

SENATE, No. 2805

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 27, 2018

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

“Water Resources Protection Trust Fund Act”; establishes user fee on water consumption and diversion; utilizes fee revenue for water quality, supply, and infrastructure projects.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning water quality, supply, and infrastructure,
2 supplementing Title 58 of the Revised Statutes, and amending
3 P.L.1985, c.334.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Sections 1 through 10 of P.L. , c. (C.)
9 (pending before the Legislature as this bill) shall be known and may
10 be cited as the “Water Resources Protection Trust Fund Act.”

11
12 2. (New section) The Legislature finds and declares that New
13 Jersey, already the most densely populated state in the nation,
14 continues to experience deterioration of its water resources,
15 including its rivers, streams, lakes, wetlands, and underground
16 aquifers; that these resources, by virtue of their capacity to sustain
17 substantial reserves of potable water, afford flood protection, serve
18 as habitat for countless animal, bird, and plant species, purify the
19 air, provide recreational opportunities, and otherwise promote the
20 environment necessary for a high quality of life, constitute not only
21 an invaluable and irreplaceable asset to the present citizens of New
22 Jersey, but also a trust for future generations; and that, as the
23 steward of that trust, it is incumbent upon the State to commit itself
24 to the preservation in perpetuity of those resources indispensable to
25 the continued supply of clean water and to the health and welfare of
26 its citizens.

27 The Legislature further finds and declares that much of the
28 State’s drinking water infrastructure has aged past its useful life and
29 is in dire need of repair and replacement; that failure to repair or
30 replace broken pipes has led to increased water main breaks and
31 service interruptions, more frequent and costly emergency repairs,
32 the loss of large quantities of treated drinking water to leakage, and
33 a lack of sufficient water infrastructure to support local and State
34 economic growth; that lead in drinking water infrastructure still
35 threatens the health and safety of the citizens of the State, especially
36 pregnant women and children; that a modern and reliable water
37 infrastructure provides the foundation for healthy communities and
38 a prosperous economy; and that current levels of federal, State, and
39 local funding are insufficient to ensure the preservation of the
40 State’s water resources and to make the necessary improvements to
41 the State’s water infrastructure.

42 The Legislature therefore determines that it is in the public
43 interest to establish a stable source of funding, based on user fees
44 on water consumption and water diversion, for the long-term
45 preservation and protection of the State's water resources and the
46 improvement of its drinking water infrastructure.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. (New section) As used in sections 1 through 10 of
2 P.L. , c. (C.) (pending before the Legislature as this bill):

3 “Acquisition” means the obtaining of a fee simple or lesser
4 interest in land, including, but not limited to, a development
5 easement, a conservation restriction or easement, or any other
6 restriction or easement permanently restricting development, by
7 purchase, installment purchase agreement, gift, donation, eminent
8 domain by the State or a local government unit, or devise.

9 “Combined sewer overflow” means the discharge of untreated or
10 partially treated stormwater runoff and wastewater from a combined
11 sewer system into a body of water.

12 “Combined sewer system” means a sewer system designed to
13 carry wastewater at all times, which is also designed to collect and
14 transport stormwater runoff from streets and other sources, thereby
15 serving a combined purpose.

16 “Consumptive use” means any use of water diverted from
17 surface or ground waters other than a nonconsumptive use.

18 “Department” means the Department of Environmental
19 Protection.

20 “Diversion” or “divert” means the taking or impoundment of
21 water from a river, stream, lake, pond, aquifer, well, other
22 underground source, or other water body, whether or not the water
23 is returned thereto, consumed, made to flow into another stream or
24 basin, or discharged elsewhere.

25 “Fund” means the Water Resources Protection Trust Fund
26 established pursuant to section 4 of this act.

27 “Local government unit” means (1) a State authority, district
28 water supply commission, county, municipality, municipal, county
29 or regional utilities authority, municipal water district, joint meeting
30 or any other political subdivision of the State authorized pursuant to
31 law to operate or maintain a public water system or to construct,
32 rehabilitate, operate or maintain water supply facilities or otherwise
33 provide water for human consumption; or (2) a municipality,
34 county, or other political subdivision of the State authorized to
35 administer, protect, develop, and maintain water quality, or any
36 agency thereof, the primary purpose of which is to administer,
37 protect, develop, and maintain water quality.

38 “Nonconsumptive use” means the use of water diverted from
39 surface or ground waters in such a manner that it is returned to the
40 surface or ground water at or near the point from which it was taken
41 without substantial diminution in quantity or substantial impairment
42 of quality.

43 “Person” means any individual, corporation, company,
44 partnership, firm, association, owner, or operator of a public water
45 system, political subdivision of the State, and any state, or interstate
46 agency or Federal agency.

1 “Public community water system” means a public water system
2 which serves at least 15 service connections used by year-round
3 residents or regularly serves at least 25 year-round residents.

4 “Public water system” means a system for the provision to the
5 public of water for human consumption through pipes or other
6 constructed conveyances, if the system has at least 15 service
7 connections or regularly serves an average of at least 25 individuals
8 daily at least 60 days out of the year. “Public water system”
9 includes: (1) any collection, treatment, storage and distribution
10 facilities under control of the operator of the system and used
11 primarily in connection with the system; and (2) any collection or
12 pre-treatment storage facilities not under the control which are used
13 primarily in connection with such system.

14 “Safe or dependable yield” or “safe yield” means that
15 maintainable yield of water from a surface or ground water source
16 or sources which is available continuously during projected future
17 conditions, including a repetition of the most severe drought of
18 record, without creating undesirable effects, as determined by the
19 department.

20 “Small water company” means any company, purveyor, or entity,
21 other than a governmental agency, that provides water for human
22 consumption and which regularly serves less than 1,000 customer
23 connections, including nonprofit, noncommunity water systems
24 owned or operated by a nonprofit group or organization.

25 “Unaccounted-for water” means water withdrawn by a local
26 government unit or water purveyor from a source and not accounted
27 for as being delivered to customers in measured amounts.

