 order, the court shall specifically order full compliance with
22 the department's order by a date set by the court and may issue
23 any further order as may be appropriate.

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

30 (f) Whenever pursuant to subsection (e) the department

1 adopts and administers flood plain management regulations for a
2 municipality, such regulations shall apply notwithstanding any
3 municipal flood plain management regulation; provided, that any
4 zoning or other ordinance adopted by a municipality shall remain
5 effective to the extent such ordinance is more restrictive than
6 the flood plain management regulation adopted by the department.

7 (g) Upon a determination by the department that the
8 municipality has adopted and is able to administer flood plain
9 management regulations which comply with the requirements of
10 Chapter 2 and any department regulations adopted pursuant
11 thereto, the department or the municipality may petition the
12 court requesting that the court terminate its order empowering
13 the department to adopt and administer flood plain management
14 regulations for the municipality.

15 Section 502. Civil remedies.

16 (a) Any obstruction or conduct in violation of this act or
17 of any flood plain management regulations is hereby declared a
18 public nuisance.

19 (b) Suits to restrain, prevent or abate violation of this
20 act or of any flood plain management regulations may be
21 instituted in equity or at law by the department, the Department
22 of Environmental Resources, any affected county or municipality,
23 or any person. Such proceedings may be prosecuted in the
24 Commonwealth Court, or in the court of common pleas of the
25 county where the obstruction exists, conduct occurs, or the
26 public affected, and to that end jurisdiction is hereby
27 conferred in law and equity upon such courts. Except in cases of
28 emergency where, in the opinion of the court, the circumstances
29 of the case require immediate abatement of the unlawful
30 obstruction or conduct, the court may, in its decree, fix a

1 reasonable time during which the person responsible for the
2 unlawful obstruction or conduct shall correct or abate the same.
3 The expense of such proceedings shall be recoverable from the
4 violator in such manner as may now or hereafter be provided by
5 law.

6 Section 503. Appeals.

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

12 (b) Any person aggrieved by an action of the Department of
13 Environmental Resources in granting, modifying, suspending or
14 revoking a permit or in issuing an order shall have the right
15 within 30 days of receipt of notice of such action to appeal
16 such action to the Environmental Hearing Board, pursuant to
17 section 1921-A of the act of April 9, 1929 (P.L.177, No.175),
18 known as "The Administrative Code of 1929," and the
19 "Administrative Agency Law."

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

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

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

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

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

1 CHAPTER 6

2 MISCELLANEOUS; APPROPRIATIONS

3 Section 601. Preservation of existing rights and remedies.

4 (a) No provision of this act shall be construed to permit an
5 activity or condition otherwise prohibited by law, or to affect
6 the rights of the Commonwealth, persons, counties or
7 municipalities to proceed in courts of law or equity to suppress
8 nuisances or to enforce common law or statutory rights.

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

11 Section 602. Appropriations.

12 (a) The sum of \$750,000, or as much thereof as may be
13 necessary, is hereby appropriated for the fiscal period
14 beginning July 1, ~~1977~~ 1978, and ending June 30, ~~1978~~ 1979, to <—
15 the Department of Community Affairs for the purposes of
16 administrative and general expenses in implementing the
17 provisions of this act.

18 (b) The sum of \$250,000, or as much thereof as may be
19 necessary, is hereby appropriated for the fiscal period
20 beginning July 1, ~~1977~~ 1978, and ending June 30, ~~1978~~ 1979, to <—
21 the Department of Environmental Resources for the purposes of
22 this act.

23 Section 603. Repealer and savings clause.

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

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

30 Section 604. Effective date.

1 This act shall take effect immediately.