

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1606 Session of
1999

INTRODUCED BY McILHINNEY, BARD, BELFANTI, CORRIGAN, COSTA,
DRUCE, GORDNER, RAMOS, SAYLOR, STEIL, RUBLEY AND ROSS,
JUNE 8, 1999

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, JUNE 8, 1999

AN ACT

1 Amending the act of July 31, 1968 (P.L.805, No.247), entitled,
2 as amended, "An act to empower cities of the second class A,
3 and third class, boroughs, incorporated towns, townships of
4 the first and second classes including those within a county
5 of the second class and counties of the second through eighth
6 classes, individually or jointly, to plan their development
7 and to govern the same by zoning, subdivision and land
8 development ordinances, planned residential development and
9 other ordinances, by official maps, by the reservation of
10 certain land for future public purpose and by the acquisition
11 of such land; to promote the conservation of energy through
12 the use of planning practices and to promote the effective
13 utilization of renewable energy sources; providing for the
14 establishment of planning commissions, planning departments,
15 planning committees and zoning hearing boards, authorizing
16 them to charge fees, make inspections and hold public
17 hearings; providing for mediation; providing for transferable
18 development rights; providing for appropriations, appeals to
19 courts and penalties for violations; and repealing acts and
20 parts of acts," providing for zoning for watershed
21 cooperation among adjoining municipalities.

22 The General Assembly of the Commonwealth of Pennsylvania

23 hereby enacts as follows:

24 Section 1. The act of July 31, 1968 (P.L.805, No.247), known
25 as the Pennsylvania Municipalities Planning Code, reenacted and
26 amended December 21, 1988 (P.L.1329, No.170), is amended by
27 adding an article to read:

1 ARTICLE VIII-B

2 Joint Watershed Zoning

3 Section 801-B. Definitions.--The following words and phrases
4 when used in this article shall have the meanings ascribed to
5 them in this section unless the context clearly indicates
6 otherwise:

7 "Department," the Department of Community and Economic
8 Development of the Commonwealth.

9 "Municipality," a municipality as defined in section 107 of
10 this act, excluding counties.

11 "Watershed," the entire region or area drained by a river or
12 other body of water, whether natural or artificial, as
13 designated by the Department of Environmental Protection for
14 purposes of the act of October 4, 1978 (P.L.864, No.167), known
15 as the "Storm Water Management Act."

16 Section 802-B. Intergovernmental Cooperation.--(a) To
17 further the purposes set forth in subsection (b), two or more
18 municipalities located wholly or partially within the boundaries
19 of a watershed may utilize the authority granted under 53
20 Pa.C.S. Pt. III Subpt. D (relating to area government and
21 intergovernmental cooperation) to enter into an agreement which
22 shall identify the common watershed and each participating
23 municipality's intention to adopt or amend a zoning ordinance to
24 create a joint watershed resource protection overlay district in
25 accordance with section 803-B. The agreement also may include:

26 (1) A statement of the joint policy goals and joint
27 development objectives of the participating municipalities,
28 with respect to land use.

29 (2) Density of population.

30 (3) The need for housing, commerce and industry.

1 (4) The location and function of streets and other
2 community facilities and utilities.

3 (5) The need for preserving agricultural land and
4 protecting natural resources.

5 (6) Any other factors that the municipalities believe
6 relevant for protecting their common watershed and the
7 furtherance of the purposes set forth in subsection (b).

8 (b) In accordance with subsection (a), municipalities may
9 enter into cooperative agreements for any of the following
10 purposes:

11 (1) To preserve and protect the watershed, its surface
12 and groundwater resources, wetlands, aquifers and flood
13 plains.

14 (2) To minimize disturbances within the watershed in
15 order to protect and maintain the present quality and
16 quantity of potable water.

17 (3) To prevent and control pollution of surface water
18 and groundwater in the watershed.

19 (4) To restrict or control uses involving hazardous
20 materials or other contaminants within the watershed.

21 (5) To maintain safe and healthful environmental
22 conditions in the watershed.

23 (6) To regulate development within the watershed in a
24 manner consistent with watershed storm water plan or plans
25 applicable in the common watershed of each of the
26 municipalities which have entered into the agreement.

