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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1233** Session of  
1980

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INTRODUCED BY ORLANDO, MELLOW, KELLEY, DWYER, MANBECK, BODACK,  
LYNCH, MURRAY, ANDREWS, KURY AND HOLL, FEBRUARY 5, 1980

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REFERRED TO ENVIRONMENTAL RESOURCES, FEBRUARY 5, 1980

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AN ACT

1 Providing for the regulation of structure setbacks in bluff  
2 recession hazard areas throughout the Commonwealth to limit  
3 property damage and shoreline erosion recession, imposing  
4 duties and conferring powers on the Department of  
5 Environmental Resources and municipalities, providing for  
6 penalties and enforcement.

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the "Bluff  
11 Recession and Setback Act."

12 Section 2. Purpose and policy.

13 The policy and purpose of this act is to:

14 (1) Encourage planning and development in bluff areas  
15 which is consistent with sound land use practices.

16 (2) Protect people and property in bluff areas from the  
17 dangers and damage associated with the inevitable recession  
18 of bluffs.

19 (3) Prevent and eliminate urban and rural blight which  
20 results from the damages of bluff erosion and recession.

21 (4) Minimize the expenditure of public and private funds  
22 for shoreline protection and bluff stabilization structures  
23 and activities.

24 (5) Authorize a comprehensive and coordinated program to  
25 regulate development activities through the use of setback  
26 ordinances in bluff recession hazard areas, designed to  
27 preserve and restore the natural ecological systems, and to  
28 prevent continuing destruction of private property and  
29 structures.

30 (6) Encourage local administration and management of

1 bluffs consistent with the Commonwealth's duty as trustee of  
2 natural resources, and the people's constitutional right to  
3 the preservation of the natural, scenic, aesthetic and  
4 historic values of the environment.

5 Section 3. Definitions.

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

9 "Bluff." Any high bank or bold headland with a broad,  
10 precipitous, almost perpendicular, sometimes rounded cliff face,  
11 overlooking a large body of water.

12 "Bluff line." The edge or crest of the bluff.

13 "Bluff recession." The loss of material along the bluff face  
14 caused by the direct or indirect action by one or a combination  
15 of groundwater seepage, water currents, wind generated water  
16 waves or high water levels.

17 "Bluff recession hazard area." An area or zone where the  
18 rate of progressive bluff recession creates a substantial threat  
19 to the safety or stability of nearby or future structures or  
20 utility facilities.

21 "Bluff setback ordinance and regulations." Building codes,  
22 zoning ordinances, subdivision regulations, health regulations,  
23 special purpose ordinances, and other applications of the police  
24 power, which provide standards for the location of structures  
25 and facilities in bluff recession hazard areas.

26 "Department." The Department of Environmental Resources of  
27 the Commonwealth of Pennsylvania.

28 "Development":

29 (1) The improvement of one lot or two or more contiguous  
30 lots, tracts or parcels of land for any purpose involving:

1 (i) a group of two or more buildings; or  
2 (ii) the division or allocation of land or space  
3 between or among two or more existing or prospective  
4 occupants by means of, or for the purpose of streets,  
5 common areas, leaseholds, condominiums, building groups  
6 or other features.

7 (2) A subdivision of land.

8 "Municipality." A city, borough, town or township, or any  
9 county or other governmental unit when acting as an agent  
10 thereof, or any combination thereof acting jointly.

11 "Person." An individual, partnership, public or private  
12 association or corporation, firm, trust estate, municipality,  
13 governmental unit, public utility or any other legal entity  
14 whatsoever which is recognized by law as the subject of rights  
15 and duties. Whenever used in any section prescribing or imposing  
16 a penalty, the term "person" shall include the members of a  
17 partnership, the officers, members, servants and agents of an  
18 association, officers, agents and servants of a corporation, but  
19 shall exclude any department, board, bureau or agency of the  
20 Commonwealth.

21 "Structure." Any man-made object having an ascertainable  
22 stationary location on or in land or water, whether or not  
23 affixed to the land.

24 "Structure life span." The useful life of the structure  
25 considering both economic and physical factors.

26 "Substantial improvement." Any repair, reconstruction or  
27 improvement of a structure, the cost of which equals or exceeds  
28 50% of the market value of the structure either:

29 (1) before the improvement or repair is started; or

30 (2) if the structure has been damaged, and is being

1 restored, before the damage occurred or any repairs,  
2 reconstructions or improvements of a structure occurring over  
3 a five-year period, the aggregate cost of which equals or  
4 exceeds 50% of the market value of the structure either:

5 (i) before the first improvement or repair is  
6 started; or

7 (ii) if the structure has been damaged, and is being  
8 restored, before the damage occurred.

