

CHAPTER 48
FORMERLY
SENATE BILL NO. 65

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE TO RENAME THE CLEAN WATER ADVISORY COUNCIL TO THE WATER INFRASTRUCTURE ADVISORY COUNCIL AND TO RECONFIGURE THE MEMBERSHIP OF THE COUNCIL AND MODIFY ITS RESPONSIBILITIES TO INCLUDE THE INTERESTS OF THE DRINKING WATER REVOLVING LOAN FUND AS WELL AS THE DELAWARE WATER POLLUTION REVOLVING LOAN FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 8011, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) There is hereby established a ~~Clean~~ Water Infrastructure Advisory Council.

(b) Definition. -- "Wastewater facility" shall mean any property, easement, equipment, pipe, pump, plant or appurtenance used in any way to collect, transport, store, handle, treat or dispose of wastewater. "Surface water management" shall mean a strategy for the integration of drainage, flood control and stormwater management through habitat protection, restoration, and other green infrastructure. ~~"Drinking water supply or water supply" facilities shall mean any property, equipment, pipe or other conveyance, pump, tower, tank or other storage device, well, filter and any other appurtenances used to collect, treat, store, and distribute the best quality water available to address strategies to correct, present or prevent future violations of health-based drinking water standards.~~

(c) The Water Infrastructure Advisory Council (the "Council") shall serve in an advisory capacity to ~~the Governor,~~ the Secretaries of the Departments of Natural Resources and Environmental Control ("DNREC"), Health and Social Services ("DHSS") and Finance ("DOF") and collectively the ("Secretaries"). ~~and the Directors of the Divisions of Water and Watershed Stewardship.~~ The Advisory Council shall be composed of 12~~3~~ members appointed by the Governor with the advice and consent of the Senate. The Governor shall ~~designate~~ appoint a chairperson. Members of the Council shall serve for up to 3 years excluding the Chairperson who shall serve an unlimited term at the pleasure of the Governor. 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. ~~The Council shall include at least 1 representative of each of the following organizations: the Delaware Association of Conservation Districts, the Delaware League of Local Governments, the Delaware Association of Counties, the American Council of Engineering Companies, the Delaware Institute of Planning and Design, and a not for profit environmental organization.~~ Members of the Council shall represent interest and possess expertise in the areas of wastewater, stormwater and drinking water infrastructure. Members may include, but not be limited to representatives from local government, non-profit environmental organizations, public health, agriculture and financial management. No more than 7 members shall be affiliated with any major political party. Those members registered in either major political party shall not exceed the other major political party by more than 1. At least 4 members shall have technical or financial expertise on wastewater facility and surface water managements issues. The term of each member, excluding the chairperson who serves at the pleasure of the Governor, shall be for 3 years.

(d) Members of the Council shall serve without compensation except that they shall be reimbursed for reasonable and necessary expenses incidental to their duties as members of the Council.

~~(e) Any appointment, pursuant to provisions hereof, to replace a member whose position becomes vacant prior to the expiration of the term, shall be filled only for the remainder of that unexpired term.~~

~~(f)~~ (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 capital 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 ~~the Department's~~ 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;

(2) To establish standards and procedures for persons to ~~obtain funding~~ submit requests for funding the construction, repair, renovation or expansion of water supply and wastewater facilities and to recommend specific grants or loans, or both, in accordance with such standards and procedures using funds authorized for such purposes by act of the General Assembly or funds approved by the Delaware State Clearinghouse Committee. The Council shall develop and recommend ~~to the General Assembly~~ projects for the planning, construction, repair, renovation or expansion of water supply and wastewater facilities to be funded in whole or in part by the Delaware Water Pollution Control Revolving Fund, the Drinking Water State Revolving Loan Fund (the "Funds") and any other ~~related special revolving loan fund~~ so source of funding authorized by the General Assembly;

(3) To develop and periodically update a non-binding comprehensive, statewide water supply and wastewater facilities assessment to be presented in 3 sections, 1 for each county. The Council may retain the services of necessary professionals and may enter into agreements in order to prepare such an assessment. Each of the counties may, at its option, designate a county agency responsible for preparing the assessment for such county, provided however, that the assessments shall be prepared in a uniform manner pursuant to criteria established by the Council. In the absence of such a designation, ~~the Department~~ DNREC and DHSS shall be the lead agencyies in coordinating preparation of the assessment. The assessment shall include, but not be limited to, a description of the status of existing water supply and wastewater facilities, the current usage thereof, the adequacy of existing water supply and wastewater facilities, projected long range requirements for ~~wastewater~~ such facilities, the compatibility of existing land use plans with existing and long range requirements of water supply and wastewater facilities, and recommendations for improvements to existing ~~wastewater~~ facilities;

(4) To recommend ~~long term strategies for financing the construction, repair, renovation or expansion~~ of affordability standards for water supply and wastewater facilities infrastructure projects. Such ~~strategies~~ recommendations shall reflect the goals of establishing fair rates that equitably distribute the costs of water supply and wastewater facilities using public funds based upon usage and relying upon private firms to provide ~~wastewater~~ services if it is economical and in the public interest to do so; and

~~(5) To adopt standards and procedures for the audit of program expenditures, the performance of program evaluations to ensure conformance to the law, and the monitoring of the progress of wastewater facility projects funded in whole or in part by the State.~~ The Council shall review; and recommend and approve the payment of administrative and operating expenses of the Council to ~~the Department~~ DNREC and DHSS.

