

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1073**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Senate Budget and Appropriations Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1073, with committee amendments.

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

Specifically, under the substitute, the governing body of any county or municipality may, by resolution or ordinance, as appropriate, establish a stormwater utility for the purposes of acquiring, constructing, improving, maintaining, and operating stormwater management systems. 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 or departments having responsibility and control over stormwater management systems.

Alternatively, the governing body or bodies of 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 such a request, the authority may establish a stormwater utility pursuant to a service agreement between the authority and the requesting municipalities. Likewise, the governing body of any 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 utility pursuant to a service agreement. A stormwater utility that is established by an authority would be considered a separate operation of the authority to be budgeted and accounted for separately.

Any county, municipality, or authority that establishes a stormwater utility under the substitute 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 which has installed and is operating and maintaining stormwater best management practices that reduce, retain, or treat stormwater onsite. Counties, municipalities, and authorities would also be required to provide an additional credit to any property which has installed and is operating and maintaining green infrastructure onsite. Land actively devoted to agriculture or horticulture would be exempt from any fees and other charges under the substitute.

A county, municipality, or authority would be permitted to use fees collected for a variety of stormwater-related purposes outlined in section 8 of the substitute. Any county, municipality, or authority that collects fees and other charges under the substitute 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 substitute. Moneys deposited in the fund would be specifically dedicated and used by the Department of Environmental Protection (DEP) only 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 substitute 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 substitute 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.

The substitute, as amended, would require a county, municipality, or authority 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 (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, other charges, and credits; the number of properties subject to the utility's fees and other charges, and the number of properties, broken down by land-use type, granted credits or exemptions; the total revenues collected from stormwater utility fees and other charges; the percentage of revenues from fees and other charges spent on the purposes authorized in the substitute; 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 substitute, 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 substitute 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 any privately-owned stormwater management system, the payment cannot exceed the costs attributable to the stormwater management system.

The substitute 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 substitute 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 substitute, as amended, would require the DEP, in consultation with other government agencies and stakeholders, 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 and revising 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.”

The substitute would exempt 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 substitute would require each county, municipality, and authority 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 substitute.

#### COMMITTEE AMENDMENTS:

The committee amendments:

(1) specify that counties, municipalities, and authorities may use fees and other charges collected under the bill to take any action that is required pursuant to any New Jersey Pollutant Discharge Elimination System (NJPDES) permit;

(2) require that the annual report submitted by a stormwater utility include information on the utility’s schedule of credits, the number of properties of each land use type that receive a credit or exemption, and the cumulative value of credits that have been granted to properties of each land use type; and

(3) require the DEP to consult with stakeholders when developing the stormwater utility guidance manual.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the substitute 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 substitute 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 substitute 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 substitute 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.