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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 200
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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:

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 IV. Clean Water for Delaware Act.

§ 8080. Short title.

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

§ 8081. 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) Delaware’s continued economic vitality is dependent upon: maintaining and improving the State’s water and wastewater systems; and protecting and enhancing the State’s water resources and natural infrastructure as the foundation for a healthy population and environment to sustain a high quality of life for residents, healthy habitats, as well as an attraction for tourism, employers and workers.

(3) Many Delaware homes, farms, agricultural lands, and businesses are at risk from flooding and drainage hazards, which have environmental, public safety, health, and economic impacts, and some Delawareans lack access to potable drinking water or basic wastewater disposal in their homes.

(4) Delaware’s list of impaired waters includes 377 bodies of water that suffer from excess nutrients, low dissolved oxygen, toxins and bacteria that negatively impact human and aquatic life.

(5) It is important that priorities for clean water projects in this State be given to projects that utilize green infrastructure and enhancement of natural systems to provide ecological benefits that improve water quality, demonstrate a high ratio of nutrient or pollution reduction to the amount of funding, and improve of community resilience to extreme weather, sea level rise, and other climate impacts.

(6) Existing federal and State funding resources alone are inadequate to meeting the State's current and future demand for clean water projects.

(7) 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 mechanisms to assist planning and financing of such projects at the lowest reasonable costs.

(b) Based on its findings in subsection (a) of this section, the General Assembly determines that it is in the public interest to designate a Delaware Clean Water Trust account to ensure the greatest environmental return on investment through the management and coordination of financial resources available to the State for drinking water, wastewater, drainage, stormwater, and other eligible clean water projects to be funded from the following sources:

(1) Appropriations, including supplemental funds in the bond bill, intended to satisfy all of the following purposes:

a. § 7903(14) of this title related to the Delaware Safe Drinking Water Revolving Fund.

b. § 8003(12) of this title related to the Delaware Water Pollution Control Revolving Fund.

c. § 3923 of Title 7 related to resource conservation and development projects undertaken by the County Conservation Districts in Kent, New Castle and Sussex Counties.

(2) Moneys received as repayments of principal and interest on loans, interest received on invested funds, and other funding made available for the programs and purposes in paragraph (1) of this subsection.

§ 8082. Clean Water Trust Oversight

(a) To ensure coordination of the management of resources available for Clean Water Trust projects and other programs that impact the quality of the State's water resources, the Clean Water Trust Oversight Committee ("Committee") is established and shall serve in an advisory capacity to the Governor and the General Assembly.

(b) The Committee shall be comprised of 7 members to include all of the following:

(1) The Secretary of the Department of Natural Resources who shall serve as its Chair.

(2) The Secretary of the Department of Health and Social Services.

(3) The Secretary of the Department of Finance.

(4) The Secretary of the Department of Agriculture.

(5) The Secretary of the Department of Transportation.

(6) The Chair and Co-Chair of the Joint Capital Improvement Committee of the Delaware General Assembly.

(c) Members who serve by virtue of their position may designate a designee to serve on the Committee.

(d) The Committee shall be responsible for oversight of the Clean Water Trust account and shall produce and publish an Annual Report and Strategic Plan for Clean Water that shall include all of the following:

(1) An annual report, titled "The Mulrooney Report", accounting for the sources, benefits, and uses of the Clean Water Trust account and other water quality programs funded with State or federal resources including wastewater, stormwater and drinking water infrastructure and programs for drainage, beach preservation, waterway management, cover crop, the conservation reserve enhancement program, tax ditches and conservation cost-sharing that shall include a list of all funded projects.

(2) An annually updated strategic plan that shall include all of the following:

a. Multi-year water quality goals and progress toward meeting those goals.

b. Challenges facing the achievement of such water quality goals.

c. A prioritized list of proposed projects to attain such goals, including increased accessibility to low-income and traditionally underserved communities.

d. Drinking water testing priorities of the State.

e. Recommendations on minimum funding levels for wastewater and drinking water projects benefitting low-income and traditionally underserved communities through low interest loans and affordability grants.

f. Recommendations on strategies that support low-income consumer affordability.

g. An annual work plan report on the implementation of the Strategic Plan for the previous fiscal year addressing success indicators, deliverables and milestones.

(e) Prior to the publication of the initial Annual Report and Strategic Plan, the Committee shall hold at least 3 publicly noticed meetings in Dover to seek input and allow public comment. Thereafter, the Committee shall hold at least 1 publicly noticed meeting prior to publication of the Annual Report and annually updated Strategic Plan. All meetings under this subsection shall comply with § 10004 of this title.

(f) The Water Infrastructure Advisory Council and the Conservation Districts shall provide outside, technical assistance and advice to the Committee.

Section 2. 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 to the Secretaries of the Departments of Natural Resources and Environmental Control ("DNREC"), Agriculture ("DDA"), Health and Social Services ("DHSS"), Transportation ("DelDOT", and Finance ("DOF") and collectively the ("Secretaries"). The Council shall be composed of ~~13~~ 16 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 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. Members of the Council shall represent interest and possess expertise in the areas of wastewater, stormwater, agricultural water use, and drinking water infrastructure. Members may include, but not be limited to representatives from local government, public health, agriculture, and financial management, and 3 members representing non-profit environmental organizations, 1 of whom may represent an environmental justice organization. No more than 7 9 members shall be affiliated with any 1 major political party. The Governor shall appoint a member representing the water utilities, the president of 1 of the conservation districts, and a member of the Farm Bureau, all of whom shall serve as non-voting members of the Council, and at the pleasure of the Governor. The non-voting members may provide annual recommendations to the Council relating to stormwater, drainage, flood protection, resource and conservation development projects, agricultural and conservation cost share, cover crops, conservation reserve enhancement, and tax ditches.

Section 3. Amend § 8011(e), Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(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~~. Additionally, the Council shall submit to the Clean Water Trust Fund Oversight Committee annual advisory recommendations related to wastewater, stormwater and drinking water infrastructure addressing those elements required for inclusion in the Strategic Plan for Clean Water as required in §8082(a) of this title on or before September 15 of each year.

(f) The Council shall adopt all motions and approve the 6-year water supply and wastewater infrastructure plan, the assessment, and recommendations for loans or grants only by a majority vote of the entire voting 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 plan. The Council is subject to the applicable provisions of the Administrative Procedures Act [Chapter 101 of this title].