28 “Wastewater” means residential, commercial, industrial, or
29 agricultural liquid waste, sewerage, or any combination thereof, or
30 other liquid residue discharged or collected into a sewer system, or
31 stormwater management system, or any combination thereof.

32 “Wastewater treatment system” means any equipment, plants,
33 structures, machinery, apparatus, or land, or any combination
34 thereof, acquired, used, constructed or operated by, or on behalf of,
35 a local government unit for the storage, collection, reduction,
36 recycling, reclamation, disposal, separation, or other treatment of
37 wastewater or sewage sludge, or for the collection or treatment, or
38 both, of stormwater runoff and wastewater, or for the final disposal
39 of residues resulting from the treatment of wastewater, including,
40 but not limited to, pumping and ventilating stations, treatment
41 plants and works, connections, outfall sewers, interceptors, trunk
42 lines, stormwater management systems, and other personal property
43 and appurtenances necessary for their use or operation. "Wastewater
44 treatment system" shall include a stormwater management system
45 or a combined sewer system.

46 “Water purveyor” means any investor-owned water company or
47 small water company that owns or operates a public water system.

1 “Water quality, supply, and infrastructure project” means any
2 project to accomplish the purposes set forth in section 6 of this act.

3 “Water supply infrastructure project” means a water supply
4 project undertaken by or on behalf of a water purveyor for the
5 purpose of drought mitigation.

6
7 4. (New section) a. There is established in the Department of
8 Environmental Protection a special non-lapsing fund to be known as
9 the “Water Resources Protection Trust Fund.” Moneys in the fund
10 shall be used for State water quality, supply, and infrastructure
11 projects and to provide grants or low-interest loans to assist local
12 government units and water purveyors in funding water quality,
13 supply, and infrastructure projects authorized pursuant to section 6
14 of this act. The fund shall be administered by the department and
15 shall be credited with all revenue collected pursuant to sections 7
16 and 8 of this act, all interest or other investment income received on
17 moneys in the fund, and all sums received as repayment of principal
18 and interest on outstanding loans made from the fund. The
19 department may use up to one percent of the total revenues
20 deposited in the fund during the fiscal year to cover administrative
21 expenses incurred in implementing the provisions of this act.

22 The department may carry forward any unexpended balances in
23 the fund as of June 30 of each year.

24 b. Unless otherwise expressly provided by the specific
25 appropriation thereof by the Legislature, which shall take the form
26 of a discrete legislative appropriations act and shall not be included
27 within the annual appropriations act, all available moneys in the
28 fund shall be appropriated annually solely for the purposes set forth
29 in section 6 of this act.

30 c. The department may make and contract to make low-interest
31 loans to local government units or water purveyors in accordance
32 with and subject to the provisions of this act to finance the cost of
33 water quality, supply, and infrastructure projects authorized
34 pursuant to section 6 of this act. The loans may be made subject to
35 those terms and conditions as the department shall determine to be
36 consistent with the purposes thereof. Each loan and the terms and
37 conditions thereof shall be subject to approval by the State
38 Treasurer, and the department shall make available to the State
39 Treasurer all information, statistical data, and reports of
40 independent consultants or experts as the State Treasurer deems
41 necessary in order to evaluate the loan.

42 d. To be eligible for a grant pursuant to this act, a local
43 government unit or water purveyor shall demonstrate the ability to
44 match the grant requested by generating funds in ratios specified by
45 the department.

46
47 5. (New section) a. On or before January 15 of each year,
48 the department shall submit to the Legislature a financial plan

1 designed to implement the financing of the projects on the project
2 priority list approved pursuant to section 6 of this act. The financial
3 plan shall contain an enumeration of the water quality, supply, and
4 infrastructure projects for which the department intends to provide
5 funds and the terms and conditions of any loans or grants associated
6 therewith, the anticipated rate of interest per year, and the
7 repayment schedule for any loans. The financial plan shall also set
8 forth a complete operating and financial statement covering the
9 department's proposed operations during the forthcoming fiscal
10 year, summarize the status of each project for which grants or loans
11 have been made, and describe any major impediments to the
12 accomplishment of the planned projects.

13 b. Any project funded pursuant to this act shall be eligible for
14 financing pursuant to the "New Jersey Infrastructure Trust Act,"
15 P.L.1985, c.334 (C.58:11B-1 et seq.).

16

17 6. (New section) a. Moneys in the Water Resources
18 Protection Trust Fund may be used for the following purposes:

19 (1) the costs of transferring water between public water systems
20 during a state of water emergency or to avert a drought emergency
21 in all or any part of the State;

22 (2) the protection of existing water supplies through the
23 acquisition of watershed and wetlands areas;

24 (3) the interconnection of existing water supplies, and the
25 extension of water supplies to areas with contaminated ground
26 water supplies;

27 (4) water supply infrastructure projects undertaken by water
28 purveyors for the purpose of drought mitigation;

29 (5) the costs of a safe or dependable yield analysis of the State's
30 surface and ground water sources undertaken by the department as
31 provided in section 9 of this act, up to \$100,000;

32 (6) projects to rehabilitate, repair, or replace public water
33 system infrastructure;

34 (7) grants to local government units to finance the cost of
35 developing asset management programs for public water systems;
36 and

37 (8) projects to remediate lead in drinking water infrastructure.

38 b. In addition to the projects authorized in subsection a. of this
39 section, beginning 10 years after the effective date of
40 P.L. , c. (C.) (pending before the Legislature as this bill),
41 moneys in the fund may be used for projects to rehabilitate, repair,
42 or replace wastewater treatment system infrastructure, including,
43 but not limited to, combined sewer overflow abatement projects.

