

ASSEMBLY, No. 3154

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MARCH 7, 2022

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

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.



A3154 MCKEON

2

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

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

3

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

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

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

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

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

21 "Department" means the Department of Environmental
22 Protection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18

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

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

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

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

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

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

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

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

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

40 b. In addition to the projects authorized in subsection a. of this
41 section, beginning 10 years after the effective date of P.L. ,

42 c. (C.) (pending before the Legislature as this bill), moneys in
43 the fund may be used for projects to rehabilitate, repair, or replace
44 wastewater treatment system infrastructure, including, but not
45 limited to, combined sewer overflow abatement projects.

46 c. Whenever any moneys in the fund are used for the protection
47 of existing water supplies through the acquisition of watershed and

1 wetlands areas as provided in paragraph (2) of subsection a. of this
2 section, the percentage of moneys used for such acquisitions in the
3 Highlands region designated pursuant to section 3 of P.L.2004,
4 c.120 (C.13:20-3) shall be an amount equivalent to not less than the
5 percentage of total revenues deposited in the fund pursuant to
6 sections 7 and 8 which were collected from user fee payers within
7 the Highlands region, and the percentage of moneys used for such
8 acquisitions in the Pinelands area designated pursuant to section 10
9 of P.L.1979, c.111 (C.13:18A-11) shall be an amount equivalent to
10 not less than the percentage of total revenues deposited in the fund
11 pursuant to sections 7 and 8 which were collected from user fee
12 payers within the Pinelands area.

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

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

28

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

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

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

45 c. If a return required by this section is not filed, or if a return
46 when filed is incorrect or insufficient in the opinion of the director,
47 the amount due shall be determined by the director from such

1 information as may be available. Notice of the determination shall
2 be given to the person subject to the water consumption user fee.
3 The determination shall finally and irrevocably fix the amount due,
4 unless the person on whom it is imposed, within 90 days after the
5 giving of the notice of the determination, shall file a protest in
6 writing as provided in R.S.54:49-18 and request a hearing, or unless
7 the director on the director's own motion shall re-determine the
8 same. After the hearing the director shall give notice of the
9 determination to the person on whom the water consumption user
10 fee is imposed.

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

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

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

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

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

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

42 h. Any person subject to the water consumption user fee may
43 collect the water consumption user fee imposed by this section by
44 including the amount of the user fee due as a separate line item on
45 every customer bill or other statement presented to consumers.
46 The person subject to the water consumption user fee may use up to
47 one percent of all revenues collected to defray the costs of

1 administration and collection of the water consumption user fee.
2 The director shall credit the proper amount to the person subject to
3 the water consumption user fee upon receipt of written
4 documentation of the actual costs expended for the collection of the
5 water consumption user fee.

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

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

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

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

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

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

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

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

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

43 (1) Any person claiming a complete or partial exemption from
44 the water consumption user fee pursuant to this subsection shall
45 annually file with the director a written certification indicating the
46 percentage and number of gallons of water delivered to a consumer
47 for which the exemption is claimed. The director, in consultation

1 with the department, may conduct an audit of the certification. Any
2 person who files a false certification shall be subject to such
3 penalties and interest as provided in the State Uniform Tax
4 Procedure Law, R.S.54:48-1 et seq.

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

12

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

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

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

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

45 (2) Any person subject to the water diversion user fee who fails
46 to file a return when due or to pay the user fee when it becomes
47 due, as herein provided, shall be subject to such penalties and

1 interest as provided in the State Uniform Tax Procedure Law,
2 R.S.54:48-1 et seq. If the director determines that the failure to
3 comply with any provision of this section was excusable under the
4 circumstances, the director may remit that part or all of the penalty
5 as shall be appropriate under the circumstances.

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

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

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

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

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

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

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

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

46 (1) water diverted for agricultural or horticultural purposes
47 under a water usage certification required pursuant to the provisions

1 of section 6 of P.L.1981, c.262 (C.58:1A-6) or as provided in
2 section 2 of P.L.1981, c.277 (C.58:1A-7.2);

3 (2) water diverted for a nonconsumptive use. In the case of
4 those permittees or persons with diversion privileges to divert water
5 for both a consumptive use and a nonconsumptive use, the
6 calculation of the amount of water diverted for nonconsumptive use
7 shall be determined by the department based on water use as
8 reported to the department pursuant to P.L.1981, c.262 (C.58:1A-1
9 et seq.) or P.L.1993, c.202 (C.58:1A-7.3 et al.), or if not reported,
10 based on standard industry water use profiles;

