

**Clean Water and Flood Abatement Task Force**

**Thursday, April 20<sup>th</sup>, 2016  
11:00 a.m. – 1:00 p.m.  
Tidewater Utilities, Inc. – Building 1110**

**Meeting Attendance**

**Task Force Members:**

**Present:**

Senator Bryan Townsend  
Representative Ronald Gray  
Representative Michael Mulrooney  
Senator Bryant Richardson  
Dian Taylor  
Jen Adkins  
Holly Porter  
Jeffrey Bross  
Roy Miller  
Brenna Goggin  
Lew Killmer  
Joseph Corrado  
Gina Jennings  
Paul Morrill  
Gerard Esposito  
Patty Cannon  
George Haggerty

**E-mail:**

[Bryan.Townsend@state.de.us](mailto:Bryan.Townsend@state.de.us)  
[Ronald.Gray@state.de.us](mailto:Ronald.Gray@state.de.us)  
[Michael.Mulrooney@state.de.us](mailto:Michael.Mulrooney@state.de.us)  
[Bryant.Richardson@state.de.us](mailto:Bryant.Richardson@state.de.us)  
[dtaylor@artesianwater.com](mailto:dtaylor@artesianwater.com)  
[jadkins@delawareestuary.org](mailto:jadkins@delawareestuary.org)  
[Holly.Porter@state.de.us](mailto:Holly.Porter@state.de.us)  
[Jeff@duffnet.com](mailto:Jeff@duffnet.com)  
[policy@inlandbays.org](mailto:policy@inlandbays.org)  
[brenna@delnature.org](mailto:brenna@delnature.org)  
[lew.killmer@mac.com](mailto:lew.killmer@mac.com)  
[JCORRADO@CORRADO.COM](mailto:JCORRADO@CORRADO.COM)  
[gjennings@sussexcountyde.gov](mailto:gjennings@sussexcountyde.gov)  
[pmorrill@committeeof100.com](mailto:pmorrill@committeeof100.com)  
[jesposito@tuiwater.com](mailto:jesposito@tuiwater.com)  
[Patricia.Cannon@state.de.us](mailto:Patricia.Cannon@state.de.us)  
[GOHaggerty@nccde.org](mailto:GOHaggerty@nccde.org)

**Absent:**

Secretary Jennifer Cohan  
Sam Lathem  
William Lucks  
Thomas Unruh  
Bruce Jones  
Christine Mason  
Secretary David Small  
Howard Morrison  
Andrew Jakubowitch  
Thom May  
Gerald Kauffman  
Michael Riemann  
Robert Baldwin

[Jennifer.Cohan@state.de.us](mailto:Jennifer.Cohan@state.de.us)  
[lathem.de.aflcio@comcast.net](mailto:lathem.de.aflcio@comcast.net)  
[wluks@wluks.com](mailto:wluks@wluks.com)  
[townsendunruh@aol.com](mailto:townsendunruh@aol.com)  
[bjones@pennoni.com](mailto:bjones@pennoni.com)  
[christine@sussexshoreswater.com](mailto:christine@sussexshoreswater.com)  
[David.Small@state.de.us](mailto:David.Small@state.de.us)  
[lmorrison@countygrp.com](mailto:lmorrison@countygrp.com)  
[Andrew.jakubowitch@co.kent.de.us](mailto:Andrew.jakubowitch@co.kent.de.us)  
[Thom.May@state.de.us](mailto:Thom.May@state.de.us)  
[jerryk@udel.edu](mailto:jerryk@udel.edu)  
[mriemann@beckermorgan.com](mailto:mriemann@beckermorgan.com)  
[robert.baldwin@dacdn.net](mailto:robert.baldwin@dacdn.net)

**Staff:**

Michelle Zdeb  
Caitlyn Gordon

[Michelle.Zdeb@state.de.us](mailto:Michelle.Zdeb@state.de.us)  
[Caitlyn.Gordon@state.de.us](mailto:Caitlyn.Gordon@state.de.us)

Minutes prepared by Caitlyn Gordon, Legislative Aide

Minutes reviewed by Michelle Zdeb, Legislative Assistant & Task Force Staffer

**Attendees:**

Charles S. Postles  
 David Spacht  
 Marjorie Crofts  
 Virgil Holmes  
 Pamela Bakerian  
 Martha Narvaez  
 Douglas Hokuf  
 Maria Evans  
 Kristen Higgins  
 Ray Ebaugh  
 Lisa Pertzoff  
 James Dechene  
 Terry Deputy  
 Ed Hallock

**Organization:**

N/A  
 AWC  
 DNREC  
 DNREC  
 DE Farm Bureau  
 UD WRA  
 NCC  
 DAR  
 Tidewater  
 Tidewater  
 LWVDE  
 DE State Chamber of Commerce  
 DNREC  
 DPH/ODW

The Task Force meeting was brought to order at 11:20 a.m.