9 For the purposes of this definition "substantial improvement" is  
10 considered to occur when the first alteration of any wall,  
11 ceiling, floor or other structure part of the building  
12 commences, whether or not that alteration affects the external  
13 dimensions of the structure. The term does not, however, include  
14 any project for improvement of a structure to comply with  
15 existing State or local health, sanitary or safety  
16 specifications which are solely necessary to assure safe living  
17 conditions; or any alterations of a structure listed on the  
18 National Register of Historic Places or a State inventory of  
19 historic places.

20 Section 4. Designation of areas with bluff recession hazards.

21 (a) The department shall conduct studies necessary to  
22 identify areas in the Commonwealth subject to bluff recession  
23 hazards.

24 (b) The department shall notify the chief executive officer  
25 of each municipality which is tentatively identified as  
26 containing one or more areas subject to bluff recession hazards.  
27 Each such municipality shall be invited to submit within 60 days  
28 of notification by the department any technical data or comments  
29 on the proposed identification of a bluff recession hazard. The  
30 department shall submit its report, together with the comments

1 of the affected municipality, to the Environmental Quality  
2 Board.

3 (c) Following receipt of the department's report, and after  
4 public notice and public hearings, the Environmental Quality  
5 Board shall by regulation identify and designate those areas and  
6 municipalities subject to bluff recession hazards.

7 Section 5. Bluff setback requirements.

8 (a) In any area designated as having a bluff recession  
9 hazard, no person shall construct, install, or engage in  
10 substantial improvement to any structure, or any utility  
11 facility such as but not limited to water, sewage, electric,  
12 gas, oil or telephone facilities, in violation of the bluff  
13 setback requirements established pursuant to this section.

14 (b) The Environmental Quality Board shall, by regulation,  
15 establish minimum bluff setback requirements for bluff recession  
16 hazard areas. In setting such standards, the board shall  
17 consider the applicable bluff recession rates, the appropriate  
18 life span of various classes of structures, and other relevant  
19 factors affecting the public safety and bluff stability.

20 Section 6. Municipal bluff setback regulations.

21 (a) Within six months following designation by the  
22 Environmental Quality Board of an area and municipality subject  
23 to bluff recession hazards, each designated municipality shall  
24 adopt or amend, and shall implement such ordinances and  
25 regulations as are necessary to regulate construction and  
26 development activities in areas subject to bluff recession  
27 hazards in a manner consistent with the minimum bluff setback  
28 requirements established pursuant to section 5. Such ordinances  
29 and regulations shall require permits for all proposed  
30 construction, installation or substantial improvement of

1 structures, or water, sewage, electric or gas utility services  
2 located in designated bluff recession hazard areas.

3 (b) The adoption and administration by municipalities of  
4 bluff setback ordinances and regulations which are necessary to  
5 comply with this act shall be governed by the provisions of the  
6 act of July 31, 1968 (P.L.805, No.247), known as the  
7 "Pennsylvania Municipalities Planning Code," or other applicable  
8 enabling legislation; provided that a municipality may adopt  
9 bluff setback ordinances and regulations for a bluff recession  
10 hazard area without adopting ordinances and regulations  
11 governing any other area of the municipality, notwithstanding  
12 any provision of the "Pennsylvania Municipalities Planning Code"  
13 or other applicable enabling legislation.

14 (c) No provision of this act shall be construed as in any  
15 way limiting the power of any municipality to adopt more  
16 restrictive ordinances, codes or regulations governing  
17 construction and development in bluff recession hazard areas  
18 than the minimum bluff setback requirements established pursuant  
19 to section 5.

20 Section 7. Department oversight of municipal compliance.

21 (a) The department shall review and approve all municipal  
22 bluff setback ordinances and regulations, and amendments  
23 thereto. The department shall approve the ordinances and  
24 regulations if it determines that they comply with the minimum  
25 requirements of this act. If the department disapproves an  
26 ordinance or regulation, it shall notify the affected  
27 municipality in writing, stating the reasons for disapproval.

28 (b) If the department fails to either approve or disapprove  
29 an ordinance or regulation, or amendment thereto, within 90 days  
30 following submission by the municipality to the department, the

1 ordinance or regulation shall be deemed to be approved.

2 (c) The department shall periodically review the  
3 implementation and administration by municipalities of bluff  
4 setback ordinances and regulations in order to assure  
5 coordinated and consistent enforcement of the setback  
6 requirements established pursuant to this act.