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

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

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

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

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

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

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

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

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

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

41 For the purposes of this subsection, "salt water" means water
42 containing a chloride concentration in excess of 10,000 mg/L;
43 "post-consumer waste material" means a material or product that
44 would otherwise become solid waste, having completed its intended
45 end use and product life cycle, except that "post-consumer waste
46 material" shall not include secondary waste material or materials
47 and by-products generated from, and commonly used within, an

1 original manufacturing and fabrication process; “recycled product”
2 means any product or commodity which is manufactured or
3 produced in whole or in part from post-consumer waste material
4 and which meets the recycled content standard of the United States
5 Environmental Protection Agency as published in the
6 Comprehensive Procurement Guidelines for Products Containing
7 Recovered Material; “secondary waste material” means waste
8 material generated after the completion of a manufacturing process;
9 “solid waste” means the same as that term is defined in section 3 of
10 P.L.1970, c.39 (C.13:1E-3); and “saline water” means water
11 containing a chloride concentration in excess of 250 mg/L.

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

24
25 9. (New section) The department shall undertake a safe or
26 dependable yield analysis of the State's surface and ground water
27 sources to ascertain what actions may be required to maintain safe
28 yield. The department shall include the results of the safe or
29 dependable yield analysis in revisions and updates of the New
30 Jersey Statewide Water Supply Plan prepared pursuant to section 13
31 of P.L.1981, c.262 (C.58:1A-13).

32
33 10. (New section) a. The department shall adopt, pursuant to
34 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
35 seq.), rules and regulations as are necessary to effectuate the
36 purposes of this act.

37 b. The Director of the Division of Taxation in the Department
38 of the Treasury, in consultation with the department, and pursuant
39 to the "Administrative Procedure Act," shall adopt rules and
40 regulations as are necessary to effectuate the provisions of sections
41 7 and 8 of this act.

42
43 11. Section 3 of P.L.1985, c.334 (C.58:11B-3) is amended to
44 read as follows:

45 3. As used in sections 1 through 27 of P.L.1985, c.334
46 (C.58:11B-1 through C.58:11B-27), sections 23 through 27 of
47 P.L.1997, c.224 (C.58:11B-10.1, C.58:11B-20.1, C.58:11B-21.1,

1 C.58:11B-22.1, and C.58:11B-22.2), and sections 22 and 34 through
2 38 of P.L.2016, c.56 (C.58:11B-10.3 through C.58:11B-10.5,
3 C.58:11B-20.2, C.58:11B-22.3, and C.58:11B-22.4):

4 "Aviation project" means a project to develop or improve county
5 or municipal airport facilities, or airport facilities owned or
6 operated by a regional transportation authority that is not a bi-state
7 authority, and related infrastructure or capital equipment, including,
8 but not limited to, any design, planning, acquisition, construction,
9 reconstruction, relocation, installation, removal, repair, or
10 rehabilitation project that facilitates, increases the efficiency of, or
11 improves the capacity for inter-modal trade for commercial and
12 industrial facilities that are part of airport facilities. "Aviation
13 project" includes, but is not limited to, any project to develop or
14 improve terminal facilities designed for public use and for the
15 transportation of persons or property, such as airports, runways,
16 berms, basins, storage places, sheds, warehouses, and related
17 infrastructure;

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

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

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

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

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

36 "Department" means the Department of Environmental
37 Protection;

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

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

5 "Local government unit" means (1) a State authority, county,
6 municipality, municipal, county or regional sewerage or utility
7 authority, municipal sewerage district, joint meeting, improvement
8 authority, or any other political subdivision of the State authorized
9 to construct, operate, and maintain wastewater treatment systems;
10 (2) a State authority, district water supply commission, county,
11 municipality, municipal, county or regional utilities authority,
12 municipal water district, joint meeting, or any other political
13 subdivision of the State authorized pursuant to law to operate or
14 maintain a public water supply system or to construct, rehabilitate,
15 operate, or maintain water supply facilities or otherwise provide
16 water for human consumption; (3) a county, municipality,
17 municipal, county or regional transportation authority, or any other
18 political subdivision of the State authorized to construct, operate, or
19 maintain public highways or transportation projects; (4) a county,
20 municipality, or other political subdivision or instrumentality of the
21 State, or a municipal, county, or State authority that is not a bi-state
22 authority, authorized to construct, operate, or maintain ports or
23 marine projects; or (5) a county, municipality, municipal or regional
24 transportation authority, or other political subdivision or
25 instrumentality of the State authorized to construct, operate, or
26 maintain airports or aviation projects;