44 c. Whenever any moneys in the fund are used for the protection
45 of existing water supplies through the acquisition of watershed and
46 wetlands areas as provided in paragraph (2) of subsection a. of this
47 section, the percentage of moneys used for such acquisitions in the
48 Highlands region designated pursuant to section 3 of P.L.2004,

1 c.120 (C.13:20-3) shall be an amount equivalent to not less than the
2 percentage of total revenues deposited in the fund pursuant to
3 sections 7 and 8 which were collected from user fee payers within
4 the Highlands region, and the percentage of moneys used for such
5 acquisitions in the Pinelands area designated pursuant to section 10
6 of P.L.1979, c.111 (C.13:18A-11) shall be an amount equivalent to
7 not less than the percentage of total revenues deposited in the fund
8 pursuant to sections 7 and 8 which were collected from user fee
9 payers within the Pinelands area.

10 d. On or before May 15 of each fiscal year, the department
11 shall prepare and submit to the Legislature for approval a project
12 priority list recommending the particular water quality, supply, and
13 infrastructure projects to be funded for the upcoming fiscal year.
14 The project priority list shall include a description of each project,
15 its purpose, impact, cost, and construction schedule, and an
16 explanation of the manner in which priorities were established.

17 e. No expenditure from the fund shall be made except by an
18 appropriation made pursuant to law and in accordance with the
19 project priority list developed by the department. Each such
20 appropriation act shall clearly set forth all terms and conditions
21 governing the expenditure of the appropriation, shall identify each
22 specific project or projects for which an appropriation is made, and
23 may provide such sums as may be necessary to cover the costs
24 associated with the administration thereof.

25

26 7. (New section) a. There is imposed upon the owner or
27 operator of every public community water system a water
28 consumption user fee of \$0.40 per 1,000 gallons of water delivered
29 to a consumer, not including water delivered for resale.

30 b. (1) Every person subject to the water consumption user fee
31 shall, on the effective date of this section, and quarterly thereafter,
32 render a return under oath to the Director of the Division of
33 Taxation, on such forms as may be prescribed by the director,
34 indicating the number of gallons of water delivered to a consumer,
35 and at that time shall pay the full amount due. The director may
36 prescribe a consolidated form for reporting the amount due under
37 the water consumption user fee imposed by this section and the tax
38 imposed under section 11 of P.L.1983, c.443 (C.58:12A-21).

39 (2) Every person subject to the water consumption user fee
40 shall, within 30 days after the effective date of this act, register with
41 the director on forms prescribed by the director.

42 c. If a return required by this section is not filed, or if a return
43 when filed is incorrect or insufficient in the opinion of the director,
44 the amount due shall be determined by the director from such
45 information as may be available. Notice of the determination shall
46 be given to the person subject to the water consumption user fee.
47 The determination shall finally and irrevocably fix the amount due,
48 unless the person on whom it is imposed, within 90 days after the

1 giving of the notice of the determination, shall file a protest in
2 writing as provided in R.S.54:49-18 and request a hearing, or unless
3 the director on the director's own motion shall re-determine the
4 same. After the hearing the director shall give notice of the
5 determination to the person on whom the water consumption user
6 fee is imposed.

7 d. Any person subject to the water consumption user fee who
8 fails to file a return when due or to pay the user fee when it
9 becomes due, as herein provided, shall be subject to such penalties
10 and interest as provided in the State Uniform Tax Procedure Law,
11 R.S.54:48-1 et seq. If the director determines that the failure to
12 comply with any provision of this section was excusable under the
13 circumstances, the director may remit that part or all of the penalty
14 as shall be appropriate under the circumstances.

15 e. The director shall deposit all revenues collected pursuant to
16 this section in the Water Resources Protection Trust Fund
17 established pursuant to section 4 of this act.

18 f. In addition to the other powers granted to the director in this
19 section, the director is authorized to:

20 (1) Delegate to any officer or employee of the division those
21 powers and duties as the director deems necessary to carry out
22 efficiently the provisions of this section, and the person to whom
23 the power has been delegated shall possess and may exercise all of
24 these powers and perform all of the duties delegated by the director;
25 and

26 (2) Prescribe and distribute all necessary forms for the
27 implementation of this section.

28 g. Any person subject to the water consumption user fee who is
29 subject to the jurisdiction or rate regulation of the Board of Public
30 Utilities as a public utility shall collect the water consumption user
31 fee imposed by this section by imposing an automatic surcharge on
32 any tariff established pursuant to law for water rates and charges.
33 The Board of Public Utilities shall issue an appropriate order
34 adjusting the tariffs established pursuant to law to reflect these
35 payments. In issuing any order required by this subsection, the
36 Board of Public Utilities shall be exempt from the provisions of
37 R.S.48:2-21.

38 h. Any person subject to the water consumption user fee may
39 collect the water consumption user fee imposed by this section by
40 including the amount of the user fee due as a separate line item on
41 every customer bill or other statement presented to consumers.
42 The person subject to the water consumption user fee may use up to
43 one percent of all revenues collected to defray the costs of
44 administration and collection of the water consumption user fee.
45 The director shall credit the proper amount to the person subject to
46 the water consumption user fee upon receipt of written
47 documentation of the actual costs expended for the collection of the
48 water consumption user fee.

1 i. The water consumption user fee imposed by this section
2 shall be governed in all respects by the provisions of the State
3 Uniform Tax Procedure Law, R.S.54:48-1 et seq., except only to the
4 extent that a specific provision of this section may be in conflict
5 therewith.

6 j. The water consumption user fee imposed by this section shall
7 be collected in the same manner as the tax imposed under section 11
8 of P.L.1983, c.443 (C.58:12A-21).

9 k. The water consumption user fee imposed by this section
10 shall not be imposed on:

11 (1) water delivered to a consumer for the purpose of storage for
12 future water supplies;

13 (2) water delivered to a consumer for the purpose of transferring
14 water between public water systems;

15 (3) water delivered to a consumer for emergency purposes,
16 including firefighting, flood prevention, response to a discharge of
17 hazardous substances, or for other emergency purposes as may be
18 determined by the department;

19 (4) water delivered to a consumer, including water delivered for
20 resale, or a bulk sale of water delivered to a consumer in another
21 public water system; or

22 (5) unaccounted-for water of 15 percent or less. In the case of
23 unaccounted for water greater than 15 percent, the local government
24 unit or water purveyor may petition the department for an increase
25 in the percentage of unaccounted-for water eligible for an
26 exemption pursuant to this subsection. The allowable increase in
27 the percentage of unaccounted-for water shall be determined by the
28 department based on a finding of fact that the leakage reported to
29 the department is not the result of a critically needed water supply
30 infrastructure project.

