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HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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House Bill 979

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House Environmental Resources and Energy Committee

Main Capitol Building  
Room 140, Majority Caucus Room  
Harrisburg, Pennsylvania

Monday, July 15, 1996 - 12:00 p.m.

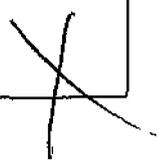
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BEFORE:

- Honorable Robert Reber, Majority Chairman
- Honorable Sam Smith
- Honorable Art Hershey
- Honorable Al Masland
- Honorable Eugene McGill
- Honorable Carole Rubley
- Honorable Jerry Stern
- Honorable Dan Surra
- Honorable Stanley Jarolin
- Honorable Greg Vitali

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1 ALSO PRESENT:

2

3 Frederick Taylor, Esquire  
4 Counsel to Committee

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5 Mark Brown  
6 Majority Research Analyst

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## C O N T E N T S

1	WITNESSES	PAGE
2		
3		
4	Representative David J. Steil 31st Legislative District, Bucks County	5
5		
6	Richard J. Peltz, Deputy Secretary Local & Area Transportation	20
7		
8	Chris Johnston, Special Assistant Local & Area Transportation	53
9		
10	William R. Coup, Jr., Chief Engineering/Payment Division, Bureau of Municipal Services	56
11		
12	John M. Hrubovcak, Assistant Counsel-in-charge Environmental Section, Office of Chief Counsel	58
13		
14		
15	Mike Sherman, Chief Division of Stormwater Management and Sediment Control	62
16		
17	Durla Lathia, Section Chief Stormwater Management	80
18		
19	Representative Thomas A. Michlovic 35th Legislative District, Allegheny County	89
20		
21	David R. French, Vice President for Sales L. Robert Kimball & Associates	94
22		
23		
24		
25		

1           CHAIRMAN REBER: At this time, I'd like  
2 to convene the Environmental Resources and  
3 Energy Committee for purposes of taking  
4 testimony relative to the issue of stormwater  
5 management here in the Commonwealth of  
6 Pennsylvania.

7           Our first individual to testify today is  
8 The Honorable David Steil, Representative from  
9 Bucks County, represents the 31st legislative  
10 district. At this time, I would like to have  
11 the Committee Members who are present introduce  
12 themselves starting on my far left with  
13 Representative Vitali.

14           REPRESENTATIVE VITALI: Greg Vitali,  
15 Delaware County.

16           REPRESENTATIVE HERSHEY: I'm Art  
17 Hershey, Chester County.

18           REPRESENTATIVE SMITH: Sam Smith.  
19 Jefferson, Clearfield, and Indiana Counties.

20           REPRESENTATIVE STERN: I'm Jerry Stern  
21 from Bedford County and Blair County.

22           CHAIRMAN REBER: And I'm Bob Reber,  
23 Montgomery County and the Chairman of the  
24 Committee. And sitting to my right is our Chief  
25 Counsel for the Republican Caucus, Fred Taylor,

1 Esquire.

2 At this time, we have the pleasure of  
3 having the testimony of Representative Dave  
4 Steil of Bucks County. I know Bucks County has  
5 had its share of stormwater management or lack  
6 thereof maybe with some issues surfacing in the  
7 very recent past.

8 And Dave, we look forward to your  
9 testimony; and I thank you for being one of the  
10 driving forces to assist and facilitate in  
11 this hearing. I would invite you to join with  
12 the Committee to sit through the rest of the  
13 testimony.

14 REPRESENTATIVE STEIL: Thank you. Thank  
15 you, Mr. Chairman, and thank you for the  
16 opportunity to testify before the Environmental  
17 Resources Committee regarding our efforts within  
18 the last year and a half to begin addressing the  
19 problems of the management of stormwater  
20 throughout the state of Pennsylvania.

21 I particularly want to thank the  
22 Committee for convening this public hearing  
23 giving us the opportunity to bring to your  
24 attention some of the problems we have  
25 identified and to begin addressing solutions

1       which we hope will find their way into practice  
2       and law over the next several years.

3               Behind me is a map of the watersheds of  
4       Pennsylvania. The heavy dark lines outline each  
5       individual watershed. There are some 355  
6       watersheds within the state, and you will notice  
7       that they do not respect county lines and  
8       certainly not municipal lines. Act 167, when it  
9       was adopted, mandated the development of  
10      watershed management plans.

11              To date, some 30 plans have been  
12      developed. That's 30 out of 355 potential  
13      plans. So you can see that we have a way to go,  
14      and I think that map represents the enormity of  
15      the problem we face.

16              The particular project that we are  
17      working on began in late 1994 as a result of a  
18      conversation between Carl Tosi, District  
19      Maintenance Engineer for PennDOT and myself  
20      regarding the difficulties PennDOT was  
21      encountering in the flow of stormwater on and  
22      off their roadways.

23              Simultaneously, our office had been  
24      receiving phone calls from concerned citizens in  
25      the 31st District seeking to put the blame on

1 PennDOT for roadside and off road erosion  
2 resulting from the flow of stormwater.

3 Certain communities also within the  
4 district were expressing concern over the  
5 cleaning and maintenance of stormwater  
6 facilities

7 As a result, Mr. Tosi and I along with  
8 Senator Heckler and Representative Melio  
9 convened a group of municipal and county  
10 officials, municipal engineers, some  
11 legislators, and soil conservation personnel to  
12 review the entire problem. The result of this  
13 review, we identified a number of significant  
14 problems.

15 They are: There is a very real question  
16 as to the ownership of stormwater management  
17 facilities, especially those that parallel  
18 roadways. PennDOT does not necessarily  
19 recognize ownership of stormwater facilities  
20 even though they may have been dedicated by a  
21 developer or a municipality as part of a road  
22 rebuilding process. Therefore, the question of  
23 who is responsible for maintaining and  
24 rebuilding such systems when needed is an open  
25 question.

1           Further, who is responsible for water  
2           flowing onto public roadways, which is the  
3           result of failed or nonexistent stormwater  
4           management facilities outside the highway  
5           right-of-way.

6           It's a parallel here that PennDOT gets  
7           blamed for much of the stormwater problems when,  
8           in fact, the water that they're responsible for  
9           coming from their roadway is a very small part  
10          of the total amount of water which they must  
11          deal with.

12          No. 2 is stormwater management standards  
13          between municipalities and PennDOT are  
14          different. The mechanism whereby these  
15          different standards are coordinated so as to  
16          ensure consistent application between the  
17          municipalities, PennDOT, and the developers is  
18          required.

19          We found, for example, that most  
20          municipalities develop stormwater management  
21          facilities using a 100-year storm as a  
22          guideline. PennDOT's design for stormwater  
23          facilities is much less, anywhere from 10 to 25  
24          years. So, obviously, you can't put a -- the  
25          water from a 48-inch pipe into a 24-inch pipe.

1 It just doesn't work.

2 No. 3 was that there was no complete  
3 inventory of existing stormwater management  
4 facilities within particular watersheds;  
5 therefore, coordinating new stormwater  
6 facilities or connecting with downstream  
7 existing facilities, especially across municipal  
8 lines, does not occur.

9 EPA water quality standards have been  
10 incorporated into the Neshaminy Watershed Plan,  
11 which was the first plan done in Bucks  
12 County but have not been made applicable for  
13 stormwater management outside of that watershed.  
14 The same is true in other areas of the state.

15 The commencement of regional stormwater  
16 management facilities appears to be not  
17 practical, at least in Bucks County, and from  
18 our continuing discussions, in other places in  
19 the state.

20 Land development is occurring at such a  
21 rapid rate that the facilities simply are not  
22 practicable. They can't be put into place in  
23 time to manage regional stormwater. The Bucks  
24 County Planning Commission had already adopted a  
25 local approach to implementing Act 167;

1 therefore, regional facilities were not part of  
2 that plan.

3 Ownership and maintenance standards for  
4 existing retention or detention basins were  
5 inconsistent or nonexistent. Considerable  
6 legislation and funding mechanisms would have to  
7 be developed to support regional facilities.  
8 Finally, impact fees for regional stormwater  
9 facilities would be required. Implementing  
10 legislation, however, would probably occur long  
11 after the development thereby negating the  
12 opportunity to collect such fees.

13 No. 6 was that there is obviously an  
14 urgent need to resolve the foregoing issues.  
15 The problems are becoming worse as development  
16 occurs in a random pattern with uncoordinated  
17 stormwater management facilities.

18 Existing planning approaches have failed  
19 since they addressed future problems only and  
20 did not address the existing problems.  
21 Watershed authority must include the  
22 responsibility to manage stormwater past,  
23 present, and future.

24 Legislation would have to be implemented  
25 defining the responsibility for all facets of

1 stormwater management As a result of these  
2 problems, we organized four different task  
3 forces to begin addressing the issues. And  
4 those task forces were charged with the  
5 following responsibilities:

6 The first task force was to begin  
7 conversations with municipal associations and  
8 PennDOT to address the issue of responsibility.  
9 In other words, who is responsible for  
10 stormwater facilities on and off roadways?

11 I took the responsibility of setting up  
12 and organizing that group which had been meeting  
13 here in Harrisburg now since mid last year.  
14 PennDOT, in conjunction with municipalities and  
15 municipal engineers, needs to address the issues  
16 of stormwater management standards.

17 We assigned Mr. Hoffman from PennDOT to  
18 coordinate with Earnest Knight of Knight  
19 Engineering representing the municipalities to  
20 address the issue of stormwater standards.

21 Third, in order to make stormwater  
22 management plan work, we would have to more  
23 clearly define the authority for implementing an  
24 enforcement of any stormwater management plan;  
25 and to that extent, the Bucks County Planning

1 Commission under Vitor Vicente, V-I-C-E-N-T-E,  
2 will take the lead in developing policy options  
3 for that.

4 And finally, coordinating through  
5 Senator Heckler's office, we want to ensure that  
6 while dealing with the immediate problems that  
7 we did not lose sight of the potential for  
8 regional stormwater management, especially in  
9 the areas that were less developed. You will  
10 hear today and tomorrow from members of these  
11 working groups of the progress in developing  
12 recommendations and action plans.

13 The Committee would probably question  
14 why this problem remains so large in the wake of  
15 Act 167. We believe that Act 167 is working  
16 well for future planning and management of  
17 stormwater but it has been underfunded in slow  
18 development of Watershed Management plans.

19 Further, some technology has been found  
20 deficient, especially in recognizing the timing  
21 of converging flows from multiple detention  
22 basins in the total volume and velocity of  
23 downstream water -- I can go into that more if  
24 you have questions on that -- but that has been  
25 a design deficiency that occurs when you plan

1 individual detention basins from individual  
2 developments and don't coordinate them all.  
3 This may create problems not previously  
4 existing.

5 The more serious issue, however, is that  
6 much of the stormwater problem is the result of  
7 pre-Act 167 development. Most of this  
8 development was deficient in design and  
9 responsibility for managing stormwater.

10 In seeking the resolution of these  
11 issues, I offer my own thoughts and observations  
12 for the Committee's consideration. Since the  
13 flow of water respects no municipal boundaries,  
14 overall responsibility must occur at a  
15 governmental level above the municipality but  
16 below the state.

17 A review of the municipality's planning  
18 code as it enables local government to protect  
19 flood sensitive and wetlands areas should be  
20 undertaken. Essentially, we have to determine  
21 what additional police powers should be granted  
22 to municipalities to control development in not  
23 only environmentally-sensitive areas but in  
24 areas that are prone to flooding.

25 As we continue to build in flood planes,

1 we can expect those individuals will sooner or  
2 later be at the receiving end of a flood.  
3 Dedicated funding must be part of any Management  
4 plan.

5 And finally, since this is both an  
6 environmental and a local government issue, the  
7 legislative initiative should be the joint  
8 responsibility of the Environmental Resources  
9 and Local Government Committee.

10 And as a member of that Committee, I'd  
11 be happy to work with this group in terms of  
12 addressing both the local government and the  
13 environmental issues that are involved.

14 Thank you, and I'd be happy to answer  
15 any questions.

16 CHAIRMAN REBER: Thank you,  
17 Representative Steil. Before we get to  
18 questions, there have been a number of other  
19 members of the Committee join us; and I'd like  
20 to identify them for the record and for the  
21 information of those present.

22 In the front row to my immediate far  
23 left is Representative Carole Rubley of Chester  
24 County. In the back row immediately to my left  
25 is Representative Dan Surra. In the middle of

1 the back row is Representative Al Masland, and  
2 to his right is Representative Gene McGill; all  
3 members of the Committee.

4 At this time, we will entertain any  
5 questions that the Committee might have of our  
6 esteemed colleague, Representative Steil of  
7 Bucks County. I'll look to the lady from  
8 Chester first.

9 REPRESENTATIVE RUBLEY: Thank you,  
10 Mr. Chairman. Representative Steil, I know  
11 you've been very involved in a growth management  
12 proposal in the legislation last session and are  
13 currently working on it this session.

14 Do you think that that proposal as it  
15 was developed and as it's being revised would  
16 help to address this issue of stormwater  
17 management from the regional level that you're  
18 looking at?

19 REPRESENTATIVE STEIL: Yes, I definitely  
20 feel that that would be a part of that. I think  
21 that as we increase the responsibilities of  
22 municipalities to plan regionally it becomes  
23 even more important as we look at stormwater  
24 because stormwater is truly a regional issue.  
25 It simply cannot be managed on a

1 municipality-by-municipality basis

2 So to the extent that the Land Use  
3 Planning proposal, that piece of legislation  
4 which was House Bill 2662 in the last term, to  
5 the degree that that enhances the municipality's  
6 ability to plan regionally, it works for  
7 stormwater management

8 I am concerned however that that  
9 legislation may still be deficient in the police  
10 powers granted to municipalities to determine  
11 developments of flood plane and wetland areas.

12 REPRESENTATIVE RUBLEY: Thank you.

13 CHAIRMAN REBER: Representative Vitali.

14 REPRESENTATIVE VITALI: Thank you.

15 First, I wanted to thank Representative Steil  
16 for all the hard work he's done. I know he's  
17 done an excellent job to this point. I just  
18 would like to emphasize one point that I think  
19 is -- I think is an act of insensitivity to both  
20 in the legislature and with regard to local  
21 municipalities and that this relationship that  
22 you've touched on between the loss of wetlands  
23 and increased flooding.

24 And as you know, Pennsylvania's  
25 lost -- well, we've gone from a million acres of

1 wetlands 200 years ago to about 400,000 acres  
2 now. And we have these flooding problems not  
3 only in your county, Bucks County, but  
4 Pennsylvania as a whole.

5 I mean wetlands, as you know, act as a  
6 sponge so that when we do have these heavy rains  
7 the water is absorbed and gradually released.  
8 And I think that the more we fill them in, the  
9 more we're going to exacerbate our flooding  
10 problems and water purification problems.

11 So I think, you know, as you have said,  
12 we need to also consider wetlands loss in  
13 dealing with this whole stormwater management  
14 issue. It is cheaper to build rather than to  
15 preserve wetlands and create wetlands than it is  
16 to undertake some of the expenses of stormwater  
17 management projects. And I think we need to  
18 keep that in mind.

19 I think we need to take a close look at  
20 the Administration's recent initiative, General  
21 Permit 15, which has made it easier to develop  
22 in wetlands and has allowed some development to  
23 go forward without that wetlands delineation,  
24 that mapping of wetlands.

25 And that will, in my view, result in

1 increased wetlands development But, again, I  
2 just want to thank you for the good work you've  
3 done. And I just ask you and the General  
4 Assembly as a whole to take a real close look at  
5 protecting our wetlands. Thank you.

6 CHAIRMAN REBER: Representative Hershey

7 REPRESENTATIVE HERSHEY: Thank you,  
8 Mr. Chairman. I just have a couple comments,  
9 and I thank Representative Steil for bringing  
10 this to our attention

11 I live where I've lived now for 30  
12 years, and every ten years I think our  
13 population's increasing 10 to 15 percent and  
14 we're having more driveways and roofs. And we  
15 never knew it was the driveway or roof. We  
16 thought it's the way it is when you don't have  
17 water penetrating the ground, but we are having  
18 runoff where we didn't have it before.

19 So it is a good time -- on the tail end  
20 of this last flood, we just had 3 inches of rain  
21 the other night. It's probably a good time to  
22 discuss this thing. Thank you.

23 CHAIRMAN REBER: Thank you,  
24 Representative Hershey. Any questions from  
25 Representative Smith? Representative Gill?



