

[Passed Both Houses]

[Third Reprint]

SENATE, No. 1776

STATE OF NEW JERSEY

INTRODUCED JANUARY 14, 1997

By Senators BENNETT, ADLER, McNamara, Baer, McGreevey,
Kyrillos, Assemblymen Corodemus, Blee, LeFevre and Bucco

1 AN ACT concerning watershed preservation, protection and
2 management, ³[and]³ providing for the expenditure of monies
3 dedicated pursuant to Article VIII, Section II, paragraph 6,
4 subparagraph (a) of the New Jersey Constitution ³. and making an
5 appropriation³.

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

9
10 1. This act shall be known and may be cited as the "Watershed
11 Protection and Management Act of 1997."

12
13 2. The Legislature finds and declares that, on November 5, 1996,
14 the voters overwhelmingly approved an amendment to the New Jersey
15 Constitution dedicating the equivalent of 4 percent of the revenues
16 annually generated by the Corporation Business Tax for financing the
17 costs of hazardous discharge site remediation, upgrading hazardous
18 underground storage tanks, and water quality ³point and nonpoint
19 source³ pollution monitoring, ³[watershed based] watershed-based³
20 water resource planning and management, and nonpoint source
21 pollution prevention projects; and that, of the 4 percent dedicated for
22 these purposes, a minimum of one-sixth, or a minimum of \$5,000,000,
23 whichever is less, is annually dedicated for the purposes of water
24 quality point and nonpoint source ³pollution³ monitoring, ³[watershed
25 based] watershed-based³ water resource planning and management and
26 nonpoint source pollution prevention projects.

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted February 10, 1997.

² Senate SBA committee amendments adopted March 10, 1997.

³ Assembly AES committee amendments adopted May 1, 1997.

1 The Legislature further finds and declares that the Department of
2 Environmental Protection currently administers the State's water
3 quality planning, monitoring, permitting and enforcement programs;
4 that the department has recently begun to change its long-standing,
5 permit-based approach to water resource protection and water
6 pollution control to that of a watershed-based planning approach; that
7 such an approach would greatly increase the overall efficiency and
8 precision with which pollution control measures could be applied; and
9 that the federal Clean Water Act establishes policy guidelines requiring
10 states to clean up polluted waters and protect waters that meet water
11 quality standards.

12 The Legislature further finds and declares that the ³[1997]³ Fiscal
13 Year ³1997³ funding levels must be increased in future years to enable
14 the department to meet the requirements of the ³[Federal] federal³
15 Clean Water Act; and that the constitutionally dedicated and
16 appropriated additional monies, when used to fund a watershed-based
17 approach to water resource management and pollution control, will
18 greatly assist the State in protecting waters that meet water quality
19 standards and in attaining and complying with federal water quality
20 standards.

21 The Legislature therefore determines that it is in the public interest
22 and consistent with the intent of Article VIII, Section II, paragraph 6,
23 subparagraph (a) of the New Jersey Constitution ³[,]³ to provide
24 statutory guidance to the department for the use of the dedicated
25 monies; that the dedicated monies should be used to support an
26 expansion of department efforts in the area of water resource
27 management; and that the State should adopt a watershed-based
28 approach to most effectively and efficiently comply with federal
29 guidelines.

30

31 3. As used in this act:

32 "Department" means the Department of Environmental Protection;

33 "Federal Act" means the federal "Clean Water Act" (33 U.S.C.
34 §1251 et seq.);

35 "Total maximum daily load" ¹[or "TMDL"]¹ means the sum of
36 individual point and nonpoint sources of pollution, other sources such
37 as tributaries or adjacent segments, and allocations to a reserve or
38 margin of safety for an individual pollutant ²or as defined in
39 subsequent ³rules and³ regulations of the department²;

40 "Watershed" means a geographic area within which water,
41 sediments, and dissolved materials drain to a particular receiving
42 waterbody;

43 "Watershed management activity" means activities or projects
44 undertaken by the department ¹, the Pinelands Commission ³[created]
45 established³ pursuant to section 4 of P.L.1979, c.111 ³[(C.13:18A-1
46 et seq.).¹ (C.13:18A-4).³ or a watershed management group to

