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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 744**

Session of  
1977

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INTRODUCED BY KURY, MURRAY, MELLOW, HOLL AND WOOD,  
APRIL 19, 1977

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AS AMENDED ON THIRD CONSIDERATION, MARCH 14, 1978

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AN ACT

1 Providing for the regulation of land and water use for flood  
2 control and storm water management purposes, imposing duties  
3 and conferring powers on the Department of Environmental  
4 Resources, municipalities and counties, providing for  
5 enforcement and penalties, and making appropriations.

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1 causing accelerated runoff, is fundamental to the public  
2 health, safety and welfare and the protection of the people  
3 of the Commonwealth, their resources and the environment.

4 Section 3. Purpose and policy.

5 The policy and purpose of this act is to:

6 (1) Encourage planning and management of storm water  
7 runoff in each watershed which is consistent with sound water  
8 and land use practices.

9 (2) Authorize a comprehensive program of storm water  
10 management designated to preserve and restore the flood  
11 carrying capacity of Commonwealth streams; to preserve to the  
12 maximum extent practicable natural storm water runoff regimes  
13 and natural course, current and cross-section of water of the  
14 Commonwealth; and to protect and conserve ground waters and  
15 ground-water recharge areas.

16 (3) Encourage local administration and management of  
17 storm water consistent with the Commonwealth's duty as  
18 trustee of natural resources and the people's constitutional  
19 right to the preservation of natural, economic, scenic,  
20 aesthetic, recreational and historic values of the  
21 environment.

22 Section 4. Definitions.

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

26 "Department." The Department of Environmental Resources of  
27 the Commonwealth of Pennsylvania.

28 "Governmental unit." Any county, municipality, political  
29 subdivision or the Commonwealth, and any department, authority,  
30 agency or board thereof or any agent of the foregoing.

1 "Municipality." A city, borough, town or township, or any  
2 county or other governmental unit when acting as an agent  
3 thereof, or any combination thereof acting jointly.

4 "Pennsylvania Municipalities Planning Code." The act of July  
5 31, 1968 (P.L.805, No.247), as amended.

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

16 "Public utility service." The rendering of the following  
17 services for the public:

18 (1) gas, electricity or steam production, generation,  
19 transmission or distribution;

20 (2) water diversion, pumping, impoundment, or  
21 distribution;

22 (3) railroad transportation of passengers or property;

23 (4) operation of a canal, turnpike, tunnel, bridge,  
24 wharf or similar structure;

25 (5) transportation of natural or artificial gas, crude  
26 oil, gasoline or petroleum products, materials for  
27 refrigeration or other fluid substances by pipeline or  
28 conduit;

29 (6) telephone or telegraph communications; and

30 (7) sewage collection, treatment or disposal.

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

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

5 "Watershed storm water plan." A plan for storm water  
6 management adopted by a county in accordance with section 5.  
7 Section 5. Watershed storm water plans and contents.

8 (a) Within two years following ~~the effective date of this~~ <—  
9 ~~act,~~ THE PROMULGATION OF GUIDELINES BY THE DEPARTMENT PURSUANT <—  
10 TO SECTION 14, each county shall prepare and adopt a watershed  
11 storm water management plan for each watershed located in the  
12 county as designated by the department, in consultation with the  
13 municipalities located within each watershed, and shall  
14 periodically review and revise such plan at least every five  
15 years. THE DEPARTMENT MAY, FOR GOOD CAUSE SHOWN, GRANT AN <—  
16 EXTENSION OF TIME TO ANY COUNTY FOR THE PREPARATION AND ADOPTION  
17 OF A WATERSHED STORM WARTER MANAGEMENT PLAN.

