

## 2021 Update on the Status of the 2008 Recommended Legislative Priorities of the Statewide Water Resources Committee to Implement the State Water Plan

(2008 Legislative Priorities are indicated by ***bold italics*** with updates provided below)

### ***1. Enact legislation to require proficiency-based licensing and certification of water well drillers, and to establish statewide private water well construction standards.***

- No progress.
- There have been several efforts to do one or both of these things since (and before) 2008, including:
  - 2011-2012 [HB 1855](#);
  - 2013-2014 [HB 343](#);
  - 2015-2016 [HB 48](#); and
  - 2017-2018 [HB 417](#) and [HB 596](#).
  - In 2001-2002, [HB 1591](#) passed the House but died in the Senate.

### ***2. Based on pilot plan assessments, enact new or amended legislation that would encourage the development and implementation of Integrated Water Resources Plans.***

- A few counties (York and Westmoreland) developed Integrated Water Resource Plans (IWRPs) that, in part, meet the purposes of watershed stormwater plans required under [Act 167 of 1978](#). For more info, see the [Pennsylvania IWRP Flowchart Tool](#).
- Some bills in the current session (e.g., [SB 832](#) and [HB 1901](#)) contain language that would prioritize projects that are part of an integrated water resources plan.
- Prior session bills along these lines include:
  - 2013-2014 [SB 287](#);
  - 2011-2012 [SB 452](#);
  - 2009-2010 [SB 524](#) and [HB 1390](#); and
  - 2007-2008 [HB 2266](#).

### ***3. Enact new or amended legislation to link local land use decisions with water resources planning and management, and to provide adequate funding for developing information necessary for making sound decisions.***

- [Act 167 of 1978](#) arguably already provides this link (at least for stormwater planning), but funding to support development/updating of Act 167 plans evaporated about a decade ago.
- Integrated Water Resources legislation is partially addressed, at least for purposes of making clear that Authorities may assess fees for stormwater management, by:
  - 2012 amendments to the Municipality Authorities Act (“MAA”) to add “[s]torm water planning, management and implementation” as specifically authorized purposes of a municipal authority. 53 Pa. Stat. and Cons. Stat. Ann. § 5607(a)(18).
  - In 2013, in recognition of the need to properly fund those activities, the MAA was again amended to provide for the assessment of fees. A fee-setting concept was included in the enacted legislation: “In the case of an authority that performs storm water planning, management and implementation, reasonable and uniform rates may be based in whole or in part on property characteristics, which may include installation and maintenance of best management practices approved and inspected by the authority.” 53 Pa. Stat. and Cons. Stat. Ann. § 5607(d)(34).

- Since the inclusion of this fee-setting language in the MAA, the legislature has taken additional steps to specifically authorize other municipal entities to similarly set fees based on property characteristics.
  - In 2016, the Second Class Township code was amended to add language similarly authorizing fees based in whole or in part on the characteristics of the property to be assessed. 53 Pa. Stat. Ann. § 67705. That law *requires* that the township consider and provide exemptions or credits for the installation of best management practices and that any fees collected are used only for the purposes of stormwater management activities.
  - Legislation authorizing similar fees by other municipal entities was introduced in 2018 (House Bills 913-916 (incorporated towns, boroughs), first class townships, and third class cities, respectively), and again in 2019 (House Bill 473 (first class townships) and House Bill 474 (boroughs, incorporated towns, and third class cities)).
  - Act 167 is limited to a large extent to stormwater and the reference to “Integrated Water Resources” management concept was broader (per [HB 2266](#) from 2007-2008).
  - [Act 67 of 2000](#) and [Act 68 of 2000](#) requirements to consider local land use and compliance. DEP has technical guidance documents regarding consideration of local comprehensive plans and zoning ordinances in review of permits ([012-0200-001](#)) and grants and funding ([012-0200-0200](#)) for facilities and infrastructure.
- 4. Amend the Pennsylvania Flood Control Act to provide DEP with general authority to indemnify federal agencies for water resources projects.**
- No update.
- 5. Amend the Pennsylvania Flood Control Act and the Stream Clearance and Rectification Act to provide authority to consider and implement all potential flood control or streambank stabilization solutions, including non-structural alternatives and preventive approaches to reduce the risk of flooding, and allow all types of flood control solutions to be funded through the capital budget process.**
- Big push in 2000s with FEMA and flooding.
  - Chapter 102 was amended in 2010 ([40 Pa.B. 4861](#)), which addressed some of these concerns through riparian buffer requirements ([25 Pa. Code § 102.14](#)).
- 6. Evaluate Section 301(a) of the Flood Plain Management Act to consider expanding the list of floodplain obstructions that have been determined to present a special hazard to public health and safety, may cause significant pollution, or may endanger life and property.**
- [Chapter 106](#) on floodplain management includes any highway obstruction or obstruction constructed, owned or maintained by the Commonwealth or a political subdivision of the Commonwealth; and any obstruction constructed, owned or maintained by a public utility.
- 7. Through appropriate legislation, regulation, and administrative changes, integrate and leverage existing state and federal stormwater management regulations, policies and requirements (e.g. Storm Water Management Act, Sewage Facilities Act, Municipalities Planning Code, 25 Pa. Code Chapters 102 and 105, NPDES, MS4, TMDLs) to provide an effective, straightforward, seamless stormwater management program that is blind to regulatory origin.**
- DEP has made a lot of progress with Municipal Separate Storm Sewer System (MS4) and Act 167 - they are synced with post construction stormwater management plans.