27 "Marine project" means a project to develop or improve public
28 port or terminal facilities, and related infrastructure or capital
29 equipment, including, but not limited to, any design, planning,
30 acquisition, construction, reconstruction, relocation, installation,
31 removal, repair, or rehabilitation project that facilitates, increases
32 the efficiency of, or improves the capacity for inter-modal trade and
33 cargo movement for commercial or industrial facilities that are part
34 of port or terminal facilities. "Marine project" includes, but is not
35 limited to, dredging, soil hardening, and paving of the port
36 facilities, and ferry terminal facilities designed for public use and
37 the transportation of persons or property such as water craft, docks,
38 wharves, piers, slips, storage places, sheds, warehouses, and related
39 infrastructure. "Marine project" shall not include any project that
40 relates to or supports recreational or commercial boating activities;

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

44 "New Jersey Transportation Infrastructure Financing Program"
45 means the financing program to fund transportation projects,
46 aviation projects, and marine 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 wastewater treatment and disposal system" means an on-
7 site system designed to treat and dispose of domestic sewage;

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

19 "Planning, design, and construction loan" means a short-term or
20 temporary loan for eligible costs incurred in project planning,
21 engineering design, or construction issued before or during the
22 planning stage of a project;

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

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

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

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

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

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

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

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

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

40 "Wastewater treatment system project" means any work relating
41 to the acquisition, construction, improvement, repair or
42 reconstruction of all or part of any structure, facility or equipment,
43 or real or personal property necessary for or ancillary to any
44 wastewater treatment system that meets the requirements set forth
45 in sections 20, 21, and 22 of P.L.1985, c.334 (C.58:11B-20,
46 C.58:11B-21, and C.58:11B-22); or any work relating to any of the
47 stormwater management or combined sewer overflow abatement

1 projects identified in the stormwater management and combined
2 sewer overflow abatement project priority list adopted by the
3 commissioner pursuant to section 28 of P.L.1989, c.181; or any
4 work relating to the purposes set forth in subsection b. of section 6
5 of P.L. , c. (C.)(pending before the Legislature as this bill);
6 or any work relating to the purposes set forth in section 6 of
7 P.L.2003, c.162; or any work relating to any other project eligible
8 for financing under the "Federal Water Pollution Control Act
9 Amendments of 1972" (33 U.S.C. s.1251 et seq.), or any
10 amendatory or supplementary acts thereto;

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

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

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

1 Pub.L.104-182, and any amendatory and supplementary acts
2 thereto.

3 (cf: P.L.2021, c.74, s.1)

4

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

8

9

10 STATEMENT

11

12 This bill would establish the Water Resources Protection Trust
13 Fund (fund), to be administered by the Department of
14 Environmental Protection (DEP). Moneys in the fund would be
15 derived from: (1) a water consumption user fee imposed on the
16 owner or operator of every public community water system equal to
17 \$0.40 per 1,000 gallons of water delivered to a consumer; and (2) a
18 water diversion user fee imposed on every person required by law
19 to obtain a diversion permit or a water use registration equal to
20 \$0.40 per 1,000 gallons of water diverted for a consumptive use.
21 The water consumption user fee would be collected in the same
22 manner as the water tax on public community water systems
23 imposed under the “Safe Drinking Water Act.”

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

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

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

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

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

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

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

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

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

1 the DEP pursuant to law, or if not reported, based on standard
2 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 DEP;

13 (6) diversions of salt water except whenever the DEP
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 of the Division of
21 Taxation;

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

23 (9) diversions of saline water except whenever the DEP
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 between
30 public water systems; and

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

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

45 The fund would be administered by the DEP and would be
46 credited with all water consumption user fee and water diversion
47 user fee revenue collected under sections 7 and 8 of the bill, all

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

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

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

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

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

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

19 (5) the costs of a safe or dependable yield analysis of the State's
20 surface and ground water resources undertaken by the DEP, up to
21 \$100,000;

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

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

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

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

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

43 The DEP would be authorized to make low-interest loans to local
44 governments and water purveyors to finance the cost of authorized
45 water quality, supply, and infrastructure projects. To be eligible for
46 a grant, a local government or water purveyor would be required to

1 demonstrate the ability to match the grant requested by generating
2 funds in ratios specified by the DEP.

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

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

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

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