

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1364 Session of
2007

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READSHAW, REICHLEY, SAYLOR, SCAVELLO, SCHRODER, SOLOBAY,
WALKO, WATSON, YOUNGBLOOD, YUDICHAK AND MELIO, MAY 24, 2007

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MAY 24, 2007

AN ACT

1 Providing for the acquisition of property by local government
2 units to mitigate flood hazards.

3 TABLE OF CONTENTS

4 Section 1. Short title.

5 Section 2. Legislative intent.

6 Section 3. Definitions.

7 Section 4. Acquiring property interests to mitigate flood
8 hazards.

9 Section 5. Public hearing.

10 Section 6. Property acquired in fee simple.

11 Section 7. Local taxing options.

12 Section 8. Procedure for acquisitions by local government
13 units.

14 Section 9. Borrowing and acquisitions on installment basis.

15 Section 10. Exercise of eminent domain.

1 Section 11. Assessment.

2 Section 12. Termination or disposition of property interests.

3 Section 13. Utility rights-of-way and underground gas storage.

4 Section 14. Construction.

5 Section 15. Effective date.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Flood Hazard
10 Mitigation Act.

11 Section 2. Legislative intent.

12 The purpose of this act is to reduce future risk of flood
13 damages, while promoting the goals of preserving land for storm
14 water management, open space, recreational, wetland and related
15 purposes, by providing a means by which local government units
16 may acquire property that is either located in areas having
17 special flood hazards or other areas of flood risk or property
18 that is substantially damaged by flood.

19 Section 3. Definitions.

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

23 "Flood Mitigation Assistance Program." The Federal program
24 authorized by sections 1366 and 1367 of the National Flood
25 Insurance Act of 1968 (Public Law 90-448, 42 U.S.C. § 4104c) and
26 the regulations appertaining thereto.

27 "Hazard Mitigation Grant Program." The Federal program
28 pursuant to which hazard mitigation grants are made under the
29 provisions of section 404 of The Robert T. Stafford Disaster
30 Relief and Emergency Assistance Act (Public Law 93-288, 42

1 U.S.C. § 5170c) and the regulations appertaining thereto.

2 "Interest in real property." Any right in real property,
3 improvements thereto or water, whatsoever, including, but not
4 limited to, a fee simple, easement, remainder, future interest,
5 transferable development right, lease, license, restriction or
6 covenant of any sort, option or contractual interest or
7 concerning the use of or power to transfer property.

8 "Local government unit." Any of the following:

9 (1) A county.

10 (2) A county authority having among the purpose for
11 which it was created the mitigation of flood hazards.

12 (3) A municipal corporation as defined in 1 Pa.C.S. §
13 1991 (relating to definitions) or any similar general purpose
14 unit of local government.

15 (4) A unit created by joint action of two or more local
16 government units which is authorized to be created by the
17 General Assembly, including cooperation by two or more local
18 government units under 53 Pa.C.S. Ch 23 Subch. A (relating to
19 intergovernmental cooperation).

20 "Mitigation of flood hazards." The acquisition of interests
21 in property located in areas having special flood hazards or
22 other areas of flood risk and property substantially damaged by
23 flood in accordance with or supplementary to the Hazard
24 Mitigation Grant Program or the Flood Mitigation Assistance
25 Program, provided that the property so acquired is used in a
26 manner compatible with storm water management, open space,
27 recreational or wetland management practices, including parks
28 for outdoor recreational activities, nature reserves,
29 cultivation, grazing, camping, storm water management control
30 devices, buffer zones and other uses consistent with the use

1 restrictions of the Hazard Mitigation Grant Program and the
2 Flood Mitigation Assistance Program.

3 Section 4. Acquiring property interests to mitigate flood
4 hazards.

5 (a) Authorization.--

6 (1) A local government unit may acquire, by purchase,
7 contract, condemnation, gift, devise or otherwise, interests
8 in real property for the mitigation of flood hazards.

9 (2) Acquisitions of interests in real property by a
10 local government unit under this act are limited to interests
11 in real property situate within its boundaries.

12 (b) Demolition and relocation.--The authority to acquire
13 interests in real property under this act shall include the
14 authority to provide for the demolition of structures on or the
15 relocation of structures from the property acquired.

16 Section 5. Public hearing.

17 Interests in real property may not be acquired under this act
18 unless a public hearing is held, after notice both to the owners
19 of interests in real property to be acquired and to the local
20 government unit in which land is situate. At the public hearing,
21 the entity acquiring the property interests shall set forth the
22 interests to be taken and their proposed use, and persons and
23 municipalities affected by the acquisition shall have an
24 opportunity to present relevant evidence.

25 Section 6. Property acquired in fee simple.

26 If the owner of an interest in real property to be acquired
27 under this act prefers to have the local government unit acquire
28 the property in fee simple, the local government unit shall be
29 required to acquire the property in fee simple.

30 Section 7. Local taxing options.

1 (a) General rule.--To provide revenue to make acquisitions
2 for the mitigation of flood hazards or retire the indebtedness
3 incurred in the mitigation of flood hazards, a local government
4 unit shall have the following local tax options:

5 (1) In addition to the statutory rate limits on real
6 estate taxes provided for counties, a county may, by
7 ordinance, impose a tax on real property not exceeding the
8 millage authorized by referendum as required by subsection
9 (b).

