

LEGISLATIVE FISCAL ESTIMATE
 [Second Reprint]
 SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1073
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: FEBRUARY 5, 2019

SUMMARY

- Synopsis:** Authorizes municipalities, counties, and certain authorities to establish stormwater utilities.
- Type of Impact:** State and local government expenditure increase offset by a revenue increase through utility fees and other charges.
- Agencies Affected:** Department of Environmental Protection, Department of Community Affairs, counties, municipalities, and certain local authorities.

Office of Legislative Services Estimate

Fiscal Impact	
Annual State Expenditure Increase	Indeterminate
Annual State Revenue Increase	Indeterminate
Annual Local Expenditure Increase	Indeterminate
Annual Local Revenue Increase	Indeterminate

- 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 Office of Legislative Services (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.
- Any county, municipality, or authority that collects a stormwater utility fee under the bill would be required to remit to the State Treasurer annually an amount equal to five percent of all such fees 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 Department of

Environmental Protection (DEP) for stormwater management purposes. The DEP will therefore experience an indeterminate annual increase in revenues and expenditures.

- 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 of stormwater fees its stormwater utility collects.
- The bill limits application of the two percent cap on annual increases in a regional sewerage authority's fee-funded appropriations and user fees, established by P.L.2017, c.290, to only certain counties. Sewerage authorities that are no longer subject to the cap may spend and raise more revenue from users than under existing law.

BILL DESCRIPTION

This bill would authorize counties, municipalities, and certain authorities to establish stormwater utilities and related fees and other charges.

Any county, municipality, or authority that establishes a stormwater utility under the bill would be authorized to charge and collect reasonable fees and other charges to recover the utility's costs for stormwater management. These fees and other charges would be collected from the owner or occupant, or both, of any real property from which originates stormwater runoff which enters the stormwater management system or the waters of the State. Any fee or other charge would be based on a fair and equitable approximation of the proportionate contribution of stormwater runoff from a real property. In establishing fees and other charges, a county, municipality, or authority 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 county, municipality, or authority 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 county, municipality, or authority would be required to provide an additional credit for 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 stormwater fee or other charge.

A county, municipality, or authority would be permitted to use stormwater utility fees and other charges for a variety of stormwater-related purposes outlined in the bill. Any county, municipality, or authority that collects fees and other charges under the bill would be required to remit to the State Treasurer annually an amount equal to five percent of all such fees and other charges, or \$50,000, whichever amount is less. The State Treasurer would deposit these moneys into the "Clean Stormwater and Flood Reduction Fund," established in the bill. Moneys deposited in the fund would be specifically dedicated and used by the 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. To the extent surplus revenue is collected, the bill would permit counties and municipalities to transfer up to five percent of the annual costs of operation of the stormwater utility to the local budget.

In the event that a person does not pay a stormwater utility fee or other charge when due, the bill provides counties, municipalities, and authorities with several enforcement mechanisms,

which are similar to the enforcement mechanisms that currently exist for water and sewer utilities. Specifically, interest would accrue on the unpaid fees and other charges; 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 the unpaid balance and any interest accrued thereon, together with attorney's fees, could be recovered in a civil action.

A county, municipality, or authority that establishes a stormwater utility would be required to submit an annual report in a form and manner determined by the Division of Local Government Services in the Department of Community Affairs (DCA) and the DEP. The annual report would include, but need not be limited to, information on the stormwater utility's service area, its schedule of fees and other charges, the number of properties subject to the utility's fees and other charges, the number of properties granted credits, the total revenues from stormwater utility fees and other charges, the percentage of revenues from fees and other charges spent on the purposes authorized in the bill, and a list of stormwater management projects implemented in the previous fiscal year. Counties, municipalities, and authorities would be required to post the annual report on their Internet website for access by the public.

Under the bill, a county, municipality, or authority that establishes a stormwater utility would be 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 county, municipality, or authority 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 county, municipality, or authority requires any payment as a condition of assuming ownership, operation, or maintenance of a privately-owned stormwater management system, the payment cannot exceed the costs attributable to the stormwater management system.

The bill provides that a county, municipality, or authority 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 counties, municipalities, and authorities 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. It also 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 would require the DEP, in consultation with other government agencies, to develop and periodically update a stormwater utility guidance manual. The guidance manual would include, but need not be limited to, technical assistance for counties, municipalities, and authorities seeking to establish a stormwater utility; factors for counties, municipalities, and authorities to consider when establishing stormwater utility fees and other charges; information on how to develop an asset management program for stormwater management systems; and information on how counties, municipalities, and authorities can conduct public education and outreach related to stormwater management. Development of the guidance manual would not be subject to the "Administrative Procedure Act."

Current law, P.L.2017, c.290, imposes a two percent cap on the growth in fee-funded appropriations in the annual budget of a regional sewerage authority, and a 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. This bill would limit application of P.L.2017, c.290 to regional sewerage authorities located in 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. For those regional sewerage authorities still subject to the two percent cap, the bill would exempt costs associated with stormwater utilities from the two percent cap.