18 (b) Each watershed storm water plan shall include, but is  
19 not limited to:

20 (1) a survey of existing runoff characteristics in small  
21 as well as large storms, including the impact of soils,  
22 slopes, vegetation and existing development;

23 (2) a survey of existing significant obstructions and  
24 their capacities;

25 (3) An assessment of projected and alternative land  
26 development patterns in the watershed, and the potential  
27 impact of runoff quantity, velocity and quality;

28 (4) an analysis of present and projected development in  
29 flood hazard areas, and its sensitivity to damages from  
30 future flooding or increased runoff;

1 (5) a survey of existing drainage problems and proposed  
2 solutions;

3 (6) a review of existing and proposed storm water  
4 collection systems and their impacts;

5 (7) an assessment of alternative runoff control  
6 techniques and their efficiency in the particular watershed;

7 (8) an identification of existing and proposed State,  
8 Federal and local flood control projects located in the  
9 watershed and their design capacities;

10 (9) a designation of those areas to be served by storm  
11 water collection and control facilities within a ten-year  
12 period, an estimate of the design capacity and costs of such  
13 facilities, a schedule and proposed methods of financing the  
14 development, construction and operation of such facilities,  
15 and an identification of the existing or proposed  
16 institutional arrangements to implement and operate the  
17 facilities;

18 (10) an identification of flood plains within the  
19 watershed;

20 (11) criteria and standards for the control of storm  
21 water runoff from existing and new development which are  
22 necessary to minimize dangers to property and life and carry  
23 out the purposes of this act; and <—

24 (12) PRIORITIES FOR IMPLEMENTATION OF ACTION WITHIN EACH <—  
25 PLAN; AND

26 ~~(12)~~ (13) provisions for periodically reviewing, <—  
27 revising and updating the plan.

28 (c) Each watershed storm water plan shall:

29 (1) contain such provisions as are reasonably necessary  
30 to manage storm water such that development or activities in

1 each municipality within the watershed do not adversely  
2 affect health, safety and property in other municipalities  
3 within the watershed and in basins to which the watershed is  
4 tributary; and

5 (2) consider and be consistent with other existing  
6 municipal, county, regional and State environmental and land  
7 use plans.

8 Section 6. Municipal and public participation in watershed  
9 planning.

10 (a) The county shall establish, in conjunction with each  
11 watershed storm water planning program, a watershed plan  
12 advisory committee composed of at least one representative from  
13 each municipality within the watershed, the county soil and  
14 water conservation district and such other agencies or groups as  
15 are necessary and proper to carry out the purposes of the  
16 committee.

17 (b) Each committee shall be responsible for advising the  
18 county throughout the planning process, evaluating policy and  
19 project alternatives, coordinating the watershed storm water  
20 plans with other municipal plans and programs, and reviewing the  
21 plan prior to adoption.

22 (c) Prior to adoption, each plan shall be reviewed by the  
23 official planning agency and governing body of each  
24 municipality, the county planning commission and regional  
25 planning agencies for consistency with other plans and programs  
26 affecting the watershed. All such reviews shall be submitted to  
27 the department with the proposed plan.

28 Section 7. Joint plans and coordination of planning.

29 Where a watershed includes land in more than one county, the  
30 department may require that the affected counties:

- 1           (1) prepare, adopt and submit a joint plan for the  
2           entire watershed; or
- 3           (2) take such other actions as may be necessary and  
4           appropriate to coordinate storm water planning for the entire  
5           watershed.

6 Section 8. Adoption and amendment.

7           (a) Prior to adoption or amendment of a watershed storm  
8           water plan, the county shall hold a public hearing pursuant to  
9           public notice of not less than two weeks. The notice shall  
10          contain a brief summary of the principal provisions of the plan,  
11          and a reference to the places within each affected municipality  
12          where copies may be examined or purchased at cost.

13          (b) Adoption or amendment of the plan shall be by resolution  
14          carried by an affirmative vote of at least a majority of the  
15          members of the county governing body. The resolution shall refer  
16          expressly to the maps, charts, textual matter and other  
17          materials intended to form the whole or part of the official  
18          plan, or amendment thereto, and the action shall be recorded on  
19          the adopted plan, part or amendment.

