

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2009 Session of  
2002

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MARCH 11, 2002

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, MARCH 11, 2002

AN ACT

1 Enabling counties and municipalities to develop watershed-based  
2 storm water plans and to regulate storm water within  
3 designated watershed boundaries; imposing duties and  
4 conferring powers on the Department of Environmental  
5 Protection, on the Environmental Quality Board, on counties  
6 and on municipalities; providing for financing; and making an  
7 appropriation.

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11       The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13   Section 1.   Short title.

14       This act shall be known and may be cited as the Comprehensive  
15 Watershed Storm Water Act.

16   Section 2.   Legislative findings.

17       The General Assembly finds that:

18           (1)   There are several adverse consequences of  
19       uncontrolled runoff of storm water and subsurface drainage,  
20       including increased flood stages in streams, reduced  
21       groundwater recharge, erosion and sedimentation problems and  
22       decreased stream quality.

23           (2)   Watershed-based comprehensive storm water management  
24       planning and implementation are critical to protect the  
25       public health and safety of the people of this Commonwealth.

26           (3)   There is a need for dedicated funding to develop and  
27       implement comprehensive watershed storm water plans and to  
28       construct storm water facilities to manage and control  
29       existing and future storm water runoff and subsurface  
30       drainage.

(4) The act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act, is not sufficiently comprehensive to address the needs of this Commonwealth. While the act provides a basis for storm water management, additional legislation is needed to provide thorough management.

#### Section 3. Purpose.

The purpose of this act is to:

(1) Enable counties and municipalities to develop comprehensive watershed-based storm water plans for the following purposes:

(i) Preventing increased flood stages in streams.

(ii) Controlling the quantity, direction and velocity of storm water runoff and subsurface drainage.

(iii) Improving groundwater recharge.

(iv) Reducing erosion and sedimentation.

(2) Encourage the regional implementation of comprehensive watershed storm water management plans within designated watershed boundaries to preserve and protect areas adversely affected by storm water runoff and subsurface drainage.

#### Section 4. Definitions.

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

"Agency." A county, municipal or regional organization authorized pursuant to section 5 or 6 to develop, implement or comment on a comprehensive watershed storm water plan.

"Bonds." The notes, bonds and other evidence of indebtedness or obligations which are authorized to be issued pursuant to

1 section 7.

2 "Commercial property." Any property developed for  
3 manufacturing; processing of raw materials or products;  
4 nonmanufacturing purposes, including stores, office buildings,  
5 shopping centers, industrial parks, trucking terminals or  
6 railroads; institutional purposes, including schools, churches,  
7 hospitals or other services; or property developed as a primary  
8 or secondary residence for occupation by three or more  
9 residential properties.

10 "Comprehensive watershed storm water plan." A plan  
11 containing all of the elements prescribed under the act of  
12 October 4, 1978 (P.L.864, No.167), known as the Storm Water  
13 Management Act, plus elements outlined in section 5(c), for the  
14 specific purpose of managing all storm water flows within the  
15 watershed.

16 "County." A body politic and corporate, created pursuant to  
17 the act of August 9, 1955 (P.L.323, No.130), known as The County  
18 Code.

19 "Department." The Department of Environmental Protection of  
20 the Commonwealth.

21 "Flow standard." The measured quantity, quality, velocity  
22 and direction of storm water.

23 "Municipality." A city, borough, town, a township or another  
24 governmental unit when acting as an agent thereof or any  
25 combination of these acting jointly.

26 "NPDES." National Pollutant Discharge Elimination System.

27 "Regional storm water facility." A storm water facility  
28 which is located in, is financed by or serves more than one  
29 municipality in a watershed.

30 "Residential property." Any property developed as a primary

1 or secondary residence for occupation by two or less families.

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

4 "Storm water facility." A natural feature or man made  
5 facility that collects, detains, retains, conveys, treats or  
6 allows infiltration of storm water or subsurface drainage.

7 "Subsurface drainage." Drainage runoff which occurs below  
8 the surface of the ground resulting from precipitation, snow or  
9 ice melt occurring naturally or by alteration or development of  
10 land.

