

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 40

Session of
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INTRODUCED BY BODACK, REGOLI, SCANLON, BELAN, DAWIDA, FISHER,
LYNCH, STOUT AND MUSTO, JANUARY 23, 1989

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY,
JANUARY 23, 1989

AN ACT

1 Permitting counties of the second class to form storm water
2 management districts for the purpose of regulating storm
3 water within designated watershed boundaries; imposing duties
4 and conferring powers on second class county storm water
5 districts, on municipalities and on persons engaged in the
6 development of land; and providing for organization, for
7 function, for enforcement and for financing.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Storm Water
9 District for Second Class Counties Act.

10 Section 2. Legislative findings.

11 The General Assembly finds that:

12 (1) There are several adverse consequences of
13 uncontrolled runoff of storm water, including increased flood
14 stages in streams, reduced groundwater recharge, erosion and
15 sedimentation problems and decreased stream quality.

16 (2) A storm water district and comprehensive storm water
17 management, planning, implementation and enforcement are
18 critical to protect the public health and safety of the
19 people of this Commonwealth.

20 Section 3. Purpose.

21 The purpose of this act is to:

22 (1) Allow counties of the second class to create a
23 district for any of the following purposes:

24 (i) Preventing floods.

25 (ii) Controlling the quantity, direction and
26 velocity of storm water runoff.

27 (iii) Maintaining the watershed conditions in a
28 sound hydrological manner.

29 (2) Encourage the regional regulation and management of
30 storm water within designated watershed boundaries to

1 preserve and protect areas affected by natural storm water
2 runoff and to ensure consistent implementation of the
3 approved storm water management plan within a watershed.

4 Section 4. Definitions.

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

8 "Authority." A body politic and corporate, created pursuant
9 to the act of May 2, 1945 (P.L.382, No.164), known as the
10 Municipality Authorities Act of 1945.

11 "Bonds." The notes, bonds and other evidence of indebtedness
12 or obligations which each district is authorized to issue
13 pursuant to section 11.

14 "Department." The Department of Environmental Resources of
15 the Commonwealth.

16 "District." One or more watersheds, as designated by the
17 Department of Environmental Resources, organized under this act
18 within a second class county for the purposes designated in
19 section 3. The district may include areas outside the second
20 class county with the consent of the boards of commissioners of
21 the interested counties.

22 "Municipality." A city, borough, town, township, county or
23 second class county district, or other governmental unit when
24 acting as an agent thereof, or any combination thereof acting
25 jointly.

26 "Storm water." Drainage runoff from the surface of the land
27 resulting from precipitation or snow or ice melt.

28 "User." Any person who resides, owns property or alters the
29 land use within the boundaries of the district.

30 "Watershed." The entire region or area drained by a river or

1 other body of water, whether natural or artificial.

2 "Watershed storm water plan." A plan for storm water
3 management adopted by a county in accordance with the act of
4 October 4, 1978 (P.L.864, No.167), known as the Storm Water
5 Management Act.

6 Section 5. Second class county storm water districts.

7 (a) Establishment.--The board of commissioners of a second
8 class county may, by resolution, establish a second class county
9 storm water district or districts. Upon approval by the
10 department of a storm water management plan for a watershed
11 located, in whole or in part, within a county of the second
12 class, pursuant to the act of October 4, 1978 (P.L.864, No.167),
13 known as the Storm Water Management Act, that entire watershed
14 shall become a member of the district.

15 (b) Boundaries.--The district boundaries shall be uniform
16 with those watershed boundaries designated by the department.

17 (c) Board of directors.--The district shall have a board of
18 directors composed of three members appointed by the board of
19 commissioners and one member chosen by the governing board of
20 each municipality within the watershed. These members shall
21 serve terms of three years.

22 (d) Executive committee of board.--There shall be seven
23 members of the executive committee of the board. These members
24 shall serve nonconsecutive terms of two years and shall have the
25 duty of carrying out day-to-day functions of the district. The
26 board of commissioners shall appoint no less than one member but
27 no more than three members to the executive committee. The board
28 of directors of the district shall elect the remaining members
29 of the executive committee.

30 (e) Public hearings.--Prior to organization of a district,

1 public hearings shall be scheduled for the purpose of
2 determining whether the purpose of this act would be promoted by
3 creation of a district. Any resident or owner of real property
4 in a proposed district who wishes to object to the organization
5 and incorporation of such district shall, on or before the date
6 of the hearing, file his objections to the organization and
7 incorporation of such district with the county commissioners.

