

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 606 Session of
2003

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HARPER, MARCH 3, 2003

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 15, 2003

AN ACT

1 Enabling counties and municipalities to develop comprehensive
2 watershed storm water plans and to regulate storm water
3 within designated watershed boundaries; imposing duties and
4 conferring powers on the Department of Environmental
5 Protection, on the Environmental Quality Board, on counties
6 and on municipalities; AND providing for financing. and <—
7 ~~making an appropriation.~~

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12 SECTION 14. APPLICABILITY.

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

16 Section 1. Short title.

17 This act shall be known and may be cited as the Comprehensive
18 Watershed Storm Water Act.

19 Section 2. Legislative findings.

20 The General Assembly finds that:

21 (1) There are several adverse consequences of
22 uncontrolled runoff of storm water and subsurface drainage,
23 including increased flood stages in streams, reduced
24 groundwater recharge, erosion and sedimentation problems and
25 decreased stream quality.

26 (2) Comprehensive watershed storm water management
27 planning and implementation are critical to protect the
28 public health and safety of the people of this Commonwealth.

29 (3) There is a need for dedicated funding to develop and
30 implement comprehensive watershed storm water plans and to

1 construct storm water facilities to manage and control
2 existing and future storm water runoff and subsurface
3 drainage.

4 (4) The act of October 4, 1978 (P.L.864, No.167), known
5 as the Storm Water Management Act, is not sufficiently
6 comprehensive to address the needs of this Commonwealth.
7 While the act provides a basis for storm water management,
8 additional legislation is needed to provide thorough
9 management.

10 Section 3. Purpose.

11 The purpose of this act is to:

12 (1) Enable counties and municipalities to develop
13 comprehensive watershed storm water plans for the following
14 purposes:

15 (i) Preventing increased flood stages in streams.

16 (ii) Controlling the quantity, quality, direction
17 and velocity of storm water runoff and subsurface
18 drainage.

19 (iii) Improving groundwater recharge.

20 (iv) Reducing erosion and sedimentation.

21 (2) Encourage the regional implementation of
22 comprehensive watershed storm water plans within designated
23 watershed boundaries to preserve and protect areas adversely
24 affected by storm water runoff and subsurface drainage.

25 Section 4. Definitions.

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

29 "Agency." A county, municipality or regional organization
30 authorized pursuant to section 5 or 6 to develop, implement or

1 comment on a comprehensive watershed storm water plan.

2 "Bonds." The notes, bonds and other evidence of indebtedness
3 or obligations which are authorized to be issued pursuant to
4 section 7.

5 "Commercial property." Any property developed for
6 manufacturing; processing of raw materials or products;
7 nonmanufacturing purposes, including stores, office buildings,
8 shopping centers, industrial parks, trucking terminals or
9 railroads; institutional purposes, including schools, churches,
10 hospitals or other services; or property developed as three or
11 more residential units.

12 "Comprehensive watershed storm water plan" or "plan." A plan
13 containing all of the elements prescribed under the act of
14 October 4, 1978 (P.L.864, No.167), known as the Storm Water
15 Management Act, plus elements outlined in section 5(b), for the
16 specific purpose of managing all storm water flows within the
17 watershed.

18 "County." A body politic and corporate, created pursuant to
19 the act of August 9, 1955 (P.L.323, No.130), known as The County
20 Code.

21 "Department." The Department of Environmental Protection of
22 the Commonwealth.

23 "Flow standard." The measured quantity, quality, velocity
24 and direction of storm water.

25 "Infiltration." The flow or movement of surface water into
26 or through the soil, where it is absorbed by plant roots,
27 evaporated into the atmosphere or percolates downward to
28 recharge groundwater.

29 "Municipality." A city, borough, town, a township or another
30 governmental unit when acting as an agent thereof or any

1 combination of these acting jointly.

2 "NPDES." National Pollutant Discharge Elimination System.

3 "Recharge." The process by which water is absorbed and is
4 added to the zone of saturation of a groundwater aquifer. Also,
5 the quantity of water that is added to the zone of saturation.