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

15 "Watershed storm water plan." A plan for storm water  
16 management prepared for a watershed and adopted by a county in  
17 accordance with act of October 4, 1978 (P.L.864, No.167), known  
18 as the Storm Water Management Act.

19 Section 5. Comprehensive watershed storm water plans.

20 (a) Local authorization to counties.--The following shall  
21 apply:

22 (1) The county or counties located in a watershed,  
23 acting jointly or through a joint agency, may develop a  
24 comprehensive storm water management plan as described in  
25 subsection (c). If all counties in the watershed do not agree  
26 to develop the plan, the plan shall assume flow standards at  
27 the boundaries of the nonparticipating county or counties  
28 which are consistent with the comprehensive watershed storm  
29 water plan.

30 (2) Federal lands shall be included in the comprehensive

1 storm water management plan with the consent of the United  
2 States Department of the Interior.

3 (3) State lands shall be included in the comprehensive  
4 storm water management plan with the consent of the  
5 Department of Conservation and Natural Resources.

6 (4) The comprehensive storm water management plan shall  
7 be generally consistent with county and municipal  
8 comprehensive plans enacted under the act of July 31, 1968  
9 (P.L.805, No.247), known as the Pennsylvania Municipalities  
10 Planning Code.

11 (5) The comprehensive storm water management plan shall  
12 be generally consistent with municipal comprehensive plans  
13 adopted under the Pennsylvania Municipalities Planning Code.  
14 A municipal comprehensive plan enacted after adoption of a  
15 comprehensive storm water management plan shall be generally  
16 consistent with the comprehensive storm water management  
17 plan.

18 (b) Composition.--The comprehensive watershed storm water  
19 plan shall consist of, but is not limited to:

20 (1) Identification of existing storm water and  
21 subsurface drainage problems in the watershed.

22 (2) Identification of existing storm water facilities in  
23 the watershed, their engineering design features, their  
24 ownership and maintenance responsibility.

25 (3) A design standard common to all storm water  
26 facilities within the watershed.

27 (4) Designation of locations, sizes and types of storm  
28 water facilities for construction to correct existing and  
29 prevent future storm water and subsurface drainage problems.

30 (5) A priority listing for construction of each storm

1 water facility included in the plan.

2 (6) Identification of financing alternatives for storm  
3 water facilities.

4 (7) A program for public information, participation and  
5 education.

6 (8) Provision for plan update or review at a minimum of  
7 every ten years.

8 (9) Demonstration of consistency with other existing  
9 Federal, State, interstate, regional, county and municipal  
10 environmental and land use plans.

11 (10) Demonstrate consistency with existing watershed  
12 storm water plans, including minimum standards required by  
13 the act of October 4, 1978 (P.L.864, No.167), known as the  
14 Storm Water Management Act.

15 (11) Design of a rate structure for fees and assessments  
16 to implement the plan.

17 (12) A description of the mechanism by which the plan  
18 will be implemented.

19 (13) A storm water infiltration standard for groundwater  
20 recharge.

21 (14) Identification of other watershed storm water plans  
22 which impact the planned watershed.

23 (c) Development.--Public participation in the development of  
24 the comprehensive watershed storm water plan shall be provided  
25 as follows:

26 (1) A comprehensive watershed storm water plan advisory  
27 committee, composed of at least one representative from each  
28 municipality, county and county soil and water conservation  
29 district in the watershed shall be established to advise the  
30 agency throughout the process.

1           (2) Prior to adoption, the comprehensive watershed storm  
2 water plan shall be reviewed by the official planning agency  
3 and governing body of each municipality and county and by  
4 each regional planing agency in the watershed, for  
5 consistency with other plans and programs affecting the  
6 watershed. All such reviews and the agency's responses shall  
7 be submitted to the department with the plan, at the time an  
8 approval of the plan is requested from the department.

9           (3) Prior to adoption or amendment of the plan,  
10 reasonable public notice shall be given and a public hearing  
11 shall be held within the watershed.