**Consideration of Meeting Minutes**

Senator Bryan Townsend, Co-Chair, welcomed Task Force members to the meeting and thanked everyone for coming. Next, the Senator reviewed the materials and topics that the Task Force would discuss. The first item on the Agenda was to consider the Meeting Minutes from February 22, 2016; March 13, 2016; and March 28, 2016.

Next, Senator Townsend reviewed an edit that Mr. Gerard Esposito found on page 11 of the March 28, 2016 Meeting Minutes. The Minutes had reflected Mr. Robert Baldwin referencing the “United States Digital Service.” Mr. Esposito noted that the Minutes should state the “United States Geological Survey” instead. Senator Townsend noted that this was the only edit that he received. He then asked if there were any more proposed changes from Task Force members. As there were none, he asked for motions to approve the February 22, 2016; March 13, 2016; and March 28, 2016 Meeting Minutes as amended.

Representative Michael Mulrooney, Co-Chair, motioned to approve all three sets of Meeting Minutes.

Lew Killmer, Delaware League of Local Governments, seconded this motion.

The Meeting Minutes from February 22, 2016; March 13, 2016; and March 28, 2016 were approved unanimously.

Senator Townsend asked Mr. Paul Morrill to update the group on his findings.

Paul Morrill, Committee of 100, noted that he checked to see if there was an existing statewide fee that they could attach the Clean Water Fee to. He continued by saying that it seemed feasible to consider a three-part surcharge process that the Task Force could “piggy back” onto.

Using the personal income tax, the State could charge each individual a Clean Water Surcharge Fee on tax returns. Mr. Morrill continued by saying that the personal income tax might be better because a large amount of Delawareans do not file personal income taxes. If they do not file, they do not have to pay the fee. Only individuals who make enough money to file a personal income tax will have to pay the additional Clean Water Fee.

Mr. Morrill moved onto the second piece of this plan, which relates to small businesses. He commented that the Department of Finance is responsible for issuing business licenses in Delaware and there are roughly 80,000 business licenses issued. However, some companies have multiple business licenses. With that being said, Mr. Morrill lowered the estimate to about 50,000 business license holders that would be charged the Clean Water Fee, to eliminate the possibility of charging the same company twice. Additionally, the current fee for a business license is \$75 annually, and it has not been raised in 25 years. He suggested they could add a \$45 Small Business Clean Water Fee to the business license fee.

The third piece of this plan is for larger companies, for which the Task Force could incorporate the gross receipts tax. This tax is broken down into different industries and sectors. There is a threshold of income under which a business does not have to file, so the small businesses would be exempted. However, the threshold varies between industries. He continued by saying that they discussed making this fee \$150-180. Their goal with this plan was to avoid charging a large Clean Water Fee to a modest sized business. After the discussion that Mr. Morrill had with the Division of Revenue and the Department of Finance, there did not seem to be any technical reasons why this plan was not feasible.

Senator Townsend asked if the administrative costs of Mr. Morrill’s plan were miniscule relative to the other options.

Mr. Morrill replied that they were asking for 1 percent or less. However, the way the plan is drafted now still makes DNREC (Department of Natural Resources and Environmental Control) responsible for collecting those fees. But, they have the ability to contract with public agents who use private companies, like the Department of Finance.

Maria Evans, on behalf of William Lucks and the Delaware Association of Realtors, stated that if the Task Force’s proposed fee does not run through the property tax, they will most likely support it.

Patty Cannon, Delaware Economic Development Office, stated that her preference would be to increase the business license fee, but not touch the gross receipts tax, which is considered by some as Delaware’s “hidden sales tax.”

Minutes prepared by Caitlyn Gordon, Legislative Aide

Minutes reviewed by Michelle Zdeb, Legislative Assistant & Task Force Staffer

Senator Townsend asked in terms of business licenses and tiers of businesses licenses, if the State had the ability to charge one tier of a business license more than the tier beneath them.

