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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1598 Session of  
2021

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INTRODUCED BY BOBACK, SAPPEY, PICKETT, HELM, HENNESSEY AND  
SAINATO, JUNE 10, 2021

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REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY  
PREPAREDNESS, JUNE 10, 2021

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AN ACT

1 Amending the act of October 4, 1978 (P.L.851, No.166), entitled  
2 "An act providing for the regulation of land and water use  
3 for flood control purposes, imposing duties and conferring  
4 powers on the Department of Community Affairs, the Department  
5 of Environmental Resources, and municipalities, providing for  
6 penalties and enforcement and making appropriations,"  
7 replacing references to the Department of Community Affairs  
8 with the Pennsylvania Emergency Management Agency; in  
9 miscellaneous and appropriations, repealing provisions  
10 related to appropriations; and making editorial changes.

11 The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13 Section 1. The title of the act of October 4, 1978 (P.L.851,  
14 No.166), known as the Flood Plain Management Act, is amended to  
15 read:

16 AN ACT

17 Providing for the regulation of land and water use for flood  
18 control purposes, imposing duties and conferring powers on  
19 the [Department of Community Affairs] Pennsylvania Emergency  
20 Management Agency, the Department of Environmental  
21 [Resources] Protection, and municipalities, providing for

1 penalties and enforcement and making appropriations.

2 Section 2. The definition of "department" in section 104 of  
3 the act is repealed:

4 Section 104. Definitions.

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

8 ["Department." The Department of Community Affairs of the  
9 Commonwealth of Pennsylvania.]

10 \* \* \*

11 Section 3. Sections 205, 206, 207, 301, 302(b), 401, 402,  
12 403, 404, 501 and 502 of the act are amended to read:

13 Section 205. [Department review] Review and approval of  
14 municipal flood plain management regulations.

15 (a) The [department] Pennsylvania Emergency Management  
16 Agency shall, in consultation with the Department of  
17 Environmental [Resources] Protection, 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] Pennsylvania Emergency Management  
24 Agency, in consultation with the Department of Environmental  
25 [Resources] Protection, shall adopt, and periodically review and  
26 amend, regulations including but not limited to:

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

30 (2) Procedures, requirements and standards for

1 submission, review and approval of municipal flood plain  
2 management regulations pursuant to this section.

3 (c) Prior to adoption of [department] Pennsylvania Emergency  
4 Management Agency regulations pursuant to this section, the  
5 [department] Pennsylvania Emergency Management Agency shall hold  
6 at least one public hearing, after public notice, in each major  
7 river basin of the Commonwealth. Prior to any amendment of  
8 [department] Pennsylvania Emergency Management Agency  
9 regulations, the [department] Pennsylvania Emergency Management  
10 Agency shall hold at least one public hearing after public  
11 notice.

12 Section 206. Municipalities [required to comply] compliance  
13 with [department] Pennsylvania Emergency Management  
14 Agency regulations.

15 Each municipality participating in the National Flood  
16 Insurance Program shall comply with any regulations adopted by  
17 the [department] Pennsylvania Emergency Management Agency  
18 pursuant to this chapter within six months of the effective date  
19 of such regulations. A municipality shall be deemed to have  
20 complied with [department] Pennsylvania Emergency Management  
21 Agency regulations if it has received [department] Pennsylvania  
22 Emergency Management Agency approval as provided for in this  
23 chapter. The [department] Pennsylvania Emergency Management  
24 Agency shall not adopt regulations more strict than the  
25 regulations of the National Flood Insurance Program and shall  
26 not require the regulations of the municipalities to be more  
27 strict than the regulations of the National Flood Insurance  
28 Program: Provided, however, That these limitations shall not  
29 apply to section 207 or the special hazards under sections 301  
30 and 302.

1 Section 207. Regulations to prohibit development which has been  
2 determined as dangerous to human life.

3 The regulations promulgated by the [department] Pennsylvania  
4 Emergency Management Agency shall prohibit the construction or  
5 substantial improvement of structures in an area which has been  
6 determined by the Environmental Quality Board as a flood hazard  
7 area on a flood insurance rate map promulgated by the Department  
8 of Housing and Urban Development which may endanger human life.