12       (d) Adoption.--Adoption or amendment of the plan shall be by  
13 resolution of the governing body or bodies of the agency or  
14 agencies identified in subsection (a), which have authorized  
15 development of the plan.

16       (e) Approval by department.--The following shall apply:

17           (1) Prior to adoption or substantive amendment, a  
18 comprehensive watershed storm water plan shall be submitted  
19 to the department for review and approval. The department  
20 shall approve the plan if it determines that it is consistent  
21 with the practice and intent of the following:

22               (i) Municipal flood plain management plans.

23               (ii) State programs which regulate dams,  
24 encroachments, water obstructions, erosion and  
25 sedimentation.

26               (iii) Federal and State flood control and water  
27 quality programs.

28               (iv) Other watershed storm water plans which impact  
29 the planned watershed.

30               (v) The policies and purposes of this act and the



Storm Water Management Act.

(2) Unless the department approves, disapproves or conditionally approves the plan within three months of receipt, it will be deemed approved.

(f) Appeals.--Any person aggrieved by a final decision of the department approving or disapproving a storm water management plan or any amendment to it may appeal the decision to the Environmental Hearing Board in accordance with the provisions of the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act.

Section 6. Implementation of comprehensive watershed storm water management plan.

(a) Revision of ordinances.--All municipalities shall revise their ordinances and regulations to conform with the requirements of the comprehensive storm water plan.

(b) Infrastructure implementation.--Infrastructure improvements under a department-approved comprehensive watershed storm water plan may be implemented through any of the following:

(1) Each municipality will carry out the plan within its municipal boundaries. Any municipality in a watershed may agree to assume responsibility for implementation of the plan by acting jointly, with a municipality, with the county or through a joint agency.

(2) One or more municipalities in the watershed may request that the county or counties in the watershed assume responsibility for implementation of the plan. The county or counties may assume responsibility for implementation of the plan and operational authority for the storm water facilities as provided for in the plan, but only for municipalities

1       which agree to allow the county or counties to assume  
2       implementation responsibilities.

3           (3) If two-thirds of the municipalities, representing at  
4       least 51% of the population within the watershed, through  
5       adoption of resolutions of their governing bodies, request  
6       that the county or counties in the watershed assume  
7       responsibility for implementation of the plan, then the  
8       county or counties shall assume such responsibility.

9       (c) Exercise of local authority.--A county or counties or  
10      municipalities which have assumed responsibility for  
11      implementation of the plan shall have the right to exercise  
12      authority by any of the following methods:

13           (1) By creating an operational unit under the authority  
14      of the county or municipalities or by assigning such  
15      responsibility to an existing operational unit.

16           (2) By contracting with any private or public, profit or  
17      not-for-profit organization, corporation or other legal  
18      entity to perform such responsibilities in accordance with  
19      the plan.

20      (d) Powers.--Municipalities exercising the authority to  
21      implement the plan under subsection (b)(1) may exercise the  
22      following powers:

23           (1) Deny any landowner in a municipality access to the  
24      storm water facilities constructed pursuant to the plan  
25      unless the landowner complies with the municipal ordinances  
26      adopted under this act.

27           (2) Install necessary storm water facilities on private  
28      property if the landowner does not comply with the municipal  
29      ordinances adopted under this act requiring installation of  
30      storm water facilities for activities on the landowner's

1 property, and assess costs against such landowner, which  
2 costs shall be recoverable in the same manner as assessments  
3 under section 7.

4 (e) Ceding of authority.--Ceding of authority shall be  
5 conducted as follows:

6 (1) Storm water facilities on private lands may be ceded  
7 to the agency at the agency's discretion. Whether ceded or  
8 not, the facilities shall be required to meet the flow  
9 standards required under the comprehensive storm water  
10 management plan.

11 (2) All ceded facilities shall be subject to an easement  
12 for maintenance and inspection access.

13 (f) Fee authorization.--The county may levy an annual storm  
14 water fee on real property to pay for all costs associated with  
15 implementation under this section as defined in section 7. The  
16 annual storm water fee may be countywide or may be implemented  
17 in phases which reflect the implementation of the comprehensive  
18 storm water plan.