- Realizes part of the objective to MS4, National Pollutant Discharge Elimination System (NPDES), Total Maximum Daily Load (TMDL).
  - DEP has accomplished this in the stormwater context in regard to TMDL.
- This is related in part to the broad Integrated Water Resource Planning concepts supported and pursued (reflected in part in HB 2266 draft legislation) and referenced above. It is also specific to the stormwater management context. In the early 2000s there were three stormwater management regulatory programs that were managed by different staff within DEP, using different technical standards: the nascent post construction stormwater requirements added to the federal Clean Water Act NPDES Stormwater Construction permit; the federal NPDES municipal separate storm sewer system permit program; and the Pennsylvania Storm Water Management Act (Act 167) county-based stormwater planning program. In the late 2000s, DEP coordinated the administration of these programs, as is reflected in the preamble to the 2010 Chapter 102 rulemaking ([40 Pa.B. 4861](#)):

“The revisions will also provide benefits through the restructuring and clarification of planning and permit application requirements, as well as the codification of the existing PCSM requirements. This final-form rulemaking reflects a continuing commitment to integrate regulatory obligations for stormwater management including requirements under the Storm Water Management Act (Act 167) (32 P. S. §§ 680.1—680.17), the NPDES MS4 program and permitting of earth disturbance activities [Note – this is referring to the rulemaking itself, Chapter 102 and its provisions related to NPDES and O&G construction stormwater discharges]. Local governments with Act 167 or NPDES MS4 regulatory obligations may rely on the regulatory structure provided by this final-form rulemaking. This reliance on existing State stormwater programs represents a significant cost savings to local governments.” (40 Pa.B. 4877)

8. ***Clearly authorize by legislation, regulation, or policy the creation and operation of local Authorities, Utilities or Management Districts, and/or other sustainable funding sources that would enable entities to collect fees and generate revenues dedicated to planning, constructing, monitoring, maintaining, improving, expanding, operating, inspecting and repairing public and private stormwater management infrastructure.***
  - [Act 62 of 2016](#) amended The Second Class Township Code ([Act 69 of 1933](#)) to authorize the assessment of stormwater fees by second-class townships. In particular, Act 62 of 2016 added § 2705 to The Second-Class Township Code, which provides some specificity as to the assessment of such fees.
9. ***As further information concerning Pennsylvania’s water use trends and challenges are developed over the next five years, concerted efforts should be undertaken to evaluate and evolve Pennsylvania’s water rights and water withdrawal arrangements to a more consistent, secure and holistic approach that:***
  - ***Offers water users well-defined, stable and predictable water rights;***
  - ***Promotes siting and development of uses requiring withdrawals in ways that assure adequate and sustainable supplies both in normal and drought periods, without causing unacceptable impacts on instream uses and environmental resources;***

- ***Is administratively efficient and avoids unnecessary duplication between agencies and programs.***

***Focuses on considering and evaluating the options and issues described on (pages 48-49) of the Water Plan Principles, evaluating programs that are used in other states, and utilizing a process which includes DEP, the Statewide Committee, and other major stakeholders. Based on that process, a report on the relative merits of the identified options should be developed, and appropriate recommendations should be made to the General Assembly as to whether and how Pennsylvania's water rights system might be improved and made more efficient, effective, predicable and secure.***

- No update.