

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 743

Session of 1977

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

AS AMENDED ON THIRD CONSIDERATION, MARCH 6, 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.

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11 The General Assembly of the Commonwealth of Pennsylvania

12 hereby enacts as follows:

13 CHAPTER 1

14 PRELIMINARY PROVISIONS

15 Section 101. Short title.

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

18 Section 102. Statement of legislative findings.

19 (a) Flooding of large areas of land within the Commonwealth
20 causes unnecessary loss of life, destroys private and public
21 property, damages means of livelihood and economic resources;
22 disrupts commerce, communication, utility and governmental
23 services; causes pollution and unsanitary conditions; carries
24 solid waste, sewage and other materials injurious to health and
25 property; all of which is detrimental to the health, safety and
26 welfare of the people of the Commonwealth.

27 (b) Extensive expenditures of public funds have been
28 allocated to costly flood control projects, repair and
29 maintenance of public facilities and property, and relief and
30 rescue efforts, to reduce the disastrous effects of recurrent

1 flooding.

2 (c) The exclusive use of flood control measures, such as
3 engineering projects, has failed to significantly reduce the
4 human suffering and economic losses caused by recurrent
5 flooding.

6 (d) A comprehensive and coordinated program of flood plain
7 management, based upon the National Flood Insurance Program, is
8 fundamental to the health, safety, welfare and protection of the
9 people of the Commonwealth.

10 Section 103. Statement of policy and purposes.

11 The policy and purpose of this act is to:

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

14 (2) Protect people and property in flood plains from the
15 dangers and damage of floodwaters and from materials carried
16 by such floodwaters.

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

19 (4) Authorize a comprehensive and coordinated program of
20 flood plain management, based upon the National Flood
21 Insurance Program, designed to preserve and restore the
22 efficiency and carrying capacity of the streams and flood
23 plains of the Commonwealth.

24 (5) Assist municipalities in qualifying for the National
25 Flood Insurance Program.

26 (6) Provide for and encourage local administration and
27 management of flood plains.

28 (7) Minimize the expenditure of public and private funds
29 for flood control projects and for relief, rescue and
30 recovery efforts.

1 Section 104. Definitions.

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

5 "Department." The Department of Community Affairs of the
6 Commonwealth of Pennsylvania.

7 "Fill." Sand, gravel, earth or other material placed or
8 deposited so as to form an embankment or raise the elevation of
9 the land surface.

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

13 "Flood plain management regulations." Zoning ordinances,
14 subdivision regulations, building codes, health regulations,
15 special purpose ordinances and other applications of police
16 power. The term describes such State or local regulations, in
17 any combination thereof, which provide standards for the purpose
18 of flood damage, prevention and reduction.

19 "Floodproofing." Structural or other changes or adjustments
20 to properties or obstructions for the reduction or elimination
21 of flood damages to such properties and obstructions or to the
22 contents of any structure.

23 "Municipality." A city, borough, town or township or any
24 similar general purpose unit of government, or county or other
25 governmental unit when acting as an agent thereof, or any
26 combination thereof acting jointly.

27 "New mobile home park or mobile home subdivision." A parcel
28 (or contiguous parcels) of land divided into two or more mobile
29 home lots for rent or sale for which the construction of
30 facilities for servicing the lot on which the mobile home is to

1 be affixed (including at a minimum, the installation of
2 utilities, either final site grading or the pouring of concrete
3 pads, and the construction of streets) is completed on or after
4 the effective date of flood plain management regulations adopted
5 by a community.

6 "Obstruction." Any structure or assembly of materials
7 including fill above or below the surface of land or water, and
8 an activity which might impede, retard or change flood flows.
9 The planting, cultivation and harvesting of field and orchard
10 crops or the grazing of livestock, including the maintenance of
11 necessary appurtenant agricultural fencing, shall not be
12 considered an "obstruction" under this definition and shall not
13 be subject to regulation under this act.

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

17 "One hundred-year flood plain" or "flood plain." The 100-
18 year floodway and that maximum area of land that is likely to be
19 flooded by a 100-year flood shown on flood plain maps approved
20 or promulgated by the United States Department of Housing and
21 Urban Development.

22 "Person." An individual, partnership, public or private
23 association or corporation, firm, trust, estate, municipality,
24 governmental unit, public utility or any other legal entity
25 whatsoever which is recognized by law as the subject of rights
26 and duties.