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

11 (a) The [department] Pennsylvania Emergency Management  
12 Agency shall by regulation publish a list of obstructions which  
13 it determines present a special hazard to the health and safety  
14 of the public or occupants or may result in significant  
15 pollution, increased flood levels or flows or debris endangering  
16 life and property, if such obstructions are located in all or a  
17 designated portion of the flood plain. These obstructions are  
18 limited to: hospitals, nursing homes, jails, new mobile home  
19 parks, subdivision or substantial additions to mobile home parks  
20 or subdivisions.

21 (b) Construction of any structure or commencement of any  
22 activity listed as a special hazard by [department] Pennsylvania  
23 Emergency Management Agency regulations in a flood plain or such  
24 portion of the flood plain designated by the regulations shall  
25 be prohibited except in accordance with a special exception  
26 issued pursuant to this section.

27 (c) A municipality administering flood plain management  
28 regulations may issue a special exception if the applicant  
29 demonstrates and the municipality determines that the structure  
30 or activity will be located, constructed and maintained in a

1 manner which:

2 (1) will fully protect the health and safety of the  
3 public or occupants;

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

7 (3) will comply with the requirements of the National  
8 Flood Insurance Program.

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

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

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

26 \* \* \*

27 (b) No person shall construct, modify, remove, abandon or  
28 destroy any structure or engage in any activity specified in  
29 subsection (a) in the 100-year flood plain unless such person  
30 has first applied for and obtained a permit from the Department

1 of Environmental [Resources] Protection. The [department]  
2 Department of Environmental Protection may impose such permit  
3 terms and conditions as it deems necessary to carry out the  
4 purposes of this act. The permit shall become effective 60 days  
5 following the receipt of the application by the [department]  
6 Department of Environmental Protection unless the application is  
7 disapproved by the [department] Department of Environmental  
8 Protection. If the [department] Department of Environmental  
9 Protection disapproves the application it shall notify the  
10 applicant of the reasons for disapproval.

11 \* \* \*

12 Section 401. Powers and duties [of the Department of Community  
13 Affairs and the Department of Environmental  
14 Resources].

15 (a) The [Department of Community Affairs] Pennsylvania  
16 Emergency Management Agency shall have the power and its duty  
17 shall be to:

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

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

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

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

1 (b) The [Department of Community Affairs] Pennsylvania  
2 Emergency Management Agency and the Department of Environmental  
3 [Resources] Protection shall exercise the joint powers and their  
4 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]  
18 Pennsylvania Emergency Management Agency, the Department of  
19 Environmental [Resources] Protection 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] Pennsylvania Emergency Management Agency, the  
6 Department of Environmental [Resources] Protection, or of a  
7 municipality administering flood plain management regulations  
8 shall have the power and duty to, upon presentation of proper  
9 credentials:

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

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

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

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

1 this act.

2 Section 404. Grants and reimbursements to municipalities and  
3 counties.

4 (a) The [Department of Community Affairs] Pennsylvania  
5 Emergency Management Agency is authorized to administer grants  
6 to municipalities and counties to assist or reimburse them for  
7 costs in preparing official plans and actual administrative  
8 enforcement and implementation costs and revisions to official  
9 plans for flood plain management required by this act, and for  
10 carrying out related studies, surveys, investigations, research  
11 and analyses. Grants and reimbursements shall be made from and  
12 to the extent of funds appropriated by the General Assembly for  
13 such purposes, and shall be made in accordance to rules and  
14 regulations adopted by the [Department of Community Affairs]  
15 Pennsylvania Emergency Management Agency and in accordance with  
16 the following:

17 (1) The grant shall be equal to:

18 (i) 50% of the allowable costs for preparation of  
19 official plans, administrative, enforcement and  
20 implementation costs required by this act, and revisions  
21 of official plans incurred by any municipality or county  
22 which prior to the effective date of this act adopted a  
23 flood area management program which complies with Title  
24 24, section 1910.3(c) or 1910.3(d) of the regulations of  
25 the Department of Housing and Urban Development, Federal  
26 Insurance Administration; or

