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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2008 Session of  
1997

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INTRODUCED BY DALEY, GEORGE, MICHLOVIC, DeWEESE, BUXTON, OLASZ,  
BELARDI, HENNESSEY, BELFANTI, YOUNGBLOOD, TIGUE, PETRARCA,  
M. COHEN, WOJNAROSKI, MARKOSEK, CURRY, SERAFINI, McCALL,  
TRELLO, VAN HORNE, RAMOS AND HALUSKA, NOVEMBER 25, 1997

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
NOVEMBER 25, 1997

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AN ACT

1 Amending the act of October 4, 1978 (P.L.864, No.167), entitled  
2 "An act providing for the regulation of land and water use  
3 for flood control and storm water management purposes,  
4 imposing duties and conferring powers on the Department of  
5 Environmental Resources, municipalities and counties,  
6 providing for enforcement, and making appropriations,"  
7 further providing for legislative findings, for watershed  
8 storm water plans and contents, for failure to submit plans,  
9 for effect of watershed plans, for failure to adopt certain  
10 ordinances, for duty of land developers and for grants to  
11 counties; and making an editorial change.

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

14 Section 1. Sections 2, 4 and 5(a) of the act of October 4,  
15 1978 (P.L.864, No.167), known as the Storm Water Management Act,  
16 are amended to read:

17 Section 2. Statement of legislative findings.

18 The General Assembly finds that:

19 (1) Inadequate management of accelerated runoff of storm  
20 water resulting from development throughout a watershed  
21 increases flood flows and velocities, contributes to erosion

1 and sedimentation, overtaxes the carrying capacity of streams  
2 and storm sewers, greatly increases the cost of public  
3 facilities to carry and control storm water, undermines flood  
4 plain management and flood control efforts in downstream  
5 communities, reduces ground-water recharge, and threatens  
6 public health and safety.

7 (2) A comprehensive program of storm water management,  
8 including reasonable regulation of development and activities  
9 causing accelerated runoff, is fundamental to the public  
10 health, safety and welfare and the protection of the people  
11 of the Commonwealth, their resources and the environment.

12 (3) Earlier efforts to encourage and assist storm water  
13 management planning in watersheds have met with limited  
14 success with less than 20% of the State's identified  
15 watersheds having completed plans in the 20 years since  
16 enactment of legislation. During that time, development has  
17 proceeded without adequate guidance and has probably caused  
18 the rash of flash flooding observed in this decade.

19 Section 4. Definitions.

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

23 "Department." The Department of Environmental [Resources]  
24 Protection of the Commonwealth of Pennsylvania.

25 "Municipality." A city, borough, town or township, or any  
26 county or other governmental unit when acting as an agent  
27 thereof, or any combination thereof acting jointly.

28 "Pennsylvania Municipalities Planning Code." The act of July  
29 31, 1968 (P.L.805, No.247), as amended.

30 "Person." An individual, partnership, public or private

1 association or corporation, firm, trust, estate, municipality,  
2 governmental unit, public utility or any other legal entity  
3 whatsoever which is recognized by law as the subject of rights  
4 and duties. Whenever used in any section prescribing or imposing  
5 a penalty, the term "person" shall include the members of a  
6 partnership, the officers, members, servants and agents of an  
7 association, officers, agents and servants of a corporation, and  
8 the officers of a municipality or county, but shall exclude any  
9 department, board, bureau or agency of the Commonwealth.

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

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

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

27 "Watershed." The entire region or area drained by a river or  
28 other body of water, whether natural or artificial.

29 "Watershed storm water plan." A plan for storm water  
30 management adopted by a county in accordance with section 5.

1 Section 5. Watershed storm water plans and contents.

2 (a) Within two years following the promulgation of  
3 guidelines by the department pursuant to section 14, each county  
4 shall prepare and adopt a watershed storm water management plan  
5 for each watershed located in the county as designated by the  
6 department, in consultation with the municipalities located  
7 within each watershed, and shall periodically review and revise  
8 such plan at least every five years. The department may, [for  
9 good cause shown] due to limitations of funding, grant an  
10 extension of time to any county for the preparation and adoption  
11 of a watershed storm water management plan.

12 \* \* \*

13 Section 2. Section 10 of the act, repealed in part October  
14 5, 1980 (P.L.693, No.142), is amended to read:

15 Section 10. Failure to submit plan; mandamus.

16 The department [may] shall institute an action in mandamus to  
17 compel counties to adopt and submit plans in accordance with  
18 this act.

19 Section 3. Sections 11, 12 and 13 of the act are amended to  
20 read:

21 Section 11. Effect of watershed storm water plans.

22 (a) After adoption and approval of a watershed storm water  
23 plan in accordance with this act, the location, design and  
24 construction within the watershed of storm water management  
25 systems, obstructions, flood control projects, subdivisions and  
26 major land developments, highways and transportation facilities,  
27 facilities for the provision of public utility services and  
28 facilities owned or financed in whole or in part by funds from  
29 the Commonwealth shall be conducted in a manner consistent with  
30 the watershed storm water plan.