27 "Public utility service." The rendering of the following
28 services for the public:

29 (1) gas, electricity or steam production, generation,
30 transmission or distribution;

- 1 (2) water diversion, pumping, impoundment or
- 2 distribution;
- 3 (3) railroad transportation of passengers or property;
- 4 (4) operation of a canal, turnpike, tunnel, bridge,
- 5 wharf or similar structure;
- 6 (5) transportation of natural or artificial gas, crude
- 7 oil, gasoline or petroleum products, materials for
- 8 refrigeration or other fluid substances by pipeline or
- 9 conduit;
- 10 (6) telephone or telegraph communications; and
- 11 (7) sewage collection, treatment or disposal.

12 "Special hazard obstruction." This shall include but not be
13 limited to hospitals, nursing homes, jails, facilities for the
14 production or storage of hazardous materials and facilities
15 necessary for emergency response.

16 "Substantial improvement." Any repair, reconstruction or
17 improvement of a structure, the cost of which equals or exceeds
18 50% of the market value of the structure either:

- 19 (1) before the improvement or repair is started; or
- 20 (2) if the structure has been damaged, and is being
- 21 restored, before the damage occurred.

22 For the purposes of this definition "substantial improvement" is
23 considered to occur when the first alteration of any wall,
24 ceiling, floor or other structure part of the building
25 commences, whether or not that alteration affects the external
26 dimensions of the structure. The term does not, however, include
27 either:

- 28 (i) any project for improvement of a structure to
- 29 comply with existing State or local health, sanitary or
- 30 safety code specifications which are solely necessary to

1 States Department of Housing and Urban Development as having an
2 area or areas subject to flooding, shall adopt such flood plain
3 management regulations, and amendments thereto, as are necessary
4 to comply with the requirements of the National Flood Insurance
5 Program within six months after a flood plain map is approved or
6 promulgated for the municipality by the United States Department
7 of Housing and Urban Development.

8 Section 203. Relationship of flood plain management regulations
9 to the Pennsylvania Municipalities Planning Code
10 and other applicable enabling legislation.

11 The adoption and administration by municipalities of flood
12 plain management regulations, or amendments thereto, which are
13 necessary to comply with the requirements of the National Flood
14 Insurance Program shall be governed by the provisions of the act
15 of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania
16 Municipalities Planning Code," or other applicable enabling
17 legislation; provided, that a municipality may adopt flood plain
18 management regulations for the flood plain without adopting
19 ordinances, codes or regulations for any other area of the
20 municipality, notwithstanding any provision of the
21 Municipalities Planning Code or other applicable enabling
22 legislation.

23 Section 204. Requirements of the National Flood Insurance
24 Program deemed minimum standards.

25 The flood plain management regulations adopted by a
26 municipality in order to comply with the requirements of the
27 National Flood Insurance Program shall be deemed minimum
28 standards for the management of the flood plains, and no
29 provision of this act shall be construed as in any way limiting
30 the power of any municipality to adopt more restrictive

1 ordinances, codes or regulations for the management of flood
2 plains.

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

5 (a) The department shall, in consultation with the
6 Department of Environmental Resources, review and approve all
7 municipal flood plain management regulations, and amendments
8 thereto, for the purpose of assuring that such regulations
9 comply with the requirements of the National Flood Insurance
10 Program and that such regulations are coordinated and uniformly
11 enforced throughout each watershed.

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

15 (1) Criteria and standards for the coordination and
16 uniform enforcement of municipal flood plain management
17 regulations under the National Flood Insurance Program.

18 (2) Procedures, requirements and standards for
19 submission, review and approval of municipal flood plain
20 management regulations pursuant to this section.

21 (c) Prior to adoption of department regulations pursuant to
22 this section, the department shall hold at least one public
23 hearing, after public notice, in each major river basin of the
24 Commonwealth. Prior to any amendment of department regulations,
25 the department shall hold at least one public hearing after
26 public notice.

27 Section 206. Municipalities required to comply with department
28 regulations.

29 Each municipality participating in the National Flood
30 Insurance Program shall comply with any regulations adopted by

1 the department pursuant to this chapter within six months of the
2 effective date of such regulations. A municipality shall be
3 deemed to have complied with department regulations if it has
4 received department approval as provided for in this chapter.