6 "Regional storm water facility." A storm water facility
7 which is located in, is financed by or serves more than one
8 municipality in a watershed.

9 "Residential property." Any property developed as a primary
10 or secondary residence for occupation by two or less families.

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

13 "Storm water facility." A natural feature or man made
14 facility that collects, detains, retains, conveys, treats or
15 allows infiltration of storm water or subsurface drainage.

16 "Subsurface drainage." Drainage runoff which occurs below
17 the surface of the ground resulting from precipitation, snow or
18 ice melt occurring naturally or by alteration or development of
19 land.

20 "Watershed." The entire region or area drained by a river or
21 other body of water, whether natural or artificial, as
22 designated pursuant to the act of October 4, 1978 (P.L.864,
23 No.167), known as the Storm Water Management Act.

24 "Watershed storm water plan." A plan for storm water
25 management prepared for a watershed and adopted by a county in
26 accordance with act of October 4, 1978 (P.L.864, No.167), known
27 as the Storm Water Management Act.

28 Section 5. Comprehensive watershed storm water plans.

29 (a) Local authorization to counties.--The following shall
30 apply:

1 (1) The county or counties located in a watershed,
2 acting jointly or through a joint agency, may develop a
3 comprehensive watershed storm water plan as described in
4 subsection (c). If all counties in the watershed do not agree
5 to develop the plan, the plan shall assume flow standards at
6 the boundaries of the nonparticipating county or counties
7 which are consistent with the comprehensive watershed storm
8 water plan.

9 (2) Federal lands shall be included in the comprehensive
10 watershed storm water plan with the consent of the United
11 States Department of the Interior.

12 (3) State lands shall be included in the comprehensive
13 watershed storm water plan with the consent of the
14 appropriate State agency.

15 (4) The comprehensive watershed storm water plan shall
16 be generally consistent with comprehensive plans of counties
17 and municipalities enacted under the act of July 31, 1968
18 (P.L.805, No.247), known as the Pennsylvania Municipalities
19 Planning Code.

20 (5) A comprehensive plan of a county or a municipality
21 enacted under the Pennsylvania Municipalities Planning Code
22 subsequent to adoption of this act shall be generally
23 consistent with the comprehensive watershed storm water plan
24 enacted under this act that applies to the county or
25 municipality.

26 (b) Plan content.--The comprehensive watershed storm water
27 plan shall consist of, but is not limited to:

28 (1) Identification of existing storm water and
29 subsurface drainage problems in the watershed.

30 (2) Identification of existing storm water facilities in

1 the watershed, their engineering design features, their
2 ownership and maintenance responsibility.

3 (3) A flow standard common to all storm water facilities
4 within the watershed.

5 (4) Designation of locations, sizes and types of storm
6 water facilities for construction to correct existing and
7 prevent future storm water and subsurface drainage problems.
8 Any designation of locations for facilities must be generally
9 consistent with the comprehensive plans of the municipality
10 and county enacted under the Pennsylvania Municipalities
11 Planning Code.

12 (5) A priority listing for construction of each storm
13 water facility included in the plan.

14 (6) Identification of financing alternatives for storm
15 water facilities.

16 (7) A program for public information, participation and
17 education.

18 (8) Provision for plan update or review at a minimum of
19 every five years.

20 (9) Demonstration of general consistency with other
21 existing Federal, State, interstate, regional, county and
22 municipality environmental and land use plans.

23 (10) Demonstrate consistency with existing watershed
24 storm water plans, including minimum standards required by
25 the act of October 4, 1978 (P.L.864, No.167), known as the
26 Storm Water Management Act.

27 (11) Design of a rate structure for fees and assessments
28 to implement the plan.

29 (12) A description of the mechanism and time frame by
30 which the plan will be implemented.

1 (13) A storm water infiltration standard for groundwater
2 recharge based on soil type as developed by appropriate
3 agencies.

4 (14) Identification of other watershed storm water plans
5 which impact the planned watershed.