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

~~(g)~~ (f) The Council shall adopt all motions and approve the 6 year water supply and wastewater infrastructure ~~capital~~ plans, the assessment, and recommendations for all programs, loans or grants only by a majority vote of the entire membership of the Council. All voting shall be done in person and at regular or special meetings of the Council. The Council shall conduct a public meeting in each county prior to annual adoption of the 6 year water supply and wastewater infrastructure ~~capital~~ plan. The Council is subject to the applicable provisions of the Administrative Procedures Act.

~~(h)~~ (g) The Council shall work in concert with ~~the Department~~ DNREC, DHSS, the Department of Transportation, the Delaware Economic Development Office, the Department of Agriculture, Conservation Districts, the Delaware Geological Survey, the Public Service Commission, the ~~Department of Health and Social Service, the Department of Finance~~ DOF, the Cabinet Committee on State Planning Issues and any other appropriate department, agency or committee focusing on statewide planning issues and each shall provide reasonable staff time and resources as may be required by the Council to fulfill its duties and responsibilities. The Council shall also work in concert with the Water Resources Agency of New Castle County and any other appropriate agency designated by the counties. ~~The Department~~ DNREC and DHSS shall be the lead agencyies in coordinating support for the Council.

~~(i)~~ (h) The Council shall provide guidance and policy advice to the Governor and Secretaryies and assistance in the statewide effort to develop ~~funding options for capital and maintenance~~ infrastructure programs

related to water supply, drainage, stormwater management and flood control. This guidance shall include State level direction to ~~the Department~~ DNREC and 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.

(j) (i) The Council shall provide assistance in defining areas of responsibility between the State and local agencies, and coordinating implementation and operations.

(k) (j) The Council shall provide assistance to the State in the establishment of a central response unit coordinated by ~~the Department~~ DNREC to handle public calls relating to drainage, stormwater and flood control.

(l) (k) The Council shall provide assistance in the statewide effort for the development of sustainable program funding options.

(m) (l) The Council shall provide assistance in the development and evaluation of criteria for watershed-based plans for surface water management. The Council shall also provide assistance developing the priority needs for watershed plans. The Council shall assist in developing a strategy for long term planning for future growth as it relates to surface water management. This strategy may include options for private-public partnerships for infrastructure improvement and regional solutions.

Section 2. Amend § 6102A(g), Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(g) Water and wastewater infrastructure. --

(1) To ensure that Delaware has the water and wastewater treatment infrastructure necessary to preserve its environment, provide its citizens with clean drinking and recreational waters and permit economic growth, funds appropriated from the Twenty-First Century Fund shall be expended to improve the State's water and wastewater infrastructure.

(2) A special fund appropriation account is hereby created in the Department of Natural Resources and Environmental Control, Division of Water to be known as the "Infrastructure Planning Account." The Planning Account shall be dedicated to the development of comprehensive municipal and county plans. Such plans shall include municipalities and counties' needs for water facilities ~~under the direction of the Cabinet Committee on State Planning Issues~~ and for wastewater facilities under the direction of the ~~Clean~~ Water Infrastructure Advisory Council. Grants from the Planning Account shall be issued pursuant to guidelines and procedures developed by the Cabinet Committee on State Planning Issues, which guidelines and procedures shall give preference to applicants which intend to develop comprehensive municipal plans and to coordinate such plans with their counties' plan and state development policies. To be eligible for funding, a municipality or county seeking such grant must commit to provide a 50 percent matching contribution. Upon request from the Secretary of Natural Resources and Environmental Control, subsequent to the approval of a project in accordance with this subsection, funds of up to a total of \$2 million shall be transferred to the Account for expenditures sufficient to fund the state share of such project.

(3) A special fund appropriation account is hereby created in the Department of Natural Resources and Environmental Control, Division of Water, to be known as the "Wastewater Management Account." The Management Account shall be expended to create a state revolving loan/grant management account to enhance and supplement public and private wastewater financing. The ~~Clean~~ Water Infrastructure Advisory Council shall set affordability standards for wastewater projects under the direction of the Secretary of Natural Resources and Environmental Control for the use of these moneys and establish an appropriate review and approval process. Upon the request of the Secretary of Natural Resources and Environmental Control, the Secretary of Health and Social Services and the Secretary of Finance subsequent to approval of a wastewater project in accordance with this subsection, funds shall be transferred to the Account for expenditures sufficient to fund the state share of such project. The Secretary of Natural Resources and Environmental Control is authorized to expend funds appropriated from the Twenty-First Century Fund for Wastewater Infrastructure from the Management Account.