27 Section 803-B. Joint Watershed Resource Protection Overlay
28 District.--(a) (1) In accordance with the terms of an
29 agreement entered into pursuant to section 802-B, and for the
30 purposes set forth therein, a municipality shall have the

1 power and authority, without having adopted a joint municipal
2 comprehensive plan, to engage in joint watershed zoning by
3 adopting or amending a zoning ordinance to create a joint
4 watershed resource protection overlay district.

5 (2) The overlay district shall not include any portion
6 of the municipality which is not within the watershed.

7 (3) The zoning ordinances or amendments creating a joint
8 watershed resource protection overlay district may include,
9 but not be limited to, any of the following:

10 (i) The establishment of special storm water and
11 water disposal provisions.

12 (ii) The prohibition or strict control of identified
13 uses that require the storage and management of hazardous
14 or toxic materials.

15 (iii) Provisions for reducing densities.

16 (iv) Provisions limiting the amount of impervious
17 surface.

18 (v) The establishment of special requirements for
19 on-lot sewage disposal systems.

20 (b) (1) If a municipality which has not adopted a zoning
21 ordinance desires to participate in joint watershed zoning in
22 accordance with this article, it may, along with and as part
23 of the adoption of an underlying municipal zoning ordinance
24 that leaves no part of such municipality unzoned, also adopt
25 provisions to establish a joint watershed resource protection
26 overlay district.

27 (2) If a municipality which has adopted an underlying
28 zoning ordinance that leaves no part of such municipality
29 unzoned desires to participate in joint watershed zoning in
30 accordance with this article, it may amend its zoning

1 ordinance by establishing a joint watershed resource
2 protection overlay district.

3 (3) The joint watershed resource protection overlay
4 district shall be superimposed on the zoning map. The overlay
5 district may be coterminous with one or more of the
6 underlying zoning district or districts or it may contain
7 parts of one or more of the underlying zoning district or
8 districts.

9 (4) Where there is a conflict between the provisions or
10 requirements relating to the joint watershed resource
11 protection overlay district and the provisions or
12 requirements relating to the underlying zoning district, the
13 more restrictive provisions or requirements shall apply.

14 Section 804-B. Withdrawing from Participation in Joint
15 Watershed Zoning.--No municipality may withdraw from its
16 participation in joint watershed zoning in accordance with this
17 article during the first three years following the date of
18 enactment or amendment of a zoning ordinance creating the joint
19 watershed resource protection overlay district. If, at any time
20 after the end of the second year following the enactment or
21 amendment of a zoning ordinance creating the joint watershed
22 resource protection overlay district, a municipality wishes to
23 withdraw from its participation in joint watershed zoning, it
24 shall enact an ordinance, which shall be effective no sooner
25 than one year after its enactment, repealing those provisions of
26 its zoning ordinance relating to the joint watershed resource
27 protection overlay district and shall provide immediately and
28 concurrently one year's advanced written notice of its repeal
29 and withdrawal to the governing bodies of all municipalities
30 party to the joint watershed zoning. The repeal and withdrawal

1 may become effective within less than one year with the
2 unanimous approval, by ordinance, of the governing bodies of all
3 municipalities party to the joint watershed zoning.

4 Section 805-B. Amendments to Zoning Ordinances Providing for
5 Joint Watershed Zoning.--During the period that a municipality
6 is participating in joint watershed zoning in accordance with
7 this article, any proposed amendments to the municipal zoning
8 ordinance shall be submitted to governing bodies and planning
9 agencies of each municipality participating in the joint
10 watershed zoning, and no amendment to a municipal zoning
11 ordinance shall be effective unless all of the participating
12 municipalities approve the amendment.

13 Section 806-B. Procedure for Curative Amendments.--Curative
14 amendments shall be filed in accordance with the requirements of
15 section 609.1 with the municipality within which the landowner's
16 property is located: Provided, however, That during the time
17 that a municipality is participating in joint watershed zoning
18 in accordance with this article, a governing body before which
19 the curative amendment is brought shall not have the power to
20 adopt any amendment to the municipal zoning ordinance without
21 the approval of the other municipalities participating in the
22 joint watershed zoning. The challenge shall be directed to the
23 validity of the municipal zoning ordinance in the context of all
24 uses provided within the entire combined area of jurisdiction of
25 all the municipalities which have cooperated in the creation of
26 the joint watershed resource protection overlay district.