8 Section 6. Powers and duties of district.

9 (a) Powers and duties.--A second class county storm water
10 district shall have the power and duty to:

11 (1) Fix, alter, charge and collect rates and other
12 charges in the area served by its facilities at reasonable
13 and uniform rates as determined exclusively by the district.
14 With regard to the management of storm water, no additional
15 fees, charges or rates may be levied on the review or
16 approval of a plan of subdivision or land development as
17 defined in the act of July 31, 1968 (P.L.805, No.247), known
18 as the Pennsylvania Municipalities Planning Code. Charges
19 made for the purpose of providing for the payment of
20 administrative expenses and general maintenance shall be
21 calculated at a uniform rate based on the level of service
22 required by the user, taking into consideration the
23 characteristics of the property, including, but not limited
24 to, the average values of slope, size, soils and percent of
25 impervious surface. Any delinquent fees or charges shall be
26 collected by the district in accordance with the act of May
27 16, 1923 (P.L.207, No.153), referred to as the Municipal
28 Claim and Tax Lien Law. Any person questioning the
29 reasonableness or uniformity of any rate fixed by the
30 district or the adequacy, safety and reasonableness of the

1 district's services, including extensions thereof, shall
2 first raise such objections with the executive committee of
3 the board and, if necessary, with the full board. After
4 exhausting these administrative remedies, such persons may
5 bring suit against the district in the court of common pleas
6 of the county wherein the project is located, or, if the
7 project is located in more than one county, in the court of
8 common pleas of the county wherein the principal office of
9 the project is located. The court of common pleas shall have
10 exclusive jurisdiction to determine all such questions
11 involving rates or service.

12 (2) Provide administrative expenses of the district.

13 (3) Improve, repair, maintain and operate the facilities
14 and properties.

15 (4) Pay the principal and interest on its obligations.

16 (5) Fulfill the terms and provisions of any agreements
17 made with the purchasers or holders of any such obligations,
18 with the incorporating municipality, with municipalities
19 which are members of the district or with any municipality
20 served or to be served by the district.

21 (6) Determine exclusively the services and improvements
22 required to provide adequate, safe and reasonable service,
23 including extensions thereof in the areas served.

24 (7) Make expenditures.

25 (8) Borrow money, make and issue negotiable notes,
26 bonds, refunding bonds and other evidences of indebtedness or
27 bonds of the district, the bonds to have a maturity date not
28 longer than 40 years from the date of issue.

29 (9) Secure payment of the bonds or any part thereof by
30 pledge or deed of trust of all or any of its revenues and

1 receipts, and to make such agreements with the purchasers or
2 holders of such bonds or with others in connection with any
3 such bonds, whether issued or to be issued.

4 (10) Borrow money and issue such notes, bonds and other
5 indebtedness and obligations jointly with any authority or
6 any public authority of any adjoining state, as the district
7 shall deem advisable and, in general, to provide for the
8 security for the bonds and the rights of the holders thereof
9 and in respect to any project constructed and operated under
10 agreement with any such authority. Any district may enter
11 into any deeds of trust, indentures or other agreements with
12 any bank or trust company or other person or persons in the
13 United States having power to enter into the same, including
14 any Federal agency, as security for such bonds, and may
15 assign and pledge all or any of the revenue of receipts of
16 the district thereunder. Such deed of trust, indenture or
17 agreement may contain such provisions as may be customary in
18 such instruments or as the district may authorize, including,
19 but not limited to, the following:

20 (i) The construction, improvement, operation,
21 maintenance and repair of any project and the duties of
22 the district with reference thereto.

23 (ii) The application of funds and the safeguarding
24 of funds on hand or on deposit.

25 (iii) The rights and remedies of said trustee and
26 the holder of the bonds, which may include restrictions
27 upon the individual right of action of such bondholders.

28 (iv) The terms and provisions of the bonds or the
29 resolutions authorizing the issuance of the same.

30 (11) Use any available Federal or State funds, and any

1 other funds, and set up accounts as are necessary to
2 implement the provisions of this act.

3 (12) Implement the approved storm water management plan
4 for any watershed. These powers may include, but are not
5 limited to:

6 (i) Developing engineering standards for the
7 implementation of the approved storm water management
8 plan to be uniformly applied to all watersheds.

9 (ii) Planning for capital facilities, including the
10 development of maintenance schedules.