Ms. Cannon replied that they could charge by classification. When businesses apply for a business license, they either are classified as a wholesaler, retailer, etc. She continued by saying that this is an alternative to using the gross receipts tax to charge companies different fees based off of the classification they file under.

Mr. Morrill stated that gross receipts are based off of income. If a company is below the threshold of filing a gross receipts tax, they will not be charged this special fee. There are a small percentage of businesses that have to file for a gross receipts tax and for a company that is big enough to file for gross receipts, an additional \$180 should not be a lot for them.

Brenna Goggin, Delaware Nature Society, commented that rather than referencing the gross receipts tax in the legislation, they could put the definition of who has to file the gross receipts tax.

Senator Townsend asked what people's reactions were to the idea of putting a definition in the legislation that cross references to the gross receipts tax thresholds. If a business falls under that definition, they will pay the higher Clean Water Fee.

Ms. Cannon noted that she would be much more comfortable if the State added a line that says there is a Clean Water Fee, without changing the Gross Receipts Code.

Mr. Morrill replied that is what they would be doing. He also stated that there is a potential to filter the business licenses by addresses so as not to charge a person who has multiple business licenses more than once. However, considering the size of a company that actually files gross receipts taxes, there shouldn't be an issue of paying 2 fees, one of \$45 and another of \$180.

Senator Townsend asked Task Force members if anyone feels strongly against the proposal.

James Dechene, member of the public and representing the Delaware State Chamber of Commerce, doesn't have the Chamber's stance on this proposal currently, but will go back to them and get their feedback.

Representative Ronald Gray stated that almost 60 cents on every dollar that he makes goes to taxes. He continued by saying that the State has to stop adding taxes onto what people already pay.

Senator Bryant Richardson stated that he echoes Representative Gray's comments. He continued by saying that he knows the State needs clean water, and Delaware is already investing in clean water. Senator Richardson noted that the State is spending a lot of money in other areas where the money isn't changing anything. He noted that the State can find the money to clean

Delaware's water somewhere else, without taxing Delawareans more. Senator Richardson thinks the Task Force should use part of the State's budget to fund clean water.

Joseph Corrado, Delaware Contractors Association, stated that on behalf of the Delaware Contractors Association, they would support the Task Force's currently proposed approach. He explained that they support it because it will drive projects, jobs, and business up.

Mr. Killmer stated that he supports Mr. Morrill's proposal. He continued by saying that the first reason why he supports it is because administrative costs are the lowest with this proposal. Another reason is because it does not place a burden on those who do not make enough to file personal income taxes. Lastly, the fee has gone down in this proposal from \$45 to \$35, to make it more affordable. He continued by saying that the positives that stem from this proposal address all of the problems that came from other proposals.

Ms. Cannon asked Representative Gray and Senator Richardson if they were going to take the legislation to Legislative Hall the same day as this meeting, if they would feel more comfortable having three proposals as opposed to sending it in with only one option.

Senator Richardson answered by saying that there are \$22 million in the State's budget that could be taken to fund clean water projects.

Roy Miller, Delaware Center for the Inland Bays, stated that, speaking as a tax payer, he just sent in his tax forms the other day. He continued by saying that adding \$35 to his taxes wouldn't break him. Additionally, if he knew that \$35 would provide a better environment for his children and grandchildren, he would gladly pay. He closed his comments by saying that he supports this proposal that has been put in front of the Task Force.

Mr. Cross commented that without a dedicated source of revenue, the State loses its bonding leverage and the General Assembly would then not be able to create bondable funding for clean water. He continued by saying that within the last eight years there were at least 2 or 3 of those years where WIAC couldn't even get the General Assembly to give them a match so they could get \$16 million more in federal money. Therefore, WIAC had to reach into their non-fed admin account to fund the match.

Representative Gray stated that one additional concern of his is that the additional \$35 will go up over time.

Senator Townsend commented that some of the best conversations that he has had over his years in office is when constituents call saying that they oppose the gas tax. But when he takes 20 minutes to explain the policy drivers of the gas tax, and why it was the best solution to some of Delaware's needs, they leave the conversation understanding and open to a reasonable increase in the gas tax. They always say "I actually never thought about it that way, and now I understand why you guys are looking at that."

