

ASSEMBLY, No. 717

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman R. SMITH

1 AN ACT concerning water resources and water quality, establishing a  
2 New Jersey Clean Water Trust Fund, imposing a tax on water  
3 consumption, and supplementing Title 58 of the Revised Statutes.  
4

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

7  
8 1. This act shall be known, and may be cited, as the "New Jersey  
9 Clean Water Trust Fund Act."  
10

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

24 The Legislature further finds that New Jersey is eligible to receive  
25 more than \$1 billion in federal funds for water resources projects  
26 authorized pursuant to the "Water Resources Development Act of  
27 1986," Pub.L.99-662; that these projects would provide for the  
28 restoration, maintenance, and protection of harbors, inlets, channels,  
29 stream banks, lakes, and shorelines through the implementation of  
30 harbor, flood control, shoreline protection, and water resources  
31 conservation projects; that the State will lose these federal funds if it  
32 fails to provide matching funds; and that New Jersey does not have a  
33 stable source of funding with which to gain access to the federal  
34 monies.

35 The Legislature therefore determines that a commitment to the

1 preservation and improvement of the State's natural resources requires  
2 the adoption of a mechanism, supported by a substantial and stable  
3 source of revenue, to protect and purchase open space, watersheds,  
4 and wetlands areas, the loss or contamination of which would  
5 jeopardize the continued supply of clean water to New Jersey's  
6 citizens; provide matching funds for federally authorized projects that  
7 will enhance the economic vitality of the State and protect its citizens  
8 from natural disasters; that the State must also commit itself to the  
9 restoration of lakes and reservoirs, the establishment of new water  
10 impoundments, the interconnection of existing water supply systems,  
11 the extension of water supplies into areas with polluted groundwater  
12 supplies, the repair and restoration of dams, the prevention of salt  
13 water intrusion, flood control, shoreline protection, harbor  
14 development, and the enforcement of all laws, rules, and regulations  
15 therefor.

16

17 3. For the purposes of this act:

18 "Commissioner" means the Commissioner of Environmental  
19 Protection;

20 "Department" means the Department of Environmental Protection;

21 "Director" means the Director of the Division of Taxation in the  
22 Department of the Treasury;

23 "Fund" means the New Jersey Clean Water Trust Fund established  
24 pursuant to section 4 of this act;

25 "Local government unit" means a municipality, county, or other  
26 political subdivision of this State authorized to administer, protect,  
27 develop, and maintain water resources and water quality, or any  
28 agency thereof, the primary purpose of which is to administer, protect,  
29 develop, and maintain water resources and water quality;

30 "Taxpayer" means any person required to pay the tax imposed  
31 pursuant to sections 7 or 8 of this act, as appropriate;

32 "Tax period" means every calendar quarter, or any other period as  
33 may be prescribed by rule or regulation adopted by the Director of the  
34 Division of Taxation, on the basis of which any taxpayer is required to  
35 report to the director pursuant to the provisions of section 7 of this  
36 act;

37 "Water resources and water quality projects" mean projects to  
38 accomplish the purposes set forth in section 6 of this act.

39

40 4. a. There is established in the Department of Environmental  
41 Protection a special non-lapsing fund, to be known as the New Jersey  
42 Clean Water Trust Fund. Proceeds in the fund shall be used for State  
43 water resources and water quality projects and to provide grants and  
44 low-interest loans to assist local government units in funding water  
45 resources and water quality projects. The fund shall be administered  
46 by the department and shall be credited with all revenue collected

1 pursuant to sections 7 and 8 of this act, all interest received on moneys  
2 in the fund, and all sums received as repayment of principal and  
3 interest on outstanding loans made from the fund.

4 b. The department may make and contract to make low-interest  
5 loans to local government units in accordance with and subject to the  
6 provisions of this act to finance the cost of water resources and water  
7 quality projects that the local government unit may lawfully undertake  
8 or acquire and for which the local government unit is authorized by  
9 law to borrow money. The loans may be made subject to those terms  
10 and conditions as the department shall determine to be consistent with  
11 the purposes thereof. Each loan and the terms and conditions thereof  
12 shall be subject to approval by the State Treasurer, and the department  
13 shall make available to the State Treasurer all information, statistical  
14 data, and reports of independent consultants or experts as the State  
15 Treasurer deems necessary in order to evaluate the loan.