19 (g) Reimbursement of implementation and maintenance costs.--  
20 The following shall apply to reimbursement:

21 (1) A municipality shall be reimbursed by the county for  
22 its identified costs of infrastructure implementation and  
23 maintenance under subsection (b)(1) and (2).

24 (2) Reimbursement shall not include costs related to  
25 sanitary sewage facilities.

26 (3) The municipality may delay implementation of the  
27 plan until the county provides for reimbursement to the  
28 municipality for costs covered under this subsection.

29 (4) The county shall have the right to audit the  
30 municipalities' costs of implementation.

1 (h) Design criteria and standards.--The comprehensive  
2 watershed storm water plan shall be the sole arbiter of the  
3 engineering design and standard for any storm water facility  
4 implemented under this section and the county shall have no  
5 responsibility to reimburse the cost of any facility not meeting  
6 the design criteria.

7 (i) Maintenance of storm water facilities.--Continuing  
8 maintenance of storm water facilities shall be the  
9 responsibility of the party implementing the facility unless  
10 there is specific agreement otherwise between the agency and the  
11 implementing party.

12 Section 7. Powers and duties of county.

13 (a) Plan development and implementation.--In addition to any  
14 existing powers, the county responsible for development or  
15 implementation of the comprehensive watershed storm water plan  
16 shall have the power and duty to:

17 (1) Fix, alter, charge and collect fees and assessments  
18 in the area served by the county and the associated watershed  
19 at reasonable and uniform rates as determined exclusively by  
20 the county in order to carry out the powers and duties  
21 authorized under this act, including preparation of  
22 comprehensive watershed storm water plans and their  
23 implementation and the acquisition or construction of storm  
24 water facilities in the watershed. The fees established under  
25 this paragraph:

26 (i) Shall be assessed on real property in the  
27 watershed as follows:

28 (A) The fee may be a flat fee or may be based on  
29 the value of the real property.

30 (B) Commercial and industrial property may be

1           assessed through a flat fee based upon impervious  
2           surface coverage.

3           (C) A commercial property capable of managing  
4           storm water through privately constructed and  
5           operated storm water facilities, either on premises  
6           to the design standard for a maximum draw down time  
7           of 48 hours or through an NPDES-permitted outfall  
8           directly to a water body that does not require  
9           construction of additional public storm water  
10          facilities, shall not be charged. A commercial  
11          facility capable of managing a portion of its storm  
12          water either on premises to the design standard for a  
13          maximum draw down time of 48 hours, or through an  
14          NPDES-permitted outfall directly to a water body that  
15          does not require construction of additional public  
16          storm water facilities shall be charged only its  
17          proportional share of the fee, based on the area of  
18          the facility not addressed by the onsite storm water  
19          facilities meeting the design standard of section  
20          5(b)(3). A commercial facility subject to the fee may  
21          instead construct and operate additional onsite storm  
22          water facilities meeting the design standard of  
23          section 5(b)(3), thereby exempting that property from  
24          all or a proportional share of the storm water use  
25          fee.

26          (ii) By a county shall be added to the annual real  
27          estate tax authorized and collected under, as  
28          appropriate, the act of August 5, 1932 (Sp.Sess., P.L.45,  
29          No.45), referred to as the Sterling Act, the act of July  
30          28, 1953 (P.L.723, No.230), known as the Second Class

1 County Code, the act of August 9, 1955 (P.L.323, No.130),  
2 known as The County Code, or the act of December 31, 1965  
3 (P.L.1257, No.511), known as The Local Tax Enabling Act,  
4 authorizing counties to collect taxes.

5 (iii) Shall not exceed the cost of preparation or  
6 implementation of the comprehensive watershed storm water  
7 plan, which may include administrative, operating and  
8 maintenance expenses and the payment of principal and  
9 interest on its obligations.

10 (2) Make expenditures necessary to prepare and implement  
11 the comprehensive watershed storm water plan.

