

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2694**

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 28, 2019

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2694, with committee amendments.

As amended, this substitute bill permits counties, municipalities, and certain authorities to establish stormwater utilities and related fees and other charges.

Under the bill, a county or municipality may, by resolution or ordinance, as appropriate, establish a stormwater utility for the purposes of acquiring, constructing, improving, maintaining, and operating a stormwater management system. The county or municipality may establish a stormwater utility as a new department within the county or municipality, or as an operation of an existing department having responsibility and control over a stormwater management system.

Alternatively, one or more municipalities that have established a municipal sewerage authority or a municipal utilities authority may, by ordinance or parallel ordinances, request that the authority establish a stormwater utility. Upon receiving a request, the sewerage authority may establish a stormwater utility pursuant to a service agreement between the sewerage authority and the requesting municipalities. Likewise, a county that has established a county sewerage authority, county utilities authority, or county improvement authority may, by resolution, request that the authority establish a stormwater utility, and the authority may establish the stormwater utility pursuant to a service agreement. A stormwater utility that is established by an authority is to be considered a separate operation of the authority to be budgeted and accounted for separately.

Under the bill, a county, municipality, or authority (local unit) that establishes a stormwater utility is authorized to charge and collect reasonable fees and other charges to recover the stormwater utility's costs for stormwater management. These fees and other charges are to be collected from the owner or occupant of any real property from which originates stormwater runoff which enters the stormwater management system or the waters of the State. A fee or other charge

would be based on a fair and equitable approximation of the proportionate contribution of stormwater runoff from the real property. In establishing a fee or other charge, a local unit would be required to provide a partial fee reduction in the form of a credit for any property that complies with the State or local stormwater management standards that were in place at the time the system was approved. A local unit would be required to provide an additional credit for any property which has installed and is operating and maintaining current stormwater best management practices that reduce, retain, or treat stormwater onsite. A local unit would be required to provide an additional credit to any property which has installed and is operating and maintaining green infrastructure onsite. Under the bill, land actively devoted to agriculture or horticulture would be exempt from any fee or other charge.

A local unit is permitted to use the fees or other charges collected for a variety of stormwater-related purposes outlined in the bill. A local unit that collects fees or other charges is required to remit to the State Treasurer annually an amount equal to five percent of all fees or other charges, or \$50,000, whichever amount is less. The State Treasurer is to deposit these moneys into the “Clean Stormwater and Flood Reduction Fund” (fund), established by the bill. Moneys deposited in the fund are to be specifically dedicated and used by the Department of Environmental Protection (DEP) to fund planning, implementation, and coordination activities related to stormwater utilities in the State, water quality monitoring and assessment, point and non-point source water pollution reduction projects, implementation of the DEP’s stormwater management program, and a public education and outreach program relating to stormwater management.

In the event that a person does not pay a fee or other charge when due, the bill provides a local unit with several enforcement mechanisms which are similar to the enforcement mechanisms that currently exist for water and sewer public utilities. Specifically: (1) interest is to accrue on the unpaid fees; (2) the unpaid balance and any interest accrued thereon would constitute a lien on the parcel which would be enforced in the same manner as delinquent property taxes and municipal charges; and (3) the unpaid balance and any interest accrued thereon, together with attorney’s fees, could be recovered in a civil action.

The bill requires a local unit that establishes a stormwater utility to submit an annual report in a form and manner determined by the Division of Local Government Services in the Department of Community Affairs and the DEP. The annual report is to include, but need not be limited to: (1) information on the stormwater utility’s service area; its schedule of fees, other charges, and credits; (2) the number of properties subject to the stormwater utility’s fees and other charges, and the number of properties, broken down by land-use type,

granted credits or exemptions; (3) the total revenues collected from stormwater utility fees and other charges; (4) the percentage of revenues from fees and other charges spent on the purposes authorized in the bill; and (5) a list of stormwater management projects implemented in the previous fiscal year. A local unit would be required to post the annual report on their Internet website for access by the public.

Under the bill, a local unit that establishes a stormwater utility is permitted to issue bonds for the purpose of raising funds to pay the cost of any part of the stormwater management system. Additionally, the bill provides that a local unit that establishes a stormwater utility may acquire by gift, grant, purchase, condemnation, or in any other lawful manner, any privately-owned stormwater management system or any real property necessary for the construction, improvement, operation, or maintenance of a stormwater management system. However, if a local unit requires any payment as a condition of assuming ownership, operation, or maintenance of any privately-owned stormwater management system, the payment cannot exceed the costs attributable to the stormwater management system.