1 know that we have to organize -- whatever  
2 management we do of these facilities, has to be  
3 organized along the watershed itself because it  
4 has to be a wholly integrated solution and a  
5 wholly integrated management plan for that  
6 watershed.

7 CHAIRMAN REBER: All right. Thank you  
8 very much. And if you would like to join us,  
9 Representative, we'd be most appreciative.

10 At this time, I'd ask Deputy Secretary  
11 Peltz if he could bring his panel, entourage if  
12 you will; and I do appreciate you assembling  
13 this esteemed group to provide us with testimony  
14 today.

15 And if you would, at your leisure,  
16 introduce each one and give some background, if  
17 you will, as to their positions. And proceed as  
18 you desire

19 MR. PELTZ: I'd be happy to. Thank you,  
20 Mr. Chairman. It's a delight to be here with  
21 all of you today. I'd like to start by  
22 introducing all the resident experts that we  
23 have in our department that will be helping me  
24 to answer any questions you might have.

25 Starting from my right, your left, Chris

1       Johnston, he's my special assistant with the  
2       Deputate Local and Area Transportation. Then  
3       immediately to my right is Bill Coup. Bill is  
4       the Bureau of Municipal Services Manager. Bill  
5       has worked on municipality or municipal matters  
6       for many, many a decade at this point in time.

7                To my left, immediate left, is John  
8       Hrubovcak. John is one of our legal counsel  
9       within the Department of Transportation. And  
10      finally, our real resident expert on stormwater  
11      management matters, Carl Tosi. Carl is one of  
12      our maintenance managers over in Engineering  
13      District 6-0. And again, we're all delighted to  
14      be here with you today.

15               We first became involved with this issue  
16      of stormwater management through the request of  
17      Representative Steil, Senator Heckler, and  
18      Representative Melio. Representative Steil  
19      initially brought this issue to the Department  
20      of Transportation's Municipal Advisory Committee  
21      to address local roadways and stormwater issues.

22               In response, the Department offered to  
23      convene a working group of interested agencies  
24      and organizations to address these concerns.  
25      The working group represents local, municipal

1 governments, and state agencies, including the  
2 Department of Environmental Protection and  
3 PennDOT.

4 The Department believes this effort  
5 could be expanded to include additional groups  
6 such as POWER -- many of you may not have heard  
7 of them. POWER stands for the Pennsylvania  
8 Organizations for Watersheds and Rivers -- as  
9 well as other state agencies.

10 And when I think of other state  
11 agencies, I'm thinking of DC&R and the Fish and  
12 Boat Commission, for example, and other  
13 interested parties who seek resolution to the  
14 problems associated with stormwater management.

15 PennDOT has acted as a facilitator to  
16 bring groups together to discuss the  
17 responsibilities of stormwater runoff. This  
18 issue goes well beyond the Department of  
19 Transportation's responsibilities in managing  
20 such runoffs, as you've heard from  
21 Representative Steil earlier today.

22 The Department will continue to design,  
23 construct, and maintain those drainage  
24 facilities located within our rights-of-way  
25 which are meant to handle normal rainfall

1 runoff.

2           However, it is the Department's  
3 conviction that jurisdiction over stormwater  
4 management be provided to a bona fide,  
5 existing -- and I emphasize existing. We don't  
6 want to create another government entity if we  
7 don't have to -- entity who would be given the  
8 authority to ensure that a unified approach to  
9 stormwater management exists.

10           This includes the ability to construct,  
11 maintain, and inspect stormwater facilities.  
12 Indeed, House Bill 979 begins to address these  
13 issues. I don't need to tell any of you that  
14 stormwater management is a large problem in  
15 suburban and urban areas especially.

16           Impacts include flooding and drainage  
17 damage to local roads and bridges -- we've all  
18 seen that this year -- watershed conservation  
19 losses, and, of course, damage to public and  
20 personal property. The list is extensive and  
21 indicates the critical nature of this issue.

22           Act 167, the Stormwater Management Act  
23 of 1978 was a good start in addressing the  
24 problem; however, issues related to  
25 responsibility and coordination, maintenance,

1 and inspections still seem open to  
2 interpretation.

3 House Bill 979 or a version thereof  
4 would be beneficial in addressing these  
5 complicated issues. Stormwater Working Group  
6 intends to work closely with the Legislature on  
7 HB 979 towards promoting a regional stormwater  
8 facility management approach

9 Although PennDOT recognizes that  
10 additional work needs to be accomplished in  
11 seeking consensus on this issue, the Department  
12 supports the concept of a regional stormwater  
13 management approach.

14 On behalf of the Department, I'd like to  
15 commend Representative Steil, Representative  
16 Melio, and Senator Heckler and all of you for  
17 bringing attention to this issue.

18 I look forward to working with the  
19 Legislature and the Working Group to seek  
20 remedies. At this point in time, I'd be  
21 delighted to answer any questions as would all  
22 my resident experts here.

23 CHAIRMAN REBER: Thank you,  
24 Mr. Secretary. Representative Steil, perhaps  
25 you could set the tone with some questions of

1           these individuals as a result of your inner  
2           workings over the past year and a half on this  
3           issue which may be of some benefit to the  
4           members of the Committee so we aren't repetitive  
5           or out of context, if you will, as to where you  
6           have gone or where you hope to ultimately go.

7                        REPRESENTATIVE STEIL: Thank you,  
8           Mr. Chairman. What we might begin doing is for  
9           Carl Tosi from Bucks County is kind of just  
10          identify some of the problems that we originally  
11          discussed and, particularly, some of the  
12          problems as they now are becoming very apparent  
13          during the floods we had in June involving  
14          PennDOT and residences along the roadway.

15                       I think that kind of sets the tone for  
16          where we need to address the problem.

17                       MR. TOSI: Thank you, Representative  
18          Steil. In general, I think the easiest way to  
19          sum it up is that if a drop of water, no matter  
20          where a falls within the state of Pennsylvania,  
21          touches a state road, the residents make an  
22          assumption that it's a PennDOT problem.

23                       I constantly get calls every day from  
24          various people that are getting flooded from  
25          water that either paralleled the road for a

1 period of time or crossed the road through a  
2 pipe, but they don't look at where the water's  
3 coming from.

4 This water is not the water that's just  
5 hitting on the state roadways. This is water  
6 that's falling over the entire watershed, and  
7 it's collecting.

8 The problem that we have in Pennsylvania  
9 is that we have so many state roads throughout  
10 the entire state that it doesn't take long for  
11 that water to touch a state road someplace and  
12 as soon as it touches that state road, they get  
13 this false impression that it's all PennDOT's  
14 problem

15 Until we can get those waters, the  
16 amount of water that actually falls in watershed  
17 under some form of control where it runs from  
18 one township to another, from one development to  
19 another, we're not going to solve the problems.

20 And that's why I feel very strongly that  
21 this Committee that was put together under  
22 Representative Steil is a real good start to  
23 make some inroads to controlling the water flow  
24 over the surface of the state properties.

25 I can tell you I've suffered two storms

1 this past year: The one in January where it  
2 rained about 6, 8 inches on top of 30 inches of  
3 snow which gave us a lot of water running over  
4 the surface; and then this recent one on June  
5 12th that came down where we had 9 inches in  
6 three hours over a very small area within Bucks  
7 County.

8 Both those storms were bad; but I have  
9 to admit, the June storm was worse than my  
10 January storm. The main reason being is that  
11 the January storm, the ground was frozen. When  
12 that water came over the road and flooded  
13 everything out, it was going over flooded earth;  
14 and therefore, the erosion was minimal.

15 Yes, we did have some, but nothing like  
16 we had in the June 12th storm where there was no  
17 frozen ground and when that same amount of water  
18 or more or less, whatever the case might be, it  
19 just took out the soil unbelievable.

20 We had major washouts along the state  
21 roads, along all the creeks, and many private  
22 properties were totally washed out where their  
23 foundations were totally dug up around their  
24 houses.

25 It is an extreme problem that has to be

1 put under control. This problem is exacerbated  
2 in the heavily-populated communities. You get  
3 Southeast Pennsylvania where your population is  
4 very high. You got many of those driveways and  
5 many of those rooftops all putting water out  
6 there onto a state road or a township road which  
7 carries it down to a state road

8 In the rural areas, it might not be a  
9 problem today; but as they develop, they will  
10 experience the same type of problem. It's just  
11 really magnified by population.

12 REPRESENTATIVE STEIL: One other  
13 question that maybe John Hrubovcak may want to  
14 address, we had -- again, it came to our  
15 attention during the floods in June is who  
16 actually owns the stormwater facilities or the  
17 drainage channels that currently exist?

18 Some of these drainage channels are  
19 nothing more than streambeds that may be dry a  
20 good part of the year or have very minimal  
21 flows.

22 The question of who owns those  
23 streambeds which becomes stormwater channels is  
24 one problem The second problem is who owns the  
25 facilities that may be piped water systems

1 within roadways? And we developed some  
2 interesting understandings from that. Maybe,  
3 John, do you want to comment on that?

4 MR. HRUBOVCAK: Yes. Well, typically  
5 the state road system as you know it today  
6 started in 1911. Prior to 1911, there were no  
7 state roads And that's when the legislature  
8 starting giving township and borough roads to  
9 the state.

10 And when the General Assembly started  
11 giving roads to the state, they delegated  
12 maintenance responsibilities for certain items.  
13 So the question of who owns what drainage  
14 channel depends upon what road you are talking  
15 about.

16 We have 3 digit LR's, 4 digit LR's, 5  
17 digits LR's, and roads and boroughs and  
18 townships. And so you have to ask, you know, is  
19 it 3, 4, or 5 digit LR's? Is it a borough or  
20 township? And then I can give you the answer.

21 But typically what the General Assembly  
22 did as a general rule, not applicable in every  
23 case, but generally if you got longitudinal pipe  
24 along the roadway carrying water such as your  
25 drainage systems in boroughs and cities, those

1 were not taken over by the state.

2 The local municipalities who initially  
3 had jurisdiction over those when they were under  
4 the roads maintained that jurisdiction.  
5 Typically, the state has jurisdiction over  
6 cross pipes and any new systems that it has  
7 placed in state roads.

8 The drainage channels that  
9 Representative Steil said that are off the state  
10 roads, those are -- if they are not natural  
11 water, those are generally private property.

12 And generally the streams are, if  
13 they're navigable, are -- at least for control,  
14 those are with the Commonwealth. So there are a  
15 variety of ownership of drainage swales and  
16 drainage channels.

17 REPRESENTATIVE STEIL: I think that the  
18 interesting part about that is that we early on  
19 discovered in our task forces that  
20 municipalities, particularly those that had  
21 developments occurring along state roadways, as  
22 far as that development plan, the municipality  
23 required the developer to widen the roadway and  
24 install piped stormwater drainage systems  
25 including catch basins, inlets along the roadway.

1           At the conclusion of that development,  
2 the developer was required to dedicate those  
3 facilities to PennDOT. We found in our  
4 conversations that, in fact, in many cases  
5 PennDOT does not accept those facilities.

6           Now, we have the situation where the  
7 municipality says, Hey, we had it built for  
8 PennDOT. We dedicated it to PennDOT, but  
9 PennDOT didn't accept it. So now who does own  
10 it? Who will maintain it? Many of these are  
11 new. So it's not a current problem, but it  
12 certainly will be a problem.

13           With regard to the flooding that we had  
14 in Bucks County -- but this is true, again,  
15 throughout the state -- streambeds that were  
16 part of the drainage system, typically they  
17 belong to the property owner if they're not  
18 navigable streams. But defining navigable seems  
19 to be somewhat of a problem.

20           And when we had the kind of flooding we  
21 had in early June, the stream actually cut new  
22 channels through properties because of the  
23 tremendous amount of water that flowed. And the  
24 stream bank erosion was so severe that it's  
25 beyond the ability of property owners to restore

1       those stream banks. And this goes for miles and  
2       miles and miles.

3               So again, the question of who owns it  
4       and who will restore it so that it can be an  
5       effective stream -- stormwater channel in future  
6       is a problem.

7               Lastly, Mr. Coup, would you like to just  
8       tell us briefly about some of the discussions  
9       you've been conducting now for several months  
10      with DEP and PennDOT personnel that I've been a  
11      part of it?

12              MR. COUP    Thank you, Representative  
13      Steil. Back about a year ago, Representative  
14      Steil was pushing for PennDOT to get involved.  
15      And so what we did was we sat down -- it was  
16      probably about five or six of us -- and we  
17      started to tackle the monumental problem that  
18      faces all of us in this Commonwealth.

19              From there, we started to get interfaced  
20      with the local government folks, associations,  
21      cities. We then left from that point, we went  
22      to private industry. And we realized that it  
23      interfaced and touched private industry.

24              We also got very involved with DEP  
25      because we understood that it was one of their

1 major functions, of course. And it was a  
2 tremendous problem for them too to police these  
3 watersheds, which you'll see behind us.

4 At that point in time, we started to  
5 have monthly meetings; and we would discuss the  
6 various problems that we were coming for. And  
7 then we started to look at the House Bill 979,  
8 and we started to reevaluate that or see things  
9 that we thought should be included in that.

10 About that time, approximately in  
11 January, we had a meeting set up, I think, for  
12 January 8th. And by February 1, the Department  
13 had reassigned me to work with FEMA on the  
14 recovery effort of the Commonwealth of  
15 Pennsylvania, particularly the local governments  
16 and also for the safe highway system, of which  
17 I'm still working on

18 And it's amazing the stories that you  
19 hear working in a DFO Disaster Headquarters of  
20 the flooding not only of the highway system but  
21 what we also called the IAs. That was the  
22 individual systems, which are the homeowners.

23 We heard particularly in Bucks County  
24 where the water actually flooded a building  
25 that's up on a grade and the pictures of the

1 things that we see out there and the millions of  
2 dollars worth of damage that we're going to have  
3 to face and pay for in this Commonwealth.

4 Even with the assistance of FEMA, Senate  
5 Bill 1, and those types of things, still the  
6 property owners are the people that had this  
7 devastation, worst stormwater management. It's  
8 millions and millions of dollars.

9 And we feel now that we've come far  
10 enough with our Committee that we should now be  
11 looking at probably letting DEP take the lead  
12 and, of course, have us as a very big part of  
13 it.

14 Also, we feel that the House of  
15 Representatives and the Senate should still be  
16 representing that group, that it should be maybe  
17 even be a type of subcommittee to your Committee  
18 and work with you very closely.

19 We also realize it's going to interface  
20 with 2,600 municipalities of this Commonwealth,  
21 and we also realize it's probably going to  
22 require funding. Thank you.

23 CHAIRMAN REBER: Representative Masland.

24 REPRESENTATIVE MASLAND: Thank you,  
25 Mr. Chairman. Secretary Peltz, just a quick

1 question. I guess we need to somehow hone in or  
2 focus on exactly who is going to be in charge of  
3 this stormwater management.

4 You say you want it to be an existing  
5 entity. Representative Steil says bigger than a  
6 bread box, smaller than a Chevy. The way the  
7 bill is written, House Bill 979 calls on the  
8 county to set up districts or a district.

9 Is that acceptable to you? Because  
10 that's essentially setting up a separate entity  
11 the way I read it. It's not the county doing  
12 it. It's the county saying, we're going to set  
13 up these new districts. Do you have a problem  
14 with that?

15 MR. PELTZ: No, you're right; but we  
16 have to get our hands around this central  
17 problem. I think that both Representative Steil  
18 and myself agree that someplace around the  
19 county area would be the most likely area to go.

20 Now, as Representative Steil indicated  
21 to you earlier, you see in back of me all of the  
22 stormwater watersheds; and many of them cross  
23 county lines. So somehow we're going to have to  
24 create some type of county-regional approach  
25 towards identifying and resolving these

1 concerns As we all recognize, that doesn't  
2 make the problem any easier.

3 REPRESENTATIVE MASLAND: Again, I'm not  
4 intimately familiar with the details of House  
5 Bill 979; but there may be some way that we can  
6 add some language which would enable the  
7 stormwater districts among counties to  
8 coordinate their efforts.

9 And since I live in Cumberland County,  
10 we have a problem with the Yellow Breeches Creek  
11 among others. In fact, Durla Lathia, I see in  
12 the back from DEP, was up along with PennDOT  
13 representatives and Army Core Engineers and a  
14 whole group of people that we had for a day in a  
15 conference in my district looking at that  
16 problem.

17 And I will tell that you PennDOT was not  
18 the scapegoat. You'll be happy to know that.  
19 But the Yellow Breeches Creek, after a certain  
20 point, you deal with both York and Cumberland  
21 Counties. You can't separates the two.