6 (c) Development.--Public participation in the development of
7 the comprehensive watershed storm water plan shall be provided
8 as follows:

9 (1) A comprehensive watershed storm water plan advisory
10 committee, composed of one representative appointed by the
11 governing body of each municipality in the plan, county and
12 county soil and water conservation district in the watershed
13 and other agencies and groups, as deemed necessary by the
14 agency, which shall be established to advise the agency
15 throughout the process.

16 (2) Prior to adoption, the plan shall be reviewed by the
17 official planning agency and governing body of each
18 municipality and county and by each regional planning agency
19 in the watershed, for general consistency with other plans
20 and programs affecting the watershed. All such reviews and
21 the agency's responses shall be submitted to the department
22 with the plan, at the time a review of the plan is requested
23 from the department.

24 (3) Prior to adoption or amendment of the plan,
25 reasonable public notice shall be given and a public hearing
26 shall be held within the watershed.

27 (d) Adoption.--Adoption or amendment of the comprehensive
28 watershed storm water plan shall be by resolution of the
29 governing body or bodies of the agency or agencies identified in
30 subsection (a), which have authorized development of the plan.

(e) Recommendation by department.--The following shall apply:

(1) Prior to adoption or substantive amendment, a comprehensive watershed storm water plan shall be submitted to the department for review. The department shall recommend adoption of the plan if it determines that it is consistent with the practice and intent of the following:

(i) Municipality flood plain management plans.

(ii) State programs which regulate dams, encroachments, water obstructions, erosion and sedimentation.

(iii) Federal and State flood control and water quality programs.

(iv) Other watershed storm water plans which impact the planned watershed.

(v) The policies and purposes of this act and the Storm Water Management Act.

(2) Unless the department recommends adoption, nonadoption or conditional adoption of the plan within three months of receipt, it will be deemed acceptable as submitted.

Section 6. Implementation of comprehensive watershed storm water plan.

(a) Revision of ordinances.--A municipality shall revise its ordinances and regulations to conform with the requirements of the comprehensive watershed storm water plan applicable to the municipality.

(b) Infrastructure implementation.--Infrastructure improvements under a comprehensive watershed storm water plan may be implemented through any of the following:

(1) Each municipality will carry out the plan within its

boundaries, either individually or by agreement with another municipality, county or a joint agency.

(2) One or more municipalities in the watershed may request that the county or counties in the watershed assume responsibility for implementation of the plan. The county or counties may assume responsibility for implementation of the plan and operational authority for the storm water facilities as provided for in the plan, but only for municipalities which agree to allow the county or counties to assume implementation responsibilities.

(3) If two-thirds of the municipalities, representing at least 51% of the population within the watershed, through adoption of resolutions of their governing bodies, request that the county or counties in the watershed assume responsibility for implementation of the plan, then the county or counties shall assume such responsibility.

(c) Exercise of local authority.--A county or counties or municipalities which have assumed responsibility for implementation of the comprehensive watershed storm water plan shall have the right to exercise authority by any of the following methods:

(1) By creating an operational unit under the authority of the county or municipalities or by assigning such responsibility to an existing operational unit.

(2) By contracting with any private or public, profit or not-for-profit organization, corporation or other legal entity to perform such responsibilities in accordance with the plan.

(d) Powers.--Municipalities exercising the authority to implement the comprehensive watershed storm water plan under

1 subsection (b)(1) may exercise the following powers:

2 (1) Deny any landowner in a municipality use of the
3 storm water facilities constructed pursuant to the plan
4 unless the landowner complies with the ordinances adopted
5 under this act by the municipality.

6 (2) Install necessary storm water facilities on private
7 property if the landowner does not comply with the ordinances
8 adopted under this act by the municipality requiring
9 installation of storm water facilities for activities on the
10 landowner's property, and assess costs against such
11 landowner, which costs shall be recoverable in the same
12 manner as assessments under section 7.