11 (iii) Reviewing and approving the location, design
12 and construction within the watershed of storm water
13 management systems, obstructions, flood control projects,
14 subdivisions and major land developments, highways and
15 transportation facilities, facilities for the provision
16 of public utility services and facilities owned and
17 financed, in whole or in part, by funds from the
18 Commonwealth, to assure their consistency with the
19 watershed storm water management plan. The review and
20 approval of subdivisions and major land developments
21 shall be conducted in strict accordance with the
22 requirements of the Pennsylvania Municipalities Planning
23 Code pertaining to plan submission requirements, timing
24 requirements, public hearings, bonding and inspections.
25 The district shall review and take action on such
26 submissions within 30 days of receipt of application.
27 Required storm water facilities shall be accepted for
28 maintenance by the municipality or district upon
29 satisfactory completion of the facilities. Within the
30 parameters of the act of October 4, 1978 (P.L.864,

1 No.167), known as the Storm Water Management Act, the
2 lack of an acceptance agreement shall relieve the
3 developer of any obligation to install required storm
4 water improvements.

5 (iv) Inspecting storm water facilities for adherence
6 to plans and construction and maintenance standards.

7 (v) Providing for routine maintenance.

8 (13) Construct regional facilities.

9 (14) Issue permits to regulate the storm water flow into
10 its regional facilities and enforce the permits.

11 (15) Cooperate with emergency response and relief
12 agencies.

13 (16) Make contracts of every name and nature and execute
14 all instruments necessary or convenient for the carrying out
15 of its business.

16 (17) Provide for public comment on any plan involving
17 the construction of capital facilities.

18 (18) Maintain watershed conditions in a sound
19 hydrological manner.

20 (19) Conduct management practices to ensure the
21 satisfactory performance of the duties of the district,
22 including, but not limited to, an annual audit and
23 engineering review, necessary and proper insurance coverage
24 and an annual report for the citizens. Public hearings shall
25 be scheduled annually to review the district's budget and
26 plan for the coming year.

27 (20) Prepare and implement actions to correct existing
28 storm water management problems as necessary under the
29 approved storm water management plan, according to sound
30 engineering practices and in the most cost-effective manner.

1 (21) Notify the department, as may be required by
2 statute, of activities undertaken by the district.

3 (22) Sign and seal, and return to the municipality
4 within 30 days, any alterations, land development or change
5 in land use plans, as referenced in section 11(a) of the
6 Storm Water Management Act, requiring the preparation or
7 submittal of site development plans to the municipality.

8 (b) Qualities of bonds.--The bonds shall have all the
9 qualities of negotiable instruments under the law merchant and
10 the negotiable instruments law of this Commonwealth.

11 (c) Benefits assessment.--For the purpose of making regional
12 storm water improvements, the district may levy benefit
13 assessments upon the properties within the district which, in
14 its judgment, are especially benefited thereby, whether they
15 abut such improvements or not, according to such rule as the
16 district adopts, subject to the right of appeal. Such
17 assessments may include a proportionate share of the cost of any
18 part of the storm water management system, including the cost of
19 preliminary studies and surveys, detailed working plans and
20 specifications, acquiring necessary land or property or any
21 interest therein, damage awards, construction costs, interest
22 charges during construction, legal or other fees, or any other
23 expense incidental to the completion of the work. In assessing
24 benefits and apportioning the amount to be raised thereby among
25 the properties benefited, the district may give consideration to
26 the area, to assessed real estate value, to present or permitted
27 use of the benefited properties and to any other relevant
28 factors. Revenue from the assessment of benefits shall be used
29 solely for the acquisition or construction of the regional storm
30 water improvements, provided that such benefits are for the

1 payment of principal of and interest on bonds or notes issued to
2 finance such acquisition or construction. No assessment shall be
3 made against any property in excess of the special benefit to
4 accrue to such property.

5 (d) Other requirements.--The powers and duties under this
6 section in no way relieve persons engaged in the alteration or
7 development of land of the responsibility to comply with the
8 requirements of municipal storm water ordinances, the approved
9 storm water management plan and the requirements of the Storm
10 Water Management Act.

11 Section 7. Duties of municipalities.

12 A municipality shall not approve any alteration, land
13 development or change in land use under section 11(a) of the act
14 of October 4, 1978 (P.L.864, No.167), known as the Storm Water
15 Management Act, requiring preparation or submittal of site
16 development plans to the municipality before the plan has been
17 signed and sealed by the district.

18 Section 8. Duty of persons engaged in the development of land.

19 Any person who is engaged in the development of land and who
20 is proposing any alteration, land development or change in land
21 use plan under section 11(a) of the act of October 4, 1978
22 (P.L.864, No.167), known as the Storm Water Management Act, that
23 requires the preparation or submittal of site development plans
24 to the municipality shall submit the plans to the district
25 through the municipality. Safeguards presently afforded to such
26 persons under the act of July 31, 1968 (P.L.805, No.247), known
27 as the Pennsylvania Municipalities Planning Code, shall continue
28 to be available under the provisions of this act.