31 l. The water consumption user fee imposed by this section
32 shall not be imposed on water delivered to a consumer for purposes
33 of reducing air emissions or water pollutants necessary for
34 compliance with local, State, or federal regulations or for water
35 derived from reuse of effluent from a primary wastewater treatment
36 system, which effluent would otherwise have been discharged into
37 the waters of the State.

38 (1) Any person claiming a complete or partial exemption from
39 the water consumption user fee pursuant to this subsection shall
40 annually file with the director a written certification indicating the
41 percentage and number of gallons of water delivered to a consumer
42 for which the exemption is claimed. The director, in consultation
43 with the department, may conduct an audit of the certification. Any
44 person who files a false certification shall be subject to such
45 penalties and interest as provided in the State Uniform Tax
46 Procedure Law, R.S.54:48-1 et seq.

47 (2) The director shall authorize a refund to any person claiming
48 a complete or partial exemption from the water consumption user

1 fee who has met the requirements of this subsection. The refund
2 shall be in the amount of the percentage of the water annually
3 delivered to a consumer for which the exemption is claimed
4 multiplied by the person's total annual water consumption user fee
5 liability.

6
7 8. (New section) a. There is imposed upon every person
8 required to obtain a diversion permit issued by the department
9 pursuant to the provisions of sections 6 and 7 of P.L.1981, c.262
10 (C.58:1A-6 and C.58:1A-7), including any person who is required
11 to apply for and obtain a water use registration pursuant to rules and
12 regulations adopted by the department to administer and enforce the
13 provisions of P.L.1981, c.262 (C.58:1A-1 et seq.) or P.L.1993,
14 c.202 (C.58:1A-7.3 et al.), a water diversion user fee. The water
15 diversion user fee shall be levied at the rate of \$0.40 per 1,000
16 gallons of water diverted for a consumptive use.

17 b. (1) Every person subject to the water diversion user fee
18 shall, on the effective date of this section, and quarterly thereafter,
19 render a return under oath to the Director of the Division of
20 Taxation, on such forms as may be prescribed by the director,
21 indicating the number of gallons of water diverted, and at that time
22 shall pay the full amount due.

23 (2) Every person subject to the water diversion user fee shall,
24 within 30 days after the date of enactment of this act, register with
25 the director on forms prescribed by the director.

26 c. (1) If a return required by this section is not filed, or if a
27 return when filed is incorrect or insufficient in the opinion of the
28 director, the amount due shall be determined by the director from
29 such information as may be available. Notice of the determination
30 shall be given to the person subject to the water diversion user fee.
31 The determination shall finally and irrevocably fix the amount due,
32 unless the person on whom it is imposed, within 90 days after the
33 giving of the notice of the determination, shall file a protest in
34 writing as provided in R.S.54:49-18 and request a hearing, or unless
35 the director on the director's own motion shall redetermine the
36 amount due. After the hearing the director shall give notice of the
37 determination to the person on whom the water diversion user fee is
38 imposed.

39 (2) Any person subject to the water diversion user fee who fails
40 to file a return when due or to pay the user fee when it becomes
41 due, as herein provided, shall be subject to such penalties and
42 interest as provided in the State Uniform Tax Procedure Law,
43 R.S.54:48-1 et seq. If the director determines that the failure to
44 comply with any provision of this section was excusable under the
45 circumstances, the director may remit that part or all of the penalty
46 as shall be appropriate under the circumstances.

47 d. (1) Any person subject to the water diversion user fee who
48 is subject to the jurisdiction or rate regulation of the Board of

1 Public Utilities as a public utility shall collect the water diversion
2 user fee imposed by this section by imposing an automatic
3 surcharge on any tariff established pursuant to law for water rates
4 and charges. The Board of Public Utilities shall issue an
5 appropriate order adjusting the tariffs established pursuant to law to
6 reflect these payments. In issuing any order required by this
7 subsection, the Board of Public Utilities shall be exempt from the
8 provisions of R.S.48:2-21.

9 (2) Any person subject to the water diversion user fee may
10 collect the water diversion user fee imposed by this section by
11 including the amount of user the fee due as a separate line item on
12 every customer bill or other statement presented to consumers. The
13 person subject to the water diversion user fee may use up to one
14 percent of all revenues collected to defray the costs of
15 administration and collection of the water diversion user fee. The
16 director shall credit the proper amount to the person subject to the
17 water diversion user fee upon receipt of written documentation of
18 the actual costs expended for the collection of the water diversion
19 user fee.

20 e. The director shall deposit all revenues collected pursuant to
21 this section in the Water Resources Protection Trust Fund created
22 pursuant to section 4 of this act.

23 f. In addition to the other powers granted to the director in this
24 section, the director is authorized to:

25 (1) Delegate to any officer or employee of the division those
26 powers and duties as the director deems necessary to carry out
27 efficiently the provisions of this section, and the person to whom
28 the power has been delegated shall possess and may exercise all of
29 these powers and perform all of the duties delegated by the director;
30 and

31 (2) Prescribe and distribute all necessary forms for the
32 implementation of this section.

33 g. The water diversion user fee imposed by this section shall be
34 governed in all respects by the provisions of the State Uniform Tax
35 Procedure Law, R.S.54:48-1 et seq., except only to the extent that a
36 specific provision of this section may be in conflict therewith.