5 Section 207. Regulations to prohibit subdivision of flood
6 plain area.

7 The regulations promulgated by the department shall prohibit
8 the subdivision of property located within a designated flood
9 hazard area where the proposed subdivision would create lots
10 which are located wholly within the flood hazard area or which
11 would create lots which do not contain sufficient nonflood area
12 to permit the improvement thereof.

13 Section 208. Regulations to prohibit construction in flood
14 hazard area where alternatives exist.

15 The regulations promulgated by the department shall prohibit
16 the building of structures in a designated flood hazard area
17 where the structure sought to be built can feasibly be located
18 on the same parcel of land in an area safe from flooding.

19 Section 209. Regulations to prohibit utilization of fill in
20 flood plains.

21 The regulations promulgated by the department shall require
22 that in all instances where it is necessary to elevate a
23 proposed structure in order to meet the minimum elevation
24 requirements of the National Flood Insurance Program the
25 required elevation shall be accomplished through the use of
26 pilings or columns rather than fill in order to maintain the
27 storage capacity of the flood plain and to minimize the
28 obstruction of flood flows incident to the use of fill and
29 thereby reduce the risk of flood damage: PROVIDED, THAT FILL MAY <—
30 BE USED TO ELEVATE THE EXPANSION OF EXISTING INDUSTRIAL PLANTS.

1 Section 210. Regulations to prohibit development which is
2 dangerous to human life.

3 The regulations promulgated by the department shall prohibit
4 the construction or substantial improvement of structures in an
5 area which has been identified as a flood hazard area on a flood
6 insurance rate map promulgated by the Department of Housing and
7 Urban Development which may endanger human life.

8 CHAPTER 3

9 REGULATION OF PARTICULAR OBSTRUCTIONS

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

12 (a) The department shall by regulation publish a list of
13 obstructions which it determines present a special hazard to the
14 health and safety of the public or occupants or may result in
15 significant pollution, increased flood levels or flows or debris
16 endangering life and property, if such obstructions are located
17 in all or a designated portion of the flood plain. These
18 obstructions include, but are not limited to: hospitals, nursing
19 homes, jails, new mobile home parks, subdivision or substantial
20 additions to mobile home parks or subdivisions, facilities for
21 the production or storage of toxic, buoyant, flammable or
22 otherwise hazardous materials and facilities necessary for
23 emergency response.

24 (b) Construction of any structure or commencement of any
25 activity listed as a special hazard by department regulations in
26 a flood plain or such portion of the flood plain designated by
27 the regulations shall be prohibited except in accordance with a
28 special exception issued pursuant to this section.

29 (c) A municipality administering flood plain management
30 regulations may issue a special exception if the applicant

1 demonstrates and the municipality determines that the structure
2 or activity will be located, constructed and maintained in a
3 manner which:

4 (1) will fully protect the health and safety of the
5 public or occupants;

6 (2) will prevent any significant possibility of
7 pollution, increased flood levels or flows, or debris
8 endangering life and property; and

9 (3) will comply with the requirements of the National
10 Flood Insurance Program.

11 Approval of any special exception shall be conditioned upon
12 compliance with all feasible floodproofing and other
13 requirements necessary to minimize damage, and the hindrance of
14 flood flows and to minimize potential danger to life and
15 property.

16 (d) Written notice of municipal approval of a special
17 exception shall be filed with the department. The special
18 exception shall become effective 30 days following the receipt
19 of notice by the department unless the special exception is
20 disapproved by the department. If the department disapproves a
21 special exception, it shall notify the municipality and
22 applicant of the reasons for disapproval.

23 Section 302. Exclusive State jurisdiction over certain
24 obstructions in flood plains.

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

28 (1) any obstruction otherwise regulated under the Water
29 Obstructions Act;

30 (2) any flood control project constructed, owned or

1 maintained by a governmental unit;

2 (3) any highway or other obstruction, constructed, owned
3 or maintained by the Commonwealth or a political subdivision
4 thereof; and

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

7 (b) No person shall construct, modify, remove, abandon or
8 destroy any structure or engage in any activity specified in
9 subsection (a) in the 100-year flood plain unless such person
10 has first applied for and obtained a permit from the Department
11 of Environmental Resources. The department may impose such
12 permit terms and conditions as it deems necessary to carry out
13 the purposes of this act. The permit shall become effective 60
14 days following the receipt of the application by the department
15 unless the application is disapproved by the department. If the
16 department disapproves the application it shall notify the
17 applicant of the reasons for disapproval.