22 And to the extent we can enable some  
23 cooperative effort among those county districts,  
24 I think that'll address the problem. So, again,  
25 I'm not real familiar with all the language

1 here. I think the idea is going the right  
2 direction

3 I don't have any problem with the county  
4 stormwater district if you want to create  
5 something like that as long as we can have them  
6 cooperate

7 MR. PELTZ: Right. In fact, I'd like to  
8 add a couple things. That's one of the beauties  
9 about this Committee, this municipal Committee,  
10 the working group that we have.

11 We're able to bring in all the different  
12 types of municipalities whether it be counties,  
13 cities, boroughs, townships. We've got a nice  
14 working group started. We'd like to add a  
15 couple other individuals into this group -- or  
16 organizations, I should say

17 One of the other problems I see when you  
18 bring up the who is going to be responsible for  
19 this, are we talking authority or an entity  
20 other than the county, we're talking about the  
21 pointed positions on a authority. And that  
22 becomes problematical. How do you decide how  
23 many people from each county are going to be  
24 sitting on this authority?

25 And obviously, the county commissioners

1 or whomever will be responsible for overseeing  
2 these entities must have some type of exercise,  
3 some type of control for lack of a better word.  
4 And we've got to take a real hard look at this,  
5 as I'm sure the whole Committee understands.

6 REPRESENTATIVE MASLAND: I think,  
7 again, that somebody alluded to earlier many  
8 times you want to strike when the iron is hot.  
9 I think now we need to strike while the water's  
10 high, and we've had a few occasions like that.  
11 And it's what it's doing today, and what it's  
12 doing tomorrow. This is a very timely hearing.  
13 Thank you.

14 CHAIRMAN REBER: Thank you.  
15 Representative Surra.

16 REPRESENTATIVE SURRA: Thank you,  
17 Mr. Chairman. Good afternoon. Good to see you  
18 again.

19 MR. PELTZ: Good to see you again.

20 REPRESENTATIVE SURRA: The local  
21 conservation districts in our county are fine.  
22 And they deal with many of these issues already.  
23 Do you feel that they may be given an expansion  
24 of their powers and relieve you of any?

25 MR. PELTZ: Indeed, Representative Steil

1 and I were discussing that earlier today. My  
2 experience, as has been yours, has been very,  
3 very positive with those organizations.

4 And indeed, that's something we'd want  
5 to take a hard look at. Because certainly in  
6 our experience, our joint experiences have been  
7 very, very positive to work with them; and  
8 that's certainly something we need to look at.

9 REPRESENTATIVE SURRA. Just as a side  
10 comment, this is not just an urban/suburban  
11 problem. Deputy Secretary Peltz and myself  
12 worked jointly on a serious runoff problem on  
13 the Blue Jack Hill area which ended up being  
14 PennDOT's responsibilities and was caused by  
15 PennDOT.

16 And also, we do not get so much from  
17 development but from vast acres of strip mining  
18 and areas that are deforested where you have  
19 just grasses and there's not a whole lot to hold  
20 the waters back. And streams rise and fall very  
21 quickly and cause rapid flooding and stormwater  
22 problems. Thank you very much.

23 MR. PELTZ: Thank you.

24 CHAIRMAN REBER: Thank you very much.  
25 For the record, I'd also like to note

1 Representative Mark Cohen from Philadelphia, the  
2 Democratic Policy Chairman -- excuse me -- the  
3 Democratic Caucus Chairman has joined us.

4 And I appreciate his attendance because  
5 he would be the one that would ultimately handle  
6 many discussions on these kinds of issues before  
7 that caucus. So I thank Representative Cohen  
8 for being in attendance. I would now like to  
9 hear from Representative Smith.

10 REPRESENTATIVE SMITH: Thank you,  
11 Mr. Chairman. And I also wanted to comment that  
12 I appreciate Representative Steil for keeping  
13 this issue before us and for the Chairman for  
14 bringing up this hearing.

15 I had spoken with a few of the people  
16 from the local government side of things and  
17 with -- I think with Dave and a couple others a  
18 year or so ago when a parallel issue to what  
19 your primary focus is had surfaced in my area.

20 And it has to do more with the -- down  
21 the road, Bucks County, of course, is looking at  
22 current and fast development. In my area, it  
23 oftentimes happens the problem deals with older  
24 facilities or perhaps not really fully existent  
25 stormwater management facilities but older

1 communities.

2 And I'd like to go back to a comment  
3 that was made relative to, you know, who owns  
4 the water drainage channels? In my area, the  
5 problem has occurred in boroughs, in particular.

6 And I would like you to maybe expand on  
7 that a little bit in terms of differences  
8 between boroughs and townships because that's  
9 created a debate within three or four of the  
10 small boroughs in my area when they deal with a  
11 different problem with stormwater cross pipes as  
12 opposed to how they're handled in the townships.

13 Can you fill us in a little bit on that,  
14 the history of that perhaps?

15 MR. COUP: Let me try to summarize that  
16 a bit. Typically, one could look at boroughs as  
17 being fairly developed, townships being more  
18 rural areas surrounding the boroughs.

19 And typically the boroughs have, in most  
20 cases, the underground drainage systems,  
21 stormwater systems underneath the streets with  
22 the inlet boxes and all; and typically, you will  
23 not find those in townships.

24 In townships you will generally find the  
25 swales along the highway or cross pipes going

1            underneath the highways. That's typically how  
2            you look at those. And when the state  
3            did -- when the General Assembly gave over the  
4            control of the streets and boroughs to the  
5            Department for Maintenance, it did not include  
6            the underground pipes within them.

7            And when the state gave over the control  
8            of roadways and townships, it gave them over for  
9            construction. I believe it's to the width that  
10          the Department deemed to exercise. So  
11          generally, we have taken control of the drainage  
12          swales in there because there are very little  
13          curbing townships and, essentially, no parallel  
14          pipes

15          So typically, I think you can generally  
16          say if there's a pipe that's underground, it's  
17          parallel to a highway, there's essentially none  
18          of those taken over by the Department in any of  
19          the takeover statutes that the General Assembly  
20          has passed. It's pretty much the cross pipes  
21          that have been taken over.

22          REPRESENTATIVE SMITH: That's partly  
23          where I'm getting to. I had mentioned to  
24          Secretary Peltz that -- just to alert him of  
25          this because he's quite familiar with a lot of

1 the municipalities, having worked in that area  
2 for many years for Congressman Clinger.

3 And it's difficult to explain to a  
4 borough counsel member of a borough of 4 or 500  
5 people, let's say, that they're responsible for  
6 cleaning out a stormwater drainage pipe that  
7 runs under a state highway.

8 The state will come in and give you the  
9 grate on the top is what we were always told.  
10 They'll replace the surface, but the borough's  
11 responsible for that. Yet, you could go just up  
12 the road a little ways into the edge of a  
13 township that might be somewhat  
14 developed -- your characterization is accurate.  
15 Generally speaking, I would agree with it.

16 But when you go to an area of a township  
17 that's somewhat developed and if they have a  
18 problem with that similar cross pipe being  
19 filled with sediment, you know, the Department  
20 of Transportation will come in and clean that  
21 out.

22 Therein lies one of the main problems  
23 that we're have having in our area is just the  
24 general inequity which exists in today's world  
25 between the townships and the boroughs, but it

1 relates to the overall issue of the stormwater  
2 management.

3 I guess I'm searching for a way to (1),  
4 help those small boroughs deal with that  
5 problem, and (2), you know, as an explanation of  
6 why that inequity exists.

7 MR. COUP: Well, the explanation may not  
8 be palatable; but it's easy. It's legislation  
9 that was passed when the different roads were  
10 taken -- ordered taken over by the Commonwealth;  
11 and we simply follow that language.

12 And, yes, many people are of the  
13 misconception that the state owns everything  
14 that's in the state road system. And if you  
15 included that, you would also include the sewer  
16 lines, the telephone lines. And that,  
17 obviously, is not the case

18 So the statute did not give the state  
19 ownership of the state roads. It gave them  
20 responsibilities for surface maintenance. Along  
21 with that surface maintenance, we do claim  
22 surface support.

23 That's how we control some of the  
24 elements underneath the highway where people  
25 can't construct and open them because we must be

1       able to make sure that the support for that road  
2       surface stays there.

3                REPRESENTATIVE SMITH:  Am I correct that  
4       some of this took place over a period of time?  
5       You had mentioned the date 1911, the designation  
6       of the roads were more or less set out in terms  
7       of state, borough, township, whatever.

8                Wasn't it later, like in 1945, I  
9       believe, that spelled out the specifics of the  
10      pipes and all that?

11              MR. COUP:  No.  That actually came about  
12      through each different year.  In 1911, as I  
13      said, was the first year the General  
14      Assembly -- that was the Squirrel Act -- gave  
15      control of some roads to the state.

16              That's primarily the three digit LR's  
17      that were taken over by the state, and those are  
18      generally the ones between county seats and  
19      major roads  And those are not even complete  
20      road systems because they excluded portions of  
21      roads and boroughs and townships.  They excluded  
22      portions over bridges.  They excluded portions  
23      over millraces.

24              And then probably every odd year  
25      thereafter, some additional roads were given

1 over to the state with different controls.  
2 And -- so that happened piecemeal over -- since  
3 1911 to the present time

4 The majority of the roads were taken  
5 over by the late 1930's, so most of the state  
6 road system was in place by that time period.  
7 And so that literally is one of the problems  
8 because each piece of legislation when the state  
9 roads were taken over for maintenance had some  
10 different language within them.

11 So that's why you got to go back and  
12 take a look at each road system under what bill  
13 it was actually taken over. But, so, you know,  
14 getting back to your question, the thing is the  
15 straight answer that I would have to give is  
16 that the difference between them is the  
17 legislation that they were taken over. And a  
18 lot of that was codified in 1945, and that's in  
19 the state codified law.

20 REPRESENTATIVE SMITH: The one that was  
21 codified in 1945, you said that? That's the one  
22 that's often quoted back to us.

23 MR. COUP: Right In 1945, the  
24 legislation -- that's when the state highway Law  
25 was passed. And a lot of the laws were

1 reorganized in one place at that time.

2 REPRESENTATIVE SMITH: So in historical  
3 effect, that's what's kind of involved. It had  
4 taken place since 1911?

5 MR. COUP: Yes. Yes.

6 REPRESENTATIVE SMITH: Does that also  
7 deal with the right-of-ways, say, for the actual  
8 roadway and then perhaps a cross pipe and then a  
9 right-of-way that might lead going down to a  
10 stream?

11 Would that also deal with those issues  
12 of, like, who controls that right-of-way if  
13 originally the road was built by either the  
14 borough or the township and/or the state,  
15 perhaps and that right-of-way was given off to  
16 one, at a later date, the road would have been  
17 given to another entity?

18 MR. COUP: Okay. If the state took over  
19 that road system and if the state took over  
20 that cross pipe and there's an outlet swale at  
21 the end of the cross pipe, we would have taken  
22 that over because we would have taken -- we --  
23 it's assumed that the township or borough who  
24 initially constructed that would have paid  
25 property damages for that swale.

1           And we would have taken that over when  
2 we took over that cross pipe. So we would have  
3 owner -- we would have control over that. And  
4 as a matter of fact, there was a state law  
5 saying that if a property owner does block that  
6 out that is a violation of state law.

7           You may not block up any state drain and  
8 swales. So we do control those, but those are  
9 only for the swales that were taken over in one  
10 of the Highway Transfer Acts. So we have -- we  
11 maintain jurisdiction over those.

12           REPRESENTATIVE SMITH: Thank you very  
13 much I appreciate the background on that. And,  
14 again, I appreciate the issue being brought  
15 before us because it is a parallel problem to  
16 what you've actually been dealing with.

17           It's something that certainly we're  
18 going to have to address. Thank you,  
19 Mr. Chairman.

20           CHAIRMAN REBER: Thank you.  
21 Representative Hershey.

22           REPRESENTATIVE HERSHEY: Thank you,  
23 Secretary Peltz, for bringing your Committee to  
24 us today. I have an observation and comment.  
25 For ten years, I represented Western Chester

1 County and the entire of Honeybrook. We had a  
2 state road going through the edge of the woods  
3 for three miles, and two of those miles were  
4 woods.

5 And we had -- there was a stream that  
6 run below the road; and we had dealings with DER  
7 and the Fish Commission and various  
8 environmental people concerning the future  
9 of -- life.

10 I was amazed how many people complained  
11 to PennDOT and to the Fish Commission on the  
12 flooding that took place in the last five years.  
13 And it took all these floods to remind them in  
14 the last ten years there were twenty houses  
15 built along that road in the woods, all had a  
16 driveway a city block long, some were blacktop,  
17 some were gravel.

18 Anytime you have up to a half an inch of  
19 rain on a blacktop driveway on a slope like  
20 that, you have runoff. We had an inch of rain.  
21 The water flooded PennDOT's pipes, flooded the  
22 stream, and -- but they didn't realize they  
23 created it themselves.

24 But I would like to explore further the  
25 ideas of expanding the conservation districts as

1 we deal with this ongoing problem from watershed  
2 to watershed. Thank you.

3 CHAIRMAN REBER: Thank you.  
4 Representative Vitali.

5 REPRESENTATIVE VITALI: Thank you,  
6 Mr. Chairman. Real quick, if I read House Bill  
7 979 correctly, it appears to give the county  
8 stormwater management districts the right to  
9 approve the location of highways. And I'm just  
10 curious as to PennDOT's position on that. I'm  
11 looking at page 8, lines 8 through 11.

12 MR. COUP: Okay. We did not read that  
13 Bill that way to give the control of the  
14 location of highways. We don't have a copy  
15 here, but I do recall looking at that. And we  
16 did not read that in that way.

17 MR. PELTZ: Representative, could you  
18 identify where that might be so we could take a  
19 look at it?

20 REPRESENTATIVE VITALI: Yes. That's  
21 page 8, lines 8 through 11.

22 MR. PELTZ We're going to -- if you  
23 don't mind, we'll get back to you and touch base  
24 with you on that We'll take a very close look  
25 at that.

1 REPRESENTATIVE VITALI: Thank you.

2 MR PELTZ: Thanks.

3 CHAIRMAN REBER. Thank you.

4 Representative Rubley.

5 REPRESENTATIVE RUBLEY: Thank you,  
6 Mr. Chairman. As Representative Steil pointed  
7 out in his remarks -- and many of us have  
8 realized this over the years -- but one of the  
9 big problems with Act 167 is the fact that it's  
10 been underfunded all along.

11 And I notice that many of you kept  
12 referring to House Bill 979, so it sounds like  
13 you have had impact into the development of this  
14 Bill.

15 As I read this, the funding would not  
16 come from any additional charges, fees, or rates  
17 from review or approval of subdivision or land  
18 development plans; rather, it would be charges  
19 made for the purpose of paying the  
20 administrative expenses and general maintenance  
21 shall be calculated at a uniform rate based on  
22 the level of service required by the user.

23 And user is defined as any person who  
24 resides on property or alters the land use  
25 within the boundary of the district.

1 I'm just curious, this looks to me like  
2 an administrative nightmare for every single  
3 parcel that is developed coming from an  
4 intensely developing county

5 To determine what the user rate should  
6 be, you have to take into consideration the  
7 average value, the slope size, soils from  
8 sediment, percent impervious surface, and so on.

9 Did you look into what the  
10 administrative cost would be in terms of  
11 determining what this uniform rate would be for  
12 each user? And is there any precedence for  
13 assessing people for stormwater management in  
14 other states?

15 MR. PELTZ: You've caught us on it.  
16 That is a major cobweb. You're absolutely  
17 correct. And we don't have the answers on that  
18 one yet. That's what we need to work out and  
19 try and obtain consensus.

20 It always comes down to the dollar, and  
21 the bottom line is we don't have a handle on  
22 that yet. And that's the purpose of the working  
23 group. It's a major problem that needs to be  
24 addressed, but we're trying. Is there any  
25 additional comments?

1           REPRESENTATIVE RUBLEY: There must have  
2           been some reason why you decided not to impose  
3           any additional fees or rates at the time that  
4           the land development and subdivision plans were  
5           being reviewed rather than waiting until the end  
6           use of that property.

7           MR. JOHNSTON: First of all, the working  
8           task force that Representative Steil asked for,  
9           we did not have anything back at all on 979. We  
10          used 979 as a vehicle to see where we could go  
11          with maybe something similar, some type of  
12          legislation.

13          So we are looking at that too. We have  
14          not made a decision on anything at this point in  
15          time. Um, I think this House Bill has been back  
16          nine sessions? Is that right, Representative?