27 Section 807-B. Area of Jurisdiction for Challenges.--(a) In
28 any challenge to the validity of the zoning ordinance of a
29 municipality which, in accordance with this article, has acted
30 in concert with other municipalities to create a joint watershed

1 resource protection overlay district, the court shall consider
2 the validity of the challenged municipal ordinance in the
3 context of the entire combined area of jurisdiction of all the
4 municipalities that have cooperated in the creation of the joint
5 watershed resource protection overlay district. The court shall
6 not limit its consideration to the single constituent
7 municipality whose zoning ordinance is being challenged.

8 (b) The court shall not find the zoning ordinance of a
9 municipality which is participating in joint watershed zoning in
10 accordance with this article to be exclusionary if:

11 (1) a use is permitted within the jurisdictional area of
12 any of the municipalities which have cooperated in the
13 creation of the joint watershed resource protection overlay
14 district;

15 (2) a reasonable amount of land in reasonable geographic
16 areas is provided for all uses within the entire combined
17 area of jurisdiction of all the municipalities which have
18 cooperated in the creation of the joint watershed resource
19 protection overlay district;

20 (3) by considering collectively the zoning ordinances of
21 all the municipalities which have cooperated in the creation
22 of the joint watershed resource protection overlay district,
23 the court determines a wide range of housing opportunities
24 meeting all basic forms of housing is provided within the
25 entire combined area of jurisdiction of all the
26 municipalities which have cooperated in the creation of the
27 joint watershed resource protection overlay district.

28 (c) If a reasonable amount of land in reasonable geographic
29 areas is provided for all uses within the entire combined
30 jurisdiction of the municipalities which have cooperated in the

creation of the joint watershed resource protection overlay district, the court shall not require additional areas to be zoned for any use if full utilization of the area previously zoned for such use is achieved.

Section 808-B. Procedure for Municipal Curative Amendments Under Joint Watershed Zoning.--(a) The governing body of a municipality participating in joint water watershed zoning in accordance with this article may, with the approval of other participating municipalities, declare its municipal zoning ordinance or portions thereof substantially invalid and prepare a municipal curative amendment pursuant to section 609.2.

(b) The provisions of section 609.2(4) shall apply to all municipalities participating in the joint watershed zoning.

(c) (1) In the case of a municipal curative amendment involving two or three municipalities participating in joint watershed zoning, the municipality shall have nine months from the date of declaration of partial or total invalidity to enact a curative amendment.

(2) Subject to the limitation contained in clause (3), where there are more than three municipalities participating in joint watershed zoning, the nine-month period shall be extended one additional month for each municipality in excess of three that is a party to the joint watershed zoning.

(3) Notwithstanding the additional periods provided for in clause (2), a curative amendment shall be enacted by a municipality which is participating in joint watershed zoning not later than one year from the date of declaration of partial or total invalidity.

Section 809-B. Application of Article VI (Zoning).--Except as otherwise provided in this article, or where, in the context

of this article, a different intention is indicated, the provisions of Article VI (relating to zoning) shall apply to municipalities participating in joint watershed zoning.

Section 810-B. Administration.--(a) The governing bodies of the municipalities adopting the joint watershed zoning provisions shall retain or create individual zoning hearing boards in each of the individual participating municipalities to administer both the applicable underlying zoning provisions and joint provisions applicable in a joint watershed resource protection overlay district.

(b) The zoning officer appointed by each municipality to administer its zoning ordinance shall also administer the provisions relating to joint watershed zoning applicable in the joint watershed resource protection overlay district.

Section 811-B. Funding and Preferences.--(a) In order to reimburse the municipalities for all or a portion of the documented costs and expenses, approved by the department, incurred in connection with the adoption of a zoning ordinance or amendment to create a joint watershed resource protection overlay district, the department is authorized and directed to provide grants to municipalities that participate in joint watershed zoning pursuant to this article.

(b) In accordance with a preference procedure to be devised by the department's Center for Local Government Services, municipalities that participate in joint watershed zoning by creating a joint watershed resource protection overlay district pursuant to this article shall be entitled to priority consideration when applying for State financial or technical assistance, loans or grants for all projects or programs for which applications are processed or administered by the

1 department.

2 Section 2. This act shall take effect in 60 days.