



SPONSOR: Rep. Mulrooney & Sen. Townsend & Sen. Hansen
Reps. Baumbach, Brady, Hudson, Longhurst, Lynn,
Osienski, Schwartzkopf, Sen. Sokola

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 270

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CLEAN WATER FOR DELAWARE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 80, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Clean Water for Delaware Act.

§ 8070. Short title.

This Act shall be known and may be cited as the “Clean Water for Delaware Act.”

§ 8071. Legislative findings.

(a) The General Assembly finds all of the following:

(1) The waters of this State are among Delaware’s most basic and valuable resources and should be conserved and protected in a manner to realize their full benefits.

(2) The State has a compelling interest in ensuring that all Delawareans have access to clean water.

(3) Many Delaware homes and businesses are at risk from flooding and drainage hazards, which have environmental, public safety, health, and economic impacts.

(4) Delaware’s continued economic vitality is dependent upon maintaining the State’s water and wastewater systems and protecting and enhancing the State’s water resources as an attraction for tourism and new employers.

(5) Some Delawareans do not have access to potable drinking water or basic wastewater disposal in their homes.

(6) Most of Delaware’s waters do not meet water quality standards for their designated uses, such as drinking, swimming, and supporting fish and other aquatic life.

(7) Delaware’s list of impaired waters includes 377 bodies of water that suffer from excess nutrients, low dissolved oxygen, toxins, and bacteria.

(8) Extensive analysis of chemical contaminants in fish has led to advisories that fish in more than 30 waterways statewide are unsafe to eat.

(9) Groundwater is the primary source of public, rural, and industrial water supply in 94% of the State, supplying drinking water to approximately 60% of the population of the State.

(10) The Department of Natural Resources and Environmental Control has implemented over 110 Groundwater Management Zones across the State in areas known to have groundwater impacted or threatened by hazardous substances.

(11) Although certain federal grants are available to local governments through the Safe Drinking Water Act, the Clean Water Act, and other programs, federal funding is insufficient to meet the State's demands, and existing State resources are inadequate to meet current and future needs.

(12) It is fitting and proper for the State to encourage local governments, private entities, and farmers to undertake clean water projects that effectively and efficiently reduce pollution in the waters of the State by establishing state mechanisms to finance such projects at the lowest reasonable costs.

(13) It is fitting and proper for the State to more effectively leverage and maximize the impact of all public, private, and philanthropic resources available for achieving clean water standards in all Delaware waterways.

(b) Based on its findings in subsection (a) of this section, the General Assembly determines that it is in the public interest to establish the Delaware Clean Water Trust to maximize and coordinate the reduction of flood risks and the removal of impairments to designated water uses through the management of financial resources available to the State for drinking water, wastewater, stormwater, non-point source pollution reduction, removal of toxins, ecological restoration, recreation, public education and outreach efforts, and other eligible projects to be funded from the following sources:

(1) A Clean Water Surcharge Account established under § 8075 of this title.

(2) Grants from the U.S. Environmental Protection Agency ("EPA") under the Clean Water Act and the Safe Drinking Water Act, together with any matching State funds or funds received from any other federal agency allocated to the Trust by a state agency.

(3) Moneys received as repayments of principal and interest on loans, interest received on invested funds, and other funding made available to the Delaware Water Pollution Control Revolving Fund established under § 8003(12) of this title or the Delaware Safe Drinking Water Revolving Fund established under § 7903(14) of this title.

(4) Funds from the Hazardous Substance Cleanup Fund under § 9113 of Title 7 for remediation projects in response to the release of hazardous substances or petroleum products that have or may adversely impact water quality.

(5) Moneys received from other sources for the purposes directed by this subchapter.

§ 8072. Definitions.

As used in this subchapter:

(1) “Applicant” means a person who submits an application to the Department to receive funds for a project.

(2) “Authorization Act” means an act of the General Assembly, concurred in by three-fourths of all the members elected to each House of the General Assembly, appropriating funds from the proceeds of bonds authorized to be issued by such act.

(3) “Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

(4) “Clean Water Fund” means the Delaware Clean Water Fund, which is comprised of the Clean Water Surcharge Account, the Drinking Water Fund, the Water Pollution Control Fund, the Hazardous Substance Cleanup Fund, and any other money received from other sources for the purposes directed by this subchapter.

(5) “Clean Water Plan” means the Clean Water Plan required to be developed by the Water Infrastructure Advisory Council under § 8011 of this title.

(6) “Clean Water Surcharge Account” means the account established under § 8075 of this title and into which the clean water surcharges under Chapter 66 of Title 30 shall be deposited.

(7) “Clean Water Revenue Bonds” or “Bonds” mean any revenue bonds, notes, or other obligations issued by the Trust pursuant to § 8077 of this title, repayment of which is secured and repaid as provided therein.

(8) “Combined Sewer System” means a wastewater collection system designed to carry sanitary sewage, consisting of domestic, commercial, and industrial wastewater, and stormwater in a single pipe to a treatment facility.

(9) “Conservation Districts” means the three entities described in § 3903 of Title 7.

(10) “Cost” means the limited and reasonable expenses attributable to the labor, materials, machinery and equipment, lands, property, rights and easements, financing charges, interest on bonds, plans and specifications, surveys or estimates of costs and revenues, engineering, legal services, education, outreach, permitting, and all other expenses necessary or incident to all or part of a project.

(11) “Council” means the Water Infrastructure Advisory Council established under § 8011 of this title.

(12) “DDA” means the Department of Agriculture.