37 h. The water diversion user fee imposed by this section shall
38 not be imposed on:

39 (1) water diverted for agricultural or horticultural purposes
40 under a water usage certification required pursuant to the provisions
41 of section 6 of P.L.1981, c.262 (C.58:1A-6) or as provided in
42 section 2 of P.L.1981, c.277 (C.58:1A-7.2);

43 (2) water diverted for a nonconsumptive use. In the case of
44 those permittees or persons with diversion privileges to divert water
45 for both a consumptive use and a nonconsumptive use, the
46 calculation of the amount of water diverted for nonconsumptive use
47 shall be determined by the department based on water use as
48 reported to the department pursuant to P.L.1981, c.262 (C.58:1A-1

1 et seq.) or P.L.1993, c.202 (C.58:1A-7.3 et al.), or if not reported,
2 based on standard industry water use profiles;

3 (3) surface water diverted by permittees or persons required to
4 apply for and obtain a water use registration in such a manner that it
5 is returned to another surface water body;

6 (4) water diverted for the remediation of areas with
7 contaminated ground water supplies, or for other remedial actions
8 as provided by law;

9 (5) water diverted for emergency purposes, including
10 firefighting, flood prevention, response to a discharge of hazardous
11 substances, or for other emergency purposes as may be determined
12 by the department;

13 (6) diversions of salt water except whenever the department
14 determines that the diversion and resultant usage may affect
15 utilization of fresh water;

16 (7) water diverted for a paper manufacturing process utilizing
17 post-consumer waste material in the manufacture of a recycled
18 product which constitutes at least 75 percent of total annual sales
19 dollar volume of the products manufactured in the State by that
20 manufacturer as determined by the director;

21 (8) water subject to the water consumption user fee imposed by
22 section 7 of this act;

23 (9) diversions of saline water except whenever the department
24 determines that the diversion and resultant usage may affect
25 utilization of fresh water;

26 (10) water diverted for purposes of reducing air emissions or
27 water pollutants necessary for compliance with local, State or
28 federal regulations;

29 (11) water diverted for the purpose of transferring water
30 between public water systems; or

31 (12) water diverted for resale, or a bulk sale of water diverted to
32 another public water system.

33 For the purposes of this subsection, "salt water" means water
34 containing a chloride concentration in excess of 10,000 mg/L;
35 "post-consumer waste material" means a material or product that
36 would otherwise become solid waste, having completed its intended
37 end use and product life cycle, except that "post-consumer waste
38 material" shall not include secondary waste material or materials
39 and by-products generated from, and commonly used within, an
40 original manufacturing and fabrication process; "recycled product"
41 means any product or commodity which is manufactured or
42 produced in whole or in part from post-consumer waste material
43 and which meets the recycled content standard of the United States
44 Environmental Protection Agency as published in the
45 Comprehensive Procurement Guidelines for Products Containing
46 Recovered Material; "secondary waste material" means waste
47 material generated after the completion of a manufacturing process;
48 "solid waste" means the same as that term is defined in section 3 of

1 P.L.1970, c.39 (C.13:1E-3); and "saline water" means water
2 containing a chloride concentration in excess of 250 mg/L.

3 i. Any person subject to the water diversion user fee shall be
4 eligible for water conservation credits against the water diversion
5 user fee. Water conservation credits shall be granted to any
6 permittee or person required to apply for and obtain a water use
7 registration who can demonstrate a net reduction in annual water
8 use over any 10-year period commencing January 1, 2019. The
9 water conservation credits shall be equal to 50 percent of the
10 difference between the maximum year withdrawal during this
11 period and the current year, where the reduction can be documented
12 as attributable to water conservation. The department shall approve
13 the diversion permit or water use registration modification to reflect
14 the water conservation credits granted.

15

16 9. (New section) The department shall undertake a safe or
17 dependable yield analysis of the State's surface and ground water
18 sources to ascertain what actions may be required to maintain safe
19 yield. The department shall include the results of the safe or
20 dependable yield analysis in revisions and updates of the New
21 Jersey Statewide Water Supply Plan prepared pursuant to section 13
22 of P.L.1981, c.262 (C.58:1A-13).

23

24 10. (New section) a. The department shall adopt, pursuant to
25 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.), rules and regulations as are necessary to effectuate the
27 purposes of this act.

28 b. The Director of the Division of Taxation in the Department
29 of the Treasury, in consultation with the department, and pursuant
30 to the "Administrative Procedure Act," shall adopt rules and
31 regulations as are necessary to effectuate the provisions of sections
32 7 and 8 of this act.

33

34 11. Section 3 of P.L.1985, c.334 (C.58:11B-3) is amended to
35 read as follows:

36 3. As used in sections 1 through 27 of P.L.1985, c.334
37 (C.58:11B-1 through C.58:11B-27), sections 23 through 27 of
38 P.L.1997, c.224 (C.58:11B-10.1 et al.), and sections 22 and 34
39 through 38 of P.L.2016, c.56 (C.58:11B-10.3 through C.58:11B-
40 10.5, C.58:11B-20.2, C.58:11B-22.3, and C.58:11B-22.4):

41 "Bonds" means bonds issued by the trust pursuant to P.L.1985,
42 c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-10.1 et
43 al.);

44 "Combined sewer overflow" means the discharge of untreated or
45 partially treated stormwater runoff and wastewater from a combined
46 sewer system into a body of water;

47 "Combined sewer system" means a sewer system designed to
48 carry sanitary wastewater at all times, which is also designed to

1 collect and transport stormwater runoff from streets and other
2 sources, thereby serving a combined purpose;

3 "Commissioner" means the Commissioner of the Department of
4 Environmental Protection;

5 "Cost" means the cost of all labor, materials, machinery and
6 equipment, lands, property, rights and easements, financing
7 charges, interest on bonds, notes or other obligations, plans and
8 specifications, surveys or estimates of costs and revenues,
9 engineering and legal services, and all other expenses necessary or
10 incident to all or part of an environmental infrastructure project;

11 "Department" means the Department of Environmental
12 Protection;

