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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 40**

Session of  
1989

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INTRODUCED BY BODACK, REGOLI, SCANLON, BELAN, DAWIDA, FISHER,  
LYNCH, STOUT AND MUSTO, JANUARY 23, 1989

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY,  
JANUARY 23, 1989

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AN ACT

1 Permitting counties of the second class to form storm water  
2 management districts for the purpose of regulating storm  
3 water within designated watershed boundaries; imposing duties  
4 and conferring powers on second class county storm water  
5 districts, on municipalities and on persons engaged in the  
6 development of land; and providing for organization, for  
7 function, for enforcement and for financing.

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6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Storm Water  
10 District for Second Class Counties Act.

11 Section 2. Legislative findings.

12 The General Assembly finds that:

13 (1) There are several adverse consequences of  
14 uncontrolled runoff of storm water, including increased flood  
15 stages in streams, reduced groundwater recharge, erosion and  
16 sedimentation problems and decreased stream quality.

17 (2) A storm water district and comprehensive storm water  
18 management, planning, implementation and enforcement are  
19 critical to protect the public health and safety of the  
20 people of this Commonwealth.

21 Section 3. Purpose.

22 The purpose of this act is to:

23 (1) Allow counties of the second class to create a  
24 district for any of the following purposes:

25 (i) Preventing floods.

26 (ii) Controlling the quantity, direction and  
27 velocity of storm water runoff.

28 (iii) Maintaining the watershed conditions in a  
29 sound hydrological manner.

30 (2) Encourage the regional regulation and management of

1 storm water within designated watershed boundaries to  
2 preserve and protect areas affected by natural storm water  
3 runoff and to ensure consistent implementation of the  
4 approved storm water management plan within a watershed.

5 Section 4. Definitions.

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

9 "Authority." A body politic and corporate, created pursuant  
10 to the act of May 2, 1945 (P.L.382, No.164), known as the  
11 Municipality Authorities Act of 1945.

12 "Bonds." The notes, bonds and other evidence of indebtedness  
13 or obligations which each district is authorized to issue  
14 pursuant to section 11.

15 "Department." The Department of Environmental Resources of  
16 the Commonwealth.

17 "District." One or more watersheds, as designated by the  
18 Department of Environmental Resources, organized under this act  
19 within a second class county for the purposes designated in  
20 section 3. The district may include areas outside the second  
21 class county with the consent of the boards of commissioners of  
22 the interested counties.

23 "Municipality." A city, borough, town, township, county or  
24 second class county district, or other governmental unit when  
25 acting as an agent thereof, or any combination thereof acting  
26 jointly.

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

29 "User." Any person who resides, owns property or alters the  
30 land use within the boundaries of the district.

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

3 "Watershed storm water plan." A plan for storm water  
4 management adopted by a county in accordance with the act of  
5 October 4, 1978 (P.L.864, No.167), known as the Storm Water  
6 Management Act.

7 Section 5. Second class county storm water districts.

8 (a) Establishment.--The board of commissioners of a second  
9 class county may, by resolution, establish a second class county  
10 storm water district or districts. Upon approval by the  
11 department of a storm water management plan for a watershed  
12 located, in whole or in part, within a county of the second  
13 class, pursuant to the act of October 4, 1978 (P.L.864, No.167),  
14 known as the Storm Water Management Act, that entire watershed  
15 shall become a member of the district.

16 (b) Boundaries.--The district boundaries shall be uniform  
17 with those watershed boundaries designated by the department.

18 (c) Board of directors.--The district shall have a board of  
19 directors composed of three members appointed by the board of  
20 commissioners and one member chosen by the governing board of  
21 each municipality within the watershed. These members shall  
22 serve terms of three years.

23 (d) Executive committee of board.--There shall be seven  
24 members of the executive committee of the board. These members  
25 shall serve nonconsecutive terms of two years and shall have the  
26 duty of carrying out day-to-day functions of the district. The  
27 board of commissioners shall appoint no less than one member but  
28 no more than three members to the executive committee. The board  
29 of directors of the district shall elect the remaining members  
30 of the executive committee.