16 c. To be eligible for a grant pursuant to this act, a local  
17 government unit shall demonstrate the ability to match the grant  
18 requested by generating funds in ratios specified by the department.  
19 Moneys raised for projects meeting the eligibility requirements of  
20 section 6 of this act, up to three years prior to the enactment of this  
21 act, may be eligible for State assistance under the provisions of the  
22 above mentioned matching format, but under no circumstances may  
23 funds generated prior to that time qualify for a grant under the  
24 provisions of this act.

25 d. Commencement of the work on any project funded pursuant to  
26 this act shall begin within two years of the effective date of the  
27 appropriation therefor or the funds that are awarded shall lapse into  
28 the fund established pursuant to this section.

29

30 5. On or before May 15 of each year, the department shall submit  
31 to the Legislature a financial plan designed to implement the financing  
32 of the projects on the project priority list approved pursuant to section  
33 6 of this act. The financial plan shall contain an enumeration of the  
34 projects for which the department intends to provide funds and the  
35 terms and conditions of any loans or grants associated therewith, the  
36 anticipated rate of interest per annum and repayment schedule for any  
37 loans. The financial plan shall also set forth the a complete operating  
38 and financial statement covering its proposed operations during the  
39 forthcoming fiscal year, and shall summarize the status of each project  
40 for which grants or loans have been made, and shall describe any major  
41 impediments to the accomplishment of the planned projects.

42

43 6. a. Moneys in the fund shall be used for the following purposes  
44 and no others:

45 (1) protection of existing water supplies through the acquisition of  
46 watershed and wetlands areas;

- 1 (2) maintenance of existing public open space, the lack of which  
2 would negatively impact water supplies;
- 3 (3) restoration of lakes and reservoirs;
- 4 (4) establishment of new water impoundments, interconnection of  
5 existing water supplies, and the extension of water supplies to areas  
6 with contaminated ground water supplies;
- 7 (5) flood control, including dam restoration and repair;
- 8 (6) prevention of salt water intrusion;
- 9 (7) enforcement of P.L.1977, c.74 (C.58:10A-1 et seq.) and all  
10 rules and regulations adopted pursuant thereto; and
- 11 (8) to provide the State share to match federal funds for projects  
12 authorized pursuant to the federal "Water Resources Development Act  
13 of 1986."
- 14 b. On or before January 15 of each fiscal year, the commissioner  
15 shall prepare and submit to the Legislature for approval a project  
16 priority list recommending the water resources and water quality  
17 projects to be funded for the upcoming fiscal year. The list shall  
18 include a description of each project, its purpose, impact, cost, and  
19 construction schedule.
- 20 c. No expenditure from the fund shall be made except by an  
21 appropriation made pursuant to law and in accordance with project  
22 priority lists developed by the department. Each such appropriation  
23 act shall clearly set forth all terms and conditions governing the  
24 expenditure of the appropriation, shall identify the specific project or  
25 projects for which the appropriation is made, and may provide such  
26 sums as may be necessary to cover the costs associated with the  
27 administration thereof.
- 28
- 29 7. a. There is imposed upon every person who holds a permit to  
30 divert water pursuant to the "Water Supply Management Act,"  
31 P.L.1981, c.262 (C.58:1A-1 et seq.) a tax of \$0.10 per thousand  
32 gallons of water diverted, on or after the first day of the first full fiscal  
33 quarter following enactment of P.L.199 , c. (C ) (now before  
34 the Legislature as this bill), and quarterly thereafter. This subsection  
35 shall not apply to persons diverting water primarily for use on land in  
36 the farmland preservation program established pursuant to P.L.1983,  
37 c.32 (C.4:1C-12 et seq.).
- 38 b. (1) Every taxpayer shall, on or before the 20th day of the month  
39 following the close of each tax period, render a return under oath to  
40 the Director of the Division of Taxation, on such forms as may be  
41 prescribed by the director, indicating the number of gallons of water  
42 diverted, and at that time shall pay the full amount due.
- 43 (2) Every taxpayer shall, within 30 days of the effective date of this  
44 act, register with the director on forms prescribed by the director.
- 45 c. If a return required by this act is not filed, or if a return when  
46 filed is incorrect or insufficient in the opinion of the director, the