27 (ii) 50% of the allowable costs for preparation of  
28 official plans, administrative, enforcement and  
29 implementation costs required by this act, and revisions  
30 of official plans incurred by any municipality or county

1 not covered by subclause (i); and

2 (iii) 50% of the allowable costs for administration  
3 of official plans incurred by any municipality or county.  
4 Allowable costs for administration of official plans  
5 shall not include those costs which are offset by  
6 reasonable permit fees imposed by the municipality or  
7 county.

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

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

15 (b) Nothing in this section shall be construed to impair or  
16 limit application of this act to any municipality or person, or  
17 to relieve any municipality or person of duties imposed under  
18 this act.

19 (c) If, in any fiscal year, appropriations are insufficient  
20 to cover the costs or grants and reimbursements to all  
21 municipalities or counties eligible for such grants and  
22 reimbursements in that fiscal year, the [Department of Community  
23 Affairs] Pennsylvania Emergency Management Agency shall report  
24 such fact to the General Assembly and shall request  
25 appropriation of funds necessary to provide the grants  
26 authorized in this section. If such a deficiency appropriation  
27 is not enacted, any municipality or county which has not  
28 received the full amount of the grant for which it is eligible  
29 under this section shall be as a first priority reimbursed from  
30 appropriations made in the next successive fiscal year.

1 Section 501. Penalties.

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

9 (b) Within 60 days of receipt of the notice of violation,  
10 the municipality shall report to the [department] Pennsylvania  
11 Emergency Management Agency the action which it is taking to  
12 comply with the requirement or regulation.

13 (c) If within 180 days of receipt of the notice of  
14 violation, the municipality has failed to comply with such  
15 requirement or regulation, as determined by the [department]  
16 Pennsylvania Emergency Management Agency, the [Secretary of  
17 Community Affairs] Pennsylvania Emergency Management Agency  
18 shall notify the State Treasurer to withhold payment of all  
19 funds payable to the municipality from the General Fund or any  
20 other fund. Upon notification, the State Treasurer shall hold in  
21 escrow all moneys due to such municipality from the Commonwealth  
22 until such time as the [department] Pennsylvania Emergency  
23 Management Agency notifies the State Treasurer that the  
24 municipality has complied with such requirement or regulation.

25 Section 502. Civil remedies.

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

29 (b) Suits to restrain, prevent or abate violation of this  
30 act or of any flood plain management regulations may be

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

17 Section 4. Section 602 of the act is repealed:

18 [Section 602. Appropriations.

19 (a) The sum of \$750,000, or as much thereof as may be  
20 necessary, is hereby appropriated for the fiscal period  
21 beginning July 1, 1978, and ending June 30, 1979, to the  
22 Department of Community Affairs for the purposes of  
23 administrative and general expenses in implementing the  
24 provisions of this act.

25 (b) The sum of \$250,000, or as much thereof as may be  
26 necessary, is hereby appropriated for the fiscal period  
27 beginning July 1, 1978, and ending June 30, 1979, to the  
28 Department of Environmental Resources for the purposes of this  
29 act.]

30 Section 5. All activities initiated by the Department of

1 Community Affairs or the Department of Community and Economic  
2 Development shall continue and remain in full force and effect  
3 and may be completed by the Pennsylvania Emergency Management  
4 Agency. Orders, regulations, rules and decisions which were made  
5 by the Department of Community Affairs or the Department of  
6 Community and Economic Development and which are in effect on  
7 the effective date of this section shall remain in full force  
8 and effect until revoked, vacated or modified by the  
9 Pennsylvania Emergency Management Agency. Contracts, obligations  
10 and collective bargaining agreements entered into by the  
11 Department of Community Affairs or the Department of Community  
12 and Economic Development are not affected nor impaired by the  
13 replacement of the Department of Community and Economic  
14 Development with the Pennsylvania Emergency Management Agency.  
15 Section 6. This act shall take effect in 60 days.