13 (e) Ceding of authority.--Ceding of authority shall be
14 conducted as follows:

15 (1) Storm water facilities on private lands may be ceded
16 to the agency at the agency's discretion. Whether ceded or
17 not, the facilities shall be required to meet the design
18 standards required under the comprehensive watershed storm
19 water plan.

20 (2) All ceded facilities shall be subject to an easement
21 for maintenance and inspection access.

22 (f) Fee authorization.--The county may levy an annual storm
23 water fee on real property to pay for all costs associated with
24 implementation under this section as defined in section 7. The
25 annual storm water fee may be countywide or may be implemented
26 in phases which reflect the implementation of the comprehensive
27 watershed storm water plan.

28 (g) Reimbursement of implementation and maintenance costs.--
29 The following shall apply to reimbursement:

30 (1) A municipality shall be reimbursed by the county for

1 its identified costs of infrastructure implementation and
2 maintenance under subsection (b)(1) and (2).

3 (2) Reimbursement shall not include costs related to
4 sanitary sewage facilities.

5 (3) The municipality may delay implementation of the
6 comprehensive watershed storm water plan until the county
7 provides for reimbursement to the municipality for costs
8 covered under this subsection.

9 (4) The county shall have the right to audit the
10 municipalities' costs of implementation.

11 (h) Design criteria and standards.--The comprehensive
12 watershed storm water plan shall dictate the engineering design
13 and standard for any storm water facility implemented under this
14 section and the county shall have no responsibility to reimburse
15 the cost of any facility not meeting the design criteria.

16 (i) Maintenance of storm water facilities.--Continuing
17 maintenance of storm water facilities shall be the
18 responsibility of the party implementing the facility under
19 subsection (b)(1) and (2) unless there is specific agreement
20 otherwise between the agency and the implementing party.

21 Section 7. Powers and duties of county.

22 (a) Plan development and implementation.--In addition to any
23 existing powers, the county responsible for development or
24 implementation of the comprehensive watershed storm water plan
25 shall have the power and duty to:

26 (1) Fix, alter, charge and collect fees and assessments
27 in the area served by the county and the associated watershed
28 at reasonable and uniform rates as determined exclusively by
29 the county in order to carry out the powers and duties
30 authorized under this act, including preparation of

1 comprehensive watershed storm water plans and their
2 implementation and the acquisition or construction of storm
3 water facilities in the watershed. The fees established under
4 this paragraph:

5 (i) Shall be assessed on real property in the
6 watershed as follows:

7 (A) The fee may be a flat fee or may be based on
8 the value of the real property.

9 (B) Commercial and industrial property may be
10 assessed through a flat fee based upon impervious
11 surface coverage.

12 (C) A commercial property capable of managing
13 storm water through privately constructed and
14 operated storm water facilities, either on premises
15 to the design standard for a maximum draw down time
16 of 48 hours or through an NPDES-permitted outfall
17 directly to a water body that does not require
18 construction of additional public storm water
19 facilities, shall not be charged the fee. A
20 commercial facility capable of managing a portion of
21 its storm water either on premises to the design
22 standard for a maximum draw down time of 48 hours, or
23 through an NPDES-permitted outfall directly to a
24 water body that does not require construction of
25 additional public storm water facilities shall be
26 charged only its proportional share of the fee, based
27 on the area of the facility not addressed by the
28 onsite storm water facilities meeting the design
29 standard of section 5(b)(3). A commercial facility
30 subject to the fee may instead construct and operate

1 additional onsite storm water facilities meeting the
2 design standard of section 5(b)(3), thereby exempting
3 that property from all or a proportional share of the
4 storm water use fee.

5 (ii) Shall be added to the annual real estate tax
6 authorized and collected under, as appropriate, the act
7 of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to
8 as the Sterling Act, the act of July 28, 1953 (P.L.723,
9 No.230), known as the Second Class County Code or the act
10 of August 9, 1955 (P.L.323, No.130), known as The County
11 Code.

12 (iii) Shall not exceed the cost of preparation or
13 implementation of the plan, which may include
14 administrative, operating and maintenance expenses and
15 the payment of principal and interest on its obligations.