12 (3) Deposit the revenues collected under this section in  
13 a dedicated receipts account to be used for the exclusive  
14 purpose of development and/or implementation of a  
15 comprehensive watershed storm water plan.

16 (4) Collect delinquent fees in accordance with the act  
17 of May 16, 1923 (P.L.207, No.153), referred to as the  
18 Municipal Claim and Tax Lien Law.

19 (5) Levy and collect benefit assessments upon the  
20 properties within the watershed for the purpose of acquiring  
21 or constructing regional storm water facilities, which  
22 properties, in its judgment, are especially benefited thereby  
23 whether they abut such facilities or not, according to such  
24 rule as the agency adopts, subject to the right of appeal.  
25 These assessments may include a proportionate share of the  
26 cost of any part of the regional storm water facility,  
27 including the cost of preliminary studies and surveys,  
28 detailed working plans and specifications, acquisition of  
29 necessary land or property or an interest therein, damage  
30 awards, construction costs, interest charges during

1 construction, legal or other fees or any other expense  
2 incidental to the completion of the work. In assessing  
3 benefits and apportioning the amount to be raised among the  
4 properties benefited, the agency may give consideration to  
5 the area, to assessed real estate value, to present or  
6 permitted use of the benefited properties and to any other  
7 relevant factors. Revenue from the assessment of benefits  
8 shall be used solely for the acquisition or construction of  
9 the regional storm water facility, provided that such  
10 assessments are solely for the payment of principal and  
11 interest on bonds or notes issued to finance such acquisition  
12 or construction. No assessment shall be made against any  
13 property in excess of the special benefit to accrue to such  
14 property.

15 (6) Borrow money, make and issue negotiable notes,  
16 bonds, refunding bonds, and other evidences of indebtedness  
17 or bonds of the agency, the bonds to have a maturity date not  
18 longer than 40 years from the date of issue.

19 (7) Secure payment of the bonds or any part thereof by  
20 pledge or deed of trust of all or any of its revenues and  
21 receipts, and to make such agreements with the purchasers or  
22 holders of such bonds or with others in connection with any  
23 such bonds, whether issued or to be issued.

24 (8) Borrow money and issue such notes, bonds and other  
25 indebtedness and obligations jointly with any adjoining  
26 state, as the agency shall deem advisable and, in general, to  
27 provide for the security for the bonds and the rights of the  
28 holders thereof and in respect to any storm water facility  
29 constructed and operated under agreement with any such  
30 agency. Any agency may enter into any deed of trust,

1 indenture or other agreement with any bank or trust company  
2 or other person or persons in the United States having power  
3 to enter into the same, including any Federal agency, as  
4 security of such bonds and may assign and pledge all or any  
5 of the revenue of receipts of the agency thereunder. Such  
6 deed of trust, indenture or agreement may contain such  
7 provisions as may be customary in such instruments or as the  
8 agency may authorize, including, but not limited to, the  
9 following:

10 (i) The construction, improvement, operation,  
11 maintenance and repair of any storm water facility and  
12 the duties of the agency with reference thereto.

13 (ii) The application of funds and the safeguarding  
14 of funds on hand or on deposit.

15 (iii) The rights and remedies of the trustee and the  
16 holder of the bonds, which may include restrictions upon  
17 the individual right of action of such bondholders.

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

20 (9) Use any available Federal or State funds, and any  
21 other funds, and set up accounts as are necessary to  
22 implement the provisions of this act.

23 (10) Develop design details for the storm water  
24 facilities to be implemented in accordance with the approved  
25 comprehensive watershed storm water plan.

26 (11) Plan for capital facilities, including the  
27 development of maintenance schedules.

28 (12) Review and approve the location, design and  
29 construction within the watershed of facilities, owned or  
30 financed, in whole or in part, by funds from the



Commonwealth, including storm water facilities, obstruction, flood control projects, highways and transportation facilities, and facilities for the provision of public utility service, to assure their consistency with the comprehensive watershed storm water plan. The county shall review and take action on such submissions concurrent with the review period as provided in the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

(13) Inspect storm water facilities for adherence to plans and construction and maintenance standards.

