

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 606 Session of
2003

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YOUNGBLOOD AND YUDICHAK, MARCH 3, 2003

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MARCH 3, 2003

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 residential property developed as three or more residential
9 units.

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) A municipal comprehensive plan enacted after
12 adoption of a comprehensive storm water management plan shall
13 be generally consistent with the comprehensive storm water
14 management plan.

15 (b) Plan content.--The comprehensive watershed storm water
16 plan shall consist of, but is not limited to:

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

19 (2) Identification of existing storm water facilities in
20 the watershed, their engineering design features, their
21 ownership and maintenance responsibility.

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

24 (4) Designation of locations, sizes and types of storm
25 water facilities for construction to correct existing and
26 prevent future storm water and subsurface drainage problems.
27 Any designation of locations for facilities must be generally
28 consistent with municipal and county comprehensive plans.

29 (5) A priority listing for construction of each storm
30 water facility included in the plan.

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

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

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

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

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

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

16 (12) A description of the mechanism and time frame by
17 which the plan will be implemented.

18 (13) A storm water infiltration standard for groundwater
19 recharge based on soil type as developed by appropriate
20 agencies.

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 one representative appointed by the
28 governing body of each municipality in the plan, county and
29 county soil and water conservation district in the watershed
30 which shall be established to advise the agency throughout

1 the process.

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

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

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

17 (e) Recommendation by department.--The following shall
18 apply:

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

24 (i) Municipal flood plain management plans.

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

28 (iii) Federal and State flood control and water
29 quality programs.

30 (iv) Other watershed storm water plans which impact

1 the planned watershed.

2 (v) The policies and purposes of this act and the
3 Storm Water Management Act.

4 (2) Unless the department recommends approval,
5 disapproval or conditional approval of the plan within three
6 months of receipt, it will be deemed approved.

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

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

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

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

22 (1) Each municipality will carry out the plan within its
23 boundaries, either individually or by agreement with another
24 municipality, county or a joint agency.

25 (2) One or more municipalities in the watershed may
26 request that the county or counties in the watershed assume
27 responsibility for implementation of the plan. The county or
28 counties may assume responsibility for implementation of the
29 plan and operational authority for the storm water facilities
30 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 use of 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

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

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

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

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

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

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

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

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

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

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

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

6 (i) Maintenance of storm water facilities.--Continuing
7 maintenance of storm water facilities shall be the
8 responsibility of the party implementing the facility under
9 subsection (b)(1) and (2) unless there is specific agreement
10 otherwise between the agency and the implementing party.

11 Section 7. Powers and duties of county.

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

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

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

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

29 (B) Commercial and industrial property may be
30 assessed through a flat fee based upon impervious

1 surface coverage.

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

25 (ii) Shall be added to the annual real estate tax
26 authorized and collected under, as appropriate, the act
27 of August 5, 1932 (Sp.Sess., P.L.45, No.45), referred to
28 as the Sterling Act, the act of July 28, 1953 (P.L.723,
29 No.230), known as the Second Class County Code or the act
30 of August 9, 1955 (P.L.323, No.130), known as The County

1 Code.

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

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

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

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

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

1 properties benefited, the agency may give consideration to
2 the area, to assessed real estate value, to present or
3 permitted use of the benefited properties and to any other
4 relevant factors. Revenue from the assessment of benefits
5 shall be used solely for the costs listed in this paragraph.
6 No assessment shall be made against any property in excess of
7 the special benefit to accrue to such property.

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

12 (7) Secure payment of the bonds or any part thereof by
13 pledge or deed of trust of all or any of its revenues and
14 receipts, and to make such agreements with the purchasers or
15 holders of such bonds or with others in connection with any
16 such bonds, whether issued or to be issued.