1 improve the condition or prevent further degradation of a watershed,
2 and may include, but need not be limited to, public meetings to discuss
3 and exchange information on watershed issues, the establishment and
4 operation of a stakeholders advisory group or groups dedicated to
5 preserving and protecting a watershed, the monitoring, water quality
6 modeling or assessment of the condition of a watershed, the
7 development of policy goals to reduce the amount of pollutants
8 discharged into a watershed, the development of projects designed to
9 enhance or restore a watershed, the development, in consultation with
10 the department, of a watershed management plan, or the reassessment
11 of a watershed to determine whether the policy goals or the objectives
12 of ³[the] ^a watershed management plan have been attained;

13 "Watershed management area" means a geographic area in the
14 State, as designated by the department, within which may be found one
15 or more watersheds;

16 "Watershed management group" means a group ³[that represents]
17 recognized by the department as the entity representing³ the various
18 interests within one or more watersheds located in a watershed
19 management area ²[that] ³[, which group² is]³ ²[established]
20 ³[recognized² by the department ²as an entity] and³ whose purpose is²
21 to improve the condition or prevent further degradation of a watershed
22 or watersheds ²[, and shall]. A watershed management group ³[may²]
23 shall³ include ³, but need not be limited to,³ local and county
24 government officials ³[¹, officials of regional planning agencies,¹ and
25 representatives] , a representative of water purveyors, a representative
26 of wastewater utilities or authorities, a representative³ of the business
27 ³community, a representative of the development community,³ and ³a
28 representative of the³ environmental community ;³except that a
29 watershed management group need not include all such officials or
30 representatives if any such officials or representatives decline or are
31 unable to participate in the watershed management group as may be
32 determined by the department in accordance with guidelines or rules
33 and regulations adopted by the department. Where a regional planning
34 agency has been created for all or part of the watershed management
35 area to be represented by the watershed management group, an official
36 of that regional planning agency shall be included in the watershed
37 management group³ ; and

38 "Watershed management plan" means a plan developed by the
39 department ¹[or] ¹ ³[a watershed management group ¹, or the
40 Pinelands Commission¹ ,] or by the Pinelands Commission or a
41 watershed management group³ in consultation with the department,
42 designed to improve the condition or prevent further degradation of
43 a watershed or watersheds, and shall include ²consideration of
44 groundwater quality and quantity, ³consideration of³ water supply
45 quality and quantity,² a determination of the ³[²need for²]³ total
46 maximum daily load amount of pollutants that can be discharged into

1 the watershed or watersheds targeted by the plan, ¹[and]¹ the
2 implementation of water ³[quality based] quality-based³ effluent limits
3 ¹for point sources, and regulatory and best management practices to
4 control ³[non-point] nonpoint³ sources of pollution¹.

5
6 4. The "Watershed Management Fund," hereinafter referred to as
7 the "fund," is hereby established as a nonlapsing, revolving fund in the
8 Department of Environmental Protection. The fund shall be
9 ³[annually]³ credited ³annually³ with all monies appropriated pursuant
10 to the requirements of Article VIII, Section II, paragraph 6,
11 subparagraph (a) of the New Jersey Constitution. Any interest that
12 accrues on monies in the fund shall be credited to the fund.

13
14 5. Monies in the fund shall be used only for the following purposes:

15 a. The development and adoption of a priority list of water quality
16 limited waterbodies pursuant to the requirements of section
17 303(d)(1)(A) of the Federal Act (33 U.S.C. §1313);

18 b. The monitoring and assessment of all State waters pursuant to
19 the requirements of section 305(b) of the Federal Act (33 U.S.C.
20 §1315);

21 c. The ¹[development and]¹ delineation of watershed management
22 areas ¹and stream segments¹;

