

**TESTIMONY OF**  
**PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS**  
**PENNSYLVANIA STATE ASSOCIATION OF BOROUGHES**  
**PENNSYLVANIA LEAGUE OF CITIES & MUNICIPALITIES**  
**PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP**  
**COMMISSIONERS**

**BEFORE THE**  
**HOUSE ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE**

**ON**

**HOUSE BILL 979**

**STORMWATER MANAGEMENT**

**PRESENTED BY**

**LINDA BLAKE**  
**ASSISTANT DIRECTOR OF LEGISLATION**  
**PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS**

**JULY 16, 1996**

**HARRISBURG, PENNSYLVANIA**

Good morning, Chairman Reber and members of the Environmental Resources and Energy Committee.

My name is Linda Blake, and I am Assistant Director of Legislation for the Pennsylvania State Association of Township Supervisors, which represents the state's 1,457 townships. I am speaking today on behalf of my association, along with the Pennsylvania League of Cities and Municipalities, the Pennsylvania State Association of Boroughs, and the Pennsylvania State Association of Township Commissioners. Representatives from the other organizations are unable to join me today due to other conflicts.

Following January's floods caused by melting snow and heavy rains, it is no wonder that storm water management issues have come to the forefront. Certainly, if there is any way to avert another disaster, that would be preferable to the financial losses and devastation that resulted from the blizzard and subsequent flooding.

Unfortunately, while storm water management may be a timely issue, the time is not yet ripe for consideration of House Bill 979, the bill now before this committee.

Under the Storm water Management Act, Act 167 of 1978, counties are to be reimbursed for 75 percent of their costs to develop storm water management plans for each watershed within their borders, and municipalities are to be reimbursed for 75 percent of their costs to adopt and implement ordinances in compliance with the county plan.

Conceivably, every county in Pennsylvania should have a storm water management plan. Unfortunately, the commonwealth never lived up to its end of the mandate and has not appropriated enough money since the passage of this law to adequately reimburse counties for developing plans. A case in point: the allocation for this fiscal year of only \$595,000 would, at best, pay for 10 to 12 plans at about \$50,000 each, with no money left over to reimburse municipalities for adopting and implementing ordinances in compliance with these plans.

According to the Department of Environmental Protection, Pennsylvania has approximately 356 designated watersheds. Yet only 50 watershed plans have been approved to date in about 30 to 35 counties. Without these plans in place, House Bill 979 puts the cart before the horse. After all, the very purpose of storm water management planning is to coordinate storm water management in accordance with a plan that takes into account an entire watershed. Since House Bill 979 would follow the county's adopted watershed plan and counties have no financial incentive to adopt these plans, this bill will have little value until the issue of funding for county plans is addressed. Before House Bill 979 is considered, we should be looking at ways to enable more plans to be developed and implemented.

Also, a number of groups and agencies have been working together, including the Departments of Transportation and Environmental Protection, on developing a more comprehensive solution to the storm water management problem, with emphasis on road

drainage problems. We believe it would be worthwhile to wait for the outcome of these meetings before considering this legislation.

There is no doubt that the commonwealth needs to do a better job of managing storm water runoff. But it is not necessary to create another level of government bureaucracy to develop better storm water management. Rather, we need to provide enough incentives, funding and assistance to enable our existing local governmental structure to do a better job.

House Bill 979 would authorize the creation of a new entity – county storm water management districts – to look at storm water management on a district-wide basis encompassing one or more watersheds. These districts would have considerable powers, yet the members of the district board would be appointed, not elected. And once created, these districts would be responsible only to themselves.

Furthermore, authority to form a district would be granted exclusively to counties. Municipalities within the county appear to have no voice whatsoever in the formation of a district. While counties would have the choice of establishing a district, municipalities would be mandated to become a member of the district, comply with the district's decisions, and bear responsibility for any ramifications of the district's actions.

Each municipality would have one representative on the district's board, which could result in an unwieldy size in many counties. The day-to-day operations would be governed by a seven-member executive committee. But the bill does not make it clear what power is granted to the district board and what power is granted to the executive committee. Further, the executive committee representation is weighted heavily in favor of the county, with up to three county members out of seven, and only the remaining four members elected from the board of directors. All members of the executive committee should be elected by and from the board of directors.