(13) “DHSS” means the Department of Health and Social Services.

(14) “DNREC” or “Department” means the Department of Natural Resources and Environmental Control.

(15) “Drinking Water Fund” means the Delaware Safe Drinking Water Revolving Fund established under § 7903(14) of this title.

(16) “Hazardous Substance Cleanup Fund” means the Hazardous Substance Cleanup Fund established under § 9113 of Title 7.

(17) “Issuing officers” means as defined in § 7401 of this title.

(18) “Local government unit” means a State authority, county, municipality, or any other political subdivision of this State.

(19) “Person” includes an individual; corporation; business trust; estate trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(20) “Project” means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or administration of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement for the purpose of or relating to the provision, preservation, or maintenance of clean water or water quality and reduction of flooding.
“Project” includes all of the following:

a. An agricultural project. For purposes of this subchapter, an “agricultural project” means agricultural natural resource conservation cost-share programs developed by the Conservation Districts, DNREC, or the DDA, including cover crops, forested and grass buffers, manure relocation, tax ditch restoration, and other best management practices that are consistent with implementing nutrient management plans or farm conservation plans.

b. A conservation project. For purposes of this subchapter, a “conservation project” means a project with the primary purpose of improving water quality and fish and wildlife habitat; a project that preserves intact habitat to mitigate impacts to threatened species, waterway or land conservation, a habitat, or stream restoration; a project that offsets impacts to natural resources including natural resources restoration, enhancement, and creation and a wetlands or stormwater mitigation bank; a project that generates water quality or quantity credits; or a recreational facilities project as permitted by § 5423 of Title 30 or § 6102A of this title. “Conservation project” does not mean a regional infrastructure project that is unrelated to the provision, preservation, or maintenance of clean water or water quality.

c. An EPA eligible project. For purposes of this subchapter, “EPA eligible project” means any project permitted to be funded under the Safe Drinking Water Act and Clean Water Act.

d. A flooding and drainage project. For purposes of this subchapter, a “flooding and drainage project”

means a project with the primary purpose of managing the impacts from drainage, preventing flooding of lands, or managing water for resource conservation for public benefit and conducive to the public health, safety, and welfare with a specific goal towards maintaining natural drainage flow and conservation and management of the soil, water, wildlife, forest, and other resources of this State.

e. A remediation project. For purposes of this subchapter, a “remediation project” means a project, undertaken under Chapters 74, 74A, or 91 of Title 7, to provide a remedy that addresses the release of a hazardous substance or a petroleum product that has adversely impacted water quality.

f. A stormwater management project. For purposes of this subchapter, a “stormwater management project” means any work relating to the planning, acquisition, construction, improvement, repair, or reconstruction of all or part of any structure, facility, equipment, or real or personal property that is necessary for, or is ancillary to, any stormwater management system.

g. A wastewater treatment system project. For purposes of this subchapter, “wastewater treatment system project” means any work relating to the acquisition, construction, improvement, repair, or reconstruction of all or part of any structure, facility, equipment, or real or personal property that is necessary for, or is ancillary to any wastewater treatment system. “Wastewater treatment system project” includes upgrading connecting properties with septic systems, seepage pits, and failing community systems, and repairing or replacing failing or at-risk individual, community, non-profit, or homeowner association-owned systems.

h. A water supply project. For purposes of this subchapter, “water supply project” means any work relating to the acquisition, construction, improvement, repair, or reconstruction of all or part of any structure, water supply facility, equipment, or real or personal property that is necessary for, or is ancillary to, water supply; any work relating to the purposes set forth in § 8076 of this title; or any work relating to any other EPA eligible project for funding under the Safe Drinking Water Act.

(21) “Public water utility” means any investor-owned water company or small water company.

(22) “Secretary” means the Secretary of DNREC.

(23) “Safe Drinking Water Act” means the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq.

(24) “Small water company” means any non-profit or for-profit company, purveyor, or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 3,300 customers. “Small water company” includes a non-profit, non-community water system owned or operated by a nonprofit organization.

(25) "Stormwater" means the runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

(26) "Stormwater management system" means any equipment, plant, structure, machinery, apparatus, management practice, or land, or any combination thereof, that is acquired, used, constructed, implemented, or operated to prevent non-point source pollution, abate improper cross-connections and interconnections between stormwater and sewer systems, minimize stormwater runoff and flooding, reduce soil erosion, or enhance stormwater runoff volume reduction, or any combination thereof.

(27) "Strategic Plan" means the Strategic Plan required to be included in the Clean Water Plan by the Water Infrastructure Advisory Council under § 8011 of this title.

(28) "Trust" means the Delaware Clean Water Trust authorized under this subchapter.

(29) "Trust Board" means the Board of Directors of the Trust established under § 8073 of this title.

(30) "Wastewater" means residential, commercial, industrial, or agricultural liquid waste, sewage, seepage, or other liquid residue, or any combination thereof, that may be discharged or collected into a sewer system.

(31) "Wastewater treatment system" means any equipment, plant, structure, machinery, apparatus, land, or any combination thereof, acquired, used, constructed, or operated 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 wastewater, or for the final disposal of residues resulting from the treatment of wastewater, including pumping and ventilating stations, treatment plants and works, connections, outfall sewers, interceptors, trunk lines, and other personal property and appurtenances necessary for their use or operation.

(32) "Water Pollution Control Fund" means the Delaware Water Pollution Control Revolving Fund established under § 8003(12) of this title.