13 "Environmental infrastructure project" means the acquisition,
14 construction, improvement, repair or reconstruction of all or part of
15 any structure, facility or equipment, or real or personal property
16 necessary for or ancillary to any: (1) wastewater treatment system
17 project, including any stormwater management or combined sewer
18 overflow abatement projects; or (2) water supply project, as
19 authorized pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or
20 P.L.1997, c.224 (C.58:11B-10.1 et al.), including any water
21 resources project, as authorized pursuant to P.L.2003, c.162;

22 "Federal infrastructure bank program" means the United States
23 Department of Transportation State Infrastructure Bank Program
24 provided for in section 350 of Pub.L.104-59 and Pub.L.102-240 as
25 amended or superseded;

26 "Local government unit" means (1) a State authority, county,
27 municipality, municipal, county or regional sewerage or utility
28 authority, municipal sewerage district, joint meeting, improvement
29 authority, or any other political subdivision of the State authorized
30 to construct, operate, and maintain wastewater treatment systems;
31 (2) a State authority, district water supply commission, county,
32 municipality, municipal, county or regional utilities authority,
33 municipal water district, joint meeting, or any other political
34 subdivision of the State authorized pursuant to law to operate or
35 maintain a public water supply system or to construct, rehabilitate,
36 operate, or maintain water supply facilities or otherwise provide
37 water for human consumption; or (3) a county, municipality,
38 municipal, county or regional transportation authority, or any other
39 political subdivision of the State authorized to construct, operate,
40 and maintain public highways or transportation projects as defined
41 pursuant to this section;

42 "New Jersey Environmental Infrastructure Financing Program"
43 means the financing program to fund environmental infrastructure
44 projects;

45 "New Jersey Transportation Infrastructure Financing Program"
46 means the financing program to fund transportation infrastructure
47 projects;

1 "Notes" means notes issued by the trust pursuant to P.L.1985,
2 c.334 (C.58:11B-1 et seq.), P.L.1997, c.224 (C.58:11B-10.1 et al.),
3 or sections 22 and 34 through 38 of P.L.2016, c.56 (C.58:11B-10.3
4 through C.58:11B-10.5, C.58:11B-20.2, C.58:11B-22.3, and
5 C.58:11B-22.4);

6 "Onsite septic system ordinance or regulation" means an
7 ordinance adopted by a municipality or county or regulation
8 adopted by a regional planning agency establishing the
9 requirements for construction, maintenance and repair of onsite
10 wastewater treatment and disposal systems;

11 "Onsite wastewater treatment and disposal system" means an on-
12 site system designed to treat and dispose of domestic sewage;

13 "Other assistance" means forms of financial assistance, in
14 addition to loans, authorized by the New Jersey Infrastructure Bank
15 from the State Transportation Infrastructure Bank Fund, including,
16 but not limited to, use of funds to: provide credit enhancements;
17 serve as a capital reserve for bond or other debt instrument
18 financing; subsidize interest rates; ensure the issuance of letters of
19 credit and credit instruments; finance purchase and lease
20 agreements with respect to transit projects; and provide bond or
21 other debt financing instrument security;

22 "Project" means the acquisition, construction, improvement,
23 repair or reconstruction of all or part of any structure, facility, or
24 equipment, or real or personal property necessary for or ancillary to
25 any: (1) wastewater treatment system project, including any
26 stormwater management or combined sewer overflow abatement
27 projects; (2) water supply project, as authorized pursuant to
28 P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-
29 10.1 et al.), including any water resources project, as authorized
30 pursuant to P.L.2003, c.162; or (3) transportation project authorized
31 pursuant to sections 22 and 34 through 38 of P.L.2016, c.56
32 (C.58:11B-10.3 through C.58:11B-10.5, C.58:11B-20.2, C.58:11B-
33 22.3, and C.58:11B-22.4);

34 "Public highway" means public roads, streets, expressways,
35 freeways, parkways, motorways and boulevards, including bridges,
36 tunnels, overpasses, underpasses, interchanges, express bus
37 roadways, bus pullouts and turnarounds, park-ride facilities, traffic
38 circles, grade separations, traffic control devices, the elimination or
39 improvement of crossings of railroads and highways, whether at-
40 grade or not at-grade, bicycle and pedestrian pathways and
41 pedestrian and bicycle bridges, and any property, rights of way,
42 easements and interests therein needed for the construction,
43 improvement, and maintenance of highways;

44 "Public water utility" means any investor-owned water company
45 or small water company;

46 "Small water company" means any company, purveyor or entity,
47 other than a governmental agency, that provides water for human
48 consumption and which regularly serves less than 1,000 customer

1 connections, including nonprofit, noncommunity water systems
2 owned or operated by a nonprofit group or organization;

3 "Stormwater management system" means any equipment, plants,
4 structures, machinery, apparatus, management practices, or land, or
5 any combination thereof, acquired, used, constructed, implemented
6 or operated to prevent nonpoint source pollution, abate improper
7 cross-connections and interconnections between stormwater and
8 sewer systems, minimize stormwater runoff, reduce soil erosion, or
9 induce groundwater recharge, or any combination thereof;

10 "Transportation project" means capital projects for public
11 highways, approach roadways and other necessary land-side
12 improvements, ramps, signal systems, roadbeds, transit lanes or
13 rights of way, pedestrian walkways and bridges connecting to
14 passenger stations and servicing facilities, bridges, and grade
15 crossings;

16 "Trust" means the New Jersey Infrastructure Bank created
17 pursuant to section 4 of P.L.1985, c.334 (C.58:11B-4);

18 "Wastewater" means residential, commercial, industrial, or
19 agricultural liquid waste, sewage, septage, stormwater runoff, or
20 any combination thereof, or other liquid residue discharged or
21 collected into a sewer system or stormwater management system, or
22 any combination thereof;