1 (e) Public hearings.--Prior to organization of a district,  
2 public hearings shall be scheduled for the purpose of  
3 determining whether the purpose of this act would be promoted by  
4 creation of a district. Any resident or owner of real property  
5 in a proposed district who wishes to object to the organization  
6 and incorporation of such district shall, on or before the date  
7 of the hearing, file his objections to the organization and  
8 incorporation of such district with the county commissioners.  
9 Section 6. Powers and duties of district.

10 (a) Powers and duties.--A second class county storm water  
11 district shall have the power and duty to:

12 (1) Fix, alter, charge and collect rates and other  
13 charges in the area served by its facilities at reasonable  
14 and uniform rates as determined exclusively by the district.  
15 With regard to the management of storm water, no additional  
16 fees, charges or rates may be levied on the review or  
17 approval of a plan of subdivision or land development as  
18 defined in the act of July 31, 1968 (P.L.805, No.247), known  
19 as the Pennsylvania Municipalities Planning Code. Charges  
20 made for the purpose of providing for the payment of  
21 administrative expenses and general maintenance shall be  
22 calculated at a uniform rate based on the level of service  
23 required by the user, taking into consideration the  
24 characteristics of the property, including, but not limited  
25 to, the average values of slope, size, soils and percent of  
26 impervious surface. Any delinquent fees or charges shall be  
27 collected by the district in accordance with the act of May  
28 16, 1923 (P.L.207, No.153), referred to as the Municipal  
29 Claim and Tax Lien Law. Any person questioning the  
30 reasonableness or uniformity of any rate fixed by the

1 district or the adequacy, safety and reasonableness of the  
2 district's services, including extensions thereof, shall  
3 first raise such objections with the executive committee of  
4 the board and, if necessary, with the full board. After  
5 exhausting these administrative remedies, such persons may  
6 bring suit against the district in the court of common pleas  
7 of the county wherein the project is located, or, if the  
8 project is located in more than one county, in the court of  
9 common pleas of the county wherein the principal office of  
10 the project is located. The court of common pleas shall have  
11 exclusive jurisdiction to determine all such questions  
12 involving rates or service.

13 (2) Provide administrative expenses of the district.

14 (3) Improve, repair, maintain and operate the facilities  
15 and properties.

16 (4) Pay the principal and interest on its obligations.

17 (5) Fulfill the terms and provisions of any agreements  
18 made with the purchasers or holders of any such obligations,  
19 with the incorporating municipality, with municipalities  
20 which are members of the district or with any municipality  
21 served or to be served by the district.

22 (6) Determine exclusively the services and improvements  
23 required to provide adequate, safe and reasonable service,  
24 including extensions thereof in the areas served.

25 (7) Make expenditures.

26 (8) Borrow money, make and issue negotiable notes,  
27 bonds, refunding bonds and other evidences of indebtedness or  
28 bonds of the district, the bonds to have a maturity date not  
29 longer than 40 years from the date of issue.

30 (9) Secure payment of the bonds or any part thereof by

1 pledge or deed of trust of all or any of its revenues and  
2 receipts, and to make such agreements with the purchasers or  
3 holders of such bonds or with others in connection with any  
4 such bonds, whether issued or to be issued.

5 (10) Borrow money and issue such notes, bonds and other  
6 indebtedness and obligations jointly with any authority or  
7 any public authority of any adjoining state, as the district  
8 shall deem advisable and, in general, to provide for the  
9 security for the bonds and the rights of the holders thereof  
10 and in respect to any project constructed and operated under  
11 agreement with any such authority. Any district may enter  
12 into any deeds of trust, indentures or other agreements with  
13 any bank or trust company or other person or persons in the  
14 United States having power to enter into the same, including  
15 any Federal agency, as security for such bonds, and may  
16 assign and pledge all or any of the revenue of receipts of  
17 the district thereunder. Such deed of trust, indenture or  
18 agreement may contain such provisions as may be customary in  
19 such instruments or as the district may authorize, including,  
20 but not limited to, the following:

21 (i) The construction, improvement, operation,  
22 maintenance and repair of any project and the duties of  
23 the district with reference thereto.