29 Section 9. Entry upon lands for survey and examinations.

30 Designated representatives of the district may enter upon

1 lands within the district to make surveys and examinations to
2 accomplish the necessary purposes of the district or to have
3 access to the work.

4 Section 10. Duties of other agencies of the Commonwealth.

5 (a) Technical assistance.--Upon request of a second class
6 county or second class county storm water district, the
7 Department of Environmental Resources and the Department of
8 Community Affairs shall provide technical assistance as required
9 for the purposes of this act.

10 (b) Delegation.--The department may delegate to the district
11 any powers that it may possess under the act of October 4, 1978
12 (P.L.864, No.167), known as the Storm Water Management Act, and
13 the act of November 26, 1978 (P.L.1375, No.325), known as the
14 Dam Safety and Encroachments Act, as it pertains to storm water
15 management.

16 (c) Performance reviews.--If the powers under subsection (b)
17 are delegated, the department shall conduct periodic performance
18 reviews of the district's activities.

19 (d) Department authority.--Nothing in this act shall be
20 construed to abrogate the authority of the department under any
21 of the environmental laws administered by the department.

22 Section 11. Bond authorization; provisions.

23 (a) Authorization.--The bonds of any district shall be
24 authorized by resolution of the board of directors and shall be
25 of the series, bear such date or dates, mature at such time or
26 times, not exceeding 40 years from their respective dates, and
27 bear interest at such rate or rates, as determined by the
28 executive advisory committee to be necessary to issue and sell
29 the authorized bonds. The bonds shall be all of the following:

30 (1) Payable semiannually.

1 (2) In denomination and form, either coupon or fully
2 registered without coupons.

3 (3) Carry registration, exchangeability and
4 interchangeability privileges.

5 (4) Subject to terms of redemption, not exceeding 150%
6 of the principal amount thereof.

7 (5) Entitled to priorities in the revenues of receipts
8 of the district as resolution or resolutions may provide.

9 (6) Signed by or bear the facsimile signature of such
10 officers as the district shall determine.

11 Coupon bonds shall include interest coupons bearing the
12 facsimile signature of the treasurer of the district, and all
13 bonds shall be authenticated by an authenticating agent, fiscal
14 agent or trustee, all as may be prescribed in the resolution or
15 resolutions. These bonds may be issued and delivered,
16 notwithstanding that one or more of the officers signing the
17 bonds, or the facsimile of whose signature shall be upon the
18 bonds or the coupons shall have ceased to be the officer or
19 officers at the time when the bonds are actually delivered.

20 (b) Provisions.--Any resolution or resolutions authorizing
21 any bonds may contain provisions which shall be part of the
22 contract with the holders thereof, as to the following:

23 (1) Pledging the full faith and credit of the district,
24 but not of the Commonwealth or any political subdivision
25 thereof, for such obligations or restricting the same to all
26 or any of the revenues of the district from all or any
27 projects or properties.

28 (2) The construction, improvement, operations,
29 extension, enlargement, maintenance and repair of the project
30 and the duties of the district with reference thereto.

1 (3) The terms and provisions of the bonds.

2 (4) Limitations on the purpose to which the proceeds of
3 the bonds then or thereafter to be issued or of any loan or
4 grant by the United States may be applied.

5 (5) The rate of tolls and other charges for use of the
6 facilities of or for the services rendered by the district.

7 (6) The setting aside of reserves or sinking funds and
8 the regulation and disposition thereof.

9 (7) Limitations in the issuance of additional bonds.

10 (8) The terms and provisions of any deed of trust or
11 indenture which secure the bonds or under which the same may
12 be issued.

13 (9) Any other or additional agreements with the holders
14 of the bonds.

15 Section 12. Remedies of bondholders.

16 (a) District default.--The rights and remedies herein
17 conferred upon or granted to the bondholders shall be in
18 addition to and not in limitation of any rights and remedies
19 lawfully granted to such bondholders by the resolution or
20 resolutions providing for the issuance of bonds or by any deed
21 of trust, indenture or other agreement under which the same may
22 be issued. In the event that the district shall default in the
23 payment of principal of or interest on any of the bonds after
24 the principal or interest shall become due, whether at maturity
25 or upon call for redemption, and such default shall continue for
26 a period of 30 days or, in the event that the district shall
27 fail or refuse to comply with the provisions of this act or
28 shall default in any agreement made with the holders of the
29 bonds, the holders of 25% in aggregate principal amount of the
30 bonds then outstanding, by instrument or instruments filed in

1 the office of the recorder of deeds of the county and proved or
2 acknowledged in the same manner as a deed to be recorded, may
3 appoint a trustee to represent the bondholder for the purpose
4 herein provided.