17 (8) Borrow money and issue such notes, bonds and other
18 indebtedness and obligations jointly with any adjoining
19 state, as the agency shall deem advisable and, in general, to
20 provide for the security for the bonds and the rights of the
21 holders thereof and in respect to any storm water facility
22 constructed and operated under agreement with any such
23 agency. Any agency may enter into any deed of trust,
24 indenture or other agreement with any bank or trust company
25 or other person or persons in the United States having power
26 to enter into the same, including any Federal agency, as
27 security of such bonds and may assign and pledge all or any
28 of the revenue of receipts of the agency thereunder. Such
29 deed of trust, indenture or agreement may contain such
30 provisions as may be customary in such instruments or as the

1 agency may authorize, including, but not limited to, the
2 following:

3 (i) The construction, improvement, operation,
4 maintenance and repair of any storm water facility and
5 the duties of the agency with reference thereto.

6 (ii) The application of funds and the safeguarding
7 of funds on hand or on deposit.

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

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

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

16 (10) Develop design details for the storm water
17 facilities to be implemented in accordance with the approved
18 comprehensive watershed storm water plan.

19 (11) Plan for capital facilities, including the
20 development of maintenance schedules.

21 (12) Review and comment on the location, design and
22 construction within the watershed of facilities, owned or
23 financed, in whole or in part, by funds from the
24 Commonwealth, including storm water facilities, obstruction,
25 flood control projects, highways and transportation
26 facilities, and facilities for the provision of public
27 utility service, to assure their consistency with the
28 comprehensive watershed storm water plan. The county shall
29 review and take action on such submissions concurrent with
30 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 of service 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 bring suit against the agency in the court of common pleas of the county in which the principal office of the agency is located.

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

(a) Regulation.--A municipality shall regulate development activities consistent with any applicable approved comprehensive

1 watershed storm water plan.

2 (b) Enforcement.--Nothing in this act shall prohibit a
3 municipality or county from enforcing any zoning, subdivision or
4 land development ordinance which the municipality or county has
5 adopted.

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

7 Designated representatives of the agency, upon serving a
8 reasonable notice, may enter upon lands in the watershed to make
9 surveys and examinations to accomplish the necessary purposes of
10 the agency or to have access to storm water facilities.

11 Section 10. Powers and duties of department and Environmental
12 Quality Board.

13 (a) Technical assistance.--Upon request of a county or
14 municipality, the department shall provide technical assistance
15 as required for the purposes of this act. The department may
16 prepare and issue such advisory guidelines as may be appropriate
17 to assist in the implementation of this act.

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

21 (c) Environmental Quality Board.--The Environmental Quality
22 Board shall adopt such rules and regulations of the department
23 as are necessary and appropriate to carry out the purposes of
24 this act.

25 Section 11. Permits.

26 The department, the Environmental Quality Board and other
27 Commonwealth departments and agencies and county and municipal
28 governments and agencies shall make decisions with respect to
29 issuance of permits that are generally consistent with
30 comprehensive storm water management plans.

1 Section 12. Preservation of existing rights and remedies.

2 The taking of any action under the provisions of this act
3 shall not be construed as estopping the Commonwealth or any
4 county, municipality or aggrieved person from proceeding in
5 courts of law or equity to abate nuisances under existing law or
6 to restrain, at law or in equity, a violation of this act.

7 Section 13. Grants.

8 (a) Purpose.--The department may administer grants to
9 municipalities and counties and to assist or reimburse them for
10 costs in preparing comprehensive watershed storm water plans
11 under this act. Grants and reimbursements shall be made from and
12 to the extent of funds appropriated by the General Assembly for
13 such purposes and shall be made in accordance with rules and
14 regulations promulgated by the Environmental Quality Board.

15 (b) Amount.--A grant shall not exceed 75% of the allowable
16 costs for the preparation of a comprehensive watershed storm
17 water plan by any municipality or county. The grant shall be in
18 addition to grants for similar purposes made to any municipality
19 or county by the Federal Government.

20 Section 14. Appropriation.

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

26 Section 15. Applicability.

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

28 Section 16. Effective date.

29 This act shall take effect in 60 days.