

No. 1978-167

AN ACT

SB 744

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

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

Section 1. Short title.

This act shall be known and may be cited as the "Storm Water Management Act."

Section 2. Statement of legislative findings.

The General Assembly finds that:

- (1) Inadequate management of accelerated runoff of storm water resulting from development throughout a watershed increases flood flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and storm sewers, greatly increases the

cost of public facilities to carry and control storm water, undermines flood plain management and flood control efforts in downstream communities, reduces ground-water recharge, and threatens public health and safety.

(2) A comprehensive program of storm water management, including reasonable regulation of development and activities causing accelerated runoff, is fundamental to the public health, safety and welfare and the protection of the people of the Commonwealth, their resources and the environment.

Section 3. Purpose and policy.

The policy and purpose of this act is to:

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

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

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

Section 4. Definitions.

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

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

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

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

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

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

- (1) gas, electricity or steam production, generation, transmission or distribution;
- (2) water diversion, pumping, impoundment, or distribution;
- (3) railroad transportation of passengers or property;
- (4) operation of a canal, turnpike, tunnel, bridge, wharf or similar structure;
- (5) transportation of natural or artificial gas, crude oil, gasoline or petroleum products, materials for refrigeration or other fluid substances by pipeline or conduit;
- (6) telephone or telegraph communications; and
- (7) sewage collection, treatment or disposal.

“Storm water.” Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

“Watershed.” The entire region or area drained by a river or other body of water, whether natural or artificial.

“Watershed storm water plan.” A plan for storm water management adopted by a county in accordance with section 5.

Section 5. Watershed storm water plans and contents.

(a) Within two years following the promulgation of guidelines by the department pursuant to section 14, each county shall prepare and adopt a watershed storm water management plan for each watershed located in the county as designated by the department, in consultation with the municipalities located within each watershed, and shall periodically review and revise such plan at least every five years. The department may, for good cause shown, grant an extension of time to any county for the preparation and adoption of a watershed storm water management plan.

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

- (1) a survey of existing runoff characteristics in small as well as large storms, including the impact of soils, slopes, vegetation and existing development;
- (2) a survey of existing significant obstructions and their capacities;
- (3) an assessment of projected and alternative land development patterns in the watershed, and the potential impact of runoff quantity, velocity and quality;
- (4) an analysis of present and projected development in flood hazard areas, and its sensitivity to damages from future flooding or increased runoff;
- (5) a survey of existing drainage problems and proposed solutions;
- (6) a review of existing and proposed storm water collection systems and their impacts;
- (7) an assessment of alternative runoff control techniques and their efficiency in the particular watershed;
- (8) an identification of existing and proposed State, Federal and local flood control projects located in the watershed and their design capacities;

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

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

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

(12) priorities for implementation of action within each plan; and

(13) provisions for periodically reviewing, revising and updating the plan.

(c) Each watershed storm water plan shall:

(1) contain such provisions as are reasonably necessary to manage storm water such that development or activities in each municipality within the watershed do not adversely affect health, safety and property in other municipalities within the watershed and in basins to which the watershed is tributary; and

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

Section 6. Municipal and public participation in watershed planning.

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

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

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

Section 7. Joint plans and coordination of planning.

Where a watershed includes land in more than one county, the department may require the affected counties to prepare, adopt and submit a joint plan for the entire watershed.

Section 8. Adoption and amendment.

(a) Prior to adoption or amendment of a watershed storm water plan, the county shall hold a public hearing pursuant to public notice of not less than two weeks. The notice shall contain a brief summary of the principal provisions of the plan, and a reference to the places within each affected

municipality where copies may be examined or purchased at cost.

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

Section 9. Review and approval by the department.

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

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

(2) that the plan is compatible with other watershed storm water plans for the basin in which the watershed is located, and is consistent with the policies and purposes of this act.

(b) Should the department neither approve or disapprove a watershed plan or amendment or revision thereto within 90 days of its submission to the department, the plan or amendment or revision shall be deemed to be approved.

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

Section 10. Failure to submit plan; mandamus.

The department may institute an action in mandamus in the Commonwealth Court to compel counties to adopt and submit plans in accordance with this act.

Section 11. Effect of watershed storm water plans.

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

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

the municipality in a manner consistent with the applicable watershed storm water plan and the provisions of this act.

Section 12. Failure of municipalities to adopt implementing ordinances.