10 (2) In addition to the statutory rate limits provided
11 for the respective class of local government units, a local
12 government unit, excluding a county and county authority,
13 may, by ordinance, impose either a tax on real property not
14 exceeding the millage authorized by referendum under
15 subsection (b) or a tax on the earned income of the residents
16 of that local government unit not exceeding the rate
17 authorized by referendum under subsection (b).

18 (b) Referendum.--

19 (1) The local taxing option authorized by this section
20 shall not be exercised unless the governing body of the local
21 government unit shall, by ordinance, first provide for a
22 referendum on the question of the imposition of the
23 additional tax at a specific rate and a majority of those
24 voting on the referendum question vote in favor of the
25 imposition of the tax. The ordinance of the governing board
26 of the local government unit providing for a referendum on
27 the question shall be filed with the county board of
28 elections.

29 (2) The referendum shall be governed by the provisions
30 of the act of June 3, 1937 (P.L.1333, No.320), known as the

1 Pennsylvania Election Code.

2 (3) The election official shall cause the question to be
3 submitted to the electors of the local government unit at the
4 next primary, general or municipal election occurring not
5 less than the 13th Tuesday following the filing of the
6 ordinance with the county board of elections.

7 (4) At such election, the question shall be submitted to
8 the voters in the same manner as other questions are
9 submitted under the provisions of the Pennsylvania Election
10 Code. The question to be placed upon the ballot shall be
11 framed in the following form:

12 Do you favor the imposition of a (describe tax in millage
13 or rate) by (local government unit) to be used in the
14 mitigation of flood hazards to (purpose)?

15 Section 8. Procedure for acquisitions by local government
16 units.

17 (a) Recordkeeping.--When a local government unit acquires an
18 interest in real property as authorized under this act, it shall
19 establish and maintain a repository of records of the interests
20 in real property that have been or are acquired by the local
21 government unit. The local government unit shall also record
22 each interest in real property acquired by the local government
23 unit in the office of the recorder of deeds for the county in
24 which the real property is located.

25 (b) Copy to school district.--A local government unit
26 acquiring an interest in real property shall submit to the
27 school district within which the real property is located a
28 copy, certificated by the county recorder of deeds, of the deed
29 reflecting the acquisition.

30 Section 9. Borrowing and acquisitions on installment basis.

1 (a) Authority to incur debt.--

2 (1) A local government unit that is governed by 53
3 Pa.C.S. Pt. VII Subpt. B (relating to indebtedness and
4 borrowing) may incur indebtedness under 53 Pa.C.S. Pt. VII
5 Subpt. B for the purposes of acquiring property interests
6 under the provisions of this act, and a local government unit
7 may authorize the establishment of a program to purchase the
8 property interests on an installment or other deferred basis.

9 (2) The obligation of the local government unit to make
10 payments on an installment or other deferred basis shall not
11 be subject to the requirements of 53 Pa.C.S. § 8142(b) or (c)
12 (relating to limitations on stated maturity dates).

13 (b) Interest to be paid to landowner.--A landowner who
14 enters into an installment agreement with a local government
15 unit shall receive, in addition to the selling price, interest
16 in an amount or at a rate set forth in the purchase agreement.

17 Section 10. Exercise of eminent domain.

18 The use of the power of eminent domain to acquire interests
19 in real property for the purposes of this act shall be subject
20 to restrictions and limitations imposed by Federal and State
21 law.

22 Section 11. Assessment.

23 Any interest in property acquired by a local government unit
24 under this act shall be held for public purposes and be exempt
25 from taxation. The assessment of private interests in land
26 subject to an interest in property acquired under this act shall
27 reflect any change in market value of the property that may
28 result from the acquisition of the property interest by the
29 local government unit.

30 Section 12. Termination or disposition of property interests.

Property interests acquired under this act may be terminated or disposed of in a manner not inconsistent with any restrictions and limitations imposed by the Hazard Mitigation Grant Program or the Flood Mitigation Assistance Program.

Section 13. Utility rights-of-way and underground gas storage.

(a) General rule.--The ownership by a local government unit of a property interest acquired under this act shall not preclude the acquisition, by lease, purchase or eminent domain, and use of rights-of-way or underground gas storage rights in such property by a public utility or other body entitled to exercise the power of eminent domain. In the case of an acquisition by a public utility, such acquisition shall occur only if the Pennsylvania Public Utility Commission, after public hearing, shall find that such acquisition and use are necessary or proper for the service, accommodation, convenience or safety of the public. In the case of an acquisition by a body other than a public utility, such acquisition shall occur only if the local government unit, after public hearing, shall approve the acquisition.

(b) Notice of the public hearing.--

(1) Notice of public hearing required under subsection (a) shall include a statement of the purpose of the public hearing and the date, time and place of the public hearing and be given by publication one time at least 20 days prior to the hearing in a newspaper of general circulation in the area where the property is located. In addition, a written notice shall be conspicuously posted at points deemed sufficient by the body conducting the public hearing to notify potentially interested citizens. The affected tract shall be posted at least ten days prior to the hearing.

1 (2) If a local government unit owns an interest in
2 property that is the subject of the hearing, and is not
3 itself conducting the hearing, notice shall be sent by United
4 States first class mail at least 20 days prior to the hearing
5 to the local government unit.

6 Section 14. Construction.

7 The authority granted to the local government units under
8 this act shall be in addition to and not in limitation of any
9 other authority heretofore or hereafter granted to a local
10 government unit by any other law and shall be construed to
11 enlarge and not to reduce or limit the power and authority of
12 local government units.

13 Section 15. Effective date.

14 This act shall take effect immediately.