20 Section 9. Review and approval by the department.

21          (a) The department shall, in consultation with the  
22          Department of Community Affairs, review all watershed storm  
23          water plans and revisions or amendments thereto. It shall  
24          approve the plan if it determines:

25                 (1) that the plan is consistent with municipal flood  
26                 plain management plans, State programs which regulate dams,  
27                 encroachments, and water obstructions, and State and Federal  
28                 flood control programs; and

29                 (2) that the plan is compatible with other watershed  
30                 storm water plans for the basin in which the watershed is



1 located, and is consistent with the policies and purposes of  
2 this act.

3 (b) Any person aggrieved by a final decision of the  
4 department approving or disapproving a watershed plan or  
5 amendment thereto, may appeal the decision to the Environmental  
6 Hearing Board in accordance with the provisions of section 1921-  
7 A of the act of April 9, 1929 (P.L.177, No.175), known as "The  
8 Administrative Code of 1929," and the act of June 4, 1945  
9 (P.L.1388, No.442), known as the "Administrative Agency Law."  
10 Section 10. Failure to submit plan; mandamus.

11 The department may institute an action in mandamus in the  
12 Commonwealth Court or the court of common pleas of the county or  
13 counties in which the watershed is located, to compel counties  
14 to adopt and submit plans in accordance with this act.

15 Section 11. Effect of watershed storm water plans.

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

25 (b) Within six months following adoption and approval of the  
26 watershed storm water plan, each municipality shall adopt or  
27 amend, and shall implement such ordinances and regulations,  
28 including zoning, subdivision and development, building code,  
29 and erosion and sedimentation ordinances, as are necessary to  
30 regulate development within the municipality in a manner

1 consistent with the applicable watershed storm water plan and  
2 the provisions of this act.

3 Section 12. Failure of municipalities to adopt implementing  
4 ordinances.

5 (a) If the department finds that a municipality has failed  
6 to adopt or amend, and implement such ordinances and regulations  
7 as required by section 11, the department shall provide written  
8 notice of violation to the municipality.

9 (b) Within 60 days of receipt of the notice of violation,  
10 the municipality shall report to the department the action which  
11 it is taking to comply with the requirement or regulation.

12 (c) If within 180 days of receipt of the notice of  
13 violation, the municipality has failed to comply with such  
14 requirement or regulation, as determined by the department, the  
15 ~~Secretary of Community Affairs~~ DEPARTMENT shall notify the State ←  
16 Treasurer to withhold payment of all funds payable to the  
17 municipality from the General Fund or any other fund. Upon  
18 notification, the State Treasurer shall hold in escrow all  
19 moneys due to such municipality from the Commonwealth until such  
20 time as the department notifies the State Treasurer that the  
21 municipality has complied with such requirement or regulation.

22 (D) ANY PERSON AGGRIEVED BY AN ACTION OF THE DEPARTMENT ←  
23 TAKEN PURSUANT TO SUBSECTION (C) SHALL HAVE THE RIGHT WITHIN 30  
24 DAYS OF RECEIPT OF NOTICE OF SUCH ACTION TO APPEAL SUCH ACTION  
25 TO THE ENVIRONMENTAL HEARING BOARD, PURSUANT TO SECTION 1921-A,  
26 ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS "THE  
27 ADMINISTRATIVE CODE OF 1929," AND THE ACT OF JUNE 4, 1945  
28 (P.L.1388, NO.442), KNOWN AS THE "ADMINISTRATIVE AGENCY LAW."

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

30 Any landowner and any person engaged in the alteration or

1 development of land which may affect storm water runoff  
2 characteristics shall implement such measures consistent with  
3 the provisions of the applicable watershed storm water plan as  
4 are reasonably necessary to prevent injury to health, safety or  
5 other property. Such measures shall include such actions as are  
6 required:

7 (1) to assure that the maximum rate of storm water  
8 runoff is no greater after development than prior to  
9 development activities; or

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

13 Section 14. Powers and duties of the Department of  
14 Environmental Resources.

15 The Department of Environmental Resources shall have the  
16 power and its duty shall be to:

17 (1) Coordinate the management of storm water in the  
18 Commonwealth.

19 (2) Provide in cooperation with the Department of  
20 Community Affairs technical assistance to counties and  
21 municipalities in implementing this act.