24 (ii) The application of funds and the safeguarding  
25 of funds on hand or on deposit.

26 (iii) The rights and remedies of said trustee and  
27 the holder of the bonds, which may include restrictions  
28 upon the individual right of action of such bondholders.

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

1           (11) Use any available Federal or State funds, and any  
2 other funds, and set up accounts as are necessary to  
3 implement the provisions of this act.

4           (12) Implement the approved storm water management plan  
5 for any watershed. These powers may include, but are not  
6 limited to:

7           (i) Developing engineering standards for the  
8 implementation of the approved storm water management  
9 plan to be uniformly applied to all watersheds.

10          (ii) Planning for capital facilities, including the  
11 development of maintenance schedules.

12          (iii) Reviewing and approving the location, design  
13 and construction within the watershed of storm water  
14 management systems, obstructions, flood control projects,  
15 subdivisions and major land developments, highways and  
16 transportation facilities, facilities for the provision  
17 of public utility services and facilities owned and  
18 financed, in whole or in part, by funds from the  
19 Commonwealth, to assure their consistency with the  
20 watershed storm water management plan. The review and  
21 approval of subdivisions and major land developments  
22 shall be conducted in strict accordance with the  
23 requirements of the Pennsylvania Municipalities Planning  
24 Code pertaining to plan submission requirements, timing  
25 requirements, public hearings, bonding and inspections.  
26 The district shall review and take action on such  
27 submissions within 30 days of receipt of application.  
28 Required storm water facilities shall be accepted for  
29 maintenance by the municipality or district upon  
30 satisfactory completion of the facilities. Within the

1 parameters of the act of October 4, 1978 (P.L.864,  
2 No.167), known as the Storm Water Management Act, the  
3 lack of an acceptance agreement shall relieve the  
4 developer of any obligation to install required storm  
5 water improvements.

6 (iv) Inspecting storm water facilities for adherence  
7 to plans and construction and maintenance standards.

8 (v) Providing for routine maintenance.

9 (13) Construct regional facilities.

10 (14) Issue permits to regulate the storm water flow into  
11 its regional facilities and enforce the permits.

12 (15) Cooperate with emergency response and relief  
13 agencies.

14 (16) Make contracts of every name and nature and execute  
15 all instruments necessary or convenient for the carrying out  
16 of its business.

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

19 (18) Maintain watershed conditions in a sound  
20 hydrological manner.

21 (19) Conduct management practices to ensure the  
22 satisfactory performance of the duties of the district,  
23 including, but not limited to, an annual audit and  
24 engineering review, necessary and proper insurance coverage  
25 and an annual report for the citizens. Public hearings shall  
26 be scheduled annually to review the district's budget and  
27 plan for the coming year.

28 (20) Prepare and implement actions to correct existing  
29 storm water management problems as necessary under the  
30 approved storm water management plan, according to sound

1 engineering practices and in the most cost-effective manner.

2 (21) Notify the department, as may be required by  
3 statute, of activities undertaken by the district.

4 (22) Sign and seal, and return to the municipality  
5 within 30 days, any alterations, land development or change  
6 in land use plans, as referenced in section 11(a) of the  
7 Storm Water Management Act, requiring the preparation or  
8 submittal of site development plans to the municipality.

9 (b) Qualities of bonds.--The bonds shall have all the  
10 qualities of negotiable instruments under the law merchant and  
11 the negotiable instruments law of this Commonwealth.