(4) A special fund is created in the Department of Health and Social Services, Division of Public Health, to be known as the "Drinking Water Management Account." The Management Account shall be expended to create a state revolving loan/grant management account to enhance and supplement public and private water financing. The ~~Cabinet Committee on State Planning Issues~~ Water Infrastructure Advisory Council shall set affordability standards for drinking water projects ~~for the use of these moneys and establish an appropriate review and approval process under the direction of the Secretaries.~~ ~~The Department of Health and Social Services shall make recommendations for the approval of projects.~~ The ~~Cabinet Committee on State Planning Issues~~ Water Infrastructure Advisory Council shall make recommendations and only approve drinking water projects for funding where private sector alternatives have been explored and it is both economical, and in the public interest to do so and meets a public health need. Upon the request of the Secretary of Health and Social Services, subsequent to approval of a water project in accordance with this subsection, funds shall be transferred to the Account for expenditures sufficient to fund the state share of such project. The Secretary of Health and Social Services is authorized to expend funds appropriated from the state revolving fund for water infrastructure from the Management Account.

Section 3. Amend § 7903, 15(a) and 15(b) of Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(15) The Secretary is empowered to administer a state revolving loan program in accordance with requirements set forth in the Federal Safe Drinking Water Act.

a. Delaware Safe Drinking Water Revolving Fund. -- There is hereby established a "Delaware Safe Drinking Water Revolving Fund" as contemplated by and to be administered pursuant to the Federal Safe Drinking Water Act. All federal capitalization grants received pursuant to the Federal Safe Drinking Water Act, all required matching state funds, and all loan repayments received by the State pursuant to any loan agreement made under the Delaware Safe Drinking Water Revolving Fund shall be credited to the Delaware Safe Drinking Water Revolving Fund. In addition, all proceeds of obligations issued by the State and supported by a pledge or other interest in the funds in the Delaware Safe Drinking Water Revolving Fund shall be held in or for such fund. The Delaware Safe Drinking Water Revolving Fund shall be deemed to be a special fund and shall be approved by the Governor for the following purposes:

1. To accept and retain the funds and revenues specified herein;
2. To make loans to eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;
3. To buy or refinance debt obligations of eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;
4. To guarantee or purchase insurance for obligations of eligible persons for qualifying purposes under the Safe Drinking Water Act;
5. To be a source of revenue or security for the payment of principal and interest on revenue bonds of the State if the proceeds of the sale of such bonds will be deposited in the Delaware Safe Drinking Water Revolving Fund;
6. To earn interest on amounts on deposit in such fund;
7. To establish all necessary interest bearing accounts for deposit of loan repayments;
8. To finance the reasonable costs incurred by the State in the administration of the Delaware Safe Drinking Water Revolving Fund as permitted under the Federal Safe Drinking Water Act; and
9. To accomplish any other allowable purpose under the Federal Safe Drinking Water Act.

The Department is designated as the administering agency of the Delaware Safe Drinking Water Revolving Fund and shall have such power necessary to administer such fund including, but not limited to, the power to enter into capitalization grant agreements with the Environmental Protection Agency, the power to accept capitalization grant awards made under the Federal Safe Drinking Water Act and the power to make loans ~~recommend the approval of loans from the fund to the Cabinet Committee on State Planning Issues~~ in accordance with the requirements of the Federal Safe Drinking Water Act, and Chapter 61 of this title, or any successor statute. The Department shall coordinate implementation of the Delaware Safe Drinking Water Revolving Fund with the

Delaware Department of Natural Resources and Environmental Control which shall be responsible for financial administration of the loan portion of the Drinking Water State Revolving Fund. The Department shall take all actions necessary to secure for the State the benefits of the Federal Safe Drinking Water Act.

b. Standards and procedures. -- Before making any loan from the Delaware Safe Drinking Water Revolving Fund, the Department shall specify:

1. Standards for the eligibility of borrowers and the type of projects to be financed with loans;
2. Procedures for the preparation, review and approval of the "project priority" list, which must contain those projects for which financial assistance is sought;
3. Procedures for submitting applications for financial assistance and procedures for Department approval of such applications;
4. Procedures for completing an environmental review of projects otherwise qualifying under this paragraph which shall be sufficiently consistent with the provisions for environmental review established under applicable state and federal requirements;
5. Conditions for financial assistance; and
6. Other relevant criteria, standards and procedures.

Standards and procedures specified under this paragraph shall provide for a final ~~approval~~ recommendations by the ~~Cabinet Committee on State Planning Issues~~ Water Infrastructure Advisory Council of any loan from the Delaware Safe Drinking Water Revolving Fund and the "project priority" list as required by Chapter 61 of this title, or any successor statute.

Section 4. This amendment shall be effective immediately.

Approved June 19, 2013