17          REPRESENTATIVE VITALI: Yes, this bill  
18          has been around for quite a while. We wanted to  
19          look at the Bill as a potential umbrella  
20          approach to the problem. And we weren't yet  
21          focusing on the individual aspects of the bill.

22          When Representative Michlovic and Mr.  
23          David French testified, they are more familiar  
24          with some of the aspects of that and what they  
25          had in mind as they developed that legislation.

1           We're just trying to get right now an  
2 agreement on the overall concept of stormwater  
3 management district and then beginning to refine  
4 it from there.

5           MR. PELTZ: I'd just like to add one  
6 thing. I'd like to make it somewhat clear that  
7 we at PennDOT -- we didn't draft this bill; but  
8 we have taken the bill as a vehicle to try to  
9 work with all of you to try and come to some  
10 remedies.

11           But you've hit on an area that's really  
12 going to be a tough one to resolve.

13           MR. JOHNSTON: But we, like you folks,  
14 we didn't like a lot of the language in it  
15 either. But what we recommend we do is get the  
16 key people in the Commonwealth of Pennsylvania  
17 on this task force.

18           And as many ways this thing goes -- it  
19 has a lot of roots. And we're trying to work  
20 out those roots back into the tree and get a  
21 good, good -- something good to present to you  
22 folks.

23           REPRESENTATIVE RUBLEY: Thank you.

24           MR. JOHNSTON: Thank you.

25           CHAIRMAN REBER: I suspect Mr. Coup or

1 Mr. Gromelski would be able to give you some  
2 direction in this area. If you had to  
3 prioritize what would be stormwater runoff  
4 problems that are exacerbated by some reason off  
5 site of your jurisdiction, what in a prioritized  
6 fashion would be those areas that caused some of  
7 the concerns?

8 Obviously 9 inches in three hours -- I  
9 don't care what you do -- you're not going to be  
10 able to regulate that. But in instances  
11 where -- let's not talk about hundred-year  
12 floods or anything of that nature.

13 But just a good, old-fashioned summer  
14 thunderstorm coming through the area and, you  
15 know, the kind of damages that we see on  
16 occasions, if you had to try to explain what are  
17 some of the causes and some of the remedies,  
18 what would we be looking for as to areas that  
19 might need additional remediation, statutorily  
20 or otherwise.

21 Obviously, I think the municipality's  
22 planning code and some of its consideration  
23 would be the area where that would have to be  
24 plugged in.

25 MR. COUP: Yes, I agree totally with

1       that. The planning codes, I think, need looked  
2       at. I think also as Representative Steil said,  
3       we've built an awful lot of things over the last,  
4       probably, 70 years in flood plane areas. We've  
5       created a lot of our own problems. I think those  
6       would be the key areas I would look at, you  
7       know.

8                 CHAIRMAN REBER: Do you find that a lot  
9       of the problems that you see emanate from newer  
10      developments where there has been acute -- an  
11      awareness as to stormwater runoff problems?

12                Or is it older, pre-78, prewhatever, of  
13      developments that are bad in and of themselves?  
14      It may have been exacerbated by the additional  
15      flows that pre-78 may have carried out and there  
16      really wasn't that coordination of planning when  
17      the development was reviewed by the local  
18      municipality planning commissions?

19                MR COUP: That I think is very true,  
20      even in the highway system and all sides of the  
21      issue. I think we're seeing that a lot of prior  
22      planning wasn't in there. They took care of  
23      what they seen today -- that development today  
24      and that type of thing.

25                But what had been built or what

1           happened, as John was saying, back the road to  
2           the 30's and those type of things, I don't think  
3           they were really taken into consideration.

4                     And about '78, '79, I think we really  
5           started to look seriously at it. And I think  
6           that was really precipitated by my first flood,  
7           which was '72.

8                     Our home was devastated by the flood of  
9           Agnes; and we started to realize our pipes, we  
10          had to downsize. We had to start to looking at  
11          things in a different light.

12                    CHAIRMAN REBER: John, you may be able  
13          to, you know, give some guidance in this area.  
14          If, in fact, there is an acute problem that is  
15          somewhat apparent from stormwater management  
16          standpoint for a new development and the new  
17          development is ultimately having ingress and  
18          egress on those state roads and is a necessity  
19          for a highway entrance permit and the  
20          coordination of that local roadway and new  
21          development on this state road where ultimate  
22          ingress and egress is going to take place, do  
23          you use the powers of your particular permit  
24          process to make sure that the stormwater  
25          situation is, in fact, to your people's

1 expertise that have that expertise and that have  
2 analyzed it before that permit is actually used?

3 Do you look at it in that fashion? Do  
4 you get involved to that extent? Or is that an  
5 unfair representation as to what may or may not  
6 be done to the Department?

7 MR. HRUBOVCAK: No, I think it's a fair  
8 recommendation; but, again, you remember that  
9 water development is not on state roads. It  
10 comes on local roads. The second thing is you  
11 may only see the first phase of that development  
12 or that plan with other development, you know,  
13 going on behind that and really exacerbating the  
14 problem.

15 So it's one -- it's one handle on how to  
16 handle things. It's just, unfortunately, not a  
17 complete solution.

18 CHAIRMAN REBER: But where you do have  
19 definite jurisdiction in that is a problem the  
20 Department is aggressive in attempting to manage  
21 what otherwise becomes a serious stormwater  
22 problem if you didn't micromanage the issue.

23 Does the Department aggressively do that  
24 from your experience? Or do they sort of leave  
25 that up to the planning process at the local

1 end?

2 MR HRUBOVCAK: No. They will  
3 look -- my experience is the engineers who  
4 review the permits will look at the drainage  
5 flow coming from the property that will enter  
6 the state road. And they will determine if that  
7 water will overwhelm the state system or not.  
8 They do not look at that.

9 I hate to use the term micromanagement  
10 because that looks like it's telling the people  
11 how they're going to --

12 CHAIRMAN REBER: Don't feel bad. I  
13 think that's the first time those words have  
14 ever emanated from my lips, but it just seemed  
15 to --

16 MR. HRUBOVCAK. Okay. I'd like to say  
17 we do review the water flow coming from  
18 properties onto the state highway.

19 CHAIRMAN REBER: Okay. Deputy Secretary  
20 Peltz, the Department of Transportation's  
21 Municipal Advisory Committee which is looking  
22 into this local roadways and stormwater issues,  
23 will there be some formal recommendations,  
24 findings forthcoming?

25 Or are you intending to ultimately

1 develop compendium of your investigation  
2 analysis? And if so, could you at some time in  
3 the future present to this Committee for  
4 ultimate dissemination to all of the Members of  
5 the Committee such a document?

6 MR. PELTZ: Certainly. Again, we'll be  
7 working closely with Representative Steil and  
8 other reps and Senators across the legislature.  
9 But, yes, we certainly plan to work very, very  
10 closely with the other agencies and departments.

11 Bill Coup mentioned earlier that we have  
12 had some discussions with DEP. In fact, I'm  
13 going to assess with DEP about their  
14 involvement. They've been very actively  
15 involved.

16 But we're thinking maybe it's time to  
17 hand the gavel, work very closely with them in  
18 terms of this stormwater management group is  
19 concerned. But whatever happens, we will be  
20 right there in the midst of this matter working  
21 with the rest of the bodies.

22 CHAIRMAN REBER: Okay. Fine. One last  
23 thing, just formalizing Representative Vitali's  
24 request on page 8, that's section 6 of paragraph  
25 10, subparagraph small triple I, if you could

1 provide us with some form of review of that and  
2 pass it through counsel and we'll see that it's  
3 distributed to all members of the Committee.

4 MR. PELTZ: Absolutely.

5 CHAIRMAN REBER: Thank you very much.  
6 At this time, I think I will take a short break.  
7 We'll reconvene at 2:16 to give the reporter an  
8 opportunity to readjust her fingers. Thank you.  
9 Stand in recess for about six, seven minutes.

10 (A break was taken at this time.)

11 CHAIRMAN REBER: At this time, I would  
12 like to reconvene the Environmental Resources  
13 and Energy Committee Hearing on the stormwater  
14 management issue, House Bill 979, which is the  
15 subject itself.

16 Our next panel is from the Pennsylvania  
17 Department of Environmental Protection; and I'd  
18 like to introduce the Chief of the Division of  
19 Stormwater Management and Sediment Control, Mike  
20 Sherman.

21 Mike, thank you for coming. If you  
22 could introduce the remaining members of your  
23 panel as well as their areas of expertise, I'd  
24 appreciate it; and then you might proceed with  
25 your testimony.

1                   MR. SHERMAN    Thank you, Chairman Reber.  
2                   To my right is Durla Lathia. Durla has been  
3                   Manager of the stormwater management program in  
4                   the Commonwealth for the past ten years. To my  
5                   left is Dave Gromelski, who is Regulatory  
6                   Counsel to the program as administered in the  
7                   Bureau of Land and Water Conservation.

8                   I'd like to thank you for this  
9                   opportunity to appear before you today to  
10                  discuss the Commonwealth's stormwater management  
11                  program, the Stormwater Management Act of 1978,  
12                  as well as House Bill 979.

13                  I would like to especially thank the  
14                  members of the General Assembly for passing  
15                  Special Session House Bill 2, the Capital  
16                  Project Flood Protection Bill. The projects  
17                  listed in this Bill will provide relief for many  
18                  communities and improve their implementation of  
19                  stormwater planning and management.

20                  The Administration supports the concept  
21                  of communities and counties voluntarily joining  
22                  together to solve problems on a regional basis.  
23                  As the pending legislation attempts to move the  
24                  thought process to one of planning on a  
25                  watershed or regional basis, the Department is

1 already taking a watershed-based approach to  
2 many of its water programs.

3 Watershed assessment, restoration, and  
4 pilot watershed projects in our regional offices  
5 are involving local government and the public to  
6 join us in improving our management of these  
7 important resources.

8 Before we discuss the bill, let me  
9 provide some background information on the  
10 Commonwealth's stormwater management Program and  
11 the Act of 1978. Within the last 50 years,  
12 Pennsylvania has suffered 20 major floods  
13 resulting in total damages of over 6 billion  
14 dollars.

15 Despite investments of over \$1 billion  
16 in Federal and state flood control projects, the  
17 Pennsylvania state Water Plan estimates that on  
18 an actuarial basis, the Commonwealth suffers  
19 average residual flood damages of \$60 million  
20 annually.

21 95 percent of the Commonwealth's 2,567  
22 communities are designated as flood-prone under  
23 the National Flood Insurance Program. And as  
24 you know, over the past year, the Commonwealth  
25 has experienced widespread and localized

1           damaging floods leading to the passage of  
2           Special Session House Bill 2

3                       Unmanaged new development creates a host  
4           of problems. Some of which are: increased  
5           flood flows and velocities, accelerated erosion  
6           and sedimentation, overburdened carrying  
7           capacity of streams and storm sewers, increased  
8           cost of public facilities to carry and control  
9           stormwater, undermined flood plain management  
10          and flood control efforts in downstream  
11          communities, reduced ground water recharge,  
12          deteriorated stream water quality, and  
13          threatened public health and safety.

14                      The Commonwealth recognized the need for  
15          a stormwater management program and subsequently  
16          approved the Stormwater Management Act in  
17          October, 1978. The Act establishes a  
18          comprehensive program designed to preserve and  
19          restore flood carrying capacity and natural  
20          runoff regimes of Commonwealth streams and to  
21          protect and conserve ground waters and ground  
22          water recharge areas.

23                      The main thrust of the Act is to  
24          encourage sound water and land use practices  
25          through watershed planning and administration by

1 county and local governments to prevent future  
2 stormwater problems.

3 The stormwater management program is an  
4 integral part of the Commonwealth's flood  
5 mitigation efforts, augmenting flood plane  
6 management, stream improvements, flood control,  
7 and preventing degradation of water quality of  
8 our streams.

9 The Act requires counties and  
10 municipalities to undertake planning and  
11 management of stormwater runoff in each of the  
12 355 designated watershed consistent with sound  
13 water and land use practices to help preserve  
14 natural, economic, scenic, aesthetic,  
15 recreational, and historical values of the  
16 environment.

17 Counties and municipalities are  
18 reimbursed up to 75 percent of their costs in  
19 preparing and implementing watershed plans.  
20 The Department provides technical,  
21 administrative, and financial assistance to  
22 counties and municipalities from funds that are  
23 appropriated by the General Assembly each fiscal  
24 year.

25 \$595,000 was appropriated in FY '95, and

1 a similar appropriation is provided in FY '96.  
2 The stormwater plans prepared by counties  
3 provide criteria and standards for the control  
4 of accelerated runoff based on sound hydrologic  
5 and hydraulic principles. Those criteria and  
6 standards are implemented by local governments  
7 through their codes and ordinances.

8 This facilitates consistent stormwater  
9 management in the entire watershed and provides  
10 protection for public health and safety as well  
11 as minimizes the risk of loss to public and  
12 private properties.

13 The Department has developed stormwater  
14 management guidelines and model ordinances to  
15 assist counties and municipalities to explain  
16 the concepts of watershed planning and to  
17 implement the principles of hydrologic and  
18 hydraulic engineering and management of  
19 stormwater runoff.

20 The guidelines were approved by the  
21 General Assembly in May of 1985; and since then,  
22 50 watershed plans by 36 counties have been  
23 completed, requiring 489 municipalities to  
24 implement stormwater Control Ordinances.

25 The General Assembly has appropriated

1 over \$7 million since 1985 to provide financial  
2 assistance to counties and municipalities.  
3 Appropriations over the past five years have  
4 averaged \$590,000 per year.

5 Also as part of the commonwealth's  
6 stormwater program, the Department began  
7 assisting the Pennsylvania Infrastructure  
8 Investment Authority, PennVEST, in 1993 to  
9 provide financial assistance to municipalities  
10 to undertake stormwater construction projects.  
11 Over \$21 million in loans have been approved for  
12 36 municipal projects.

13 Municipalities, in order to be eligible  
14 to obtain a low interest loan from the PennVEST,  
15 are required to enact and implement a stormwater  
16 ordinance consistent with the Act.

17 As a result of Governor Ridge's  
18 Executive Order and Department Secretary Jim  
19 Seif's Secretarial Directive, program staff have  
20 participated this past year in the Department's  
21 Regulatory Basics Initiative. We have reviewed  
22 the existing statute, planning guidelines, and  
23 policies to recommend and offer the following  
24 comments:

25 First, while the act mandates that all

1        counties prepare and adopt watershed plans for  
2        the 355 designated watersheds, some watersheds  
3        may not need preparation of detailed watershed  
4        plans. It is possible that some counties could  
5        easily recommend and implement an effective  
6        stormwater control strategy without conducting  
7        detailed studies of the watershed.

8                The Department, in consultation with the  
9        counties, could establish a list of priority  
10       watersheds requiring planning efforts and defer  
11       planning activities for the nonpriority areas  
12       until there will be a need. Until such time  
13       that all watershed plans have been prepared by  
14       the counties, the Department would encourage  
15       municipalities to consider enacting a model  
16       stormwater ordinance.

17                Second, the Act also mandates that  
18       watershed plans must include, at a minimum, 13  
19       items listed under Section 5(b), Watershed  
20       stormwater Plan Content. The Department  
21       recommends that some of those requirements could  
22       be omitted from the plan without affecting the  
23       overall quality and effectiveness of the plan.  
24       This would save counties and the Department time  
25       and money.

1           Third, the Act requires developers to  
2           implement measures to control stormwater runoff  
3           from new development activities only. The Act  
4           further requires that watershed plans address  
5           stormwater impacts of existing land uses on  
6           drainage conditions at all locations in the  
7           watershed but does not require correction of  
8           existing drainage problems.

9           Fourth, there is no existing mechanism  
10          to assure consistent implementation of the  
11          required ordinances by all local municipalities.  
12          Promotion of increased cooperation between  
13          counties and local municipalities should be  
14          fostered to allow counties to implement  
15          stormwater ordinances on behalf of  
16          municipalities that elect not to implement them.

17          The Department plans to increase  
18          outreach and educational programs for local  
19          government. Distribution of educational videos  
20          for government officials and the public coupled  
21          with a 1997 stormwater Watershed Symposium and  
22          outreach workshops with PennVEST and county  
23          conservation districts are also planned for the  
24          coming year.

25          Finally, while the local government

1 share of developing a stormwater management plan  
2 is only 25 percent, it is increasingly difficult  
3 for them to come up with the required match. An  
4 effort should be made to find other nonstate  
5 sources of funds for counties and municipalities  
6 to provide their 25 percent match of the program  
7 cost.