(33) "Water supply facility" means a plant, structure, interconnection between existing facilities, machinery, equipment, and other property, real, personal, or mixed, that is 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 small water company, 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; 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; preserving and protecting these resources and facilities; and providing for the conservation and development of future water supply resources and facilitating incidental recreational uses of future water supply resources.

§ 8073. Establishment of the Delaware Clean Water Trust and the Board of Directors of the Trust; members; dissolution; Trust Administrator.

(a) The Delaware Clean Water Trust is established as a body corporate and politic. The Trust is a public instrumentality of the State, and its exercise of the powers conferred by this subchapter is an essential governmental function of the State in order to create a coordinated plan to clean the State's waterways, ensure clean and safe drinking water for all Delawareans, and protect the State's citizens from the effects of flooding.

(b) The Trust is managed by a Board of Directors. The Trust may act only by resolution of the Board of Directors. The Board of Directors is comprised of all of the following members:

(1) The Secretary of DNREC.

(2) The Secretary of the Department of Finance.

(3) The Secretary of DDA.

(4) The Secretary of DHSS.

(5) A director with expertise in public and private finance, appointed by the Governor with the advice and consent of the Senate.

(c) The director with expertise in public and private finance under paragraph (b)(5) of this section serves a 4-year term and holds over until the director's successor has been confirmed and qualified. An individual is eligible for reappointment as a director. A vacancy under this subsection is filled in the same manner as the original appointment. An individual filling a vacancy under this subsection serves only for the unexpired portion of the term.

(d) The Secretary of DNREC is the Chair of the Trust Board.

(e) The position of Trust Administrator is created within DNREC. The Trust Board shall appoint the Trust Administrator, who serves at the pleasure of the Trust Board.

(f) The Trust may be dissolved by an act of the General Assembly on condition that the Trust has no debts or obligations outstanding or that provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the Trust, all property, funds, and assets of the Trust are vested in the State and any moneys or assets collected pursuant to the assessment under another provision of the Delaware Code are to be returned to the designated funds established by those provisions.

(g) No director, officer, employee, or agent of the Trust may have an interest either directly or indirectly in any project or in any contract, sale, purchase, lead, or transfer of real or personal property to which the Trust is a party. The existence of any such interest does not affect the validity of bonds issued under this subchapter.

198 (h) No director, officer, employee, or agent of the Trust is deemed to have forfeited or shall forfeit any other state
199 office or employment or any benefits or emoluments of the state office or employment by reason of acceptance of an office
200 of the Trust or provision of services for the Trust, subject to this subchapter.

201 § 8074. Powers of the Trust related to projects.

202 (a) The Trust shall be responsible for oversight of the financial assets of the Clean Water Fund to maximize and
203 coordinate the management of the resources available for projects.

204 (b) If the Trust determines that demand for funding for projects exceeds all available resources, the Trust may
205 issue bonds, notes, and other obligations as set forth in § 8077 of this title.

206 (c) Notwithstanding subsection (b) of this section, at the request of the Department, the Trust may issue bonds,
207 notes, and other obligations from the Hazardous Substance Cleanup Fund for the purposes of Chapters 74, 74A, and 91 of
208 Title 7.

209 (d) The Trust shall receive recommendations from the Water Infrastructure Advisory Council and issue loans and
210 grants in consideration of the common platform developed by the Council for soliciting, prioritizing, and determining
211 creditworthiness, closing, and managing loans and grants in accordance with EPA policy. Consistent with the purposes of
212 this subchapter, the Council, DNREC, DHSS, DDA, and the Conservation Districts shall utilize appropriate programs,
213 processes, and criteria to prioritize, plan for, and identify projects, and this information shall inform the development of a
214 Clean Water Plan and recommendations of the Council to the Trust.

215 (1) The Council's recommendations of agricultural projects to the Trust shall conform with all of the
216 following:

217 a. The Council shall add the cost-share and other soil and water conservation projects approved by the
218 Conservation Districts or the Department to the Council's project priority listing as submitted.

219 b. If additional resources from the Clean Water Fund are to be provided for any agricultural project, the
220 Council shall consider the addition of the resources using the Council's overall project prioritization process.

221 (2) The Council's recommendations of remediation projects to the Trust shall conform with all of the
222 following:

223 a. The Department shall provide a list of all active remediation projects that have a direct impact on water
224 quality to the Council for inclusion in the Council's Strategic Plan.

225 b. If additional resources from the Clean Water Fund or other sources are to be provided for any
226 remediation project, the Council shall consider the addition of the resources using the Council's overall project
227 prioritization process.

(3) The Council's recommendations of flooding and drainage projects to the Trust shall conform with all of the following:

a. The Council shall add flooding and drainage projects approved by the Conservation Districts to the Council's project priority listing as submitted, provided that any single project may not exceed \$250,000 in cost.

b. The Council shall make available a minimum of \$2,000,000 from the Clean Water Fund for flooding and drainage projects annually.

c. The Council may provide funding above the project cap or minimum funding availability, provided that the project meets the Council's prioritization criteria and is consistent with the Clean Water Plan and Strategic Plan.

(e) The Trust may transfer funds available for loans between the Drinking Water Fund and Water Pollution Control Fund programs based on demand, contingent on the requirements of the EPA and others, and provided a transfer of funds is identified in the Intended Use Plan and Annual Report for each revolving loan fund.

(f) The Trust shall develop the framework required to maximize private and philanthropic resources under the requirements of this subchapter, determine program structure, obtain and maintain credit ratings, maintain and manage cash and investment accounts including those necessary for debt service or private financing repayment, coordinate the issuance of bonds or private financing, disburse proceeds, and maintain compliance with regulatory requirements.