7 (d) Following public notice and public hearing, the  
8 Environmental Quality Board shall adopt, and periodically review  
9 and amend, regulations establishing:

10 (1) Criteria and standards for the coordinated and  
11 consistent enforcement of bluff setback requirements by  
12 municipalities.

13 (2) Requirements and procedures for the submission,  
14 review and approval of municipal bluff setback ordinances and  
15 regulations.

16 (3) Requirements and procedures for maintenance of  
17 records concerning municipal implementation and  
18 administration of bluff setback ordinances and regulations,  
19 and for periodic submission of such records or reports to the  
20 department for review.

21 (e) Where conditions affecting a bluff recession hazard area  
22 are changed, including changes created by artificial erosion and  
23 recession control projects, the Environmental Quality Board  
24 shall review and as appropriate amend regulations under this  
25 section.

26 Section 8. Failure to adopt or implement bluff setback  
27 ordinances.

28 (a) The department may institute an action in mandamus in  
29 the Commonwealth Court to compel a municipality to adopt and  
30 submit bluff setback ordinances and regulations which comply

1 with the requirements of this act.

2 (b) If the department finds that a municipality has failed  
3 to implement and enforce, in a consistent and effective manner,  
4 the bluff setback ordinances and regulations required by this  
5 act, the department shall provide written notice of violation to  
6 the municipality.

7 (c) Within 60 days of the receipt of a notice of violation,  
8 the municipality shall report to the department regarding the  
9 action which it is taking to correct the violation and to comply  
10 with the requirements of this act.

11 (d) If within 90 days of the receipt of a notice of  
12 violation, the department determines that the municipality has  
13 failed to comply with the requirements of this act, the  
14 department shall issue an administrative order to the  
15 municipality and its officers specifying the actions necessary  
16 to correct the violation and to achieve full compliance with the  
17 requirements of this act. Any order issued under this section  
18 shall take effect upon receipt of notice unless the other  
19 specifies otherwise.

20 (e) Any municipality or municipal officer who violates or  
21 fails to comply with an order of the department issued pursuant  
22 to subsection (d), from which no appeal has been taken, or which  
23 has been sustained on appeal, or which has been appealed but  
24 where no supersedeas has been granted, shall be deemed to be in  
25 contempt of such order. Upon petition and certification of such  
26 order by the department, the Commonwealth Court or the court of  
27 common pleas of the county where the municipality is located,  
28 shall, if it finds that the respondent municipality or officer  
29 is not in compliance with the order, adjudge the respondent in  
30 contempt of the order and shall assess civil penalties of an

1 amount not less than \$100 nor greater than \$1,000 per violation  
2 plus \$200 for each continuing day of violation. Where the  
3 respondent has not as of the date of hearing before the court  
4 complied with the order of the department or board, the court  
5 shall specifically order the respondent to immediately and fully  
6 comply with such order, and may issue any further order as may  
7 be appropriate.

8 Section 9. Coordination with environmental protection programs.

9 The department and municipalities shall coordinate the  
10 implementation of this act with the administration of the  
11 environmental protection programs for erosion and sedimentation  
12 control, stormwater management and water obstructions.

13 Section 10. Inspections.

14 (a) An agent or employee of the Department of Environmental  
15 Resources or of a municipality administering bluff setback  
16 ordinances and regulations shall have the power to, upon  
17 presentation of proper credentials:

18 (1) Enter any land for the purpose of surveying bluff  
19 recession hazard areas.

20 (2) Enter any land in a bluff recession hazard area for  
21 the purpose of ascertaining the location of structure or  
22 structures.

23 (3) Enter land or any structure located in a bluff  
24 recession hazard area for the purpose of ascertaining the  
25 compliance or noncompliance with the bluff setback ordinance  
26 and regulations adopted pursuant to this act.

27 (b) Whenever an agent or employee of the Department of  
28 Environmental Resources or a municipality charged with the  
29 enforcement of the provisions of this act has been refused  
30 access to property for the purposes of conducting a survey or

1 inspection as authorized by this section or reasonably requires  
2 access to such property without prior notice to the owner, such  
3 agent or employee may apply for an inspection warrant to any  
4 Commonwealth official authorized by law to issue a search or  
5 inspection warrant to enable him or her to have access and  
6 inspect such property. It shall be sufficient probable cause to  
7 issue an inspection warrant that the inspection is necessary to  
8 properly enforce the provisions of this act.