8 This would promote increased  
9 participation by counties and municipalities who  
10 experience financial difficulties funding their  
11 25 percent matching share.

12 Similar in purpose to the Stormwater  
13 Management Act, the intent of House Bill 979 is  
14 to prevent flooding and control stormwater  
15 runoff, maintain watershed conditions in a sound  
16 hydrologic manner, and encourage consistent  
17 regulation and management within designated  
18 watersheds.

19 The Bill allows counties and  
20 municipalities to come together to create  
21 stormwater districts to control the quantity,  
22 direction, and velocity of stormwater runoff and  
23 ensure consistency and implementation of  
24 approved watershed plans.

25 District boundaries would follow

1 watershed boundaries and may include areas  
2 outside a county with consent of the Boards of  
3 Commissioners of the adjoining counties. The  
4 Bill conveys power to districts to fix, alter,  
5 charge, and collect stormwater utility fees and  
6 to issue bonds for the construction,  
7 improvement, inspection, and maintenance and  
8 operation of stormwater facilities.

9           Similar bills have been introduced eight  
10 times in past with the first bill, Senate Bill  
11 1342, which was introduced in 1988. All of the  
12 past bills addressed the payment of maintenance  
13 and capital improvement needs of stormwater  
14 infrastructure systems on a watershed basis. In  
15 addition, they assured consistent implementation  
16 of stormwater management plans prepared under  
17 the Stormwater Management Act.

18           Earlier bills only pertained to the  
19 creation of districts in counties in the second  
20 class. Subsequent bills expanded the  
21 authorization to include all counties within the  
22 Commonwealth.

23           As mentioned earlier, consistent  
24 implementation of stormwater ordinances and  
25 regulations based on a technically comprehensive

1 watershed plan is important to a successful  
2 stormwater management program.

3 House Bill 979 would enhance this effort  
4 by authorizing the creation of a watershed-wide  
5 agency to assume the responsibility of carrying  
6 out a consistent watershed-based approach.

7 The Department supports this voluntary  
8 concept because we believe that a watershed  
9 district could consistently implement county and  
10 municipal obligations under the Stormwater  
11 Management Act.

12 The district could also obtain loans  
13 from PennVEST to undertake stormwater  
14 construction projects. These loans could be  
15 paid back to PennVEST through revenue generated  
16 by the district where the project is located.

17 While we support the concept of a  
18 voluntary watershed district, we do recommend  
19 several changes to make the Bill consistent with  
20 the Stormwater Management Act and program.

21 I would also like to add that a legal  
22 analysis needs to be conducted to determine if  
23 the districts may constitutionally levy taxes,  
24 issue bonds, and undertake other similar  
25 financial transactions.

1           Since last fall, we have served on a  
2           Committee established by PennDOT to explore  
3           solutions to stormwater drainage problems and  
4           associated maintenance responsibilities and  
5           alternative means of financing.

6           This Committee consists of members from  
7           PennDOT and the Department of Environmental  
8           Protection; Representative David Steil;  
9           Representative Anthony Melio; Betsy Helsel of  
10          Senator David Heckler's office; Pennsylvania  
11          State Association of Township Supervisors;  
12          Pennsylvania State Association of Boroughs;  
13          Pennsylvania State Association of County  
14          Commissioners; Ted Dorand of Smith  
15          Environmental; and David French, formerly of the  
16          Allegheny County Planning Department.

17          The Committee has had several  
18          discussions about the bill and believes that the  
19          bill can provide effective solutions to address  
20          existing and future drainage problems. Some of  
21          the recommended changes to the bill include:

22                 No. 1, deleting local approval authority  
23                 in Section 6(a)(12) of state projects since  
24                 consistency with the approved watershed plan is  
25                 already required by the Stormwater Management

1 Act. We would suggest language authorizing the  
2 district to comment upon state projects and  
3 require state agencies to seek and consider the  
4 district's comments.

5 No. 2, clarification of Section 6(a)(12)  
6 that the district only reviews and approves  
7 plans for activities regulated by the stormwater  
8 ordinances that implement the approved watershed  
9 stormwater management plan.

10 Further definition of the scope of the  
11 district's authority assures that the district  
12 duties not conflict or duplicate existing powers  
13 and duties provided local municipalities by the  
14 Municipalities Planning Code.

15 No. 3, clarifying that acceptance of  
16 stormwater management facilities should be given  
17 solely to the district rather than forcing the  
18 municipality to accept the responsibility.

19 No. 4, deleting language in Section 6,  
20 page 8, lines 24-30 and line 1 on page 9, as  
21 this conflicts with Section 13 of the Stormwater  
22 Management Act. While the Department would  
23 encourage and support a mechanism to ensure the  
24 ongoing maintenance of these facilities, we feel  
25 it is incorrect to relieve the developer of the

1 obligations that are already established by the  
2 Stormwater Management Act.

3 No. 5, deleting language in Section  
4 6(a), number 14, as a separate permit system may  
5 not be necessary as long as the district would  
6 review and approve stormwater plans for  
7 activities that would discharge stormwater to  
8 regional facilities.

9 And No. 6, providing additional  
10 enforcement authority for the stormwater  
11 district in Section 13 should be considered  
12 because under the Stormwater Management Act, the  
13 Department does not have authority to enforce  
14 provisions on individual land development  
15 activities.

16 The Department recognizes that the  
17 maintenance of stormwater management facilities  
18 required by local ordinances has been, and  
19 continues to be, an ongoing problem of great  
20 concern.

21 In the past, we have suggested that the  
22 owners of commercial and industrial developments  
23 maintain their own stormwater facilities because  
24 these owners have the financial ability to carry  
25 out this maintenance.

1           For stormwater management facilities  
2 within single-family residential areas, we have  
3 expressed a concern that developers build the  
4 facilities and then move on, frequently leaving  
5 individual homeowners or homeowners'  
6 associations with the maintenance  
7 responsibility.

8           Generally, this is not an acceptable  
9 arrangement and suggest that municipalities or  
10 counties accept these facilities as part of  
11 their public works infrastructure.

12           The creation of a stormwater management  
13 district is a viable mechanism to establish the  
14 procedures to guarantee safe operation and  
15 maintenance of stormwater management facilities.

16           Although I have just mentioned several  
17 scenarios, these certainly are not the only ones  
18 which would work. We would encourage the  
19 creativity of a stormwater district in any  
20 participating municipality or county to develop  
21 whatever means that would work locally to assure  
22 the maintenance of those facilities.

23           This concludes my specific comments on  
24 House Bill 979. Again, I wish to thank the  
25 Committee for the opportunity to testify today.

1           The Department supports the concept of allowing  
2           counties to voluntarily establish a  
3           watershed-wide management district. At this  
4           time, I'd be glad to answer any questions.

5                   CHAIRMAN REBER: Thank you very much,  
6           Mr. Sherman. First of all, for the record, I'd  
7           like to reflect that earlier joining the  
8           Committee was Representative Jarolin to my far  
9           left. Stanley, do you have any questions?

10                   REPRESENTATIVE JAROLIN: No.

11                   CHAIRMAN REBER: Okay. Representative  
12           Rubley?

13                   REPRESENTATIVE RUBLEY: No, not at this  
14           time.

15                   CHAIRMAN REBER: Representative Vitali.

16                   REPRESENTATIVE VITALI: Thank you,  
17           Mr. Chairman. Just a couple of comments and a  
18           question. One problem with Special Session  
19           House Bill 2 -- and I see a related problem with  
20           House Bill 979 -- is in regard to bonds. And I  
21           think we could save some money if you put that  
22           out to competitive bidding.

23                   I'm not going to beat that drum too hard  
24           today, but I think that would solve some of the  
25           problems that we're having. And I hope the

1 Committee will consider that as it works on  
2 House Bill 979.

3 The second problem I think you pointed  
4 out -- and I have some concerns in this Bill.  
5 It appears to give this unelected county  
6 stormwater management district the ability to  
7 collect revenue, impose taxes, incur  
8 indebtedness, and so forth.

9 And I have some concerns with that. You  
10 may share my concerns based on what you've said.  
11 I think we need to focus in on what exactly this  
12 unelected body can do as far as requiring our  
13 citizens to pay additional tax revenues.

14 The question I have -- and I'm really  
15 not as familiar with this area as I should be.  
16 I know that in my Delaware County we have, I  
17 believe, five different watersheds. And I don't  
18 know -- I know that several do not have  
19 stormwater management plans.

20 Perhaps one or two may be in the process  
21 of being completed. I'm not sure. But we do  
22 have significant flooding problems, particularly  
23 in the southern part of the county.

24 And as I was generally involved in this  
25 issue, I believe it was the position of the

1 county that, well, it's fine for the state to  
2 impose these planned developing -- stormwater  
3 plan developing duties upon us; but where's the  
4 money to pay for it?

5 I mean, is it true that the state is  
6 picking up 75 percent of the costs of these  
7 plans? And perhaps you can answer that question  
8 and discuss, what's the problem? Why aren't  
9 these plans being developed?

10 MR. SHERMAN. We pay up to 75 percent of  
11 the cost of developing the plan, but also more  
12 importantly in some respects, we'll reimburse  
13 the counties for their costs of implementing the  
14 plan and the program, implementing the  
15 ordinances that come out of the watershed  
16 planning efforts.

17 We remind the local municipalities of  
18 the availability of this money. As you can see  
19 from one of the handouts that you have, the  
20 reimbursements for implementations started out  
21 very low, and they have been increasing slowly,  
22 but not to the extent that you might expect if  
23 we had full implementation of the program.

24 REPRESENTATIVE VITALI: To be clear, if  
25 my county, for example, created these plans, are

1           you saying you would reimburse them up to 75  
2           percent based on various criteria? Or will you  
3           simply give them 75 percent of what it costs?

4                       I'm just a little unclear on whether  
5           there's a financial problem that's deterring  
6           counties like my own from developing stormwater  
7           management plans?

8                       MR. LATHIA: As far as the development  
9           of stormwater management plans are concerned,  
10          the Department does provide 75 percent funding  
11          assistance for the planning study. And these  
12          planning studies would provide criterion  
13          standards. Those will be implemented by the  
14          local municipalities.

15                      As far as the municipal development is  
16          concerned, the department provides 75 percent  
17          reimbursement for preparation of the ordinances  
18          and enactment and implementation of the  
19          ordinances.

20                      As far as the construction projects are  
21          concerned that would be needed to resolve the  
22          drainage problems, the planning funding under  
23          Act 167 does not provide that assistance for the  
24          municipality, only implementation of the  
25          ordinances.

1           REPRESENTATIVE VITALI: As far as  
2 plan preparation, do you know what the problem  
3 is as far as -- did I hear earlier in your  
4 testimony that the overwhelming majority of  
5 watersheds do not have stormwater management  
6 plans; is that correct?

7           MR. LATHIA: Mike mentioned that there  
8 are 50 watershed plans completed and they are  
9 fully being implemented by 489 municipalities.  
10 Out of 355 watersheds that are presently in the  
11 Commonwealth, we have several additional plans  
12 also underway by the counties.

13           So if the counties come forward and the  
14 planning process begins, then more and more  
15 watersheds will be completed.

16           REPRESENTATIVE VITALI. I just want to  
17 be clear now. How many watersheds and how many  
18 completed stormwater management plans?

19           MR. LATHIA: Okay. As you can see  
20 behind me, we have 355 watersheds in all 67  
21 counties.

22           REPRESENTATIVE VITALI: Okay. How many  
23 plans -- out of those 355 watersheds, how many  
24 have completed stormwater management plans?

25           MR. LATHIA: Fifty watershed plans have

1 fully completed and are being implemented.

2 REPRESENTATIVE VITALI: About  
3 one-seventh then have plans. What's the  
4 problem? Is money the problem?

5 MR. LATHIA: I wouldn't say the problem.  
6 There are several issues and procedures  
7 involved in watershed planning. First of all,  
8 the watershed planning is a long drawn process,  
9 maybe stretching over two or three fiscal years.  
10 We provide 75 percent funding based upon the  
11 appropriations provided to the department. So  
12 we are limited with that funding assistance.

13 REPRESENTATIVE VITALI: Let me stop you.  
14 Is that the problem? The appropriations that  
15 the legislature gives you, is that the problem?

16 MR. LATHIA: Okay. Before I answer that  
17 question, let me also stretch that particular  
18 idea to further that. There is 25 percent  
19 funding assistance also expected from the county  
20 government. Now, the counties also have to come  
21 up with that 25 percent funding assistance, that  
22 could be -- services or cash outlay.

23 So if you're talking about at an average  
24 cost of about 120 to \$150,000 of the cost of  
25 preparing the plan, the county also has to pitch

1 in in the vicinity of \$25,000.

2 To come up with that particular amount  
3 to match the Department's 75 percent funding is  
4 also a problem. That is one issue that I would  
5 like to address.

6 REPRESENTATIVE VITALI: Okay. So part  
7 of it is the county coming up with their share.  
8 But given what -- you said something that leads  
9 me to believe that perhaps there isn't  
10 sufficient appropriations for you to offer any  
11 watershed who wants it 75 percent reimbursement  
12 for the plan. Are you able to do that now or  
13 not?

14 MR. SHERMAN: We are able to. We  
15 actually have money available for interested  
16 counties to come forward to commence watershed  
17 planning efforts.

18 REPRESENTATIVE VITALI: Okay. So any  
19 county who really wants that can get it. Do you  
20 know what the problem is, in particular, with  
21 Delaware County or if, in fact, there is a  
22 problem?

23 MR. LATHIA: In Delaware County back in  
24 1984, they did initiate a watershed plan which  
25 was the Ridley Creek watershed plan completed

1 and is being fully implemented by the  
2 municipality.

3 Delaware County is also currently  
4 initiating additional stormwater plans for test  
5 of creek watersheds. We are working with the  
6 County Planning Department to double up the  
7 needed paperwork to the current agreement to  
8 move forward. So Delaware County is currently  
9 undertaking the second plan.

10 REPRESENTATIVE VITALI: I know you have  
11 five; and I know it's also the subject of  
12 citizens to -- your -- I'll stop at that point.  
13 Thank you.

14 CHAIRMAN REBER: Thanks gentlemen.  
15 Representative Hershey.

16 REPRESENTATIVE HERSHEY: I have one  
17 question for Mr. Sherman. I asked the PennDOT  
18 gentleman the same question. If this would move  
19 ahead, if we would pass Act 979, could some of  
20 this work be done through expanding the soil  
21 conservation districts?

22 MR. SHERMAN: That would be a  
23 possibility that we would like to further  
24 explore. At present, several county  
25 conservation districts are involved in the

1 stormwater program; notably, Dauphin County and  
2 Westmoreland County.

3 The conservation district law does allow  
4 them to assist and advise county municipal  
5 governments and provides them the authority to  
6 accept programs delegated to them by federal,  
7 state, or local government. That would be a  
8 possibility, I think, that we would look into  
9 for you.

10 REPRESENTATIVE HERSHEY. Thank you very  
11 much. I know they have a long history of  
12 conservation, and I see this is an expanded  
13 portion. Thank you for the comment.

14 CHAIRMAN REBER: Thank you.  
15 Representative Masland is recognized.

16 REPRESENTATIVE MASLAND: Thank you,  
17 Mr. Chairman. Maybe I can follow up a little  
18 bit on what Representative Vitali was asking as  
19 to why all these municipalities don't do  
20 anything. And I think the simple answer is that  
21 it stops raining every now and then. That may  
22 sound humorous, but I think unfortunately it's  
23 true.

24 Durla Lathia, as I said earlier, was up  
25 at Kings Gap along with twenty other people and

1 four or five municipalities together to talk  
2 about the problems of Yellow Breeches. Well,  
3 what are we going to do, we said? Durla said,  
4 Let's develop the stormwater management plan,  
5 which the county, in fact, had done back in  
6 1990, was that?

7 MR. LATHIA: 1982 or '83.

8 REPRESENTATIVE MASLAND: It was sometime  
9 ago. And the fact is, after it was done,  
10 nothing happened. And because there are other  
11 pressing financial concerns, counties,  
12 municipalities, say well, it hasn't rained too  
13 badly lately. Let's just push that off to the  
14 side.

15 And unfortunately, it is something that  
16 is going to come back and haunt them because as  
17 you said in your remarks, sir, 95 percent of our  
18 municipalities are flood prone, which does not  
19 surprise me at all because where are you going  
20 to build a municipality? You're going to build  
21 it near the water.

22 You're going to build it someplace  
23 that's got some -- water. And back when our  
24 municipalities were started, that's where they  
25 went. So that being the case, I think we need

1 to somehow educate the counties and the  
2 municipalities during times like these. This is  
3 the time to get started and do something with  
4 it.