(g) The Trust shall prepare a report annually to the General Assembly's Joint Committee on Capital Improvement, the Natural Resources Committee of the House of Representatives, and the Environmental, Natural Resources & Energy Committee of the Senate.

(1) The Trust shall include all of the following in the report required by this subsection:

a. An accounting of the Trust's revenues and expenditures.

b. Information on the Trust's cash management.

c. An updated Strategic Plan.

d. Project priority lists.

e. Information on the Trust's progress toward achieving the State's water quality goals, as set forth in the Clean Water Plan.

f. A complete financial statement covering the Trust's operations during the past fiscal year.

g. Copies of the audit required to be obtained by the Trust under § 8082 of this title.

(2) The Secretary of the Department shall deliver the annual report to the legislative committees listed in this subsection and shall make the annual report available for public review.

258 §8075. Clean Water Surcharge Account.

259 (a) A Clean Water Surcharge Account is established to provide sustainable financial resources for undertaking
260 activities designed to enhance the quality of waters of this State.

261 (1) Under the direction and with the approval of the Trust, the Secretary shall manage and administer the
262 Clean Water Surcharge Account for the exclusive purpose of funding specific, sustainable projects designed to enhance
263 the State's water quality in accordance with the Trust's fiscal policies and the Clean Water Plan.

264 (2) The Clean Water Surcharge Account may be expended for the purposes of this subchapter including
265 providing low-interest loans, grants, leveraged financing, and other incentives, including the purchase of or funding the
266 development of water quality or quantity credits, to implement projects, including those designated to reduce toxins
267 pollution, sediment, or nutrient loads and bacteria impacts or to remediate hazardous substance and petroleum product
268 releases in the surface and ground waters of Delaware, as well as to increase the resiliency of communities, enhance
269 economic development, and reduce the risk of flooding.

270 (3) The Clean Water Surcharge Account may also be used to pay debt service on any revenue bonds issued
271 under § 8077 of this title.

272 (b) The Clean Water Surcharge Account is a Special Fund of the State.

273 (c) An amount not to exceed 12% in the first two years of the Clean Water Fund, and not to exceed 10% thereafter,
274 of the moneys deposited in the Clean Water Surcharge Account, may be used to pay the costs of administering this
275 subchapter.

276 § 8076. Clean water loans or grants issued by the Trust.

277 (a) The Trust may make and contract to make loans to persons that are legally authorized to borrow or receive
278 funding to finance the costs of any project. Project applications must include evidence of the sustainability of the project
279 and show its life-cycle costs, including operations and maintenance.

280 (b) Preference shall be given to projects that do one or more of the following:

281 (1) Utilize and enhance natural systems to provide ecological benefits that improve water quality.

282 (2) Demonstrate a high ratio of nutrient or pollution reduction to the amount of funding.

283 (3) Improve community resilience to extreme weather, sea level rise, and other climate impacts.

284 (4) Benefit low-income and traditionally underserved communities through lower interest rates and
285 affordability grants.

286 (5) Leverage public funds through the attraction of private and philanthropic investment through innovative
287 financing models, including the purchase, generation, or sale of water quality or quantity improvements or water
288 quality and quantity credits.

289 (c) The Trust shall make loans or grants under this section subject to such terms and conditions as the Council
290 shall determine to be consistent with the purposes of this section. Each loan, and the terms and conditions of each loan,
291 made by the Trust shall be consistent with the fiscal policies established by the Trust.

292 (d) The Trust shall review information, statistical data, and reports of independent consultants or experts as it shall
293 deem necessary in order to evaluate the requested loan or grant. Each loan to a local government unit, public water utility,
294 or any other person shall be evidenced by notes, bonds, or other obligations issued to the Trust. In the case of each local
295 government unit, notes and bonds to be issued to the Trust by the local government unit shall be authorized and issued as
296 provided by law for the issuance of notes and bonds by the local government unit. Each loan to a local government unit,
297 public water utility, or any other person and the notes, bonds, or other obligations issued must bear interest at such rate per
298 annum as the Trust and the applicant may agree.

299 § 8077. Clean Water Revenue Bonds; refunding bonds; security for obligations.

300 (a) Except as otherwise expressly provided in this section, the Trust may issue Clean Water Revenue Bonds in any
301 principal amounts, subject to this subchapter, as necessary, in the judgment of the Trust and on the advice of the Council,
302 to provide sufficient funds for any of its corporate purposes, including the funding of loans made for any project, the
303 establishment or increase of reserves or other funds to secure or to pay the Clean Water Revenue Bonds, as the case may
304 be, or interest thereon, and all other costs or expenses of the Trust incident to and necessary to carry out its corporate
305 purposes and powers. The Trust may only issue Clean Water Revenue Bonds in the amounts approved by an
306 Authorization Act of the General Assembly.

307 (b) Clean Water Revenue Bonds shall be negotiable instruments and securities under the Uniform Commercial
308 Code, Subtitle I of Title 6.