23 d. The identification of potential causes of the use impairment or
24 water quality standard violations related to waterbodies on the priority
25 list required pursuant to sections 303(d)(1)(A) and 305(b) of the
26 Federal Act by means of assessment of reliable data, including, but not
27 necessarily limited to, ¹identification of ²[all]² ¹ point sources,
28 nonpoint sources, habitat degradation, and hydrologic changes. This
29 identification shall include a broad-based intensive survey monitoring
30 program that shall supplement the existing chemical, biological and
31 toxics-in-biota monitoring networks, and that shall intensively sample
32 watersheds or segments of watersheds on a periodic basis and establish
33 a detailed watershed-wide assessment process. The number of
34 monitoring sites within a watershed shall be determined by existing
35 water quality, land uses, known and potential pollution sources, and
36 the amount of available historical data. The supplemental survey
37 monitoring program, shall be designed to provide:

38 (1) a detailed profile of water quality over specified time periods;

39 (2) an identification and detailed profile of both point and nonpoint
40 pollution sources;

41 (3) a quantification of ¹pollutant loadings and¹ pollution impacts
42 on receiving waters from both point and nonpoint sources; and

43 (4) water quality modeling based upon amounts of point and
44 nonpoint sources of pollution and land use;

45 e. The development of total maximum daily loads and water
46 quality-based effluent limitations for water quality limited waterbodies,

- 1 as required pursuant to section 303(d)(1)(C) of the Federal Act, and
2 any ³rules or³ regulations adopted pursuant thereto;
- 3 f. The development and presentation of data on the department's
4 Geographic Information System (GIS);
- 5 g. The development and adoption of pollution prevention best
6 management practices to control point and nonpoint sources of
7 pollution;
- 8 h. The characterization of land use and land cover in each
9 watershed;
- 10 i. The development and adoption of a watershed management plan;
11 ¹[and]¹
- 12 j. ¹The development and planning by the department of a watershed
13 management program and the ²[intergration] integration² of the
14 department's ³rules and³ regulations with ³[this] the³ program; ³and³
- 15 k.¹ The development and implementation of a ¹[local]¹ watershed
16 protection ²loan and² grant program, as described pursuant to section
17 6 of this act.
- 18
- 19 6. ²a. (1)² The department shall establish a ²loan and² grant
20 program to assist ¹[local]¹ watershed management groups ³in the
21 funding of watershed management activities³. A watershed
22 management group may apply to the department for a ²loan or² grant
23 pursuant to this ³[section] subsection³ on forms prescribed by the
24 department. The application shall state the objectives of the group,
25 including the watershed management activities proposed and for which
26 ²loan or² grant monies are requested.
- 27 ²(2) A ³watershed management group may, pursuant to guidance
28 provided or rules or regulations adopted by the department, distribute
29 all or part of the loan or grant to another person who is to perform a
30 watershed management activity for which the loan or grant was
31 provided. If the watershed management group distributes the loan or
32 grant to a ³person who has a NJPDES permit to discharge pollutants
33 into the waters of the State pursuant to P.L.1977, c.74 (C.58:10A-1
34 et seq.), ³[may receive a loan or grant as a watershed management
35 group as provided in this subsection only if that person provides at
36 least a 50 percent match to that loan or grant.] the distribution shall be
37 conditioned upon the permittee providing a match of one dollar for
38 every dollar provided by the loan or grant.³ The match may be made
39 either as a monetary payment or as an in-kind contribution. Any
40 person who has a NJPDES permit and who accepts a loan or grant
41 pursuant to this subsection shall agree not to use any of the loan or
42 grant monies for the purpose of complying with NJPDES permit
43 requirements.²
- 44 ³b.³ The department shall establish guidelines for the development
45 of ¹[a local]¹ watershed management ¹[plan] plans by watershed
46 management groups¹. The department shall provide guidance and

1 technical assistance to watershed management groups seeking
2 assistance in the development of a watershed management plan¹[and]
3 or³ in the ³development and³ implementation of watershed
4 management activities¹.

5
6 7. a. Any monies appropriated to the department pursuant to
7 Article VIII, Section II, paragraph 6, subparagraph (a) of the New
8 Jersey Constitution, and deposited in the fund, shall be used to support
9 the purposes ¹[required pursuant to] ³[enumerated] set forth³ in¹
10 section 5 of this act to the extent that ³[such] those³ purposes
11 constitute activities in addition to those undertaken by the department
12 in ³[fiscal year] Fiscal Year³ 1997.