5 I'm not surprised that you have money  
6 left over because a lot of municipalities out  
7 there who could use this plan just don't realize  
8 it and aren't thinking about it until after the  
9 fact. A flood like we had -- flood and blizzard  
10 and everything this past winter may spur a  
11 little bit more action.

12 And I want to thank you, Durla, because  
13 of your efforts primarily -- we just got you  
14 there. And you did the speaking -- our  
15 municipalities have gotten together. And there  
16 is this, I guess you'd say, the Upper Yellow  
17 Breeches Coalition as well as the Lower Yellow  
18 Breeches Coalition. And together we might be  
19 able to get a plan.

20 But that's just one. And as we said,  
21 there's only 50 so far that have done it and  
22 300-some to go. So I appreciate your efforts.  
23 Thank you.

24 CHAIRMAN REBER: The Chair thanks the  
25 gentlemen. Seeing that it's 2:45 and being the

1 Chairman, I'll exercise my prerogative and not  
2 ask any questions even though I have some. I'll  
3 have counsel submit them in writing, and we can  
4 probably get a response.

5 It's really in regard to the PennVEST  
6 issue and the manner in which that funding is  
7 being allocated. So we'll do that by  
8 correspondence.

9 MR. SHERMAN: We'd be pleased to answer  
10 that.

11 CHAIRMAN REBER: Fine. I thank you very  
12 much, and I thank all of you gentlemen for  
13 appearing here today.

14 MR. SHERMAN: Thank you.

15 MR. CHAIRMAN: And what we're going to  
16 do is just take a short 2- or 3-minute break so  
17 the court reporter has an opportunity to change  
18 her tapes. And at that point in time, we will  
19 immediately reconvene; and we'll proceed with  
20 Representative Michlovic and Mr. French. So we  
21 can just recess for about 3 minutes.

22 (At which time, a brief break was taken.)

23 MR. CHAIRMAN: Okay. If everyone would  
24 return to their seat, the 3-minute recess having  
25 expired, I would like to reconvene the

1           Committee.

2                     At this time, I have the pleasure of  
3           introducing as the next individual to testify  
4           before the Committee Representative Tom  
5           Michlovic of Allegheny County. And Tom has a  
6           very special guest with him. I'll allow Tom to  
7           do that introduction. Representative Michlovic.

8                     REPRESENTATIVE MICHLOVIC: Thank you,  
9           Chairman Reber and Members of the Committee. I  
10          thank you for giving us the time this afternoon  
11          to testify on House Bill 979. This is a Bill  
12          which I have introduced and reintroduced for a  
13          number of years, refined over those years with  
14          the help of Mr. French and his former boss, the  
15          Allegheny County Planning Director, Ray Reaves,  
16          over many years.

17                    Six months after I was first  
18          elected -- took office in 1979, on June  
19          20th -- I can remember the date -- there was a  
20          flood in my district, kind of a localized flood.  
21          I lived two communities away, and I saw the  
22          clouds; but didn't think anything of it. That  
23          afternoon I was called and went down to see  
24          something that I simply couldn't believe.

25                    PennDOT had taken out a culvert and

1 decreased the size of it and there was a back up  
2 in the flooding zone or the area where the water  
3 was supposed to go -- the stormwater was  
4 supposed to go.

5 And what happened was an absolute  
6 devastating flood. It ruined the PennDOT  
7 highway; it smashed into houses; it buckled the  
8 roads and sidewalks; and there was a telephone  
9 pole that came through that culvert. It was,  
10 like, an 8-foot culvert.

11 I simply could not believe the damage  
12 created by a localized flood that didn't even  
13 extend over two or three communities.  
14 Fortunately in my case, at that time the  
15 Majority Leader of the Senate was a Senator in  
16 that district; and with his able assistance,  
17 within two weeks we had about \$2.6 million  
18 to correct part of that problem.

19 But I suggest to you that's not always  
20 the case. We just happened to be in budget  
21 season; I just happened to have the Majority  
22 Leader in the Senate; he happened to negotiate  
23 the money real quick; and we were able to  
24 relieve the problem very quickly.

25 But it always stuck in my mind the power

1 of that water coming down that valley. And this  
2 is right below the Monroeville Mall area, which  
3 is a major mall in the suburbs of the Pittsburgh  
4 region.

5 At the same time, shortly after  
6 that -- well, I guess it was about five years  
7 later, we were asked to do some work on the  
8 Turtle Creek and get that creek dredged. And we  
9 took the Conservation Committee Chairman, George,  
10 at the time took the conservation Committee.

11 Fred and I were talking about this the  
12 other day. And we looked at the various upper  
13 reaches of this Turtle Creek, which is one of  
14 the major tributaries to the Monongahela River.

15 The detention ponds no longer existed.  
16 They were basically retention islands with  
17 30-foot trees in it, which meant that the soil  
18 from the development upstream had actually  
19 collected into islands. Trees had grown up and  
20 30 foot -- trees grow about a foot a year. In  
21 30 years, they hadn't been touched.

22 And so it took ten years, and we just  
23 this past year cleaned that creek. It took ten  
24 years to get that dredging. It was a Corps of  
25 Engineers' project. We had about \$5 million

1 of federal money and a couple million dollars of  
2 state money. But the question was asked -- Mr.  
3 Vitali was talking about what the problem was.

4 The problem is, is you can plan all you  
5 like. You can plan till the day is long; but if  
6 you don't have any resource to do anything about  
7 the plans or implement them, they go nowhere.  
8 And that's what happened across Pennsylvania in  
9 stormwater management.

10 We have a little bit of money that we  
11 can pass out to develop plans; but after the  
12 plan's done, you don't have any resources to  
13 really address the problem.

14 And that's what this bill does. It  
15 gives the resources at the spot where you need  
16 it. And that is in the -- in the stormwater  
17 management districts where people can address  
18 the local problem, the local concern, put in  
19 detention ponds if necessary, enforce the  
20 building codes with silt fences and proper  
21 protection so that the communities downstream  
22 are protected from development upstream.

23 And it is the communities downstream. I  
24 represent those communities at the bottom of the  
25 creek. And we have a lot of steep terrain in

1 Pennsylvania; and when you get a gully washer  
2 going down, you have a real problem. So that's  
3 essentially it in a nutshell.

4 We've taken the formula that's devised  
5 around a -- the amount of area that is drained;  
6 it's owned by a property owner; the impervious  
7 nature; how drainage goes through that surface  
8 material is a factor as well as the slope.

9 And those three conditions determine a  
10 user fee that that person has to pay for  
11 stormwater management downstream to deal with  
12 the problems that arise.

13 And really as I began getting involved  
14 with the Turtle Creek project, we  
15 had -- Allegheny County was interested in  
16 resolving it. The lower communities were in  
17 Allegheny County, and the upper regions were in  
18 Upper Westmoreland County. They didn't want to  
19 get involved.

20 So out of that experience, I began  
21 talking with the Planning Department, Dave  
22 French and Ray Reaves, about a model of some  
23 sort that could address the problem; and we came  
24 up with the prototype for 979.

25 This isn't my invention. There are some

1 other states and counties and localities around  
2 the country that use this model, and it seems to  
3 work reasonably well.

4 And to deal with that issue and the  
5 information that they've garnered on this, I  
6 wanted to introduce to you Dave French, who is  
7 formerly the Assistant Planning Director for  
8 Allegheny County. He is now with L. Robert  
9 Kimball Engineers and Associates, no longer with  
10 the county; but he has been gracious enough to  
11 join us this afternoon to address questions on  
12 House Bill 979. David.

13 MR. FRENCH: Thanks, Tom. I'd like to  
14 talk a little bit about -- first, there's two  
15 pieces of paper that you have. One is a paper  
16 entitled --

17 CHAIRMAN REBER: Mr. French, is your  
18 microphone on?

19 MR. FRENCH: Okay. How's this? There  
20 are two papers. One is a paper called  
21 stormwater management, an Attainable Goal for  
22 Allegheny County.

23 This was co-authored by Ray Reaves and  
24 myself and presented at the 1991 Penn State  
25 Stormwater Management Flood Planes Symposium.

1           It essentially, in a narrative fashion, talks  
2           about our ideas in terms of an organizational  
3           response to stormwater management.

4                       There's another item that's going to  
5           kind of guide my comments. It's about seven or  
6           eight pages long. It was originally a slide  
7           show, but we're not going to do that today. So  
8           we'll just talk about that. And it'll certainly  
9           give us -- take notes on it; and it'll sort of  
10          guide my conversation and maybe stimulate some  
11          questions on your part.

12                      When we first got involved in stormwater  
13          management in Allegheny County, we were, I  
14          believe, the first county to prepare Act 167  
15          Stormwater Management Plan in four watersheds in  
16          the northern part of the county.

17                      In about 1985, those plans were  
18          completed. It took about four years of work to  
19          get us through the planning process of the pilot  
20          phase. And upon completion of those  
21          plans -- and unfortunately, there were two major  
22          flood events in the North Hills in those  
23          watersheds in 1986 and 1987 along Pine Creek.

24                      The first flood, 1986, resulted in the  
25          death of eight people and several million

1 dollars worth of property damage. So we looked  
2 at that. We looked at what happened in Pine  
3 Creek, and we looked at the fact that we had  
4 just developed a watershed plan for the  
5 watershed where the flood occurred.

6 And we began to see pretty precisely  
7 that the plan itself would not fix a problem  
8 like the Pine Creek floods because the Pine  
9 Creek floods happened based on existing  
10 conditions in the watersheds.

11 And they were the result of a number of  
12 things: inadequate land use control by  
13 municipalities, inadequate maintenance of  
14 streams and properties, and the sewer rainstorm  
15 combined to create a very dangerous environment.

16 So we began to look at what other places  
17 around the country were doing to manage  
18 stormwater. We knew that we weren't the only  
19 people in the country having this problem, so we  
20 began to look around to see how it was done in  
21 other parts of the country.

22 And we found amazingly that a lot of the  
23 western states and the southern states had  
24 already begun to address this very problem by  
25 developing the stormwater management utilities.

1       So we -- and they were user-funded utilities  
2       very similar to what a sanitary sewer authority  
3       is.

4               That's where the user fee concept came  
5       from. And that's where we saw an opportunity to  
6       develop a resource for stormwater management in  
7       Pennsylvania.

8               So we began to really put our thinking  
9       caps on and think about what we needed to  
10      address that Act 167 did not. The first page on  
11      the handout talks about the seven functions of  
12      stormwater management.

13              Obviously, the planning function is well  
14      taken care of by Act 167. 167 is a planning  
15      Act. It's designed to develop plans based on  
16      sound hydrology that will result in enforceable  
17      performance standards for the municipalities.

18              Unfortunately, the Act is willing to  
19      accept an existing baseline condition -- an  
20      existing baseline flooding condition as part of  
21      the planning process.

22              In other words, if you have a flood  
23      today, you can have your plan in place tomorrow  
24      and the flooding conditions that exist today  
25      will still exist tomorrow; however, they will be

1 no worse off based on new development than they  
2 are at the baseline condition.

3 So the planning aspect, though -- but  
4 the fact that it required building a watershed  
5 model and developing watershed standards is a  
6 key component to adequate control of stormwater  
7 management.

8 The second thing that has to happen is  
9 land development plan review. For those of you  
10 that have experience at the municipal level, you  
11 know that this is a catch-as-catch-can  
12 experience in many cases. Some municipalities  
13 do land development plan review very, very well.

14 They have professional staff that are  
15 engineers and landscape architects that know how  
16 to read a land development plan, and they have  
17 professional building inspectors that know how  
18 to go out on the ground and see that those plans  
19 are built as per the specifications.

20 Other municipalities have problems with  
21 that. Much of that is a question of resources.  
22 Construction inspection goes into the land  
23 development plan review. Maintenance is  
24 obviously a severe problem. You've heard it  
25 addressed many times today by other people

1 giving testimony.

2 Maintenance of facilities has to be done  
3 in a consistent manner. It's very much like  
4 road maintenance, sanitary sewer maintenance,  
5 and building maintenance. If the stormwater  
6 management facilities are designed and built, no  
7 matter how well they're built, if they are not  
8 maintained on a routine basis, they will cease  
9 to function.

10 And in many cases, the national  
11 experience indicates that poorly-maintained  
12 stormwater management facilities actually make  
13 the problems worse than if they'd never been  
14 built at all. Okay. So there's a real problem  
15 with that.

16 The example is in King County,  
17 Washington. That was one of our models, one of  
18 the original stormwater management utilities in  
19 the country. That's up near Seattle.

20 They had gone with allowing on-site,  
21 nonregional retention basins to proliferate  
22 because they were a rapidly-developing area.  
23 And within a matter of five years, they were  
24 having a lot more severe flooding than they had  
25 ever had before they did that.

1           They have since reworked their plan, and  
2 now they are basing a lot of their stormwater  
3 management plan on regional facilities because  
4 they're better and they're easier to maintain.

5           Enforcement of standards. Enforcement  
6 of standards goes right back into the municipal  
7 arena. Some municipalities enforce their  
8 standards very well; some municipalities don't.

9           The problem with that, if you're in a  
10 watershed and you're upstream municipality,  
11 you're neighbor, does not enforce their  
12 standards adequately, no matter how good of a  
13 job you do as a downstream municipality, your  
14 citizens will suffer the consequences of another  
15 governmental unit not doing their job in a  
16 professional manner.

17           So consistent enforcement throughout the  
18 watershed of performance standards is critical.  
19 Emergency Response. One of the things we've  
20 always had to deal with in Pennsylvania, and  
21 particularly in Allegheny County in our  
22 experience, is responding to flood.

23           Well, and it's always been somewhat  
24 problematic. You know, you have the emergency  
25 management folks at the municipal level, the

1 emergency management folks at the county level,  
2 the emergency management folks at the state  
3 level.

4           What you don't have though is  
5 people -- you don't have a lot of people who  
6 are, quote, experts in hydrologic problems. You  
7 have people who are -- for example, in our  
8 county maintenance department, their chief  
9 experience was in road maintenance, road park  
10 maintenance. They didn't have a lot of hands-on  
11 training in hydraulic problems that occur when  
12 flooding occurs in streams.

13           And then financing. How do you finance  
14 all of this? How do you finance the work that  
15 needs to be done? I spoke about some of Act 167  
16 short falls already. The fact that municipal  
17 enforcement is fragmented and inconsistent in  
18 many cases. The Act does not provide for  
19 remediation of existing problems, and the Act  
20 does not provide adequate funding.

21           I talked about the state reimbursements,  
22 and we know that the state will eventually  
23 reimburse the counties for the preparation of  
24 watershed plans. It's a matter of when because  
25 there's a limited pot of money.

1           We developed a projection that to  
2 complete Allegheny County, as you'll see back on  
3 the map, would cost us about \$2 million worth of  
4 planning efforts to date. That's about four  
5 times of what's budgeted in the state for this  
6 year for stormwater management. So we would  
7 like to do that all at once.

8           We've come to the state many times and  
9 said, Give us all your money for four years; and  
10 we'll complete Allegheny County. They don't  
11 want to do that. That's understandable. So the  
12 Act does not provide for adequate funding.

13           So what we did was we began to look at  
14 various organizational constructs and evaluate  
15 them against the functional requirements of  
16 stormwater management.

17           And we came up with eight possibilities,  
18 and you'll see the evaluation matrix on the next  
19 page. We looked at joint municipal authorities.  
20 We looked at ALCOSAN, the Allegheny County  
21 Sanitary Authority.

22           You've got to remember, this was geared  
23 towards -- our work was geared towards  
24 establishing the district for Allegheny County.  
25 We looked at ALCOSAN, who is now our major

1 sanitary sewer provider as a key player in this.

2           Something that is done in the other  
3 parts of the country, in the Jefferson County  
4 Metropolitan Sewer district in Louisville,  
5 Kentucky, that is a county-wide sanitary and  
6 stormwater sewer facility.

7           That organization provides all the  
8 sewage and stormwater management support for  
9 all the municipalities within the county. We  
10 looked at a county-wide authority. We looked at  
11 various other things too.

12           We looked at stormwater management  
13 district and another Allegheny County department  
14 because we had been so intimately involved with  
15 it and we did have extra municipal or multiple  
16 municipal jurisdiction.

17           That was obviously an option that we  
18 wanted to explore. We short listed those down  
19 into three feasible options. And on the next  
20 three pages, you'll see those.