1 amount due shall be determined by the director from such information  
2 as may be available. Notice of the determination shall be given to the  
3 taxpayer. The determination shall finally and irrevocably fix the  
4 amount due, unless the person on whom it is imposed, within 30 days  
5 after receiving notice of such determination, shall apply to the director  
6 for a hearing, or unless the director on his own motion shall  
7 redetermine the same. After the hearing the director shall give notice  
8 of his determination to the person on whom the tax is imposed.

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

16 e. The director shall deposit all revenues collected pursuant to this  
17 section in the New Jersey Clean Water Trust Fund created pursuant to  
18 section 4 of this act.

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

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

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

28 g. The tax imposed by this section shall be governed in all respects  
29 by the provisions of the State Tax Uniform Procedure Law,  
30 R.S.54:48-1 et seq., except only to the extent that a specific provision  
31 of this section may be in conflict therewith.

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33 8. Every commercial and industrial property taxpayer who takes or  
34 impounds water from a river, stream, lake, pond, aquifer, well, or  
35 underground source or other waterbody, whether or not the water is  
36 returned thereto, consumed, made to flow into another stream or  
37 basin, or discharged elsewhere, but who is not required to apply for a  
38 water diversion permit pursuant to P.L.1981, c.262, shall submit to the  
39 tax collector of the municipality wherein it is located, with its quarterly  
40 tax return, an estimate of the number of gallons of water it has taken  
41 or impounded, and shall pay to the tax collector of that municipality  
42 an amount equal to \$0.10 for each thousand gallons. The tax collector  
43 shall forward all revenues so collected to the Director of the Division  
44 of Taxation for deposit in the New Jersey Clean Water Trust Fund.  
45 This section does not apply to waters taken or impounded primarily

1 for use on lands in the farmland preservation program pursuant to  
2 P.L.1983, c.32 (C.4:1C-12 et seq.).

3  
4 9. The department and the director shall, as appropriate, pursuant  
5 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1  
6 et seq.), adopt rules and regulations to effectuate the purposes of this  
7 act.

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9 10. This act shall take effect 60 days following enactment.

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12 STATEMENT

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14 This measure would establish a New Jersey Clean Water Trust  
15 Fund, to be administered by the Department of Environmental  
16 Protection. Monies in the fund would be derived from a tax on water  
17 consumption equal to 10 cents per thousand gallons. A tax of 1 cent  
18 is already imposed pursuant to the State's "Safe Drinking Water Act"  
19 but only applies to public water systems. The tax imposed pursuant  
20 to this bill would extend to other water users, such as industrial and  
21 commercial establishments. Farmers would be exempt under this bill.  
22 The bill would raise an estimated \$214 million per year.

23 The monies in the New Jersey Clean Water Trust Fund would be  
24 used by the State to provide loans and grants to municipalities,  
25 counties, and authorities for water resources and water quality  
26 projects. Projects which protect existing water supplies through the  
27 acquisition of watershed and wetlands areas; maintain existing public  
28 open space; restore lakes and reservoirs; establish new water  
29 impoundments, interconnect existing water supplies, and extend water  
30 supplies to areas with contaminated ground water; control flooding,  
31 including the restoration and repairs of dams; prevent salt water  
32 intrusion; enforce rules and regulations adopted pursuant to the New  
33 Jersey "Water Pollution Control Act"; and provide the State match for  
34 federal projects funded pursuant to the "Water Resources  
35 Development Act" would be eligible for funding pursuant to this bill.

36 Some of these activities have been undertaken over the years;  
37 however, funds for them have been exhausted. This bill would provide  
38 a stable and continuous source of funding for natural resource projects  
39 designed to protect the State's water resources and thereby the quality  
40 of the State's water supplies.

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42  
43  
44  
45 The "New Jersey Clean Water Trust Fund Act."