ASSEMBLY, No. 3348

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman JOHN F. MCKEON
District 27 (Essex and Morris)
Assemblyman ROBERT J. KARABINCHAK
District 18 (Middlesex)

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.

(Sponsorship Updated As Of: 1/4/2021)

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

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

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

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

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

The Legislature therefore determines that it is in the public interest to establish a stable source of funding, based on user fees on water consumption and water diversion, for the long-term

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.

preservation and protection of the State's water resources and the improvement of its drinking water infrastructure.

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

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

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

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

"Consumptive use" means any use of water diverted from surface or ground waters other than a nonconsumptive use.

"Department" means the Department of Environmental Protection.

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

"Fund" means the Water Resources Protection Trust Fund established pursuant to section 4 of this act.

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

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

"Person" means any individual, corporation, company, partnership, firm, association, owner, or operator of a public water

system, political subdivision of the State, and any state, or interstate agency or Federal agency.

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

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

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

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

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

"Wastewater" means residential, commercial, industrial, or agricultural liquid waste, sewerage, or any combination thereof, or other liquid residue discharged or collected into a sewer system, or stormwater management system, or any combination thereof.

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

"Water purveyor" means any investor-owned water company or small water company that owns or operates a public water system.

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

"Water supply infrastructure project" means a water supply project undertaken by or on behalf of a water purveyor for the purpose of drought mitigation.

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

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

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

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

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

5. (New section) a. On or before January 15 of each year, the department shall submit to the Legislature a financial plan designed to implement the financing of the projects on the project priority list approved pursuant to section 6 of this act. The financial plan shall contain an enumeration of the water quality, supply, and infrastructure projects for which the department intends to provide funds and the terms and conditions of any loans or grants associated therewith, the anticipated rate of interest per year, and the repayment schedule for any loans. The financial plan shall also set forth a complete operating and financial statement covering the department's proposed operations during the forthcoming fiscal year, summarize the status of each project for which grants or loans have been made, and describe any major impediments to the accomplishment of the planned projects.

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

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

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

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

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

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

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

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

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

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

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

c. Whenever any moneys in the fund are used for the protection of existing water supplies through the acquisition of watershed and wetlands areas as provided in paragraph (2) of subsection a. of this

section, the percentage of moneys used for such acquisitions in the Highlands region designated pursuant to section 3 of P.L.2004, c.120 (C.13:20-3) shall be an amount equivalent to not less than the percentage of total revenues deposited in the fund pursuant to sections 7 and 8 which were collected from user fee payers within the Highlands region, and the percentage of moneys used for such acquisitions in the Pinelands area designated pursuant to section 10 of P.L.1979, c.111 (C.13:18A-11) shall be an amount equivalent to not less than the percentage of total revenues deposited in the fund pursuant to sections 7 and 8 which were collected from user fee payers within the Pinelands area.

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

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

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

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

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

c. If a return required by this section is not filed, or if a return when filed is incorrect or insufficient in the opinion of the director, the amount due shall be determined by the director from such information as may be available. Notice of the determination shall be given to the person subject to the water consumption user fee.

The determination shall finally and irrevocably fix the amount due, unless the person on whom it is imposed, within 90 days after the giving of the notice of the determination, shall file a protest in writing as provided in R.S.54:49-18 and request a hearing, or unless the director on the director's own motion shall re-determine the same. After the hearing the director shall give notice of the determination to the person on whom the water consumption user fee is imposed.

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

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

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

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

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

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

h. Any person subject to the water consumption user fee may collect the water consumption user fee imposed by this section by including the amount of the user fee due as a separate line item on every customer bill or other statement presented to consumers. The person subject to the water consumption user fee may use up to one percent of all revenues collected to defray the costs of administration and collection of the water consumption user fee. The director shall credit the proper amount to the person subject to the water consumption user fee upon receipt of written

documentation of the actual costs expended for the collection of the water consumption user fee.

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

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

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

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

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

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

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

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

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

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

(2) The director shall authorize a refund to any person claiming a complete or partial exemption from the water consumption user fee who has met the requirements of this subsection. The refund shall be in the amount of the percentage of the water annually delivered to a consumer for which the exemption is claimed multiplied by the person's total annual water consumption user fee liability.

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

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

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

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

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

d. (1) Any person subject to the water diversion user fee who is subject to the jurisdiction or rate regulation of the Board of Public Utilities as a public utility shall collect the water diversion user fee imposed by this section by imposing an automatic surcharge on any tariff established pursuant to law for water rates and charges. The Board of Public Utilities shall issue an appropriate order adjusting the tariffs established pursuant to law to reflect these payments. In issuing any order required by this subsection, the Board of Public Utilities shall be exempt from the provisions of R.S.48:2-21.