Minutes prepared by Caitlyn Gordon, Legislative Aide

Minutes reviewed by Michelle Zdeb, Legislative Assistant & Task Force Staffer

Ms. Goggin stated that she appreciates Senator Richardson's comments because she has had many conversations with his colleagues on finding existing money in the budget to fund these projects. However, there is existing money that should go to the Farmland Preservation Program and the Open Space Program, by law, and those programs have seen that full funding only twice in the past eight years. She continued by saying that now there is discussion about properties in New Castle County that fail to meet the criteria for those programs that are getting a special allotment in the budget, rather than going to those programs. She added that it is a legislator's job to stop this trend; it is their responsibility to make sure funding gets allotted to those programs. She is worried about a non-dedicated fund getting dispersed to education, or other unrelated entities, because that is where the Farmland Preservation Program and Open Space Program money is going.

Mr. Morrill stated that several Task Force members have proven that Delawareans are more willing to pay for things like clean water if they understand what opportunities their money will bring.

Representative Gray commented that he is introducing legislation with Senator Hocker to increase boat licensing fees for dredging funds. He continued by saying that the funds would go into a lockbox so they do not get dispersed somewhere else. He commented that he supports implementing a lockbox for the fees collected.

Ms. Cannon noted that she did the math and 10 cents a day is really what the Task Force is talking about with this \$35 fee. Her biggest concern is that if the Task Force keeps walking away from the public accommodation tax or the gas tax, the group is missing a great opportunity.

She continued by saying that in previous administrations there have been State agencies across the board who have been asked to cut funding. Additionally, there is some historical basis where money has been saved through this process, so it is a fair discussion to have.

Dian Taylor, Delaware Business Roundtable, stated that the Task Force has had many discussions, and she personally has put issues out on the table that she feels have not been addressed.

Senator Townsend asked Mr. Morrill to remind him what changes were made to the Legislation based off of Ms. Taylor's previous remarks.

Mr. Morrill noted that there was a good-faith effort to address the problems that Ms. Taylor had brought to the table. This includes the accountability issues she raised. There have also been term limits that have been added to the legislation, which would mean nobody can serve on this council for more than 9 years.

Ms. Taylor expressed her concern that a 9-year term limit is too long.

Ms. Evans brought the conversation back to the accommodations tax. She noted that this tax has been considered for a number of issues, like beach replenishment. She continued by saying that too many people are pointing their finger at the accommodation tax. Additionally, this tax points a finger right at the beach community, and if the tax is raised on them, the beach community is going to want the money to stay in the beach community.

Senator Townsend replied to Ms. Evans' comments by saying that the idea of where the money comes from and where it should stay would mean that many of the expenditures that happen in the State of Delaware would not be possible, because that money would have to stay in Wilmington.

Representative Gray proposed putting together a letter, to get \$25,000 in this year's Bond Bill so the Task Force may move forward. He continued by saying that although the Task Force has done a lot of good work, he is not sure if this legislation is going to get through during this session. Representative Gray added that he is against raising taxes but the State still needs clean water. He asked what the fallback plan is going to be, and that getting money from Bond to move the committee's work forward might be the best fallback plan.

Senator Townsend replied that nobody will know what will happen when this Report and Legislation gets to Legislative Hall. However, having something comprehensive that explains what else was looked at is the focus of the Task Force. He continued by saying that he would like to postpone a full answer to Representative Gray's question for 2-3 weeks to see what happens. The Senator said that he does not think they need another year or additional money to push the Task Force's efforts through.

Ms. Goggin asked to bring the discussion back to the Draft Legislation, Draft Recommendations, and Draft Findings. She noted that if there are changes to the Draft Legislation then she would like to discuss that before the meeting ends.

Mr. Morrill noted that two questions that the Task Force has not answered were the bonding capabilities of the fund, and the concern that by including the Safe Drinking Water funding into the Trust they might jeopardize some existing expenditures in that program. He continued by saying that the Task Force should pin down this issue and find some answers.

Ms. Taylor responded to Mr. Morrill's remarks by saying that David Spacht had talked to Tim Frey, from Saul Ewing. She said that there is also confusion on his part when it comes to mixing up the funding.

David Spacht, member of the public on behalf of Artesian Water Company, said that Mr. Frey was not prepared to talk about the EPA side of it, which is really what he is concerned about.

Mr. Morrill said he would like to set up a meeting to talk about this with them.