309 (c) Clean Water Revenue Bonds shall be authorized by a resolution of the Trust Board; may be issued in one or
310 more series; and shall bear such date, mature at such time, bear interest at such rate, be in such denominations, be of a
311 single denomination payable in installments, be in such form, either registered or book-entry, carry such conversion or
312 registration privileges, have such rank or priority, be executed in such manner, be payable in any coin or currency of the
313 United States which at the time of payment is legal tender for the payment of public and private debts, at such place or
314 places within or without the State, and be subject to such terms of redemption by the Trust or the holders thereof, with or
315 without premium, as such resolution may provide. A resolution of the Trust authorizing the issuance of Clean Water

Revenue Bonds may provide that such Clean Water Revenue Bonds be secured by a trust indenture between the Trust and a trustee, vesting in the trustee any property rights, powers, and duties in trust as the Trust may determine.

(d) Prior to issuance of the Clear Water Revenue Bonds, the issuing officers shall approve the issuance of such Clean Water Revenue Bonds by resolution adopted by the unanimous vote of the issuing officers. Each issuing officer may designate a deputy to represent the issuing officer at meetings of the issuing officers with full powers to act and vote on the issuing officer's behalf. Clean Water Revenue Bonds shall be issued for the purposes authorized by this subchapter and Chapters 74, 74A, and 91 of Title 7. Clean Water Revenue Bonds may be issued regardless of the treatment of interest thereon for federal income tax purposes.

(e) Following approval by the issuing officers, the Clean Water Revenue Bonds shall be executed by the Chair of the Trust Board and do not require additional consent of any department, division, board, bureau, or agency of this State or any other proceedings or the happening of any other conditions or things, other than those consents, proceedings, conditions, or things which are specifically required by this section.

(f) Clean Water Revenue Bonds may be sold at any price and in any manner as the Trust may determine. Each such Bond shall mature and be paid not later than 30 years from its effective date. All Clean Water Revenue Bonds may be sold at public or private negotiated sale and for such price as the Trust determines. If sold at public sale, the procedures applicable to the sale shall be set forth in the authorizing resolution of the Trust Board.

(g) Clean Water Revenue Bonds issued under this section are not general obligations of the State and may not pledge the full faith and credit of the State. Such Bonds may not be considered as debt of the State and may not be treated as a tax supported obligation of the State, as defined in § 7422 of this title. All Bonds, unless funded or refunded by Clean Water Revenue Bonds, shall be payable solely from revenues or funds pledged or available for their payment as authorized herein and as provided in the authorizing resolution of the Trust Board. Each Clean Water Revenue Bond shall contain on its face all of the following statements:

(1) The Trust is obligated to pay the principal thereof or the interest thereon only from its revenues, receipts, or funds pledged or available for their payment.

(2) Neither the State nor any political subdivision thereof is obligated to pay the principal of or interest on such Clean Water Revenue Bonds.

(3) The faith and credit of the State, or any political subdivision thereof, is not pledged to the payment of the principal of or the interest on the Clean Water Revenue Bonds.

(4) The Trust has no taxing power other than collecting revenues, including the Clean Water Surcharge, delineated in this subchapter.

(5) The aggregate principal amount of Clean Water Revenue Bonds may not exceed the amount approved from time to time by Acts of the General Assembly. Such limitation shall exclude all the Clean Water Revenue Bonds, which have been refunded whenever the refunding shall be determined to result in a savings.

(6) The Trust may authorize the issuance of refunding bonds to refund, prior to their stated maturity, all or any portion of the outstanding Clean Water Revenue Bonds issued by the Trust and costs incidental thereto; provided, however, that the present value of the aggregate principal and interest payments of the refunding bonds must be less than the present value of the aggregate principal and interest payments on the Clean Water Revenue Bonds to be refunded.

(7) Refunding bonds may be issued in a principal amount which exceeds the principal amount of the respective Clean Water Revenue Bonds to be refunded, so long as the present value of the aggregate principal and interest payments of the refunding bonds are less than the present value of the aggregate principal and interest payments on such Clean Water Revenue Bonds to be refunded.

(h) Each issue of Clean Water Revenue Bonds shall be issued as special obligations thereof payable out of particular revenues, receipts, or funds and may be secured by one or more of the following as set forth in the authorizing resolution of the Trust Board:

(1) A pledge of revenues and other receipts to be derived from the payment of the interest on and principal of notes, bonds, or other obligations issued by State agencies, local government units, or private companies, and held in the Water Pollution Control Fund or the Drinking Water Fund. These notes, bonds, and obligations shall be designated and described in the Trust's resolution authorizing the issuance of the Bonds, and may only be pledged if such issuance complies with all EPA requirements applicable to the Water Pollution Control Fund and the Drinking Water Fund. Subject to the foregoing, DNREC and DHSS are authorized to assign and pledge such notes, bonds, or other obligations as security for any Clean Water Revenue Bonds.

(2) A pledge of payments made pursuant to loans to be made by the Trust from the proceeds of the Clean Water Revenue Bonds or from amounts held in the Clean Water Surcharge Account and those amounts held in the Hazardous Substance Cleanup Fund for the purposes of remediating hazardous substance or petroleum product releases that have, or may, adversely impact water quality.

(3) A pledge of the Clean Water Surcharge and all amounts held in the Clean Water Surcharge Account and those amounts held in the Hazardous Substance Cleanup Fund for purposes related to hazardous substances or petroleum product releases that have, or may, adversely impact water quality.

(4) A pledge of all moneys, funds, accounts, securities, and other funds held pursuant to a trust indenture securing the Clean Water Revenue Bonds, including the proceeds of the Clean Water Revenue Bonds.

(i) Bonds may be issued as separate issues or series, may finance any type of project as provided in the authorizing resolution, may be secured by part or all of the revenues or properties described in paragraphs (h)(1) through (4) of this section as provided in the authorizing resolution, and may be tax-exempt (either essential government or exempt facility private activity bonds) or taxable for federal income tax purposes.