22 (3) Publish guidelines for storm water management, and  
23 model storm water ordinances for use by counties and  
24 municipalities.

25 (4) Review, in cooperation with the Department of  
26 Community Affairs, and approve all watershed plans and  
27 revisions thereto.

28 (5) Cooperate with appropriate agencies of the United  
29 States or of other states or any interstate agencies with  
30 respect to the planning and management of storm water.

1           (6) Serve as the agency of the Commonwealth for the  
2 receipt of moneys from the Federal Government or other public  
3 or private agencies or persons and expend such moneys as  
4 appropriated by the General Assembly for studies and research  
5 with respect to planning and management of storm water.

6           (7) Conduct studies and research regarding the causes,  
7 effects and hazards of storm water and methods for storm  
8 water management.

9           (8) Conduct and supervise educational programs with  
10 respect to storm water management.

11           (9) Require the submission of records and periodic  
12 reports by county and municipal agencies as necessary to  
13 carry out the purposes of this act.

14           (10) Do any other acts not inconsistent with this act  
15 necessary to carry out the purposes and policies of this act.

16 Section 15. Civil remedies.

17           (a) Any activity conducted in violation of the provisions of  
18 this act or of any watershed storm water plan, regulations or  
19 ordinances adopted hereunder, is hereby declared a public  
20 nuisance.

21           (b) Suits to restrain, prevent or abate violation of this  
22 act or of any watershed storm water plan, regulations or  
23 ordinances adopted hereunder, may be instituted in equity or at  
24 law by the department, any affected county or municipality, or  
25 any aggrieved person. Such proceedings may be prosecuted in the  
26 Commonwealth Court, or in the court of common pleas of the  
27 county where the activity has taken place, the condition exists,  
28 or the public affected, and to that end jurisdiction is hereby  
29 conferred in law and equity upon such courts. Except in cases of  
30 emergency where, in the opinion of the court, the circumstances

1 of the case require immediate abatement of the unlawful conduct,  
2 the court may, in its decree, fix a reasonable time during which  
3 the person responsible for the unlawful conduct shall correct or  
4 abate the same. The expense of such proceedings shall be  
5 recoverable from the violator in such manner as may now or  
6 hereafter be provided by law.

7 (c) Any person injured by conduct which violates the  
8 provisions of section 13 may, in addition to any other remedy  
9 provided under this act, recover damages caused by such  
10 violation from the landowner or other responsible person.

11 Section 16. Criminal penalties.

12 (a) Any person who violates the provisions of this act or of  
13 a watershed storm water plan, regulation or ordinance adopted  
14 hereunder, is guilty of a summary offense and, upon conviction,  
15 shall be sentenced to pay a fine of not less than \$100 nor more  
16 than \$1,000 for each separate offense, and, in default of the  
17 payment of such fine, to imprisonment for a period of not more  
18 than 60 days.

19 (b) Any person who, within two years after a conviction in a  
20 summary proceeding as provided in subsection (a), violates the  
21 provisions of this act or of a watershed storm water plan,  
22 regulations or ordinances adopted hereunder, is guilty of a  
23 misdemeanor and, upon conviction, shall be sentenced to pay a  
24 fine of not less than \$500 nor more than \$5,000 for each  
25 separate offense or to imprisonment for a period of not more  
26 than one year, or both.

27 (c) Each day of continued violation shall constitute a  
28 separate offense under subsections (a) and (b). Any criminal  
29 penalty collected under this act shall be paid to the  
30 municipality or municipalities in which the violation occurred

1 to be used by said municipality or municipalities in achieving  
2 the purposes of this act.

3 Section 17. Preservation of existing rights and remedies.

4 (a) The collection of any penalty under the provisions of  
5 this act shall not be construed as estopping the Commonwealth,  
6 any county, municipality or aggrieved person from proceeding in  
7 courts of law or equity to abate nuisances under existing law or  
8 to restrain, at law or in equity, violation of this act.

9 (b) It is hereby declared to be the purpose of this act to  
10 provide additional and cumulative remedies to abate nuisances.