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

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

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

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

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

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

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

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

(2) water diverted for a nonconsumptive use. In the case of those permittees or persons with diversion privileges to divert water for both a consumptive use and a nonconsumptive use, the calculation of the amount of water diverted for nonconsumptive use

shall be determined by the department based on water use as reported to the department pursuant to P.L.1981, c.262 (C.58:1A-1 et seq.) or P.L.1993, c.202 (C.58:1A-7.3 et al.), or if not reported, based on standard industry water use profiles;

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

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

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

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

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

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

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

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

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

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

For the purposes of this subsection, "salt water" means water containing a chloride concentration in excess of 10,000 mg/L; "post-consumer waste material" means a material or product that would otherwise become solid waste, having completed its intended end use and product life cycle, except that "post-consumer waste material" shall not include secondary waste material or materials and by-products generated from, and commonly used within, an original manufacturing and fabrication process; "recycled product" means any product or commodity which is manufactured or produced in whole or in part from post-consumer waste material and which meets the recycled content standard of the United States Environmental Protection Agency as published in the Comprehensive Procurement Guidelines for Products Containing Recovered Material; "secondary waste material" means waste

material generated after the completion of a manufacturing process; “solid waste” means the same as that term is defined in section 3 of P.L.1970, c.39 (C.13:1E-3); and “saline water” means water containing a chloride concentration in excess of 250 mg/L.

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

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

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

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

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

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

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

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

"Combined sewer system" means a sewer system designed to carry sanitary wastewater at all times, which is also designed to collect and transport stormwater runoff from streets and other sources, thereby serving a combined purpose;

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

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

"Department" means the Department of Environmental Protection;

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

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

"Line of credit loan" means a short-term or temporary loan for project planning, engineering design, and construction issued before or during the planning stage of a project;

"Local government unit" means (1) a State authority, county, municipality, municipal, county or regional sewerage or utility authority, municipal sewerage district, joint meeting, improvement authority, or any other political subdivision of the State authorized to construct, operate, and maintain wastewater treatment systems; (2) a State authority, district water supply commission, county, municipality, municipal, county or regional utilities authority, municipal water district, joint meeting, or any other political subdivision of the State authorized pursuant to law to operate or maintain a public water supply system or to construct, rehabilitate, operate, or maintain water supply facilities or otherwise provide water for human consumption; or (3) a county, municipality, municipal, county or regional transportation authority, or any other political subdivision of the State authorized to construct, operate, and maintain public highways or transportation projects as defined pursuant to this section;

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

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

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

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

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

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

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

"Public highway" means public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at-grade or not at-grade, bicycle and pedestrian pathways and pedestrian and bicycle bridges, and any property, rights of way,

easements and interests therein needed for the construction, improvement, and maintenance of highways;

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

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections, including nonprofit, noncommunity water systems owned or operated by a nonprofit group or organization;

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

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

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

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

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

"Wastewater treatment system project" means any work relating to the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to any wastewater treatment system that meets the requirements set forth

in sections 20, 21, and 22 of P.L.1985, c.334 (C.58:11B-20, C.58:11B-21, and C.58:11B-22); or any work relating to any of the stormwater management or combined sewer overflow abatement projects identified in the stormwater management and combined sewer overflow abatement project priority list adopted by the commissioner pursuant to section 28 of P.L.1989, c.181; or any work relating to the purposes set forth in subsection b. of section 6 of P.L. , c. (C.)(pending before the Legislature as this bill); or any work relating to the purposes set forth in section 6 of P.L.2003, c.162; or any work relating to any other project eligible for financing under the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. s.1251 et seq.), or any amendatory or supplementary acts thereto;

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

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

"Water supply project" means any work relating to the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility or equipment, or real or personal property necessary for or ancillary to water supply facilities that meets the requirements set forth in sections 24, 25, and 26 of P.L.1997, c.224 (C.58:11B-20.1, C.58:11B-21.1, and C.58:11B-22.1); or any work relating to the purposes set forth in section 4 of P.L.1981, c.261; or any work relating to the purposes set forth in section 6 of P.L.2003, c.162; or any work relating to the appropriate purposes set forth in subsection a. of section 6 of P.L. , c. (C.)(pending before the Legislature as this bill); or any

work relating to any other project eligible for funding pursuant to the federal "Safe Drinking Water Act Amendments of 1996," Pub.L.104-182, and any amendatory and supplementary acts thereto.
(cf: P.L.2018, c.75, s.1)

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

STATEMENT

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

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

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

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

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

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

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

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

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

(2) water diverted for a nonconsumptive use. In the case of those permittees or persons with diversion privileges to divert water for both a consumptive use and a nonconsumptive use, the calculation of the amount of water diverted for nonconsumptive use would be determined by the DEP based on water use as reported to

the DEP pursuant to law, or if not reported, based on standard industry water use profiles;

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

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

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

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

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

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

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

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

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

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

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

The fund would be administered by the DEP and would be credited with all water consumption user fee and water diversion user fee revenue collected under sections 7 and 8 of the bill, all interest and other investment income received on moneys in the

fund, and all sums received as repayment of principal and interest on outstanding loans made from the fund. The DEP would be authorized to use not more than one percent of the total revenues deposited in the fund during the fiscal year to cover administrative expenses incurred in implementing the provisions of the bill.

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

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

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

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

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

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

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

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

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

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

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

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

On or before January 15 of each year, the DEP would submit to the Legislature a financial plan designed to implement the financing of the projects on the project priority list submitted to the Legislature for approval by May 15 of that year. The financial plan would contain an enumeration of the projects for which the DEP intends to provide funds and the terms and conditions of any loans or grants associated therewith, the anticipated rate of interest per year and repayment schedule for any loans. The financial plan would also set forth a complete operating and financial statement covering its proposed operations during the forthcoming fiscal year, summarize the status of each project for which grants or loans have been made, and describe any major impediments to the accomplishment of the planned projects.

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

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

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