21           Our first feasible option we explored  
22 was actually just form a county department. The  
23 easiest of all the options, one something like  
24 the Commissioners could have done based on an  
25 executive resolution. Easy to use, easy to

1 form.

2 The strengths: It could make maximum  
3 use of existing county resources and there would  
4 be no separate billing mechanism. Actually,  
5 that department would be paid for out of the  
6 county general fund as were planning,  
7 maintenance, and the other departments.

8 Some other weaknesses: The second class  
9 county code doesn't allow for direct  
10 enforcement of the county standards except on  
11 county-owned property.

12 And the only county departments that  
13 have any enforcement power are those that are  
14 deputized to them by DEP; and that is, the  
15 County Health Department and the County  
16 Conservation District.

17 There is no dedicated funding. This  
18 department would have to compete with every  
19 other department in Allegheny County for a  
20 budget. And at budget time, we all know how  
21 tough that is to fight that fight to get the  
22 money that you need to operate. And it would be  
23 limited to the political boundaries of  
24 Allegheny county.

25 Again, I refer to the map behind me. We

1        have watersheds, major watersheds that drain  
2        significant portions of other counties. For  
3        example, the Turtle watershed which  
4        Representative Michlovic mentioned, two-thirds  
5        of that watershed is in Westmoreland County.  
6        That's 63,000 acres.

7                And what's more important, 31,000 acres  
8        are in Allegheny County. The Chartiers Creek  
9        watershed is another example Chartiers Creek  
10       drains 25 percent of the land mass of Washington  
11       County and it empties into a sewer in Keys  
12       Rocks, Pennsylvania, which is a borough of about  
13       3,000 people

14                You can imagine the problems associated  
15       with that. So the political and service area  
16       limitations of a county department are severe.  
17       The second option we looked at was developing a  
18       county authority.

19                Again, under the Municipal Authorities  
20       Act, a fairly simple form, it takes advantage of  
21       existing resources and it is a familiar  
22       institutional arrangement to people in  
23       government.

24                As a matter of fact, you probably heard  
25       today and you will hear in other discussions

1 about this, the terms district and authority are  
2 often loosely used in terms of one describing  
3 the other. But an authority has specific powers  
4 and duties as well, as outlined in the Act.

5 Some weaknesses: There would be  
6 required some amendment to the Municipal  
7 Authorities Act because authorities do not have  
8 direct enforcement powers of standards; for  
9 example, Allegheny County Sanitary Authority has  
10 arrangements with municipalities.

11 If there's an illegal tap-in to an  
12 ALCOSAN line, ALCOSAN cannot go to the property  
13 owner and make them remove that illegal tapping.  
14 They're required to petition the municipality  
15 and have the municipality go and do the  
16 enforcement for the sanitary sewer standards.

17 And again, it would be more likely  
18 combined to the political boundaries of  
19 Allegheny County. Last option, and the one that  
20 we basically drafted into the original Senate  
21 bill, I guess, 1342, which is now House Bill  
22 979, was the stormwater management district.

23 And again, we modeled this after -- on  
24 the lines of what people in other parts of the  
25 country had done. We wrote it to have some

1 direct enforcement powers of standards, and that  
2 had been problematic.

3 Direct enforcement powers raised a red  
4 flag for many municipalities. We define the  
5 service area of the district not by political  
6 boundaries, but by the watershed boundaries as  
7 designated by DEP.

8 So by definition, the stormwater  
9 management district would have been able to  
10 manage stormwater contributed by properties  
11 outside the political boundaries of Allegheny  
12 County and it would be user-fee funded.

13 It would be based on a utility concept  
14 where you pay for -- you get what you pay for  
15 and you pay for the contribution to the problem  
16 you make. The weakness there is it doesn't  
17 require enabling legislation.

18 To talk about some of the substantive  
19 issues in the Act, go to the next page about  
20 powers and duties of the district with fixed  
21 rates and fees.

22 There was a question by Representative  
23 Rubley about how would those fees be determined?  
24 There are a number of models as to how fees for  
25 individual properties are determined.

1           We looked at -- and we looked at the  
2 administrative burden for that because we know  
3 that every single property is different. There  
4 are no two properties that are exactly alike.

5           But within the parameters of the types  
6 of runoff they generate, a house in Fox Chapel  
7 and a house in West Mifflin don't generate  
8 significantly different amounts of runoff even  
9 though there's obvious size differences in terms  
10 of rooftops and driveways.

11           In terms of what you gain from splitting  
12 it down to a small, quarter-acre house or a  
13 house on five acres, you really don't gain a  
14 whole lot by splitting hairs to develop a  
15 different chart.

16           So you mathematically develop a mean  
17 that would encompass the drainage -- the  
18 drainage characteristics of a single-family  
19 home -- the average if you will, the average  
20 single-family home. And the fee for a  
21 single-family residence would be based upon  
22 that.

23           Commercial, institutional, industrial  
24 charges would basically be -- have the same type  
25 of analysis applied to them that sanitary sewage

1 facilities do. I keep going back to them  
2 because that's such a good analogy.

3 We developed essentially an equivalent  
4 dwelling unit charge and assessed that against a  
5 shopping center. So a shopping center may  
6 account for 5,000 equivalent dwelling units  
7 based on the kind of impervious surface it  
8 produces. And the charge would be applied  
9 proportionally to that.

10 The other powers we used in the  
11 district: We talked about earlier in terms of  
12 revenue bonds, making contracts, developing  
13 regional stormwater management facilities.

14 That is probably the biggest strength of  
15 the district. Again, we are looking at the fact  
16 that on-site stormwater management is  
17 inefficient. It doesn't work. It causes  
18 maintenance problems. It's an increased burden  
19 on already overtaxed municipal general budgets.

20 And we know through analysis and through  
21 national experience that regional facilities  
22 tend to work much better by almost a factor of  
23 ten.

24 So it costs about -- in terms of total  
25 budget costs allocated for maintenance, regional

1 facilities serve the same area as on-site  
2 facilities for about 10 percent of the costs.  
3 So they're much cheaper once they're  
4 constructed, and they're managed better.

5 Now, the district would review land  
6 development plans. There is an issue in 979  
7 about that based on the review and approval  
8 powers.

9 If you read that whole passage in 979,  
10 that review is based strictly on the plan  
11 standards developed in watershed and stormwater  
12 management plans. So the district is not going  
13 to have the ability to say PennDOT can't build  
14 a road here or a hospital can't be built here.

15 The district does not have anything to  
16 do with zoning. Zoning and land use powers are  
17 strictly a municipal responsibility. And you'll  
18 see on the next page -- and that's a  
19 big -- that's one line -- the district will not  
20 override any municipal powers.

21 The point of the district for its review  
22 and approval of plans is, Are the plans in  
23 compliance with the performance standard as  
24 developed in the stormwater management plans?  
25 That's the district's mandate is to see the

1 watershed's hydrologic health is maintained.

2 And that is something that we went  
3 around and around in the Committee about to make  
4 sure that that language was tightly crafted, and  
5 I'm sure we'll see that as a report comes out of  
6 the Committee.

7 I've talked a little bit about the  
8 district. Again, it's financed by user fees;  
9 and it's -- there's a single fee for residential  
10 properties; and then the nonresidential  
11 properties are based on proportional  
12 characteristics.

13 The next page actually describes how the  
14 user fee is developed. And you'll see at the  
15 end at the very last block on the right that the  
16 individual charge is \$11.88 a year for a  
17 single-family home. Now, that was a figure that  
18 was developed in 1989; so obviously, it will  
19 have grown due to inflation and increased costs  
20 a little bit.

21 But, again, the national experience is  
22 that at the very most expensive end of  
23 stormwater management fees is about \$80 a year  
24 for a single-family home. That's in King  
25 County, Washington. In Tulsa, Oklahoma, I

1 believe it's around \$25 a year. In Louisville,  
2 it's about \$35 a year. That's per year for the  
3 stormwater management charge.

4 To give you some idea of what that would  
5 generate in Allegheny County, that would  
6 generate a budget of around \$5 million a year  
7 for the district to operate based on the 537,000  
8 properties assessed only as single-family  
9 residences in Allegheny County. That's -- the  
10 actual number is actually a little bit higher.

11 To give you another perspective on that,  
12 just for Pine Creek alone and for the recovery  
13 efforts of Pine Creek we have spent already in  
14 excess of \$7 million. And that only takes into  
15 account portions of five municipalities in  
16 Allegheny County, less than 5 percent of the  
17 population in the county.

18 And that's because, again, we're the old  
19 commercial; you can pay me now or pay me later.  
20 You can change the oil in your car or replace  
21 the engine. Well, we've replaced the engine a  
22 couple times in Allegheny County in Turtle Creek  
23 and in Pine Creek.

24 There's another charge that's not listed  
25 on here. You'll see the second block to the

1 right where it says, Watershed Specific Capital  
2 Expenditure.

3 Essentially, that would be an  
4 expenditure that would be a charge against the  
5 people who live in these a watershed for  
6 specific capital improvements to benefit that  
7 watershed. And those capital improvements would  
8 be passed on by the district board as part of  
9 its annual budgeting process.

10 I know there is a question about  
11 accountability. And I want to talk a little bit  
12 about how we think accountability of the board  
13 is structured so that the public is protected  
14 from excessive charges and that there is  
15 reasonableness applied to how the capital budget  
16 is developed.

17 When we initially thought about the  
18 board of directors for the stormwater management  
19 district for Allegheny County, we looked at the  
20 fact that we potentially encompass about 163  
21 municipalities. I think that's about the  
22 number.

23 So we looked at creating, essentially, a  
24 board of directors that's analogous to  
25 stockholders for major corporations. Each

1       municipality would appoint one member to this  
2       large board, and they would be the voting  
3       members just like the voting members of USX or  
4       any large corporation would vote on the actions  
5       of the executive board.

6               The executive board, obviously, is a  
7       much smaller organization. It has seven members  
8       who do not repeat terms; who are elected at  
9       large from the membership of the board of  
10      directors or the stockholders, if you will; and  
11      additionally from those municipal  
12      representatives, each county or the county  
13      commissioners would appoint one representative  
14      to the board of directors.

15             The initial legislation had the county  
16      commissioners having reserved seats on the  
17      executive committee. Subsequent amendments have  
18      reduced that to where there is no reserved seat  
19      for anybody on the board.

20             Basically, board members are -- the  
21      executive committee members are elected at large  
22      from the body of the board of directors. That  
23      executive committee is the committee that is  
24      then responsible for overseeing the day-to-day  
25      operation of the district.

1           Then the district would obviously have  
2           an executive director and paid professional  
3           staff. That organization you can see on the  
4           very last page where it shows the organizational  
5           chart.

6           So we looked at accountability and  
7           inclusiveness saying that all the municipalities  
8           would have a chance to review via their  
9           appointment of their elected officials,  
10          budgets, and operating procedures. The executive  
11          committee of the board would be then required to  
12          report out to the general membership semiannual  
13          or quarterly or however the chart would be set  
14          up for the district.

15          That kind of in a nutshell describes the  
16          intent of the legislation and our thought  
17          processes in putting it together. As we stated,  
18          this is the fifth legislative session that some  
19          version of this bill has been introduced; so  
20          that makes it about ten years old. And subject  
21          to your questions, that concludes my testimony.

22                 CHAIRMAN REBER: Representative Steil is  
23                 recognized.

24                 REPRESENTATIVE STEIL: Thank you, Dave.  
25                 The issue of a stormwater management district

1 crossing municipal lines would in your  
2 opinion -- it requires legislation to do this,  
3 state legislation to accomplish it, to create  
4 the authority to do it; or do you believe that  
5 it can be accomplished under the Municipal  
6 Authorities Act that currently exists?

7 MR. FRENCH: There are actually a number  
8 of constructs. If you were dealing with purely  
9 a municipal, inner municipal agreements, you  
10 could have joint municipal authorities; you  
11 could have intergovernmental cooperation  
12 agreements. There are a number of things you  
13 can do. I guess -- each of them have strengths  
14 and weaknesses, obviously

15 On the Intergovernmental Cooperation  
16 act's side -- I'll just relate our experience  
17 with that in Allegheny County. As part of the  
18 Pine Creek project, as part of the recovery from  
19 the floods in Pine Creek, we had gotten about \$3  
20 million in state grant funds to construct flood  
21 mitigation facilities in that watershed.

22 Part of that project was building two  
23 earthen stormwater management dams or flood  
24 control dams that would be sited in various  
25 municipalities among that group of five, and the

1 county would build it with state money.

2 We'd build it. We'd design it, and then  
3 turn it over to a municipal agency. None of the  
4 municipalities want anything to do with it in  
5 terms of an intergovernmental cooperation  
6 agreement or joint municipality authority.

7 So although it is possible, our  
8 experience indicates that it's not very popular  
9 and not likely.

10 REPRESENTATIVE STEIL: In terms of  
11 forming a stormwater management district then,  
12 all of the existing stormwater management  
13 facilities currently owned by whoever --  
14 municipality, PennDOT, private party,  
15 whatever -- the stormwater management district  
16 would assume ownership then and further  
17 maintenance and repair and whatever else of all  
18 of those facilities?

19 MR. FRENCH: We discussed that at the  
20 last Committee meeting. My initial response and  
21 the initial intent of the bill would be, yes.  
22 The answer would be yes.

23 But in further discussion, we felt that  
24 there are obvious divisions and arrangements  
25 that would need to be made based on the type of

1 facility. For example, in the case of the  
2 residential stormwater management facilities  
3 that served a subdivision, in all cases the  
4 district would take it over.

5 In the case of, say, a shopping center  
6 that had, say, a large underground sump facility,  
7 the district would not necessarily take it over;  
8 but the district would have right of entry for  
9 inspection. And if it was not maintained  
10 adequately, the district would have the ability  
11 to (a) cite the owner to make them do it; or  
12 lacking that, go in and do the maintenance and  
13 then charge the owner

14 So those types of arrangements in terms  
15 of state -- like PennDOT for example, PennDOT  
16 would basically agree to work with the district,  
17 the state-owned facilities within the watershed.

18 So there are various levels of detail  
19 and sophistication depending on the type of  
20 facility. That doesn't mean to say that a  
21 shopping center -- now, let me step -- go one  
22 step further back.

23 That's assuming no regional facilities.  
24 Okay. That's assuming no regional facilities.  
25 In all cases where the district would construct

1 a regional facility, it would require its use  
2 from the property owners and the district would  
3 have sole responsibility for it.

4 REPRESENTATIVE STEIL: Okay. And the  
5 final question goes back to something we  
6 discussed earlier on today and that was within  
7 any district there are a number of drainage  
8 channels which are natural channels.

9 They are streambeds. They are swales.  
10 They are ditches, whatever. Especially in the  
11 area of Streambeds and some of these other  
12 natural channels, they are on private property.

13 Now, they are, however, an integral part  
14 of the stormwater drainage facility. What would  
15 you propose to do with those?

16 MR. FRENCH: Well, that's a good  
17 question because that is a large part of the  
18 drainage problem, especially in western  
19 Pennsylvania.

20 Channel maintenance is something that is  
21 supposedly a property owner's responsibility;  
22 and it just doesn't get done for a number of  
23 reasons, mainly financial. If a tree falls and  
24 you know we have -- we have an elderly  
25 population in Allegheny County.

1           If a large tree falls and blocks a  
2 stream, the 75-year old woman who's living there  
3 alone does not often have the wherewithal to  
4 take that stream out.

5           What happens typically is that becomes a  
6 greater and greater obstruction until there is a  
7 flood. Then people get injured downstream  
8 unless the municipality's made aware of it.

9           And they have the ability. Many  
10 municipalities don't always have the ability or  
11 the knowledge to go in and correct existing  
12 problems. The district would have the  
13 responsibility to inspect existing drainage  
14 channels within the watersheds.

15           And again, if there's a maintenance  
16 problem that affects the hydrologic health of  
17 the watersheds, the district would then correct  
18 that problem. Now, there are the legal things,  
19 rights of entry, private property, and all that  
20 stuff; but I don't think that's a big problem.

21           Most property owners would love to be  
22 able to have the problem solved, but they can't  
23 do it. They just physically can't do it. And  
24 oftentimes it's not their fault.

25           If you have, say, somebody put in a

1 retaining wall upstream and they haven't done it  
2 properly and it collapses and it rolls down and  
3 runs up against a rock on your property, whose  
4 fault is that? Who should pay for that?

5 The district would move those  
6 obstructions and assure the maintenance. One of  
7 things we've talked about with the PennDOT  
8 Committee is where do we work with the state  
9 agencies?