12 (c) Benefits assessment.--For the purpose of making regional  
13 storm water improvements, the district may levy benefit  
14 assessments upon the properties within the district which, in  
15 its judgment, are especially benefited thereby, whether they  
16 abut such improvements or not, according to such rule as the  
17 district adopts, subject to the right of appeal. Such  
18 assessments may include a proportionate share of the cost of any  
19 part of the storm water management system, including the cost of  
20 preliminary studies and surveys, detailed working plans and  
21 specifications, acquiring necessary land or property or any  
22 interest therein, damage awards, construction costs, interest  
23 charges during construction, legal or other fees, or any other  
24 expense incidental to the completion of the work. In assessing  
25 benefits and apportioning the amount to be raised thereby among  
26 the properties benefited, the district may give consideration to  
27 the area, to assessed real estate value, to present or permitted  
28 use of the benefited properties and to any other relevant  
29 factors. Revenue from the assessment of benefits shall be used  
30 solely for the acquisition or construction of the regional storm

1 water improvements, provided that such benefits are for the  
2 payment of principal of and interest on bonds or notes issued to  
3 finance such acquisition or construction. No assessment shall be  
4 made against any property in excess of the special benefit to  
5 accrue to such property.

6 (d) Other requirements.--The powers and duties under this  
7 section in no way relieve persons engaged in the alteration or  
8 development of land of the responsibility to comply with the  
9 requirements of municipal storm water ordinances, the approved  
10 storm water management plan and the requirements of the Storm  
11 Water Management Act.

12 Section 7. Duties of municipalities.

13 A municipality shall not approve any alteration, land  
14 development or change in land use under section 11(a) of the act  
15 of October 4, 1978 (P.L.864, No.167), known as the Storm Water  
16 Management Act, requiring preparation or submittal of site  
17 development plans to the municipality before the plan has been  
18 signed and sealed by the district.

19 Section 8. Duty of persons engaged in the development of land.

20 Any person who is engaged in the development of land and who  
21 is proposing any alteration, land development or change in land  
22 use plan under section 11(a) of the act of October 4, 1978  
23 (P.L.864, No.167), known as the Storm Water Management Act, that  
24 requires the preparation or submittal of site development plans  
25 to the municipality shall submit the plans to the district  
26 through the municipality. Safeguards presently afforded to such  
27 persons under the act of July 31, 1968 (P.L.805, No.247), known  
28 as the Pennsylvania Municipalities Planning Code, shall continue  
29 to be available under the provisions of this act.

30 Section 9. Entry upon lands for survey and examinations.

1 Designated representatives of the district may enter upon  
2 lands within the district to make surveys and examinations to  
3 accomplish the necessary purposes of the district or to have  
4 access to the work.

5 Section 10. Duties of other agencies of the Commonwealth.

6 (a) Technical assistance.--Upon request of a second class  
7 county or second class county storm water district, the  
8 Department of Environmental Resources and the Department of  
9 Community Affairs shall provide technical assistance as required  
10 for the purposes of this act.

11 (b) Delegation.--The department may delegate to the district  
12 any powers that it may possess under the act of October 4, 1978  
13 (P.L.864, No.167), known as the Storm Water Management Act, and  
14 the act of November 26, 1978 (P.L.1375, No.325), known as the  
15 Dam Safety and Encroachments Act, as it pertains to storm water  
16 management.

17 (c) Performance reviews.--If the powers under subsection (b)  
18 are delegated, the department shall conduct periodic performance  
19 reviews of the district's activities.

20 (d) Department authority.--Nothing in this act shall be  
21 construed to abrogate the authority of the department under any  
22 of the environmental laws administered by the department.

23 Section 11. Bond authorization; provisions.

24 (a) Authorization.--The bonds of any district shall be  
25 authorized by resolution of the board of directors and shall be  
26 of the series, bear such date or dates, mature at such time or  
27 times, not exceeding 40 years from their respective dates, and  
28 bear interest at such rate or rates, as determined by the  
29 executive advisory committee to be necessary to issue and sell  
30 the authorized bonds. The bonds shall be all of the following:

- 1 (1) Payable semiannually.
- 2 (2) In denomination and form, either coupon or fully  
3 registered without coupons.
- 4 (3) Carry registration, exchangeability and  
5 interchangeability privileges.
- 6 (4) Subject to terms of redemption, not exceeding 150%  
7 of the principal amount thereof.
- 8 (5) Entitled to priorities in the revenues of receipts  
9 of the district as resolution or resolutions may provide.
- 10 (6) Signed by or bear the facsimile signature of such  
11 officers as the district shall determine.