13 b. Monies shall be appropriated to the department pursuant to
14 Article VIII, Section II, paragraph 6, subparagraph (a) of the New
15 Jersey Constitution, deposited in the fund ^{3,3} and allocated for the
16 following purposes:

17 (1) ²[For the first three years immediately following the effective
18 date of this act,] From the monies appropriated in ³[fiscal year] Fiscal
19 Year³ 1997 pursuant to section 8 of this act,² 100 percent of the
20 monies shall be used ¹[to support the costs of watershed management
21 program development and planning, regulatory integration, and]
22 ³[for¹] by the department to support³ the purposes established in
23 subsections a. through ¹[i.] j.¹ of section 5 of this act; ²[and]²

24 (2) ²[Commencing three years from the effective date of this act,
25 50] From the monies appropriated in ³[fiscal year] Fiscal Year³ 1998,
26 not more than 35² percent of the monies [shall] may² be used to
27 support the purposes identified in subsection ¹[j.] k.¹ of section 5 of
28 this act and ²[50 percent] the remainder² of the monies shall be used
29 ³by the department³ to support the purposes established in subsections
30 a. through ³[i.] j.³ of section 5 of this act ²; and

31 (3) From the monies appropriated in ³[fiscal year] Fiscal Year³
32 1999 and every year thereafter, not more than 50 percent of the
33 monies may be used to support the purposes identified in subsection
34 k. of section 5 of this act and the remainder of the monies shall be used
35 ³by the department³ to support the purposes established in subsections
36 a. through ³[i.] j.³ of section 5 of this act.

37 c. The department may not expend any monies that ³[is] are³ or
38 may be appropriated by the Legislature for the purposes identified in
39 subsection k. of section 5 of this act until the department submits a list
40 of proposed loan or grant recipients to the Legislature, and the
41 Legislature, by the passage of a concurrent resolution, approves that
42 list. The Legislature may approve all or part of that list and only those
43 persons listed in the ³approved³ concurrent resolution may receive a
44 watershed protection loan or grant from the department. The
45 concurrent resolution may limit or specify the amount of any loan or
46 grant and may establish any other condition of receiving the loan or

1 grant. The list of proposed recipients submitted to the Legislature by
 2 the department shall specify the name of the proposed recipient, the
 3 amount of the loan or grant to be awarded, the intended purpose of the
 4 loan or grant, the watershed or watersheds involved, and any other
 5 information relevant to the award of the loan or grant.

6 d. The department may not expend any monies in ³[fiscal year]
 7 Fiscal Year³ 1999 and thereafter ³[.]³ that ³[is] are ³ or may be
 8 appropriated by the Legislature for the purposes identified in
 9 subsection k. of section 5 of this act ³[.]³ until the department has
 10 adopted rules and regulations, pursuant to the "Administrative
 11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), ³[governing]
 12 concerning the development and implementation of watershed
 13 management activities by watershed management groups and³ the
 14 submission and review of loan and grant applications.

15 e. Any transfer of ³appropriated³ funds ³between purposes³
 16 authorized by this section shall require the approval of the Joint
 17 Budget Oversight Committee or its successor^{2 3}. No such transfer of
 18 funds shall be approved by the committee or its successor if the
 19 transfer would cause exceedance of the funding percentage allocation
 20 limitations set forth in subsection b. of this section. Any transfer of
 21 funds from an approved loan or grant recipient to another approved
 22 loan or grant recipient shall also require the approval of the committee
 23 or its successor.³

24
 25 8. There is appropriated ²[to the Watershed Management Fund]²
 26 from the General Fund, pursuant to the requirements of Article VIII,
 27 Section II, paragraph 6, subparagraph (a) of the New Jersey
 28 Constitution, ²to the Department of Environmental Protection,² the
 29 sum of ²[\$2,500,000] \$4,900,000 for deposit into the Watershed
 30 Management Fund ³[created] established³ pursuant to section 4 of this
 31 act².

32

33 9. This act shall take effect immediately.

34

35

36

37

38 The "Watershed Protection and Management Act of 1997";
 39 appropriates \$4.9 million in constitutionally dedicated Corporation
 40 Business Tax revenues for that purpose.