The district would have the authority to levy, assess and collect fees. However, it is unclear who would set these fees – the entire board? Or the executive committee?

The bill specifically states that “no additional fees, charges or rates may be levied on the review or approval of a plan of subdivision or land development under the municipalities planning code.” This language, as stated, could interfere with a municipality's authority under the municipalities planning code to charge review and approval fees for the subdivision and land development plans submitted under this law. Land use approval encompasses far more than just storm water management issues. This wording should be deleted, or at the very least, made more specific by stipulating that these fees are in addition to any fees levied by the municipality or county for the review of plans as required by the appropriate law.

We see no problems with giving the district the ability to comment on plans submitted to determine compliance with the storm water management plan. However, we cannot support giving them veto power over subdivision and land development approval.

This approval should remain a local decision, and the district's role should be merely to advise the municipality on compliance with the county storm water plan for the affected watershed, similar to the county commenting on zoning and subdivision plan reviews.

We are greatly concerned with the language under Section 6, which states that once reviewed and approved, any storm water management facilities must be accepted by the district or municipality. If not accepted, the developer would be relieved of the responsibility for putting in such facilities. This conflicts with section 6(d) of the bill, which states that "the powers and duties under this section in no way relieve persons engaged in the alteration or development of land or the responsibility to comply with the requirements of municipal storm water ordinances, the approved storm water management plan and the requirements of the Storm Water Management Act."

Presumably, the primary purpose of House Bill 979 is to provide better storm water management in the commonwealth. But this bill would impose yet another unfunded mandate on municipalities by requiring them to accept the maintenance of storm water management facilities without any financial incentive to do so. If the municipality refuses to take on this unfunded mandate, developers would be relieved of any responsibility for managing runoff, a responsibility that always has been and rightfully should remain theirs.

In other words, the responsibilities of the developer and municipality appear to be reversed under this legislation. Whereas, under current law, the developer bears the responsibility to ensure that runoff from a development is no more than before the change in land use occurred, it now appears that the municipality would become responsible for accepting forever more the maintenance responsibility for these facilities. If the municipality is unable to do so, no facilities would have to be constructed, resulting in more storm water problems. In the end, it is the property owners who will lose as a result of this legislation.

Probably the most objectionable provision in this legislation is the authority granted to the district – an appointed, not elected, body – to have a municipality's state funds withheld for non-compliance in adopting, amending or implementing storm water management ordinances. First, there is a fundamental problem with granting such authority to a non-elected entity. And further, this body's authority should not extend beyond the issue of storm water management.

Under Section 6(a)(20), it appears that the district will have the ability to require storm water management facilities to be constructed within existing developments and to assess property owners for the cost. Again, this gives a great amount of power to a loosely formed, non-elected entity. And further, this provision would open up a can of worms. Just imagine the reaction from those citizens in existing developments who are assessed involuntarily for storm water facilities, but yet cannot express their dissatisfaction by voting individuals out of office.

Under this bill, the district would have the authority to assess fees upon benefited properties to pay off the debt for acquiring and constructing storm water management

facilities. Once again, this authority appears to place responsibility that should belong to the developer solely on the district, municipality and property owner. Decidedly missing from this fee is funding for continued maintenance of storm water management facilities.

Storm water management is certainly a good idea and should be promoted. But the creation of a new layer of government with broad powers is not the answer. We need to look at working with the tools we have to provide incentives for counties to develop watershed plans and for municipalities to adopt and implement ordinances to implement storm water management.

Most importantly, the legislation should not take away responsibility from the commonwealth for helping to finance storm water management activities – a responsibility it has never lived up to. Nor should responsibility be shifted from the development community for controlling their own runoff when they develop property.

We urge this committee to withhold consideration of House Bill 979 until a more comprehensive solution addressing the need for more and better watershed planning can be developed in consultation with PennDOT, DEP and other affected state agencies.

Thank you for the opportunity to comment on the issue of storm water management today. I'll be happy to answer any questions you may have at this time.