12 Coupon bonds shall include interest coupons bearing the  
13 facsimile signature of the treasurer of the district, and all  
14 bonds shall be authenticated by an authenticating agent, fiscal  
15 agent or trustee, all as may be prescribed in the resolution or  
16 resolutions. These bonds may be issued and delivered,  
17 notwithstanding that one or more of the officers signing the  
18 bonds, or the facsimile of whose signature shall be upon the  
19 bonds or the coupons shall have ceased to be the officer or  
20 officers at the time when the bonds are actually delivered.

21 (b) Provisions.--Any resolution or resolutions authorizing  
22 any bonds may contain provisions which shall be part of the  
23 contract with the holders thereof, as to the following:

24 (1) Pledging the full faith and credit of the district,  
25 but not of the Commonwealth or any political subdivision  
26 thereof, for such obligations or restricting the same to all  
27 or any of the revenues of the district from all or any  
28 projects or properties.

29 (2) The construction, improvement, operations,  
30 extension, enlargement, maintenance and repair of the project

1 and the duties of the district with reference thereto.

2 (3) The terms and provisions of the bonds.

3 (4) Limitations on the purpose to which the proceeds of  
4 the bonds then or thereafter to be issued or of any loan or  
5 grant by the United States may be applied.

6 (5) The rate of tolls and other charges for use of the  
7 facilities of or for the services rendered by the district.

8 (6) The setting aside of reserves or sinking funds and  
9 the regulation and disposition thereof.

10 (7) Limitations in the issuance of additional bonds.

11 (8) The terms and provisions of any deed of trust or  
12 indenture which secure the bonds or under which the same may  
13 be issued.

14 (9) Any other or additional agreements with the holders  
15 of the bonds.

16 Section 12. Remedies of bondholders.

17 (a) District default.--The rights and remedies herein  
18 conferred upon or granted to the bondholders shall be in  
19 addition to and not in limitation of any rights and remedies  
20 lawfully granted to such bondholders by the resolution or  
21 resolutions providing for the issuance of bonds or by any deed  
22 of trust, indenture or other agreement under which the same may  
23 be issued. In the event that the district shall default in the  
24 payment of principal or interest on any of the bonds after  
25 the principal or interest shall become due, whether at maturity  
26 or upon call for redemption, and such default shall continue for  
27 a period of 30 days or, in the event that the district shall  
28 fail or refuse to comply with the provisions of this act or  
29 shall default in any agreement made with the holders of the  
30 bonds, the holders of 25% in aggregate principal amount of the

1 bonds then outstanding, by instrument or instruments filed in  
2 the office of the recorder of deeds of the county and proved or  
3 acknowledged in the same manner as a deed to be recorded, may  
4 appoint a trustee to represent the bondholder for the purpose  
5 herein provided.

6 (b) Action.--The trustee under subsection (a) and any  
7 trustee under any deed of trust, indenture or other agreement  
8 may and, upon written request of the holder of 25% (or other  
9 percentages as may be specified in any deed of trust, indenture  
10 or other agreement) in principal amount of the bonds then  
11 outstanding, shall, in his or its own name:

12 (1) By mandamus or other suit, action or proceeding at  
13 law, or in equity, enforce all rights of the bondholder,  
14 including the right to require the district to collect rate,  
15 rentals and other charges that are adequate to carry out any  
16 agreement as to, or pledge of, the revenues or receipts of  
17 the district and require the district to carry out any other  
18 agreements with or for the benefit of, the bondholders, and  
19 to perform its and their duties under this act.