1       (b) Within six months following adoption and approval of the  
2 watershed storm water plan, each municipality [shall] may adopt  
3 or amend, and [shall] may implement such ordinances and  
4 regulations, including zoning, subdivision and development,  
5 building code, and erosion and sedimentation ordinances, as are  
6 necessary to regulate development within the municipality in a  
7 manner consistent with the applicable watershed storm water plan  
8 and the provisions of this act. Municipalities which fail to  
9 take these steps, or which fail to apply the applicable portions  
10 of the plan or ordinances in decision making within this time  
11 frame, shall not be immune to lawsuit by private persons,  
12 businesses, corporations or public entities in their own or  
13 other jurisdictions within their designated watershed which can  
14 show that such failure led to subsequent harm to property or  
15 persons from flooding.

16       (c) Damages under the provisions of subsection (b) of this  
17 section shall be limited to twice actual damages plus reasonable  
18 legal fees and costs for property complaints and to twice  
19 remaining lifetime earnings plus reasonable legal fees and costs  
20 for loss of life or proportionally for disability. Insurers  
21 paying claims resulting from an alleged failure cited in  
22 subsection (b) of this section may join such suits and are  
23 entitled to actual claims paid plus reasonable legal fees and  
24 costs. Insurers' claims shall be deducted from the twice actual  
25 loss or twice actual earnings limitations available to the  
26 injured parties.

27       (d) Nothing in subsection (b) of this section shall be  
28 construed to compel a municipality to engage in capital  
29 expenditures in excess of \$25,000 annually to meet plan  
30 recommendations unless all the following conditions exist:



1 municipality until the appeal is decided.

2 (d)] Any person, other than a municipality, aggrieved by an  
3 action of the department shall have the right within 30 days of  
4 receipt of notice of such action to appeal such action to the  
5 Environmental Hearing Board, pursuant to section 1921-A, act of  
6 April 9, 1929 (P.L.177, No.175), known as "The Administrative  
7 Code of 1929," and the provisions of Chapters 5 and 7 of Title 2  
8 (Administrative Law and Procedure) of the Pennsylvania  
9 Consolidated Statutes.

10 Section 13. Duty of persons engaged in the development of land.

11 (a) Any landowner and any person engaged in the alteration  
12 or development of land which may affect storm water runoff  
13 characteristics shall implement such measures consistent with  
14 the provisions of the applicable watershed storm water plan as  
15 are reasonably necessary to prevent injury to health, safety or  
16 other property. Such measures shall include such actions as are  
17 required:

18 (1) to assure that the maximum rate of storm water  
19 runoff is no greater after development than prior to  
20 development activities; or

21 (2) to manage the quantity, velocity and direction of  
22 resulting storm water runoff in a manner which otherwise  
23 adequately protects health and property from possible injury.

24 (b) Failure to comply with an adopted county plan, whether  
25 adopted or enforced by the local municipality, shall subject a  
26 developer of properties constructed after the adoption of this  
27 subsection to liability for flooding damages reasonably  
28 connected to that project incurred by any person, business,  
29 corporation or public facility within the watershed. Limitations  
30 on damages in this section shall be consistent with the limits

1 of subsection (c) of section 11. When a plaintiff under this act  
2 sues both a municipality and a private developer or developers,  
3 the municipality shall bear half of any award and costs, and the  
4 developer or developers shall be assessed the remainder. No  
5 award shall exceed the limits set forth in subsection (c) of  
6 section 11.

7 (c) Compliance with an adopted county plan and good faith  
8 efforts to meet the requirements of paragraphs (1) and (2) of  
9 subsection (a) of this section shall provide an absolute shield  
10 for a developer against any liability for subsequent flooding  
11 damages within the watershed. Changes incorporated into the plan  
12 in subsequent updates shall be advisory only for existing  
13 private properties and failure to conform to such  
14 recommendations shall not subject a private property owner to  
15 any future liability.

16 Section 4. Section 17 of the act, amended May 24, 1984  
17 (P.L.324, No.63), is amended to read:

18 Section 17. Grants and reimbursements to [municipalities and]  
19 counties.

20 (a) The [Department of Environmental Resources] department  
21 is authorized to administer grants to [municipalities and]  
22 counties to assist or reimburse them for costs in preparing  
23 official storm water management plans [and actual administrative  
24 and enforcement and implementation costs] and revisions to  
25 official plans for storm water management required by this act.  
26 Grants and reimbursements shall be made from and to the extent  
27 of funds appropriated by the General Assembly for such purposes,  
28 and shall be made in accordance to rules and regulations adopted  
29 by the Environmental Quality Board.

30 (1) The grant shall be equal to [75%] 100% of the



allowable costs for preparation of official storm water management plans[, administrative, enforcement and implementation costs] incurred by any [municipality or] county.

(2) For the purposes of this section, such State grants shall be in addition to grants for similar purposes related to enforcement, administration or implementation of such plans 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 75% 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 reimbursement to [all municipalities and] counties eligible for such grants and reimbursements in that fiscal year, the [Department of Environmental Resources] department 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.

(d) To defray the cost of such plans, all insurers providing homeowner's insurance, commercial and industrial property

1 insurance, and renter's insurance in this Commonwealth shall  
2 collect a surcharge on all premiums of .25% and shall provide  
3 these revenues to the Commonwealth on a quarterly basis. The  
4 excess of such revenue over the cost of storm water management  
5 plans shall be deposited in a restricted fund administered by  
6 the department for grants for municipal storm water management  
7 improvement projects including residential property buyouts.  
8 After buyouts are subtracted in any year, the proportion of  
9 grant funds available to each departmental region shall be in  
10 direct proportion to the percentage of surcharge funds generated  
11 from that region.

12       Section 5. This act shall take effect in 60 days.