23 "Wastewater treatment system" means any equipment, plants,
24 structures, machinery, apparatus, or land, or any combination
25 thereof, acquired, used, constructed or operated by, or on behalf of,
26 a local government unit for the storage, collection, reduction,
27 recycling, reclamation, disposal, separation, or other treatment of
28 wastewater or sewage sludge, or for the collection or treatment, or
29 both, of stormwater runoff and wastewater, or for the final disposal
30 of residues resulting from the treatment of wastewater, including,
31 but not limited to, pumping and ventilating stations, treatment
32 plants and works, connections, outfall sewers, interceptors, trunk
33 lines, stormwater management systems, and other personal property
34 and appurtenances necessary for their use or operation; "wastewater
35 treatment system" shall include a stormwater management system
36 or a combined sewer system;

37 "Wastewater treatment system project" means any work relating
38 to the acquisition, construction, improvement, repair or
39 reconstruction of all or part of any structure, facility or equipment,
40 or real or personal property necessary for or ancillary to any
41 wastewater treatment system that meets the requirements set forth
42 in sections 20, 21, and 22 of P.L.1985, c.334 (C.58:11B-20,
43 C.58:11B-21, and C.58:11B-22); or any work relating to any of the
44 stormwater management or combined sewer overflow abatement
45 projects identified in the stormwater management and combined
46 sewer overflow abatement project priority list adopted by the
47 commissioner pursuant to section 28 of P.L.1989, c.181; or any
48 work relating to the purposes set forth in subsection b. of section 6

1 of P.L. , c. (C.)(pending before the Legislature as this bill);
2 or any work relating to the purposes set forth in section 6 of
3 P.L.2003, c.162; or any work relating to any other project eligible
4 for financing under the "Federal Water Pollution Control Act
5 Amendments of 1972" (33 U.S.C. s.1251 et seq.), or any
6 amendatory or supplementary acts thereto;

7 "Water resources project" means any work related to transferring
8 water between public water systems during a state of water
9 emergency, to avert a drought emergency in all or any part of the
10 State, to plan, design or construct interconnections of existing water
11 supplies, or to extend water supplies to areas with contaminated
12 ground water supplies , including any work relating to the
13 appropriate purposes set forth in subsection a. of section 6 of
14 P.L. , c. (C.)(pending before the Legislature as this bill);

15 "Water supply facilities" means and refers to the real property
16 and the plants, structures, interconnections between existing water
17 supply facilities, machinery and equipment and other property, real,
18 personal and mixed, acquired, constructed or operated, or to be
19 acquired, constructed or operated, in whole or in part, by or on
20 behalf of a public water utility, or by or on behalf of the State or a
21 local government unit, for the purpose of augmenting the natural
22 water resources of the State and making available an increased
23 supply of water for all uses, or of conserving existing water
24 resources, and any and all appurtenances necessary, useful or
25 convenient for the collecting, impounding, storing, improving,
26 treating, filtering, conserving or transmitting of water, and for the
27 preservation and protection of these resources and facilities,
28 whether in public or private ownership, and providing for the
29 conservation and development of future water supply resources, and
30 facilitating incidental recreational uses thereof;

31 "Water supply project" means any work relating to the
32 acquisition, construction, improvement, repair or reconstruction of
33 all or part of any structure, facility or equipment, or real or personal
34 property necessary for or ancillary to water supply facilities that
35 meets the requirements set forth in sections 24, 25, and 26 of
36 P.L.1997, c.224 (C.58:11B-20.1, C.58:11B-21.1, and C.58:11B-
37 22.1); or any work relating to the purposes set forth in section 4 of
38 P.L.1981, c.261; or any work relating to the purposes set forth in
39 section 6 of P.L.2003, c.162; or any work relating to the appropriate
40 purposes set forth in subsection a. of section 6 of P.L. , c. (C.
41)(pending before the Legislature as this bill) or any work relating to
42 any other project eligible for funding pursuant to the federal "Safe
43 Drinking Water Act Amendments of 1996," Pub.L.104-182, and any
44 amendatory and supplementary acts thereto.

45 (cf: P.L.2017, c.144, s.1)

1 12. This act shall take effect immediately, except that sections 7
2 and 8 of this act shall take effect on the first day of the third full
3 fiscal quarter following the date of enactment of this act.

4
5
6 STATEMENT
7

8 This bill would establish the Water Resources Protection Trust
9 Fund (fund), to be administered by the Department of
10 Environmental Protection (DEP). Moneys in the fund would be
11 derived from: (1) a water consumption user fee imposed on the
12 owner or operator of every public community water system equal to
13 \$0.40 per 1,000 gallons of water delivered to a consumer; and (2) a
14 water diversion user fee imposed on every person required by law
15 to obtain a diversion permit or a water use registration equal to
16 \$0.40 per 1,000 gallons of water diverted for a consumptive use.
17 The water consumption user fee would be collected in the same
18 manner as the water tax on public community water systems
19 imposed under the "Safe Drinking Water Act."

20 The following water uses would be exempt from the water
21 consumption user fee:

22 (1) water delivered to a consumer for the purpose of storage for
23 future water supplies;

24 (2) water delivered to a consumer for the purpose of transferring
25 water between public water systems;

26 (3) water delivered to a consumer for emergency purposes,
27 including firefighting, flood prevention, response to a discharge of
28 hazardous substances, or for other emergency purposes as may be
29 determined by the DEP;

30 (4) water delivered to a consumer, including water delivered for
31 resale, or a bulk sale of water delivered to a consumer in another
32 public water system; and

33 (5) unaccounted-for water of 15 percent or less.