20 (2) Bring suit upon the bonds.

21 (3) By action or suit in equity, require the district to  
22 account as if it were the trustee of an express trust for the  
23 bondholders.

24 (4) By action or suit in equity, enjoin any acts or  
25 things which may be unlawful or in violation of the rights of  
26 the bondholders.

27 (5) By notice in writing to the district, declare all  
28 bonds due and payable and, if all defaults shall be made  
29 good, then, with the consent of the holders of 25% (or other  
30 percentages as may be specified in any deed of trust,

1 indenture or other agreement) of the principal amount of the  
2 bonds then outstanding, to annul such declaration and its  
3 consequences.

4 (c) Jurisdiction; receiver.--The court of common pleas of  
5 the county shall have jurisdiction of any suit, action or  
6 proceedings by the trustee on behalf of the bondholders. The  
7 trustee, when appointed or acting under a deed of trust,  
8 indenture or other agreement, and whether or not all bonds have  
9 been declared due and payable, shall be entitled as of right to  
10 the appointment of a receiver, who may enter and take possession  
11 of the facilities of the district or any part or parts thereof,  
12 the revenues and receipts from which are or may be applicable to  
13 the payment of the bonds so in default and may operate and  
14 maintain the same and collect and receive all rentals and other  
15 revenues thereafter arising therefrom in the same manner as the  
16 district or the board might do, and shall deposit all such  
17 moneys in a separate account and apply the same manner as the  
18 court shall direct. In any suit, action or proceeding by the  
19 trustee, the fees, attorney fees and expenses of the trustee,  
20 and of the receiver, if any, and all costs and disbursements  
21 allowed by the court shall be a first charge on any revenues or  
22 receipts from which are or may be applicable to the payment of  
23 the bonds so in default. The trustee shall, in addition to the  
24 foregoing, have and possess all of the powers necessary or  
25 appropriate for the exercise of any functions specifically set  
26 forth herein or incident to the general representation of the  
27 bondholders in the enforcement and protection of their rights.

28 (d) Limitations.--Nothing in this section or any other  
29 section of this act shall authorize any receiver appointed  
30 pursuant to this act for the purpose of operating and

1 maintaining any facilities of the district to sell, assign,  
2 mortgage or otherwise dispose of any of the assets of whatever  
3 kind and character belonging to the district. It is the  
4 intention of this act to limit the powers of such receiver to  
5 the operation and maintenance of the facilities of the district  
6 as the court shall direct, and no holder of bonds of the  
7 district as the court shall direct and no holder of bonds of the  
8 district nor any trustee shall have the right in any suit,  
9 action or proceedings at law or in equity to compel a receiver  
10 to sell, assign, mortgage or otherwise dispose of any assets of  
11 whatever kind or character belonging to the district.

12 Section 13. Enforcement.

13 (a) Warnings.--The district may issue warnings against  
14 private developers that violate any ordinance adopted by a  
15 municipality.

16 (b) Notification to department.--The district shall notify  
17 the department:

18 (1) Of land development that violates the approved storm  
19 water management plan or local storm water ordinances.

20 (2) If a municipality violates section 11(b) of the act  
21 of October 4, 1978 (P.L.864, No.167), known as the Storm  
22 Water Management Act.

23 (3) If a municipality fails to enforce ordinances or  
24 regulations adopted pursuant to section 11(b) of the Storm  
25 Water Management Act.

26 (c) Petition to withhold payment.--The district may petition  
27 the department to notify the State Treasurer to withhold payment  
28 of all funds payable to a municipality pursuant to section 12 of  
29 the Storm Water Management Act if the municipality has not  
30 adopted or amended and implemented ordinances consistent with

1 the approved plan.

2 (d) Appeal.--A municipality may appeal to the department all  
3 action taken by the district pursuant to this section.

4 Section 14. Preservation of existing rights and remedies.

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

11 Section 15. Effective date.

12 This act shall take effect in 60 days.