

## No. 1978-166

## AN ACT

## SB 743

Providing for the regulation of land and water use for flood control purposes, imposing duties and conferring powers on the Department of Community Affairs, the Department of Environmental Resources, and municipalities, providing for penalties and enforcement and making appropriations.

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

CHAPTER 1  
PRELIMINARY PROVISIONS

Section 101. Short title.

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

Section 102. Statement of legislative findings.

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

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

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

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

Section 103. Statement of policy and purposes.

The policy and purpose of this act is to:

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

(2) Protect people and property in flood plains from the dangers and

damage of floodwaters and from materials carried by such floodwaters.

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

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

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

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

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

#### Section 104. Definitions.

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

“Department.” The Department of Community Affairs of the Commonwealth of Pennsylvania.

“Fill.” Sand, gravel, earth or other material placed or deposited so as to form an embankment or raise the elevation of the land surface.

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

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

“Floodproofing.” Structural or other changes or adjustments to properties or obstructions for the reduction or elimination of flood damages to such properties and obstructions or to the contents of any structure.

“Municipality.” A city, borough, town or township or any similar general purpose unit of government, or county or other governmental unit when acting as an agent thereof, or any combination thereof acting jointly.

“New mobile home park or mobile home subdivision.” A parcel (or contiguous parcels) of land divided into two or more mobile home lots for rent or sale for which the construction of facilities for servicing the lot on which the mobile home is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of flood plain management regulations adopted by a community.

“Obstruction.” Any structure or assembly of materials including fill above or below the surface of land or water, and an activity which might impede, retard or change flood flows. The planting, cultivation and harvesting of field and orchard crops or the grazing of livestock, including

the maintenance of necessary appurtenant agricultural fencing, shall not be considered an "obstruction" under this definition and shall not be subject to regulation under this act.

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

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

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

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

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

"Special hazard obstruction." This shall include but not be limited to hospitals, nursing homes, jails and facilities necessary for emergency response.

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

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

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

- (i) any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
- (ii) any alteration of a structure listed on the National Register of Historic Places or a State inventory of historic places.

“Watershed.” The entire region or area drained by a river or other body of water, whether natural or artificial.

**CHAPTER 2**  
**MUNICIPAL PARTICIPATION IN NATIONAL FLOOD**  
**INSURANCE PROGRAM**

**Section 201. Required participation in National Flood Insurance Program.**

(a) Each municipality which has been notified by the United States Department of Housing and Urban Development that it has been identified as having an area or areas which are subject to flooding shall participate in the National Flood Insurance Program.

(b) If a municipality with an area or areas subject to flooding is not participating in the National Flood Insurance Program at the time this act becomes effective, such municipality shall apply for eligibility and fully comply with the requirements for participation within six months of the effective date of this act, or six months from the date of notification by the United States Department of Housing and Urban Development that it has been identified as having an area or areas subject to flooding, whichever is first.

(c) If a municipality, for whatever reason, is suspended from the National Flood Insurance Program, once having gained eligibility, such municipality shall regain eligibility within 90 days of the date of receipt of its notice of suspension.

**Section 202. Adoption of flood plain management regulations.**

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

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

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

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

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

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

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

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

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

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

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

**Section 206. Municipalities required to comply with department regulations.**

Each municipality participating in the National Flood Insurance Program shall comply with any regulations adopted by the department pursuant to this chapter within six months of the effective date of such regulations. A municipality shall be deemed to have complied with department regulations if it has received department approval as provided for in this chapter. The department shall not adopt regulations more strict than the regulations of the National Flood Insurance Program and shall not require the regulations of the municipalities to be more strict than the regulations of the National Flood Insurance Program: Provided, however, That these limitations shall not apply to section 207 or the special hazards under sections 301 and 302.

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

The regulations promulgated by the department shall prohibit the

construction or substantial improvement of structures in an area which has been determined by the Environmental Quality Board as a flood hazard area on a flood insurance rate map promulgated by the Department of Housing and Urban Development which may endanger human life.

### CHAPTER 3 REGULATION OF PARTICULAR OBSTRUCTIONS

Section 301. Obstructions posing special hazards in flood plains.