§ 8078. Agreement not to abridge Trust powers; preventing diversion of funds through securitization; pledges of future revenues.

(a)(1) The State does pledge to, and covenants and agrees with, the holders of any Bonds issued under this subchapter all of the following:

a. The State will not limit or alter the rights or powers vested in the Trust to perform and fulfill the terms of any agreement made with the holders of the Bonds, nor will it limit or alter the imposition of the Clean Water Surcharge, as assessed under Chapter 66 of Title 30, as long as the Bonds, together with interest thereon, are fully met and discharged or provided for.

b. The State will not limit or alter the rights or powers vested in the Trust to administer its financial assets as may be convenient or necessary to produce sufficient revenues to meet all expenses of the Trust and to fulfill the terms of any agreement made with the holders of Bonds, including the obligations to pay the principal of and interest and premium on those Bonds, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holder.

c. The State will not limit or alter the rights and powers of any local government unit to pay and perform its obligations owed to the Trust in connection with loans received from the Trust until the Bonds, together with interest thereon, are fully met and discharged or provided for.

(2) Notwithstanding this subsection, the State is not limited in its ability to change the rates, terms, and conditions applicable to the personal income tax or to business or occupational license fees.

(b) Any pledge of revenues, receipts, moneys, funds, or other property or instruments made by the Trust shall be valid and binding from the time when the pledge is made. The revenues, receipts, moneys, funds, loans, or other property so pledged and thereafter received by the Trust or by the Water Pollution Control Fund, the Drinking Water Fund, the Clean Water Surcharge Account, or the Hazardous Substance Cleanup Fund shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Trust, DNREC, DHSS, or the Clean Water Fund,

irrespective of whether the parties have notice thereof. Neither the resolution, trust indenture, or any other instrument by which a pledge under this section is created need to be filed or recorded, except in the records of the Trust.

(c) Any loan held in the Water Pollution Control Fund or Drinking Water Fund, and any loan made by the Trust under the powers in this subchapter, shall be subject to the terms of this subchapter and, if applicable, shall be identified as security for any series of Bonds in the resolution of the Trust adopted in connection with the issuance of such Bonds.

(d) The State pledges to the owners of any Clean Water Revenue Bonds to not reduce the amount of the Clean Water Surcharge imposed pursuant to Chapter 66 of Title 30 and deposited to the Clean Water Surcharge Account under Section § 8075 of this title and to not expand any exemptions to or discounts from such Clean Water Surcharge so long as any Bonds secured by the Clean Water Surcharge are outstanding.

§ 8079. Personal liability on Clean Water Revenue Bonds.

The Secretaries of Finance, DNREC, DHSS, DDA, or any person executing Clean Water Revenue Bonds issued under this subchapter are not liable personally on such Bonds by reason of the issuance thereof.

§ 8080. Exemption from taxation.

All Bonds issued under this subchapter are declared to be issued by a body corporate and politic of the State and for an essential public and governmental purpose, and those Bonds, the interest on those Bonds, and the income from those Bonds and from the sale, exchange, or other transfer of those Bonds is exempt from taxation by the State or any political subdivision of the State.

§ 8081. Receipts; application.

Sums of money received, whether as proceeds from the sale of particular Bonds or as particular revenues or receipts of the Trust, are deemed to be funds of the Trust and are to be held and applied solely as provided in the resolution or trust indenture under which a particular series of Bonds is authorized or secured. Any officer with whom, or any bank or trust company with which, those sums of money are deposited as trustee thereof shall hold and apply the same for the purposes thereof, subject to any provision as the aforementioned acts and the resolution or trust indenture authorizing or securing such series of Bonds may provide.

§ 8082. Audit.

(a) At least once a year, the Trust, through DNREC, shall independently conduct a financial and compliance audit of the Clean Water Surcharge funds received and the projects undertaken.

(b) The auditor who conducts the audit required under subsection (a) of this section must be a certified public accountant, a public accountant licensed on or before December 31, 1970, or a governmental auditor who meets all of the following:

(1) The qualification standard contained in the federal Government Accountability Office's generally accepted government auditing standards.

(2) The independence standard as enumerated by the federal General Accounting Office and the American Institute of Certified Public Accountants.

(c) The audit conducted under subsection (a) of this section must contain an opinion on the financial statements of the Clean Water Surcharge funds received, the projects undertaken, and the internal controls of the Trust.

(d) The audit conducted under subsection (a) of this section must be completed within 1 year of the end of the State's fiscal year and submitted to the Trust within 30 days of completion.

(e) The audit conducted under subsection (a) of this section may be conducted in conjunction with audits conducted under the Drinking Water Fund and Water Pollution Control Fund programs.

§ 8083. Liberal construction of subchapter.

This subchapter, being necessary for the prosperity and welfare of the State and its citizens, is to be liberally construed to effectuate the purposes of this subchapter.

Section 2. Amend § 8003, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8003. Powers, duties and functions of the Secretary.

The Secretary may:

(12) ~~The Secretary is empowered to administer~~ Administer a state revolving loan program in accordance with the requirements set forth in Title VI of the Federal Water Pollution Control Act.

d. Coordination with Delaware Clean Water Trust:

The administration of the Delaware Water Pollution Control Revolving Fund by the Secretary as set forth in this section shall be subject to the provisions of subchapter III of this chapter. If there is a conflict or inconsistency between the provisions of this paragraph (12) and subchapter III of this chapter, the provisions of subchapter III of this chapter govern.

