

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 291 Session of
2005

INTRODUCED BY CONTI, TOMLINSON, THOMPSON, RAFFERTY, MUSTO,
PILEGGI, RHOADES, WOZNIAK, COSTA, KITCHEN AND ERICKSON,
FEBRUARY 15, 2005

REFERRED TO LOCAL GOVERNMENT, FEBRUARY 15, 2005

AN ACT

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

22 The General Assembly of the Commonwealth of Pennsylvania

23 hereby enacts as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 purposes set forth therein, a municipality shall have the
2 power and authority, without having adopted a joint municipal
3 comprehensive plan, to engage in joint watershed zoning by
4 adopting or amending a zoning ordinance to create a joint
5 watershed resource protection overlay district.

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

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

11 (i) The establishment of special storm water and
12 water disposal provisions consistent with the protected
13 uses established by the Department of Environmental
14 Protection under 25 Pa. Code Ch. 93 (relating to water
15 quality standards).

16 (ii) The prohibition or strict control of identified
17 uses that require the storage and management of hazardous
18 or toxic materials.

19 (iii) Provisions for reducing densities.

20 (iv) Provisions limiting the amount of impervious
21 surface.

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

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

1 (2) If a municipality which has adopted an underlying
2 zoning ordinance that leaves no part of such municipality
3 unzoned desires to participate in joint watershed zoning in
4 accordance with this article, it may amend its zoning
5 ordinance by establishing a joint watershed resource
6 protection overlay district.

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

13 (4) Where there is a conflict between the provisions or
14 requirements relating to the joint watershed resource
15 protection overlay district and the provisions or
16 requirements relating to the underlying zoning district, the
17 more restrictive provisions or requirements shall apply.

18 Section 804-B. Withdrawing from Participation in Joint
19 Watershed Zoning.--No municipality may withdraw from its
20 participation in joint watershed zoning in accordance with this
21 article during the first three years following the date of
22 enactment or amendment of a zoning ordinance creating the joint
23 watershed resource protection overlay district. If, at any time
24 after the end of the second year following the enactment or
25 amendment of a zoning ordinance creating the joint watershed
26 resource protection overlay district, a municipality wishes to
27 withdraw from its participation in joint watershed zoning, it
28 shall enact an ordinance, which shall be effective no sooner
29 than one year after its enactment, repealing those provisions of
30 its zoning ordinance relating to the joint watershed resource

1 protection overlay district and shall provide immediately and
2 concurrently one year's advance written notice of its repeal and
3 withdrawal to the governing bodies of all municipalities party
4 to the joint watershed zoning. The repeal and withdrawal may
5 become effective within less than one year with the unanimous
6 approval, by ordinance, of the governing bodies of all
7 municipalities party to the joint watershed zoning.

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

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

1 Section 807-B. Area of Jurisdiction for Challenges.--(a) In
2 any challenge to the validity of the zoning ordinance of a
3 municipality which, in accordance with this article, has acted
4 in concert with other municipalities to create a joint watershed
5 resource protection overlay district, the court shall consider
6 the validity of the challenged municipal ordinance in the
7 context of the entire combined area of jurisdiction of all the
8 municipalities that have cooperated in the creation of the joint
9 watershed resource protection overlay district. The court shall
10 not limit its consideration to the single constituent
11 municipality whose zoning ordinance is being challenged.

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

15 (1) a use is permitted within the jurisdictional area of
16 any of the municipalities which have cooperated in the
17 creation of the joint watershed resource protection overlay
18 district;

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

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

1 joint watershed resource protection overlay district.

2 (c) If a reasonable amount of land in reasonable geographic
3 areas is provided for all uses within the entire combined
4 jurisdiction of the municipalities which have cooperated in the
5 creation of the joint watershed resource protection overlay
6 district, the court shall not require additional areas to be
7 zoned for any use if full utilization of the area previously
8 zoned for such use is achieved.

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

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

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

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

28 (3) Notwithstanding the additional periods provided for
29 in clause (2), a curative amendment shall be enacted by a
30 municipality which is participating in joint watershed zoning

1 not later than one year from the date of declaration of
2 partial or total invalidity.

3 Section 809-B. Application of Article VI (Zoning).--Except
4 as otherwise provided in this article, or where, in the context
5 of this article, a different intention is indicated, the
6 provisions of Article VI shall apply to municipalities
7 participating in joint watershed zoning.

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

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

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

27 (b) In accordance with a preference procedure to be devised
28 by the department's Center for Local Government Services,
29 municipalities that participate in joint watershed zoning by
30 creating a joint watershed resource protection overlay district

1 pursuant to this article shall be entitled to priority
2 consideration when applying for State financial or technical
3 assistance, loans or grants for all projects or programs for
4 which applications are processed or administered by the
5 department.

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