16 (2) Make expenditures necessary to prepare and implement
17 the plan.

18 (3) Deposit the revenues collected under this section in
19 a dedicated receipts account to be used for the exclusive
20 purpose of development and/or implementation of the plan.

21 (4) Collect delinquent fees in accordance with the act
22 of May 16, 1923 (P.L.207, No.153), referred to as the
23 Municipal Claim and Tax Lien Law.

24 (5) Levy and collect benefit assessments upon the
25 properties within the watershed for the purpose of acquiring
26 or constructing regional storm water facilities, which
27 properties, in its judgment, are especially benefited thereby
28 whether they abut such facilities or not, according to such
29 rule as the agency adopts, subject to the right of appeal.

30 These assessments may include a proportionate share of the

1 cost of any part of the regional storm water facility,
2 including the cost of preliminary studies and surveys,
3 detailed working plans and specifications, acquisition of
4 necessary land or property or an interest therein, damage
5 awards, construction costs, interest charges during
6 construction, legal or other fees or any other expense
7 incidental to the completion of the work. In assessing
8 benefits and apportioning the amount to be raised among the
9 properties benefited, the agency may give consideration to
10 the area, to assessed real estate value, to present or
11 permitted use of the benefited properties and to any other
12 relevant factors. Revenue from the assessment of benefits
13 shall be used solely for the costs listed in this paragraph.
14 No assessment shall be made against any property in excess of
15 the special benefit to accrue to such property.

16 (6) Borrow money, make and issue negotiable notes,
17 bonds, refunding bonds, and other evidences of indebtedness
18 or bonds of the agency, the bonds to have a maturity date not
19 longer than 40 years from the date of issue.

20 (7) Secure payment of the bonds or any part thereof by
21 pledge or deed of trust of all or any of its revenues and
22 receipts, and to make such agreements with the purchasers or
23 holders of such bonds or with others in connection with any
24 such bonds, whether issued or to be issued.

25 (8) Borrow money and issue such notes, bonds and other
26 indebtedness and obligations jointly with any adjoining
27 state, as the agency shall deem advisable and, in general, to
28 provide for the security for the bonds and the rights of the
29 holders thereof and in respect to any storm water facility
30 constructed and operated under agreement with any such

1 agency. Any agency may enter into any deed of trust,
2 indenture or other agreement with any bank or trust company
3 or other person or persons in the United States having power
4 to enter into the same, including any Federal agency, as
5 security of such bonds and may assign and pledge all or any
6 of the revenue of receipts of the agency thereunder. Such
7 deed of trust, indenture or agreement may contain such
8 provisions as may be customary in such instruments or as the
9 agency may authorize, including, but not limited to, the
10 following:

11 (i) The construction, improvement, operation,
12 maintenance and repair of any storm water facility and
13 the duties of the agency with reference thereto.

14 (ii) The application of funds and the safeguarding
15 of funds on hand or on deposit.

16 (iii) The rights and remedies of the trustee and the
17 holder of the bonds, which may include restrictions upon
18 the individual right of action of such bondholders.

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

21 (9) Use any available Federal or State funds, and any
22 other funds, and set up accounts as are necessary to
23 implement the provisions of this act.

24 (10) Develop design details for the storm water
25 facilities to be implemented in accordance with the approved
26 plan.

27 (11) Plan for capital facilities, including the
28 development of maintenance schedules.

29 (12) Review and comment on the location, design and
30 construction within the watershed of facilities, owned or

1 financed, in whole or in part, by funds from the
2 Commonwealth, including storm water facilities, obstruction,
3 flood control projects, highways and transportation
4 facilities, and facilities for the provision of public
5 utility service, to assure their consistency with the plan.
6 The county shall review and take action on such submissions
7 concurrent with the review period as provided in Article V of
8 the act of July 31, 1968 (P.L.805, No.247), known as the
9 Pennsylvania Municipalities Planning Code.

10 (13) Inspect storm water facilities for adherence to
11 plans and construction and maintenance standards.

12 (14) Provide for routine maintenance.