Section 3. Amend § 7903, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7903. Powers, duties and functions of the Secretary.

The Secretary may:

(14) ~~The Secretary is empowered to administer~~ Administer a state revolving loan program in accordance with requirements set forth in the Federal Safe Drinking Water Act [42 U.S.C. § 300f et seq.].

c. Administration of Fund subject to subchapter III, Chapter 80 of this title. - The administration of the Delaware Safe Drinking Water Revolving Fund shall be subject to the provisions of subchapter III, Chapter 80 of this title. If there is a conflict or inconsistency between the provisions of this paragraph (14) and subchapter III, Chapter 80 of this title, the provisions of subchapter III, Chapter 80 of this title govern.

Section 4. Amend § 8011, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) The Water Infrastructure Advisory Council (the "Council") shall serve in an advisory capacity in the development of programs related to water quality, water supply, drainage, stormwater management, and flood control to the Delaware Clean Water Trust and to the Secretaries of the Departments of Natural Resources and Environmental Control ("DNREC"), Agriculture ("DDA"), Health and Social Services ("DHSS") ("DHSS"), and Finance ("DOF") and collectively the ("Secretaries"), collectively the "Secretaries". The Council shall be composed of 13 members appointed by the Governor with the advice and consent of the Senate. The Governor shall appoint a chairperson. Members of the Council shall serve for up to 3 years excluding the Chairperson who shall serve at the pleasure of the Governor. Members may be reappointed for up to 3 terms. Members shall be appointed for staggered terms so that no more than 4 members' terms expire in any calendar year. There shall be at least 1 member who is a resident of New Castle County, 1 member who is a resident of Kent County, 1 member who is a resident of Sussex County, and 1 member who is a resident of the City of Wilmington. There shall also be 1 member representing each of the following organizations: the Delaware League of Local Governments, the Delaware Association of Counties, the Delaware Farm Bureau, the Delaware Nutrient Management Commission, the Delaware Association of Conservation Districts, an environmental organization, American Council of Engineering Companies of Delaware, and the National Association of Water Companies of Delaware. Members of the Council shall represent interest and possess expertise in the areas of wastewater, stormwater ~~and drinking water infrastructure, drinking water, and ecological systems.~~ Members may include, ~~but not be limited to~~ representatives from ~~local government, government, non-profit environmental organizations, organizations, boating, sporting, and fishing users of the State's water resources; public health, health; agriculture and agriculture; and~~ financial management. No more than 7 members shall be affiliated with any major political party.

(e) The Council's duties and responsibilities shall include the following:

~~(1) To evaluate, establish, recommend, and adopt a long term plan for the public funding of drinking water supply and wastewater facility infrastructure projects that shall cover a period of not less than 6 years. The plan shall be updated and prioritized on an annual basis and incorporated in DNREC's and DHSS's annual capital budget requests to the Governor. A copy of the adopted plan shall be submitted to members of the General Assembly on or before~~

November 15 of each year beginning in calendar year 1995; To develop, with the support of the Conservation Districts, DNREC, DHSS, DDA, and other appropriate public and private entities, a Clean Water Plan for approval by the Delaware Clean Water Trust. The Clean Water Plan shall include, at a minimum, all of the following elements:

a. The programs and activities of the agencies related to water supply, water quality, flood protection and floodplain management, and natural systems. This shall include the collection and evaluation of surface water and groundwater data; programs to protect and manage water resources; programs to provide remedies with respect to releases or imminent threats of release of a hazardous substance at or from facilities; programs for regional water resource implementation programs; programs for the construction, operation, and maintenance of major public works facilities to provide for flood control, water storage, and groundwater recharge augmentation; and related technical assistance to local governments and to government-owned and privately owned water utilities.

b. The water quality standards of this State.

c. Any water resource management plans developed by the Conservation Districts.

d. A Strategic Plan, to be updated and reported to the General Assembly annually, which shall be based upon policies and directives from the Council, as approved by the Trust, that shall meet the following minimum requirements:

1. Establishes water resources management priorities for a minimum of 5 years into the future, including water supply, water quality, flood protection and floodplain management, and natural systems.

2. Identifies the goals, strategies, success indicators, funding sources, deliverables, and milestones to accomplish the strategic priorities.

3. Includes as an Addendum a separate Annual Work Plan Report on the implementation of the Strategic Plan for the previous fiscal year, addressing success indicators, deliverables, and milestones.

4. Includes at least one publicly noticed meeting to allow public comment on the proposed Strategic Plan.

(6) The Council shall make funding recommendations to the Delaware Clean Water Trust and to the Secretaries of the DNREC and DHSS of for drinking water and wastewater infrastructure projects that are "ready to proceed."

~~(h) The Council shall provide guidance and policy advice to the Governor and Secretaries and assistance in the statewide effort to develop infrastructure programs related to water supply, drainage, stormwater management, and flood control. This guidance shall include State level direction the DNREC and DHSS to the Delaware Clean Water Trust; DNREC; DDA; Conservation Districts, described in § 3309 of Title 7; DHSS; and local agencies and operating units in the~~

development of standardized processes and procedures for identifying and prioritizing problems and development of watershed-based solutions. The Council also shall provide guidance to the State in improving the quality of customer service and reviewing annual localized work plans.

Section 5. Amend Part VI, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 66. Clean Water Surcharges.

§ 6601. Definitions.

As used in this chapter:

(1) “Allowable tax credits” means the amount of tax credits an individual is allowed under §§ 1111, 1112, 1113, 1114, and 1117 of this title and Chapters 18 and 20 of this title.