(14) Provide for routine maintenance.

(15) Construct regional storm water facilities.

(16) Cooperate with emergency response and relief agencies.

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

(b) Other requirements.--The powers and duties under this section in no way relieve persons engaged in the alteration or development of land of the responsibility to comply with the requirements of municipal storm water ordinances, the approved comprehensive watershed storm water plan and the requirements of the act of October 4, 1978 (P.L.864, No.167), known as the Storm Water Management Act.

(c) Objections.--Any resident, owner of real property or person in the watershed questioning the rate fixed by the county or the adequacy, safety and reasonableness of the agency's services, including extensions thereof, shall first raise such objections with the county or the agency, as the case may be. After exhausting their administrative remedies, such persons may

1 bring suit against the agency in the court of common pleas of  
2 the county in which the principal office of the agency is  
3 located.

4 Section 8. Duties of municipalities in regulating development  
5 of land.

6 (a) Regulation.--A municipality shall regulate development  
7 activities consistent with any applicable approved comprehensive  
8 watershed storm water plan.

9 (b) Enforcement.--Nothing in this act shall prohibit a  
10 municipality or county from enforcing any zoning, subdivision or  
11 land development ordinance which the municipality or county has  
12 adopted.

13 Section 9. Entry upon land for surveys and examinations.

14 Designated representatives of the agency, upon serving a  
15 reasonable notice, may enter upon lands in the watershed to make  
16 surveys and examinations to accomplish the necessary purposes of  
17 the agency or to have access to storm water facilities.

18 Section 10. Powers and duties of department and Environmental  
19 Quality Board.

20 (a) Technical assistance.--Upon request of a county or  
21 municipality, the department shall provide technical assistance  
22 as required for the purposes of this act. The department may  
23 prepare and issue such guidelines as may be appropriate to  
24 assist in the implementation of this act.

25 (b) Department authority.--Nothing in this act shall be  
26 construed to abrogate the authority of the department under any  
27 of the environmental laws administered by the department.

28 (c) Environmental Quality Board.--The Environmental Quality  
29 Board shall adopt such rules and regulations of the department  
30 as are necessary and appropriate to carry out the purposes of

1 this act.

2 (d) Approval of comprehensive watershed storm water plan.--

3 The department shall approve a comprehensive watershed storm  
4 water plan, if it is consistent with section 5(e).

5 Section 11. Permits.

6 The department, the Environmental Quality Board and other  
7 Commonwealth departments and agencies and county and municipal  
8 governments and agencies shall make decisions with respect to  
9 issuance of permits that are consistent with comprehensive storm  
10 water management plans.

11 Section 12. Preservation of existing rights and remedies.

12 The taking of any action under the provisions of this act  
13 shall not be construed as estopping the Commonwealth or any  
14 county, municipality or aggrieved person from proceeding in  
15 courts of law or equity to abate nuisances under existing law or  
16 to restrain, at law or in equity, a violation of this act.

17 Section 13. Grants.

18 (a) Purpose.--The department may administer grants to  
19 municipalities and counties and to assist or reimburse them for  
20 costs in preparing comprehensive watershed storm water plans  
21 under this act. Grants and reimbursements shall be made from and  
22 to the extent of funds appropriated by the General Assembly for  
23 such purposes and shall be made in accordance with rules and  
24 regulations promulgated by the Environmental Quality Board.

25 (b) Amount.--A grant shall not exceed 50% of the allowable  
26 costs for the preparation of a comprehensive watershed storm  
27 water plan by any municipality or county. The grant shall be in  
28 addition to grants for similar purposes made to any municipality  
29 or county by the Federal Government.

30 Section 14. Appropriation.

1       There is hereby appropriated \$1,000,000 for the fiscal year  
2 following enactment of this act to the Department of  
3 Environmental Protection for the administrative and general  
4 expenses necessary in implementing this act. This shall be a  
5 continuing appropriation and shall not lapse.

6 Section 15.   Applicability.

7       This act shall not apply to counties of the first class.

8 Section 16.   Effective date.

9       This act shall take effect in 60 days.