34 The following water uses would be exempt from the water
35 diversion user fee:

36 (1) water diverted for agricultural or horticultural purposes
37 under a water usage certification required pursuant to law;

38 (2) water diverted for a nonconsumptive use. In the case of
39 those permittees or persons with diversion privileges to divert water
40 for both a consumptive use and a nonconsumptive use, the
41 calculation of the amount of water diverted for nonconsumptive use
42 would be determined by the DEP based on water use as reported to
43 the DEP pursuant to law, or if not reported, based on standard
44 industry water use profiles;

45 (3) surface water diverted by permittees or persons required to
46 apply for and obtain a water use registration in such a manner that it
47 is returned to another surface water body;

1 (4) water diverted for the remediation of areas with
2 contaminated ground water supplies, or for other remedial actions
3 as provided by law;

4 (5) water diverted for emergency purposes, including
5 firefighting, flood prevention, response to a discharge of hazardous
6 substances, or for other emergency purposes as may be determined
7 by the DEP;

8 (6) diversions of salt water except whenever the DEP
9 determines that the diversion and resultant usage may affect
10 utilization of fresh water;

11 (7) water diverted for a paper manufacturing process utilizing
12 post-consumer waste material in the manufacture of a recycled
13 product which constitutes at least 75 percent of total annual sales
14 dollar volume of the products manufactured in the State by that
15 manufacturer as determined by the Director of the Division of
16 Taxation;

17 (8) water subject to the water consumption user fee;

18 (9) diversions of saline water except whenever the DEP
19 determines that the diversion and resultant usage may affect
20 utilization of fresh water;

21 (10) water diverted for purposes of reducing air emissions or
22 water pollutants necessary for compliance with local, State or
23 federal regulations;

24 (11) water diverted for the purpose of transferring water
25 between public water systems; and

26 (12) water diverted for resale, or a bulk sale of water diverted to
27 another public water system.

28 Any person subject to the water diversion user fee would be
29 eligible for water conservation credits against the water diversion
30 user fee. Water conservation credits would be granted to any
31 permittee or person required to apply for and obtain a water use
32 registration who can demonstrate a net reduction in annual water
33 use over any 10-year period commencing January 1, 2019. The
34 water conservation credits would be equal to 50 percent of the
35 difference between the maximum year withdrawal during this
36 period and the current year, where the reduction can be documented
37 as attributable to water conservation. The DEP would approve the
38 diversion permit or water use registration modification to reflect the
39 water conservation credits granted.

40 The fund would be administered by the DEP and would be
41 credited with all water consumption user fee and water diversion
42 user fee revenue collected under sections 7 and 8 of the bill, all
43 interest and other investment income received on moneys in the
44 fund, and all sums received as repayment of principal and interest
45 on outstanding loans made from the fund. The DEP would be
46 authorized to use not more than one percent of the total revenues
47 deposited in the fund during the fiscal year to cover administrative
48 expenses incurred in implementing the provisions of the bill.

1 The moneys in the fund may be used for the following water
2 quality, supply, and infrastructure projects:

3 (1) the costs of transferring water between public water systems
4 during a state of water emergency or to avert a drought emergency
5 in all or any part of the State;

6 (2) the protection of existing water supplies through the
7 acquisition of watershed and wetlands areas;

8 (3) the interconnection of existing water supplies, and the
9 extension of water supplies to areas with contaminated ground
10 water supplies;

11 (4) the costs of water supply infrastructure projects undertaken
12 by water purveyors for the purpose of drought mitigation;

13 (5) the costs of a safe or dependable yield analysis of the State's
14 surface and ground water resources undertaken by the DEP, up to
15 \$100,000;

16 (6) projects to rehabilitate, repair, or replace public water
17 system infrastructure;

18 (7) grants to local government units to finance the cost of
19 developing asset management programs for public water systems;
20 and

21 (8) projects to remediate lead in drinking water infrastructure.

22 In addition, beginning 10 years after the effective date of the bill,
23 the money in the fund may be used for projects to rehabilitate,
24 repair, or replace wastewater treatment system infrastructure,
25 including, but not limited to, combined sewer overflow abatement
26 projects.

27 Whenever any moneys in the fund are used for the protection of
28 existing water supplies through the acquisition of watershed and
29 wetlands areas, the percentage of moneys used for such acquisitions
30 in the Highlands region would be an amount equivalent to not less
31 than the percentage of total revenues deposited in the fund which
32 were collected from user fee payers within the Highlands region,
33 and the percentage of moneys used for such acquisitions in the
34 Pinelands area would be an amount equivalent to not less than the
35 percentage of total revenues deposited in the fund which were
36 collected from user fee payers within the Pinelands area.

37 The DEP would be authorized to make low-interest loans to local
38 governments and water purveyors to finance the cost of authorized
39 water quality, supply, and infrastructure projects. To be eligible for
40 a grant, a local government or water purveyor would be required to
41 demonstrate the ability to match the grant requested by generating
42 funds in ratios specified by the DEP.

43 On or before January 15 of each year, the DEP would submit to
44 the Legislature a financial plan designed to implement the financing
45 of the projects on the project priority list submitted to the
46 Legislature for approval by May 15 of that year. The financial plan
47 would contain an enumeration of the projects for which the DEP
48 intends to provide funds and the terms and conditions of any loans

1 or grants associated therewith, the anticipated rate of interest per
2 year and repayment schedule for any loans. The financial plan
3 would also set forth a complete operating and financial statement
4 covering its proposed operations during the forthcoming fiscal year,
5 summarize the status of each project for which grants or loans have
6 been made, and describe any major impediments to the
7 accomplishment of the planned projects.

8 On or before May 15 of each fiscal year, the DEP would prepare
9 and submit to the Legislature for approval a project priority list
10 recommending the particular water quality, supply, and
11 infrastructure projects to be funded for the upcoming fiscal year.
12 The project priority list would include a description of each project,
13 its purpose, impact, cost, and construction schedule, and an
14 explanation of the manner in which priorities were established.

15 The bill provides that no expenditure from the fund would be
16 made except by an appropriation made pursuant to law and in
17 accordance with the project priority list developed by the DEP.
18 Each such appropriation act would clearly set forth all terms and
19 conditions governing the expenditure of the appropriation, would
20 identify each specific project or projects for which an appropriation
21 is made, and may provide such sums as may be necessary to cover
22 the costs associated with the administration thereof.

23 The bill requires the DEP to undertake a safe or dependable yield
24 analysis of the State's surface and ground water sources to ascertain
25 what actions may be required to maintain safe yield, and to include
26 the results of the analysis in revisions and updates of the New
27 Jersey Statewide Water Supply Plan.