10 And obviously, there are -- we have  
11 interests that come together at state crossings.  
12 So we would try our best in terms of working  
13 with the district. The district would try their  
14 best in terms of working with PennDOT to assure  
15 that those culverts don't get degraded in the  
16 first place to reduce maintenance cost to the  
17 state road.

18 REPRESENTATIVE STEIL: Thank you,  
19 Mr. Chairman.

20 CHAIRMAN REBER: Representative Vitali  
21 is recognized.

22 REPRESENTATIVE VITALI: Thank you,  
23 Mr. Chairman. With regard to bonds, is there  
24 any limit on the authority of this county  
25 stormwater management to borrow?

1 MR. FRENCH: Well, I'm not a bond  
2 expert; but I would imagine there are laws  
3 dealing with --

4 REPRESENTATIVE VITALI: I didn't see any  
5 language in the bill --

6 MR. FRENCH: There is language in the  
7 bill --

8 REPRESENTATIVE VITALI: What is the  
9 limit on what they can borrow? I read it very  
10 quickly, and I didn't see it.

11 MR. FRENCH: I'm not sure the limit is  
12 described closely in the Act. Again,  
13 that's -- the bond-type stuff is something I'm  
14 not expert enough to speak on.

15 REPRESENTATIVE VITALI: I just have some  
16 concerns about the ability of this unelected  
17 authority to indebt the citizens of an area. I  
18 just want to be clear as to what you're saying.

19 With regard to this user fee, are you  
20 saying that residential properties would pay a  
21 flat fee and then it's just same fee for  
22 everyone in -- every resident or property owner  
23 in the area and then the -- but the commercial  
24 properties, would you take a closer look at the  
25 characteristics? Is that what you're saying?

1           MR. FRENCH: Well, basically, it's a  
2 land use issue. And when we say property  
3 owners, we're talking -- the base unit is the  
4 single-family, residential, stand-alone house.  
5 That's the base unit that the charge is based  
6 on.

7           REPRESENTATIVE VITALI: So, for example,  
8 every single-family property -- every single  
9 property owner in Delaware County would pay "x"  
10 dollars?

11          MR. FRENCH: Correct.

12          REPRESENTATIVE VITALI: But the  
13 nonresidential people, you look a little closer  
14 as to impervious surface area of the property?

15          MR. FRENCH: The bonding process allows  
16 us to do that. When we look at -- again, the  
17 district is the beneficiary -- potential  
18 beneficiary of advances in technology because we  
19 can now determine fairly closely what the land  
20 use patterns are.

21                 So we know -- you can look at a map and  
22 determine where the shopping center is and using  
23 a geographic information system modeling  
24 develop the runoff generated by that.

25          REPRESENTATIVE VITALI: Did I hear you

1           correctly? In Allegheny County, we spend about  
2           \$80 per household?

3                   MR. FRENCH: No, that's King County,  
4           Washington. That's the high end. That's the  
5           very high end, nationally. The national  
6           average is about \$80 a year. Our projection  
7           right now is -- our original projection back in  
8           1989 was about \$12 a year for a single-family  
9           home.

10                   It'll probably be higher now because  
11           time has passed and everything's gotten a little  
12           bit more expensive, but I still would imagine it  
13           would be well below the national average which  
14           is around \$35 a year.

15                   REPRESENTATIVE VITALI: Okay. Yeah, I  
16           do, again, just want to reemphasize my concerns  
17           about an unelected authority imposing these fees  
18           and the strain already on property owners. I  
19           don't know if, Tom, you were in the room when I  
20           expressed my comments about bonds and  
21           competitive bidding; but I'll just say it again  
22           --

23                   REPRESENTATIVE MICHLOVIC: I've heard  
24           that argument.

25                   REPRESENTATIVE VITALI: Okay. Well,

1 more than then you'd like to, I'm sure. I'll  
2 just bring up another topic with regard to the  
3 abilities or the duties of the authority. Will  
4 you be able to, with regard to the revenues you  
5 were able to generate, get involved in the  
6 acquisition or preservation or creation of  
7 wetlands as a device to manage stormwater?

8 MR. FRENCH: Absolutely. I think one of  
9 the things -- some of the things we've learned  
10 is that combining regional facilities with  
11 existing or constructed wetlands that achieves  
12 multiple goals. It controls the flooding  
13 problem. It also --

14 REPRESENTATIVE VITALI: Is that in the  
15 bill because I didn't see the word wetlands in  
16 there?

17 MR. FRENCH: The word wetlands isn't in  
18 the bill; but I don't think the district is  
19 limited to a, quote, classic detention facility.  
20 It's -- I think the full range of stormwater  
21 management techniques are at the disposal of the  
22 district.

23 REPRESENTATIVE VITALI: Okay. Thank  
24 you.

25 CHAIRMAN REBER: Representative Rubley

1 is recognized.

2 REPRESENTATIVE RUBLEY: Thank you,  
3 Mr. Chairman. Thank you, Mr. French, for  
4 clarifying the whole issue of user fee. Your  
5 description of it was quite helpful, but I do  
6 have some questions.

7 As I understand it, it is the uniform  
8 fee. So if someone's living in a town house,  
9 they would be paying the same fee as someone who  
10 has a house on ten acres of ground?

11 MR. FRENCH: No, ma'am. A town home or a  
12 high density residential is basically handled  
13 with a common stormwater management drainage  
14 facility. So that is not a stand-alone property  
15 as a single -- again, the basic unit of measure  
16 is the single-family, stand-alone home.

17 High density residentials like apartment  
18 complexes or town homes would fall under the  
19 commercial/industrial fee. And the owner of  
20 that would be subject to those fees.

21 REPRESENTATIVE RUBLEY: But someone on,  
22 say, a quarter of an acre would pay the same as  
23 someone on ten acres?

24 MR. FRENCH: Essentially. And again,  
25 I'm looking at -- although, in fact, we know

1           that the larger property generates more runoff  
2           than the smaller property, the amount of runoff  
3           that it generates house to house is not  
4           statistically that much greater in terms of  
5           justifying that administrative burden of  
6           determining what precisely your home's runoff  
7           would be as opposed to someone else's home's  
8           runoff.

9                         So there are some tradeoffs there in  
10           terms of cost efficiency to the district of how  
11           that single-family fee's developed. Now, what  
12           we have seen in other places that have done  
13           this is, I believe in Fort Collins, Colorado,  
14           they actually have a fee structure that has a  
15           fee that applies to properties between a quarter  
16           acre and a half acre. Then they go to a half  
17           acre to three acres, something like that.

18                        So there is -- you could use that model  
19           to develop those kind of fees as well; but  
20           talking to those folks, they say that's pretty  
21           expensive for them to do that. And they don't  
22           really save that much money. And in terms of  
23           cost efficiency to their utility, they're moving  
24           towards a flat fee.

25                        REPRESENTATIVE RUBLEY: Just that

1 politically it can be hard to explain to a  
2 constituent.

3 MR. FRENCH: But again, I think  
4 that -- I think this is hard to understand for  
5 anybody if you're talking about why should I pay  
6 a fee for stormwater management?

7 If you're talking to a homeowner, until  
8 you can explain to them that, well, you're  
9 already paying for it by paying your municipal  
10 taxes and you're not getting very much for your  
11 money in terms of stormwater management because  
12 typically your tax dollars go into reaction to a  
13 flood event as opposed to prevention of  
14 flooding.

15 REPRESENTATIVE RUBLEY: And how would  
16 farmland be assessed?

17 MR. FRENCH: Well, again, I'm not sure  
18 that I can answer that question because I don't  
19 know. Farmland was not an issue that we dealt  
20 with when we did the original model.

21 I imagine we would have to again go  
22 back -- the committee would have to go back from  
23 a technical side and look at what kind of runoff  
24 we get from farmland and what kind of  
25 significant impact it has -- a farm has versus,

1 say, an unplowed meadow and see what those  
2 impacts are.

3 There may be -- in terms of agricultural  
4 activity, it may be limited to paddocks and  
5 structures on the farms as opposed to the entire  
6 farm. If the farm is plowed properly and the  
7 plantings are done right and erosion's  
8 controlled anyway, you may not see a significant  
9 increase in runoff in farming if the techniques  
10 are applied properly.

11 But in terms of paddocks, corrals,  
12 yards, you would normally have to have a charge  
13 for that.

14 REPRESENTATIVE RUBLEY: And my final  
15 question, In the bill you specifically preclude  
16 any additional fees or rates on the review of  
17 subdivision and land development plans.

18 MR. FRENCH: Right.

19 REPRESENTATIVE RUBLEY: Why is that?

20 MR FRENCH: Basically because of the  
21 advice of the attorney who helped us draft this,  
22 you can't charge twice for the same thing. And  
23 there are a number of reviews that go on that  
24 the fees are paid for by developers to the  
25 municipalities already. So this becomes

1 essentially a service through the municipal  
2 review process by the district.

3 It's something in Allegheny County we've  
4 been doing for about five or six years. We  
5 provide stormwater management plan review at no  
6 cost to anybody but the county for stormwater  
7 management development plans.

8 REPRESENTATIVE RUBLEY: Thank you very  
9 much.

10 CHAIRMAN REBER: Thank you,  
11 Representative Rubley. Just follow through  
12 this. Just let me see if my mind is working  
13 right. One of the big problems we have in many,  
14 many municipalities around the state is a very  
15 serious infiltration/inflow problem in our sewer  
16 systems, INI To a great extent, isn't that  
17 attributed to the lack of stormwater management?

18 MR. FRENCH: Absolutely. That is 100  
19 percent of the problem.

20 CHAIRMAN REBER: Okay. And isn't it  
21 true that the Department of Environmental  
22 Protection, more so its predecessor, the  
23 Department of Environmental Resources -- that  
24 old nasty department we used to have -- didn't  
25 they use to impose a lot of fines and consent

1       decrees and what have you where the INI was so  
2       egregious that there was overloads and  
3       discharges as a result of the violations of  
4       their Federal permit, et cetera, et cetera, and  
5       as a result of that, there would be fines and  
6       penalties accruing to a municipality and/or an  
7       authority which when ultimately is paid is the  
8       taxpayer paying for it? Is that a fair  
9       statement as well?

10               MR. FRENCH: That's correct.

11               CHAIRMAN REBER: So, I guess to some  
12       extent what we could say is -- and I'm going  
13       along with the areas of concern that  
14       Representative Rubley so aptly raises -- when  
15       you're talking about user fees is the taxpayer  
16       payment.

17               If, in fact, we were to assess some type  
18       of funding mechanism in the way of a user fee,  
19       aren't we to some extent, if not maybe to a  
20       great extent, offsetting some other charges the  
21       taxpayer would be paying when we're paying INI  
22       studies or fines and penalties or some of these  
23       other ridiculous charges that seem to be lumped  
24       upon by the Department of Environmental  
25       Protection -- this is my opinion -- on occasion

1 to the taxpayer when, in fact, it could be used  
2 to remediate the problems as opposed to  
3 punitively slap the wrist, if you will, of the  
4 particular authority?

5 MR. FRENCH: Yes, sir. That is  
6 precisely one of the main benefits of stormwater  
7 management. A case in point, the Allegheny  
8 County Sanitary Authority has just completed  
9 about \$3 million worth of combined sewer  
10 overflow studies.

11 Their main conclusion is that watershed  
12 management of stormwater is critical to reducing  
13 the impact of stormwater on the combined sewer  
14 overflows, all 293 of them, that ALCOSAN is  
15 responsible for.

16 ALCOSAN is very excited about the idea,  
17 and sanitary sewer authorities in general are  
18 very excited about the idea of stormwater  
19 management utilities because the two things work  
20 in a complimentary fashion.

21 An example of something we were  
22 attempting to do at the county before I left, we  
23 were actually -- we had been -- there was a  
24 lawsuit where McKees Rocks -- the Borough of  
25 McKees Rocks was suing Kennedy Township and

1 Stowe Township because of the impact of surface  
2 water on the McKees Rocks combined sewer system.

3 And they were at a real impasse as to  
4 how to resolve this issue. But the people in  
5 McKees Rocks kept getting flooded, and our  
6 health department kept putting Chapter 94  
7 hydraulic limitations on Kennedy Township which  
8 wanted to develop.

9 It was a naughty problem to the point  
10 where one of the judges from the Court of Common  
11 Pleas appointed me as a project manager to try  
12 and get that off dead center.

13 And what we wanted to do was basically  
14 take the existing hydraulic studies that have  
15 been done -- there were numerous hydraulic  
16 studies done of that problem; and many of them  
17 had competing recommendations. They all didn't  
18 agree depending on whose office was getting  
19 billed and which municipality the engineer was  
20 working for.

21 What we wanted to do was to complete the  
22 Chartiers Creek Stormwater Management Plan,  
23 develop the hydraulic and hydrologic model, and  
24 then validate the correct approach to resolving  
25 the combined sewer problem in McKees Rock.

1           So that's exactly right. The watershed  
2 management of surface runoff has a direct impact  
3 on the ability of combined sewer systems to  
4 perform.

5           CHAIRMAN REBER: So it's very  
6 conceivable that in areas where there is an  
7 ongoing stormwater management problem and also  
8 forms of municipal and/or private package  
9 systems, if you will, that serve large areas  
10 that have INI problems that very well you can be  
11 paying a lot more as a taxpayer just for those  
12 studies and remediation of those studies than  
13 you would if you did have an alternate plan in  
14 place with remediation for the stormwater and  
15 the type of user fee concept.

16           Let me ask one last question. How do  
17 you propose collecting this particular user fee?  
18 Or have you really given it much thought?

19           MR. FRENCH: Well, we've given it some  
20 thought. Now, obviously there's --

21           CHAIRMAN REBER: Is it part of the tax  
22 bill?

23           MR. FRENCH: Well, it's similar to what  
24 the sanitary authority sends for people who have  
25 sewer. A bill comes to your house for your

1 stormwater management fee. There's a problem  
2 with that because a lot of people are going to  
3 say, I'm not going to pay this. What are they  
4 going to do, make it stop raining?

5 So in Louisville, what they did was they  
6 dealt with the water companys; and they made  
7 that part of the water bill. So if you don't  
8 pay that, your water gets shut off.

9 CHAIRMAN REBER: Okay. But the problem  
10 you have in most municipalities in Pennsylvania  
11 at least, or a good many I suspect, and hoping  
12 the fee stays at the low-end figure around \$12  
13 plus that you talked about, a lot of people  
14 obviously aren't on a water system or a public  
15 sewer system where the billing's going out.

16 And you want to be taping into all  
17 properties, not just those that are serviced.  
18 And I guess the administrative cost and the  
19 mailing cost in and of itself could very well  
20 eat up a good portion of the \$12. I was just  
21 wondering if it would be based on an assessment  
22 basis as a subline item on someone's yearly tax  
23 bill?

24 MR. FRENCH: It's possible to just  
25 piggyback on the tax bill that the county sends

1 out, sure. I don't think the act limits any  
2 kind of creativity for, say, if there is a  
3 stormwater management district that serves a  
4 rural part of the state where there's well water  
5 and septic and that sort of thing, where an  
6 agreement couldn't be worked out with the county  
7 tax collector.

8 CHAIRMAN REBER: Okay. Tom, did you  
9 have something?

10 REPRESENTATIVE MICHLOVIC: Yeah, I just  
11 wanted to point out that not only the cost of  
12 stormwater plans and sewer systems, but the cost  
13 of remediation of these problems which are heavy  
14 capital costs as many of you know having dealt  
15 with them in your district.

16 The one I mentioned is \$2.6 million  
17 came from state taxpayers. Those taxpayers are  
18 paying the bill for us ignoring the problem all  
19 of that time.

20 And Dave quoted a figure of it's ten  
21 times more costly to deal with the aftermath of  
22 a problem than to deal with the preventive  
23 maintenance. So I think the taxpayer's going to  
24 pay one way or another. Let's give them a break  
25 on the overall cost and do some preventive

1 maintenance.

2 CHAIRMAN REBER: All right, gentlemen,  
3 thank you very much. Representative Michlovic,  
4 Mr. French, I appreciate your testimony. I  
5 think I finally found somebody that talks faster  
6 than I do. I saw her fingers going in absolute  
7 rapid motion. The Environmental Resources and  
8 Energy Committee will now stand in recess until  
9 10:00 tomorrow morning, at which time we will  
10 take additional testimony on this issue.

11 In the event -- I have two other  
12 meetings and hearings tomorrow morning; I may  
13 not be able to be here. Representative Sam  
14 Smith will chair the meeting. He is our  
15 Subcommittee Chairman. This Committee stands in  
16 recess until had 10 a.m. tomorrow morning.

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