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

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

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

- (1) will fully protect the health and safety of the public or occupants;
- (2) will prevent any significant possibility of pollution, increased flood levels or flows, or debris endangering life and property; and
- (3) will comply with the requirements of the National Flood Insurance Program.

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

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

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

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

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

(2) any flood control project constructed, owned or maintained by a governmental unit;

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

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

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

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

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

(e) The Department of Environmental Resources shall regulate those obstructions subject to exclusive State jurisdiction in a manner consistent to the maximum extent possible with the standards and criteria established in municipal flood plain management regulations.

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

#### CHAPTER 4 POWERS AND DUTIES

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 403. Inspections.

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

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

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

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

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

Section 404. Grants and reimbursements to municipalities and counties.

(a) The Department of Community Affairs is authorized to administer grants to municipalities and counties to assist or reimburse them for costs in preparing official plans and actual administrative enforcement and implementation costs and revisions to official plans for flood plain management required by this act, and for carrying out related studies, surveys, investigations, research and analyses. Grants and reimbursements shall be made from and to the extent of funds appropriated by the General Assembly for such purposes, and shall be made in accordance to rules and regulations adopted by the Department of Community Affairs and in accordance with the following:

(1) The grant shall be equal to:

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

(ii) 50% of the allowable costs for preparation of official plans, administrative, enforcement and implementation costs required by this act, and revisions of official plans incurred by any municipality or county not covered by subclause (i); and

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

(2) For the purposes of this section, such State grants shall be in

addition to grants for similar purposes made to any municipality or county by the Federal Government: Provided, That the grants authorized by this section shall be limited such that the total of all State and Federal grants does not exceed 50% of the allowable costs incurred by the municipality or county.

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

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

## CHAPTER 5 PENALTIES; CIVIL REMEDIES; APPEALS

### Section 501. Penalties.

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

(b) Within 60 days of receipt of the notice of violation, the municipality shall report to the department the action which it is taking to comply with the requirement or regulation.

(c) If within 180 days of receipt of the notice of violation, the municipality has failed to comply with such requirement or regulation, as determined by the department, the Secretary of Community Affairs shall notify the State Treasurer to withhold payment of all funds payable to the municipality from the General Fund or any other fund. Upon notification, the State Treasurer shall hold in escrow all moneys due to such municipality from the Commonwealth until such time as the department notifies the State Treasurer that the municipality has complied with such requirement or regulation.

### Section 502. Civil remedies.

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

(b) Suits to restrain, prevent or abate violation of this act or of any flood plain management regulations may be instituted in equity or at law by the department, the Department of Environmental Resources, any affected county or municipality, or any aggrieved person. Such proceedings may be prosecuted in the Commonwealth Court, or in the court of common pleas of the county where the obstruction exists, conduct

occurs, or the public affected, and to that end jurisdiction is hereby conferred in law and equity upon such courts. Except in cases of emergency where, in the opinion of the court, the circumstances of the case require immediate abatement of the unlawful obstruction or conduct, the court may, in its decree, fix a reasonable time during which the person responsible for the unlawful obstruction or conduct shall correct or abate the same. The expense of such proceedings shall be recoverable from the violator in such manner as may now or hereafter be provided by law.

Section 503. Appeals.

(a) Any person aggrieved by any action of the Department of Community Affairs shall have the right within 30 days of receipt of notice of such action to appeal such action and request a hearing in accordance with the "Administrative Agency Law."

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

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

- (1) that irreparable harm to the petitioner or other interested parties will result if supersedeas is denied;
- (2) that there is a likelihood of the petitioner's success on the merits; and
- (3) that the grant of a supersedeas will not result in irreparable harm to the Commonwealth.

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

## CHAPTER 6 MISCELLANEOUS; APPROPRIATIONS

Section 601. Preservation of existing rights and remedies.

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

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

Section 602. Appropriations.

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

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

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

Section 603. Repealer and savings clause.

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

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

Section 604. Effective date.

This act shall take effect immediately.

APPROVED—The 4th day of October, A. D. 1978.

MILTON J. SHAPP