5 (b) Action.--The trustee under subsection (a) and any
6 trustee under any deed of trust, indenture or other agreement
7 may and, upon written request of the holder of 25% (or other
8 percentages as may be specified in any deed of trust, indenture
9 or other agreement) in principal amount of the bonds then
10 outstanding, shall, in his or its own name:

11 (1) By mandamus or other suit, action or proceeding at
12 law, or in equity, enforce all rights of the bondholder,
13 including the right to require the district to collect rate,
14 rentals and other charges that are adequate to carry out any
15 agreement as to, or pledge of, the revenues or receipts of
16 the district and require the district to carry out any other
17 agreements with or for the benefit of, the bondholders, and
18 to perform its and their duties under this act.

19 (2) Bring suit upon the bonds.

20 (3) By action or suit in equity, require the district to
21 account as if it were the trustee of an express trust for the
22 bondholders.

23 (4) By action or suit in equity, enjoin any acts or
24 things which may be unlawful or in violation of the rights of
25 the bondholders.

26 (5) By notice in writing to the district, declare all
27 bonds due and payable and, if all defaults shall be made
28 good, then, with the consent of the holders of 25% (or other
29 percentages as may be specified in any deed of trust,
30 indenture or other agreement) of the principal amount of the

bonds then outstanding, to annul such declaration and its consequences.

(c) Jurisdiction; receiver.--The court of common pleas of the county shall have jurisdiction of any suit, action or proceedings by the trustee on behalf of the bondholders. The trustee, when appointed or acting under a deed of trust, indenture or other agreement, and whether or not all bonds have been declared due and payable, shall be entitled as of right to the appointment of a receiver, who may enter and take possession of the facilities of the district or any part or parts thereof, the revenues and receipts from which are or may be applicable to the payment of the bonds so in default and may operate and maintain the same and collect and receive all rentals and other revenues thereafter arising therefrom in the same manner as the district or the board might do, and shall deposit all such moneys in a separate account and apply the same manner as the court shall direct. In any suit, action or proceeding by the trustee, the fees, attorney fees and expenses of the trustee, and of the receiver, if any, and all costs and disbursements allowed by the court shall be a first charge on any revenues or receipts from which are or may be applicable to the payment of the bonds so in default. The trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of the bondholders in the enforcement and protection of their rights.

(d) Limitations.--Nothing in this section or any other section of this act shall authorize any receiver appointed pursuant to this act for the purpose of operating and maintaining any facilities of the district to sell, assign,

1 mortgage or otherwise dispose of any of the assets of whatever
2 kind and character belonging to the district. It is the
3 intention of this act to limit the powers of such receiver to
4 the operation and maintenance of the facilities of the district
5 as the court shall direct, and no holder of bonds of the
6 district as the court shall direct and no holder of bonds of the
7 district nor any trustee shall have the right in any suit,
8 action or proceedings at law or in equity to compel a receiver
9 to sell, assign, mortgage or otherwise dispose of any assets of
10 whatever kind or character belonging to the district.

11 Section 13. Enforcement.

12 (a) Warnings.--The district may issue warnings against
13 private developers that violate any ordinance adopted by a
14 municipality.

15 (b) Notification to department.--The district shall notify
16 the department:

17 (1) Of land development that violates the approved storm
18 water management plan or local storm water ordinances.

19 (2) If a municipality violates section 11(b) of the act
20 of October 4, 1978 (P.L.864, No.167), known as the Storm
21 Water Management Act.

22 (3) If a municipality fails to enforce ordinances or
23 regulations adopted pursuant to section 11(b) of the Storm
24 Water Management Act.

25 (c) Petition to withhold payment.--The district may petition
26 the department to notify the State Treasurer to withhold payment
27 of all funds payable to a municipality pursuant to section 12 of
28 the Storm Water Management Act if the municipality has not
29 adopted or amended and implemented ordinances consistent with
30 the approved plan.

1 (d) Appeal.--A municipality may appeal to the department all
2 action taken by the district pursuant to this section.

3 Section 14. Preservation of existing rights and remedies.

4 The collection of any penalty under the provisions of this
5 act shall not be construed as estopping the Commonwealth or any
6 county, municipality, district or aggrieved person from
7 proceeding in courts of law or equity to abate nuisances under
8 existing law or to restrain, at law or in equity, a violation of
9 this act.

10 Section 15. Effective date.

11 This act shall take effect in 60 days.