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

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

30 (e) The Department of Environmental Resources shall regulate

1 those obstructions subject to exclusive State jurisdiction in a
2 manner consistent to the maximum extent possible with the
3 standards and criteria established in municipal flood plain
4 management regulations.

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

12 CHAPTER 4

13 POWERS AND DUTIES

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

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

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

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

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

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

1 pursuant to this act.

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

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

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

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

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

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

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

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

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

29 (5) Do any other acts not inconsistent with this act
30 which are necessary or proper for its effective

1 implementation.

2 Section 403. Inspections.

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

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

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

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

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

29 Section 404. Grants and reimbursements to municipalities and
30 counties.

1 (a) The Department of Community Affairs is authorized to
2 administer grants to municipalities and counties to assist or
3 reimburse them for costs in preparing official plans and actual
4 administrative ENFORCEMENT AND IMPLEMENTATION costs and ←
5 revisions to official plans for flood plain management required
6 by this act, and for carrying out related studies, surveys,
7 investigations, research and analyses. Grants and reimbursements
8 shall be made from and to the extent of funds appropriated by
9 the General Assembly for such purposes, and shall be made in
10 accordance to rules and regulations adopted by the Department of
11 Community Affairs and in accordance with the following:

12 (1) The grant shall be equal to:

13 (i) 50% of the allowable costs for preparation of
14 official plans or revisions thereto incurred by any
15 municipality or county which prior to the effective date
16 of this act adopted a flood area management program which
17 complies with Title 24, section 1910.3(c) or 1910.3(d) of
18 the regulations of the Department of Housing and Urban
19 Development, Federal Insurance Administration; or

20 (ii) 50% of the allowable costs for preparation of
21 official plans ~~or revisions thereto~~ , ADMINISTRATIVE, ←
22 ENFORCEMENT AND IMPLEMENTATION COSTS REQUIRED BY THIS
23 ACT, AND REVISIONS OF OFFICIAL PLANS incurred by any
24 municipality or county not covered by subclause (i); and

25 (iii) 50% of the allowable costs for administration
26 of official plans incurred by any municipality or county.
27 Allowable costs for administration of official plans
28 shall not include those costs which are offset by
29 reasonable permit fees imposed by the municipality or
30 county.

1 (2) For the purposes of this section, such State grants
2 shall be in addition to grants for similar purposes made to
3 any municipality or county by the Federal Government:

4 Provided, That the grants authorized by this section shall be
5 limited such that the total of all State and Federal grants
6 does not exceed 50% of the allowable costs incurred by the
7 municipality or county.

8 (b) Nothing in this section shall be construed to impair or
9 limit application of this act to any municipality or person, or
10 to relieve any municipality or person of duties imposed under
11 this act.

12 (c) If, in any fiscal year, appropriations are insufficient
13 to cover the costs or grants and reimbursements to all
14 municipalities or counties eligible for such grants and
15 reimbursements in that fiscal year, the Department of Community
16 Affairs shall report such fact to the General Assembly and shall
17 request appropriation of funds necessary to provide the grants
18 authorized in this section. If such a deficiency appropriation
19 is not enacted, any municipality or county which has not
20 received the full amount of the grant for which it is eligible
21 under this section shall be as a first priority reimbursed from
22 appropriations made in the next successive fiscal year.

23 CHAPTER 5

24 ~~ENFORCEMENT:~~ ←

25 PENALTIES; CIVIL REMEDIES; APPEALS ←

26 Section 501. ~~Enforcement of Chapter 2~~ PENALTIES. ←

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

1 ~~(b) If within 60 days of receipt of the notice of violation, <—~~
2 ~~the municipality has failed to comply with the requirement or~~
3 ~~regulation, the department may issue an order to the~~
4 ~~municipality and its officers requiring compliance with such~~
5 ~~requirement or regulation. Any order issued under this~~
6 ~~subsection shall take effect upon receipt of notice, unless the~~
7 ~~order specifies otherwise. Any appeal of an order issued under~~
8 ~~this subsection shall be in accordance with section 503.~~

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

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

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

1 ~~flood plain management regulations for the municipality.~~

2 ~~(f) Whenever pursuant to subsection (e) the department~~
3 ~~adopts and administers flood plain management regulations for a~~
4 ~~municipality, such regulations shall apply notwithstanding any~~
5 ~~municipal flood plain management regulation; provided, that any~~
6 ~~zoning or other ordinance adopted by a municipality shall remain~~
7 ~~effective to the extent such ordinance is more restrictive than~~
8 ~~the flood plain management regulation adopted by the department.~~

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

17 (B) WITHIN 60 DAYS OF RECEIPT OF THE NOTICE OF VIOLATION, <—
18 THE MUNICIPALITY SHALL REPORT TO THE DEPARTMENT THE ACTION WHICH
19 IT IS TAKING TO COMPLY WITH THE REQUIREMENT OR REGULATION.