The bill provides that a local unit that establishes a stormwater utility may enter into a contract with a private entity for the planning, design, engineering, construction, improvement, maintenance, and operation of a stormwater management system. The bill permits a local unit to use local competitive contracting in lieu of public bidding for the hiring of a private or nonprofit entity to operate and manage a stormwater management system. The bill permits a contract for the operation and management of a stormwater management system by a private entity to last for up to 10 years.

The bill requires the DEP, in consultation with other government agencies and stakeholders, to develop and periodically update a stormwater utility guidance manual. The guidance manual is to include, but not be limited to: (1) technical assistance for local units seeking to establish a stormwater utility; (2) factors for local units to consider when establishing and revising stormwater utility fees and other charges; (3) information on how to develop an asset management program for stormwater management systems; and (4) information on how local units may conduct public education and outreach related to stormwater management.

The bill exempts costs associated with stormwater utilities from the two percent cap on the growth in fee-funded appropriations in the annual budget of a regional sewerage authority, and the two percent cap on amounts billed to customers of the authority or amounts billed to a local unit for its proportional share of the authority's expenses established in P.L.2017, c.290 which concerns the budgets of certain authorities.

The bill also limits the application of the two percent cap on the growth of fee-funded appropriations at regional sewerage authorities

for counties of the first class with a population of over 600,000 and a population density of over 10,000 persons per square mile according to the latest federal census

The bill requires a local unit to adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract undertaken in connection with financial assistance provided for the construction of a stormwater management system.

As amended and reported, Assembly Bill No. 2694 (ACS) is identical to Senate Bill No. 1073 SCS (1R), which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The amendments:

- 1) Specify in the bill's findings, that any stormwater management fee would be based on a fair and equitable approximation of the proportionate contribution of stormwater from a real property;
- 2) provide a partial fee reduction in the form of a credit for any property that maintains and operates a stormwater management system that complies with the State and local stormwater management standards that were in place at the time the system was approved;
- 3) specify that the credit for installing and operating stormwater best management practices applies only if *current* best management practices are used;
- 4) provide that the owner of a stormwater management system that complies with stormwater management standards that were in place at the time the system was approved may retain ownership of the system or may offer to dedicate it to the county, municipality, or authority; an owner who dedicates a system would still be liable for paying any applicable utility fees imposed under the bill;
- 5) limit the application of the two percent cap on the growth of fee-funded appropriations at regional sewerage authorities to counties of the first class with a population of over 600,000 and a population density of over 10,000 persons per square mile according to the latest federal census; and
- 6) make technical changes.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the bill will have several indeterminate annual fiscal impacts as the cost to establish and operate stormwater utilities will be incurred by certain counties, municipalities, and authorities. However, these entities will serve as a conduit for cost reimbursements through the imposition of stormwater utility fees and other charges.

The bill will increase the annual expenditures of counties, municipalities, and certain authorities that choose to establish a stormwater utility by an indeterminate amount. The OLS notes that

the increase in expenditures will be offset by the annual revenue increase from the imposition of stormwater utility fees and other charges. In many cases, operational, maintenance, and capital costs can be almost fully recovered through the imposition of these fees and other charges, with a small portion funded through bonds and other sources.

The Department of Environmental Protection (DEP) will experience an indeterminate annual revenue and expenditure increase equal to five percent of the fees and other charges collected by each stormwater utility, or \$50,000, whichever is less, that the bill dedicates to the DEP to pay for various stormwater-related costs.

Any county, municipality, or authority that collects fees and other charges through a stormwater utility would be required to remit to the State Treasurer annually an amount equal to five percent of all such fees and other charges collected by the stormwater utility, or \$50,000, whichever amount is less. The State Treasurer would deposit these moneys into the “Clean Stormwater and Flood Reduction Fund” which would be specifically dedicated to and used by the DEP to fund planning, implementation, and coordination activities related to stormwater utilities and other stormwater related programs. The DEP will therefore experience an indeterminate annual revenue and expenditure increase equal to the five percent of all such fees and other charges collected by each stormwater utility, or \$50,000, whichever amount is less.

To the extent surplus revenue is collected, the bill would permit counties and municipalities to transfer up to five percent of the annual cost of operation of the utility to the local budget. Consequently, counties and municipalities may experience an indeterminate annual revenue increase equal to up to five percent.