(2) “Gross income tax liability” means either of the following:

a. For resident individuals, an amount equal to the tax determined under § 1102 of this title reduced by the credit allowed under § 1110(b) of this title.

b. For non-resident individuals, an amount equal to the amount derived under § 1121 of this title.

(3) “Net income tax liability” means gross income tax liability less any allowable tax credits.

§ 6602. Clean Water Personal Income Tax Surcharge.

There shall be a Clean Water Personal Income Tax Surcharge in an amount equal to 10% of the net income tax liability of each resident and non-resident taxpayer, but in no event shall such surcharge exceed \$80 in the case of individuals filing a joint return or \$40 in the case of all other individuals.

§ 6603. Clean Water Business License Surcharge.

(a) In addition to the annual business and occupational license fees required under this title, there shall be levied a Clean Water Business License Surcharge according to the following schedule:

(1) For all annual occupational license fees required under § 2301(a) of this title, there shall be added a surcharge in the amount of \$45.

(2) For annual licenses issued pursuant to § 2301(b) of this title, there shall be added a surcharge in the amount of \$45.

(3) For annual licenses issued pursuant to § 2502(a) of this title, there shall be added a surcharge in the amount of \$45.

(4) For annual licenses issued pursuant to § 2702(a) and § 2703(b) of this title, there shall be added a surcharge in the amount of \$45.

(5) For annual licenses issued pursuant to § 2902(b), § 2903(b), § 2904(b), and § 2907(b) of this title, there shall be added a surcharge in the amount of \$45.

(6) For annual licenses issued pursuant to § 2905(a), § 2906(b), and § 2908(b), of this title, there shall be added a surcharge in the amount of \$45.

(7) For annual licenses issued pursuant to § 3005(a) of this title, there shall be added a surcharge in the amount of \$45.

(8) For annual licenses issued pursuant to § 4305(a) of this title, there shall be added a surcharge in the amount of \$45.

(b) All surcharge amounts enumerated in subsection (a) of this section shall be tripled for any person electing a 3-year license term under § 2102(b) of this title.

§ 6604. Surcharge proceeds.

(a) The Director of Revenue shall be entitled to retain an amount not to exceed 0.5% of all proceeds collected under this chapter for the costs of administering and collecting the surcharges provided for under this chapter.

(b) The Director of Revenue shall transfer all proceeds collected, net of the reimbursement permitted under § 6604(a), and refunds issued, if any, under this chapter to the Clean Water Surcharge Account established under § 8075 of Title 29. The Director shall endeavor to effectuate such transfers in a timely manner, but such transfers shall include only amounts arising from filings the Director deems to be completed filings, which require no additional processing, documentation, audit, or due process requirements resulting from a taxpayer's protest or appeal.

Section 6. Effective Date. Sections 1 through 4 of this Act take effect upon enactment. Section 5 of this Act is effective for tax periods beginning after December 31, 2018.

Section 7. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect any other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

SYNOPSIS

This Act establishes a framework for assessing needs, planning and implementing projects, and providing a funding source to enhance and accelerate Delaware's efforts in cleaning up its contaminated water resources, ensuring that all our citizens have safe drinking water, reducing flooding, and protecting jobs in agriculture and tourism. Most of the State's waters do not meet water quality standards to support their designated uses, such as for drinking, swimming or supporting aquatic life.

This Act increases the level and reliability of funding available to restore Delaware's streams, rivers, bays, and groundwater through construction of much needed wastewater, drinking water, and drainage projects and increased use of agricultural best practices. Over the next 5 years, more than \$500 million in water and wastewater system upgrades are needed statewide, including systems for underserved communities and numerous at-risk systems currently operated by homeowner's associations in Sussex County. More than \$150 million in stormwater upgrades are needed throughout the State along with more than \$75 million for removing toxic pollutants from various waterways. In addition, demand for agriculture cost-share funds used to reduce pollution from nutrients far surpasses available resources.

This Act creates a Clean Water Trust, supported by dedicating several existing revenue sources and a proposed new dedicated Clean Water Surcharge that will be levied on personal income tax payments and business license fees. The surcharge will be capped at \$40 for individual tax filers, \$80 for individuals filing a joint return, and \$45 for business licenses. The Clean Water Surcharge will be used for capital projects, not to grow government; the allowance for administrative expenses is capped at 10% after the first 2 years and companion legislation creating a constitutionally protected "lock box" is being introduced to provide permanent protection against the fee being diverted for operating expenses. Total revenues from the surcharge are estimated to be approximately \$20 million annually. The dedicated Clean Water Surcharge could leverage as much as \$50 million in total financing annually for clean water investments and support more than 800 direct and indirect jobs per year.

The Trust will be managed by a 5-member Board comprised of the Secretary of the Department of Natural Resources and Environmental Control, the Secretary of Finance, the Secretary of Agriculture, the Secretary of Health and Social Services, and an appointed member with financial expertise. The Trust is authorized to issue Clean Water Revenue Bonds for projects approved by the General Assembly and will administer the funds through the already existing Water Infrastructure Advisory Council with the goal of assisting municipal and county governments and others in implementing more affordable water quality projects through low-interest loans, grants, and public-private partnerships. The Trust and the Council are required to develop a Clean Water Plan with an annually updated 5-year Strategic Plan. The Trust is required to undergo an audit each year and to report annually to the General Assembly on its activities and its progress toward meeting the goals of the Clean Water Plan.