9 Section 11. Grants and reimbursements to municipalities.

10 (a) The department is authorized to administer grants to  
11 municipalities to assist or reimburse them for costs in  
12 preparing or amending bluff setback ordinances and actual  
13 administrative enforcement and implementation costs as required  
14 by this act. Grants and reimbursements shall be made from and to  
15 the extent of Federal funding augmentation under the Federal  
16 Coastal Zone Management Act as appropriated by the General  
17 Assembly for such purposes and shall be made in accordance to  
18 rules and regulations adopted by the department in accordance  
19 with the following:

20 The grant shall be limited to:

21 (i) Seventy-five per cent of the allowable costs for  
22 preparation of a bluff setback ordinance, and  
23 administrative, enforcement, and implementation costs  
24 required by this act; and revisions of a bluff setback  
25 ordinance incurred by any municipality, which prior to  
26 the effective date of this act, adopted a bluff setback  
27 ordinance.

28 (ii) Fifty per cent of the allowable costs for  
29 administration of an ordinance incurred by any  
30 municipality. Allowable costs for administration of bluff

1 setback ordinance shall not include those costs which are  
2 offset by reasonable permit fees imposed by the  
3 municipality.

4 (b) Nothing in this section shall be construed to impair or  
5 limit application of this act to any municipality or person, or  
6 to relieve any municipality or person of duties imposed under  
7 this act.

8 Section 12. Criminal penalties.

9 (a) Any person other than the officers of a municipality,  
10 county or governmental unit who violates the requirements of  
11 section 5 or any bluff setback ordinance or regulation, is  
12 guilty of a summary offense and, upon conviction, shall be  
13 sentenced to pay a fine of not less than \$100 nor more than  
14 \$1,000 for each separate offense, and, in default of the payment  
15 of such fine, to imprisonment for a period of not more than 60  
16 days. All summary proceedings under this act may be brought  
17 before any district magistrate of the county where the violation  
18 occurred, and jurisdiction is hereby conferred upon said  
19 district magistrates subject to appeal by either party in the  
20 manner provided by law. In the case of any appeal from any such  
21 conviction in the manner provided by law for appeals from  
22 summary conviction, it shall be the duty of the district  
23 attorney of the county to represent the interests of the  
24 Commonwealth.

25 (b) Any person who, within two years after a conviction in a  
26 summary proceeding as provided in subsection (a), violates the  
27 requirements of section 5 or any bluff setback ordinances or  
28 regulations, is guilty of a misdemeanor of the third degree and,  
29 upon conviction, shall be sentenced to pay a fine of not less  
30 than \$500 nor more than \$5,000 for each separate offense or to

1 imprisonment for a period of not more than one year, or both.

2 (c) Each day of continued violation of any provision of this  
3 act or any bluff setback ordinances or regulation shall  
4 constitute a separate offense under subsections (a) and (b).

5 Section 13. Civil remedies.

6 (a) Any activity conducted in violation of section 5, or of  
7 any bluff setback ordinances or regulations adopted hereunder,  
8 is declared to be a public nuisance.

9 (b) Suits to restrain, prevent or abate violations of this  
10 act or any bluff setback ordinances or regulations adopted  
11 hereunder, may be instituted in equity or at law by the  
12 department, any affected county or municipality, or any  
13 aggrieved person. Such proceedings may be prosecuted in the  
14 Commonwealth Court, or in the court of common pleas of the  
15 county where the activity has taken place, the condition exists,  
16 or the public affected, and to that end jurisdiction is hereby  
17 conferred in law and equity upon such courts. Except in cases of  
18 emergency where, in the opinion of the court, the circumstances  
19 of the case require immediate abatement of the unlawful conduct,  
20 the court may, in its decree, fix a reasonable time during which  
21 the person responsible for the unlawful conduct shall correct or  
22 abate the same. The expense of such proceedings shall be  
23 recoverable from the violator in such manner as may now or  
24 hereafter be provided by law.

25 Section 14. Appeals.

26 (a) Any person or municipality aggrieved by an action of the  
27 department shall have the right within 30 days of the receipt of  
28 notice of such action to appeal such action to the Environmental  
29 Hearing Board, pursuant to section 1921-A of the act of April 9,  
30 1929 (P.L.177, No.175), known as "The Administrative Code of

1 1929," and the "Administrative Agency Law."

2 (b) An appeal of any action under this act shall not act as  
3 a supersedeas. A supersedeas may be granted by the Environmental  
4 Hearing Board upon a showing by the petitioner:

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

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

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

11 The hearing board may grant such a supersedeas subject to  
12 such security as it may deem proper.

13 Section 15. Repealer and savings clause.

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

16 (b) The provisions of this act shall not affect any suit or  
17 prosecution pending or to be instituted to enforce any right or  
18 penalty or punish any offense under the authority of any act of  
19 assembly or part thereof repealed by this act.

20 Section 16. Effective date.

21 This act shall take effect immediately.