The bill would require each county, municipality, and authority that creates a stormwater utility 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 under the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that this bill permits, but does not require, counties, municipalities, and certain authorities to establish and operate stormwater utilities. The bill also permits counties, municipalities, and certain authorities to finance the creation, operation, and maintenance of stormwater utilities through the imposition of fees and other charges (also known as user fees) and the issuance of bonds. Additionally, the bill provides that a county, municipality, or authority 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. The bill also provides counties, municipalities, and authorities with several enforcement mechanisms in the event that a person does not pay a stormwater utility fee or other charge when due. Specifically, interest would accrue on the unpaid fees and other charges; 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 the unpaid balance and any interest accrued thereon, together with attorney's fees, could be recovered in a civil action.

The 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 counties, municipalities, and certain authorities. However, these entities will serve as a conduit for cost reimbursements through the imposition of stormwater utility fees and other charges. The OLS cannot quantify these fiscal impacts because of the lack of information on each individual stormwater utility's cost to operate, maintain, and invest in capital improvements.

The bill will increase the annual expenditures of counties, municipalities, and certain authorities that choose to establish and operate stormwater utilities by an indeterminate amount. The cost of establishing and operating stormwater utilities include staffing, planning, and operation, maintenance, and capital improvement costs for stormwater infrastructure. Operation and maintenance costs for a stormwater utility can vary widely, depending on the size of the utility, location, and age of its infrastructure. In addition, the prioritization of capital projects depends on the outcomes and prioritization of needs that come from a stormwater system inventory or asset management plan, which would be specific for each stormwater utility. Further, these projects can vary greatly in cost. Some capital projects may include: installation

of Baysaver devices, installation of additional curb, gutter, or swale conveyances, and implementing green infrastructure such as slowing or eliminating erosion at outfalls.

A county, municipality, or authority that establishes a stormwater utility would also be required to submit an annual report to the DCA and DEP which would include, but need not be limited to, information on the stormwater utility's service area, its schedule of fees and other charges, the number of properties subject to the utility's fees and other charges and the number of properties granted credits, the total revenues from stormwater utility fees and other charges, the percentage of revenues from fees and other charges spent on the purposes authorized in the bill, and a list of stormwater management projects implemented in the previous fiscal year. Counties, municipalities, and authorities would be required to post the annual report on their Internet website for access by the public. These entities would incur some administrative costs in compiling, submitting, and posting the annual report, which would be reimbursed through stormwater utility fees and other charges.

The OLS notes that the bill will also increase the annual revenue of counties, municipalities, and authorities that choose to establish and operate stormwater utilities by an indeterminate amount. In many cases, operational, maintenance, and capital costs could be almost fully recovered through the imposition of fees and other charges, with a small portion funded through bonds and other sources. For example, according to the "2016 Stormwater Utility Survey" prepared by Black & Veatch Management Consulting, LLC, the city of Bellevue in the state of Washington established stormwater utility user fees and recovered 93 percent of its cost for its stormwater utilities through such fees, and the remaining costs from miscellaneous stormwater fees. The amount of any stormwater utility fee would be determined by each county, municipality, or authority that establishes a utility, in accordance with that entity's specific needs. However, according to the "2018 Stormwater Utility Survey," prepared by Black & Veatch Management Consulting, LLC, in 2018, the average monthly single-family residential stormwater fee in the United States was \$5.48.

In addition, the bill will result in an indeterminate increase in annual DEP administrative expenditures from implementing and administering the provisions of the bill. For example, the bill's requirement that the DEP create a stormwater utility guidance manual to provide guidance to municipalities, counties, and authorities seeking to establish stormwater utilities may result in the DEP incurring some marginal administrative costs each year. The OLS notes that, under the bill, any county, municipality, or authority that collects fees and other charges would be required to remit to the State Treasurer annually an amount equal to five percent of all such fees and other charges, or \$50,000, whichever amount is less. The State Treasurer would deposit these moneys into the "Clean Stormwater and Flood Reduction Fund," established in the bill. Moneys deposited in the fund would be specifically dedicated and used by the DEP to fund planning, implementation, and coordination activities related to stormwater utilities. Consequently, the DEP will experience an indeterminate increase in revenues and expenditures.

Current law, P.L.2017, c.290, places a two percent cap on annual increases in a regional sewerage authority's fee-funded appropriations, and the amounts billed to the authority's customers and to local units that are members of the regional sewerage authority. The bill would limit application of the two percent cap to a regional sewerage authority located in a county of the first class with a population of over 600,000 and a population density of over 10,000 persons per square mile. Currently, the only county that meets this population size and density criteria is Hudson County, and so, under the bill, the two percent cap would only apply to a regional sewerage authority located in Hudson County. Regional sewerage authorities located elsewhere would no longer be subject to the two percent cap and, thus, could spend more and raise more revenue from users than under existing law. However, a regional sewerage authority could become subject to the two percent cap if the county in which it is located later meets the

population size and density criteria specified above. Whether, and how much, a regional sewerage authority increases its spending and user fees depends on a number of factors, including sewerage flow levels, the authority's customer base, its capital investment needs, the provisions of labor contracts, costs of goods and services, levels of non-user fee revenues, and debt service requirements. Consequently, the precise fiscal impact of this provision is indeterminate.

Lastly, 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 county or municipal budget, as applicable. Consequently, counties and municipalities may experience an indeterminate annual revenue increase equal to up to five percent.

Section: Environment, Agriculture, Energy and Natural Resources

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).