13 (15) Construct regional storm water facilities.

14 (16) Cooperate with emergency response and relief
15 agencies.

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

18 (b) Other requirements.--The powers and duties under this
19 section in no way relieve persons engaged in the alteration or
20 development of land of the responsibility to comply with the
21 requirements of storm water ordinances of municipalities, the
22 approved comprehensive watershed storm water plan and the
23 requirements of the act of October 4, 1978 (P.L.864, No.167),
24 known as the Storm Water Management Act.

25 (c) Objections.--Any resident, owner of real property or
26 person in the watershed questioning the rate fixed by the county
27 or the adequacy, safety and reasonableness of the agency's
28 services, including extensions of service thereof, shall first
29 raise such objections with the county or the agency, as the case
30 may be. After exhausting their administrative remedies, such

1 persons may bring suit against the agency in the court of common
2 pleas of the county in which the principal office of the agency
3 is located.

4 Section 8. Duties of municipalities in regulating development
5 of land.

6 (a) Regulation.--A municipality shall regulate development
7 activities consistent with any applicable approved comprehensive
8 watershed storm water plan.

9 (b) Enforcement.--Nothing in this act shall prohibit a
10 municipality or county from enforcing any zoning, subdivision or
11 land development ordinance which the municipality or county has
12 adopted.

13 Section 9. Entry upon land for surveys and examinations.

14 Designated representatives of the agency, upon serving a
15 reasonable notice, may enter upon lands in the watershed to make
16 surveys and examinations to accomplish the necessary purposes of
17 the agency or to have access to storm water facilities.

18 Section 10. Powers and duties of department and Environmental
19 Quality Board.

20 (a) Technical assistance.--Upon request of a county or
21 municipality, the department shall provide technical assistance
22 as required for the purposes of this act. The department may
23 prepare and issue such advisory guidelines as may be appropriate
24 to assist in the implementation of this act.

25 (b) Department authority.--Nothing in this act shall be
26 construed to abrogate the authority of the department under any
27 of the environmental laws administered by the department.

28 (c) Environmental Quality Board.--The Environmental Quality
29 Board shall adopt such rules and regulations of the department
30 as are necessary and appropriate to carry out the purposes of

1 this act.

2 Section 11. Permits.

3 The department, the Environmental Quality Board and other
4 Commonwealth departments and agencies and county and municipal
5 governments and agencies shall make decisions with respect to
6 issuance of permits that are generally consistent with
7 comprehensive watershed storm water plans enacted under this
8 act.

9 Section 12. Preservation of existing rights and remedies.

10 The taking of any action under the provisions of this act
11 shall not be construed as estopping the Commonwealth or any
12 county, municipality or aggrieved person from proceeding in
13 courts of law or equity to abate nuisances under existing law or
14 to restrain, at law or in equity, a violation of this act.

15 Section 13. Grants.

16 (a) Purpose.--The department may administer grants to
17 municipalities and counties and to assist or reimburse them for
18 costs in preparing comprehensive watershed storm water plans
19 under this act. Grants and reimbursements shall be made from and
20 to the extent of funds appropriated by the General Assembly for
21 such purposes and shall be made in accordance with rules and
22 regulations promulgated by the Environmental Quality Board.

23 (b) Amount.--A grant shall not exceed 75% of the allowable
24 costs for the preparation of a comprehensive watershed storm
25 water plan by any municipality or county. The grant shall be in
26 addition to grants for similar purposes made to any municipality
27 or county by the Federal Government.

28 ~~Section 14. Appropriation.~~

29 ~~There is hereby appropriated \$1,000,000 for the fiscal year~~
30 ~~following enactment of this act to the Department of~~

1 ~~Environmental Protection for the administrative and general~~
2 ~~expenses necessary in implementing this act. This shall be a~~
3 ~~continuing appropriation and shall not lapse.~~

4 Section ~~15~~ 14. Applicability.

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5 This act shall not apply to counties of the first class.

6 Section ~~16~~ 15. Effective date.

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7 This act shall take effect in 60 days.