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

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

(c) If within 180 days of receipt of the notice of violation, the municipality has failed to comply with such requirement or regulation, as determined by the department, the department shall notify the State Treasurer to withhold payment of all funds payable to the municipality from the General Fund. Provided, that prior to any withholding of funds, the department shall give both notice to the municipality of its intention to notify the State Treasurer to withhold payment of funds and the right to appeal the decision of the department within the 180-day period following notification. The hearing shall be conducted before the Environmental Hearing Board in accordance with the provisions of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," and Chapters 5 and 7 of Title 2 (Administrative Law and Procedure), of the Pennsylvania Consolidated Statutes. If an appeal is filed within the 180-day period, funds shall not be withheld from the municipality until the appeal is decided.

(d) Any person, other than a municipality, aggrieved by an action of the department shall have the right within 30 days of receipt of notice of such action to appeal such action to the Environmental Hearing Board, pursuant to section 1921-A, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," and the provisions of Chapters 5 and 7 of Title 2 (Administrative Law and Procedure) of the Pennsylvania Consolidated Statutes.

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

Any landowner and any person engaged in the alteration or development of land which may affect storm water runoff characteristics shall implement such measures consistent with the provisions of the applicable watershed storm water plan as are reasonably necessary to prevent injury to health, safety or other property. Such measures shall include such actions as are required:

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

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

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

(a) The Department of Environmental Resources shall have the power and its duty shall be to:

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

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

(3) After notice and public hearing and subject to the requirements of subsection (b) of this section, publish guidelines for storm water management, and model storm water ordinances for use by counties and municipalities.

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

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

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

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

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

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

(10) After notice and hearing and with the approval of the Environmental Quality Board, designate watersheds for the purpose of this act.

(11) Do such other acts consistent with this act required to carry out the purposes and policies of this act.

(b) The guidelines for storm water management and model storm water ordinances shall be submitted to the General Assembly for approval or disapproval and shall be considered by the General Assembly under the procedures created for consideration of Reorganization Plan provided in the act of April 7, 1955 (P.L.23, No.8), known as the "Reorganization Act of 1955."

Section 15. Civil remedies.

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

(b) Suits to restrain, prevent or abate violation of this act or of any

watershed storm water plan, regulations or ordinances adopted hereunder, may be instituted in equity or at law by the department, any affected county or municipality, or any aggrieved person. Such proceedings may be prosecuted in the Commonwealth Court, or in the court of common pleas of the county where the activity has taken place, the condition exists, or the public affected, and to that end jurisdiction is hereby conferred in law and equity upon such courts. Except in cases of emergency where, in the opinion of the court, the circumstances of the case require immediate abatement of the unlawful conduct, the court may, in its decree, fix a reasonable time during which the person responsible for the unlawful conduct shall correct or abate the same. The expense of such proceedings shall be recoverable from the violator in such manner as may now or hereafter be provided by law.

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

Section 16. Preservation of existing rights and remedies.

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

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

Section 17. Grants and reimbursements to counties.

(a) The Department of Environmental Resources is authorized to administer grants to counties to assist or reimburse them for costs in preparing official storm water management plans required by this act. Grants and reimbursements shall be made from and to the extent of funds appropriated by the General Assembly for such purposes, and shall be made in accordance to rules and regulations adopted by the Environmental Quality Board.

(1) The grant shall be equal to 50% of the allowable costs for preparation of official storm water management plans incurred by any county.

(2) For the purposes of this section, such State grants shall be in addition to grants for similar purposes made to any county by the Federal Government: Provided, That the grants authorized by this section shall be limited such that the total of all State and Federal grants does not exceed 50% of the allowable costs incurred by the county.

(b) Nothing in this section shall be construed to impair or limit application of this act to any municipality or person, or to relieve any municipality or person of duties imposed under this act.

(c) If, in any fiscal year, appropriations are insufficient to cover the costs or grants and reimbursement to all counties eligible for such grants

and reimbursements in that fiscal year, the Department of Environmental Resources shall report such fact to the General Assembly and shall request appropriation of funds necessary to provide the grants authorized in this section. If such a deficiency appropriation is not enacted, any county which has not received the full amount of the grant for which it is eligible under this section shall be as a first priority reimbursed from appropriations made in the next successive fiscal year.

Section 18. Appropriations.

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

Section 19. Repealer and savings clause.

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

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

Section 20. Effective date.

This act shall take effect immediately.

APPROVED—The 4th day of October, A. D. 1978.

MILTON J. SHAPP