20 (C) IF WITHIN 180 DAYS OF RECEIPT OF THE NOTICE OF
21 VIOLATION, THE MUNICIPALITY HAS FAILED TO COMPLY WITH SUCH
22 REQUIREMENT OR REGULATION, AS DETERMINED BY THE DEPARTMENT, THE
23 SECRETARY OF COMMUNITY AFFAIRS SHALL NOTIFY THE STATE TREASURER
24 TO WITHHOLD PAYMENT OF ALL FUNDS PAYABLE TO THE MUNICIPALITY
25 FROM THE GENERAL FUND OR ANY OTHER FUND. UPON NOTIFICATION, THE
26 STATE TREASURER SHALL HOLD IN ESCROW ALL MONEYS DUE TO SUCH
27 MUNICIPALITY FROM THE COMMONWEALTH UNTIL SUCH TIME AS THE
28 DEPARTMENT NOTIFIES THE STATE TREASURER THAT THE MUNICIPALITY
29 HAS COMPLIED WITH SUCH REQUIREMENT OR REGULATION.

30 Section 502. Civil remedies.

1 (a) Any obstruction or conduct in violation of this act or
2 of any flood plain management regulations is hereby declared a
3 public nuisance.

4 (b) Suits to restrain, prevent or abate violation of this
5 act or of any flood plain management regulations may be
6 instituted in equity or at law by the department, the Department
7 of Environmental Resources, any affected county or municipality,
8 or any aggrieved person. Such proceedings may be prosecuted in
9 the Commonwealth Court, or in the court of common pleas of the
10 county where the obstruction exists, conduct occurs, or the
11 public affected, and to that end jurisdiction is hereby
12 conferred in law and equity upon such courts. Except in cases of
13 emergency where, in the opinion of the court, the circumstances
14 of the case require immediate abatement of the unlawful
15 obstruction or conduct, the court may, in its decree, fix a
16 reasonable time during which the person responsible for the
17 unlawful obstruction or conduct shall correct or abate the same.
18 The expense of such proceedings shall be recoverable from the
19 violator in such manner as may now or hereafter be provided by
20 law.

21 Section 503. Appeals.

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

27 (b) Any person aggrieved by an action of the Department of
28 Environmental Resources in granting, modifying, suspending or
29 revoking a permit or in issuing an order shall have the right
30 within 30 days of receipt of notice of such action to appeal

1 such action to the Environmental Hearing Board, pursuant to
2 section 1921-A of the act of April 9, 1929 (P.L.177, No.175),
3 known as "The Administrative Code of 1929," and the
4 "Administrative Agency Law."

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

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

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

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

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

16 CHAPTER 6

17 MISCELLANEOUS; APPROPRIATIONS

18 Section 601. Preservation of existing rights and remedies.

19 (a) No provision of this act shall be construed to permit an
20 activity or condition otherwise prohibited by law, or to affect
21 the rights of the Commonwealth, persons, counties or
22 municipalities to proceed in courts of law or equity to suppress
23 nuisances or to enforce common law or statutory rights.

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

26 Section 602. Appropriations.

27 (a) The sum of \$750,000, or as much thereof as may be
28 necessary, is hereby appropriated for the fiscal period
29 beginning July 1, 1978, and ending June 30, 1979, to the
30 Department of Community Affairs for the purposes of

1 administrative and general expenses in implementing the
2 provisions of this act.

3 (b) The sum of \$250,000, or as much thereof as may be
4 necessary, is hereby appropriated for the fiscal period
5 beginning July 1, 1978, and ending June 30, 1979, to the
6 Department of Environmental Resources for the purposes of this
7 act.

8 Section 603. Repealer and savings clause.

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

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

15 Section 604. Effective date.

16 This act shall take effect immediately.