11 SECTION 18. GRANTS AND REIMBURSEMENTS TO COUNTIES. ←

12 (A) THE DEPARTMENT OF ENVIRONMENTAL RESOURCES IS AUTHORIZED  
13 TO ADMINISTER GRANTS TO COUNTIES TO ASSIST OR REIMBURSE THEM FOR  
14 COSTS IN PREPARING OFFICIAL STORM WATER MANAGEMENT PLANS  
15 REQUIRED BY THIS ACT. GRANTS AND REIMBURSEMENTS SHALL BE MADE  
16 FROM AND TO THE EXTENT OF FUNDS APPROPRIATED BY THE GENERAL  
17 ASSEMBLY FOR SUCH PURPOSES, AND SHALL BE MADE IN ACCORDANCE TO  
18 RULES AND REGULATIONS ADOPTED BY THE ENVIRONMENTAL QUALITY  
19 BOARD.

20 (1) THE GRANT SHALL BE EQUAL TO 50% OF THE ALLOWABLE  
21 COSTS FOR PREPARATION OF OFFICIAL STORM WATER MANAGEMENT  
22 PLANS INCURRED BY ANY COUNTY.

23 (2) FOR THE PURPOSES OF THIS SECTION, SUCH STATE GRANTS  
24 SHALL BE IN ADDITION TO GRANTS FOR SIMILAR PURPOSES MADE TO  
25 ANY COUNTY BY THE FEDERAL GOVERNMENT: PROVIDED, THAT THE  
26 GRANTS AUTHORIZED BY THIS SECTION SHALL BE LIMITED SUCH THAT  
27 THE TOTAL OF ALL STATE AND FEDERAL GRANTS DOES NOT EXCEED 50%  
28 OF THE ALLOWABLE COSTS INCURRED BY THE COUNTY.

29 (B) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR OR  
30 LIMIT APPLICATION OF THIS ACT TO ANY MUNICIPALITY OR PERSON, OR

1 TO RELIEVE ANY MUNICIPALITY OR PERSON OF DUTIES IMPOSED UNDER  
2 THIS ACT.

3 (C) IF, IN ANY FISCAL YEAR, APPROPRIATIONS ARE INSUFFICIENT  
4 TO COVER THE COSTS OR GRANTS AND REIMBURSEMENT TO ALL COUNTIES  
5 ELIGIBLE FOR SUCH GRANTS AND REIMBURSEMENTS IN THAT FISCAL YEAR,  
6 THE DEPARTMENT OF ENVIRONMENTAL RESOURCES SHALL REPORT SUCH FACT  
7 TO THE GENERAL ASSEMBLY AND SHALL REQUEST APPROPRIATION OF FUNDS  
8 NECESSARY TO PROVIDE THE GRANTS AUTHORIZED IN THIS SECTION. IF  
9 SUCH A DEFICIENCY APPROPRIATION IS NOT ENACTED, ANY COUNTY WHICH  
10 HAS NOT RECEIVED THE FULL AMOUNT OF THE GRANT FOR WHICH IT IS  
11 ELIGIBLE UNDER THIS SECTION SHALL BE AS A FIRST PRIORITY  
12 REIMBURSED FROM APPROPRIATIONS MADE IN THE NEXT SUCCESSIVE  
13 FISCAL YEAR.

14 Section ~~18~~ 19. Appropriations. ←

15 The sum of \$500,000, or as much thereof as may be necessary,  
16 is hereby appropriated for the fiscal period beginning July 1,  
17 1978, and ending June 30, 1979, to the Department of  
18 Environmental Resources for the purposes of administrative and  
19 general expenses in implementing the provisions of this act.

20 Section ~~19~~ 20. Repealer and savings clause. ←

21 (a) All acts or parts of acts inconsistent herewith are  
22 hereby repealed to the extent of such inconsistency.

23 (b) The provisions of this act shall not affect any suit or  
24 prosecution pending or to be instituted to enforce any right or  
25 penalty or punish any offense under the authority of any act of  
26 Assembly or part thereof repealed by this act.

27 Section ~~20~~ 21. Effective date. ←

28 This act shall take effect immediately.