Terry Deputy, on behalf of Secretary David Small and DNREC, noted that both Artesian and Tidewater are eligible to borrow funds from the Revolving Fund, and both of them have borrowed funds from the Drinking Water Program side. Additionally, Tidewater has submitted an application to WIAC asking for money for a particular project on the Clean Water Program side.

Mr. Deputy also spoke to clarify information from the last meeting. He had a discussion with Mr. Frey, who said that tax-exempt debt may be used by investor-owned utilities.

Mr. Spacht responded to Mr. Deputy's comments by referencing the conversation that he had with Mr. Frey. Mr. Spacht noted that he quizzed Mr. Frey on the same issues that Mr. Deputy referenced. He continued by saying that on the DEDO side, private utilities can access those funds for wastewater. However, this has nothing to do with the Clean Water Act side, which Mr. Frey noted that he had more research to do to answer all of the Task Force's questions.

Mr. Deputy referenced the application that WIAC is considering for Tidewater Utilities investor-owned utility, for a clean water and wastewater facility. In fact, WIAC had a discussion about providing subsidies to investor-owned utilities that would help the users of the system afford the projects. He continued by saying that at the federal level, investor-owned utilities are eligible for both clean water and drinking water assistance.

Mr. Spacht noted that he does not believe that investor-owned utilities are eligible for both clean water and drinking water assistance.

Senator Townsend asked Mr. Spacht and Mr. Deputy if Mr. Frey would be able to speak with legal authority to give an opinion about the previous comments.

Mr. Spacht answered yes.

Senator Townsend asked if they can get feedback from Mr. Frey within the next week or two.

Ms. Cannon referenced the definition for infrastructure, and asked if the Task Force would want to add a definition for infrastructure into the legislation. She noted that it is important to include all types of infrastructure in this definition so that nothing gets left out.

She also commented that it is important to her to include the Task Force's second-best and third-best options somewhere within the Report.

Mr. Morrill noted that the Task Force will not finish discussing the legislation at their meeting, but the highlighted items need to be discussed. He continued by saying that they took "infrastructure" out of the entire bill because it's too broad of a word. However, if they cannot reword the sentences that already have "infrastructure" in it, they will craft a new definition. He also asked if they should create a set-aside for safe drinking water.

Mr. Spacht responded by saying that as long as there is confusion, he does not see the purposes of the Safe Drinking Water Act matching with the purposes of the Clean Water Act. They are two large, but different, needs in Delaware.

Mr. Deputy asked if Artesian would feel more comfortable with the language of the legislation if he were to get a letter from the EPA (Environmental Protection Agency) headquarters that spoke to the eligibility of the Clean Water State Revolving Fund money for investor-owned utilities in Delaware, and if he sent a written opinion to the Bond Council regarding tax-exempt use of Bond proceeds by investor-owned utilities.

Mr. Spacht answered that it depends what it says, but it may be helpful.

Virgil Holmes, on behalf of Secretary David Small and DNREC, stated that at DNREC they have been going through the bill with a fine-tooth comb to make sure everything lines up. DNREC also has counsel going through this bill, and a DOJ representative, to get a comprehensive review of the bill to make sure it does not impact DNREC in a negative way.

Mr. Holmes commented that the other hot item for DNREC is how they are going to build the infrastructure that is necessary to meet the new spending authority. For example, in their current program, DNREC doesn't even have enough staff to fill the unfunded EPA mandates that they have. So, they would need more employees to meet the demand of new projects.

DNREC's proposal is that the administrative side would be 15% rather than 10%, and if DNREC's needs exceed 15%, they would need to bill outside of that 15%.

Mr. Bross reacted to Mr. Holmes' comments by noting that 15% is a lot of money. He continued by saying that one year WIAC put out \$100 million worth of additional funding and they did it without additional staffing. He said that the Task Force is talking about \$20 million of additional funding; he said there must be a possibility to do it without additional staffing.

Mr. Holmes replied to Mr. Bross' comments by saying that the amount of engineering time and review time that DNREC has could be all over the board. Their concern is that if DNREC goes into this without knowing what the need is, and projects start coming on board, it will take them 4 to 6 months to staff up to meet the demand for the projects.

Pam Bakerian, on behalf of Tom Unruh and the Delaware Farm Bureau, stated that if the Task Force adds something to the bill, it changes the content completely. She continued by saying that if the legislation changes completely, the Farm Bureau would have to reevaluate its support.

Mr. Miller wanted to remind members how important public outreach and education is to gain support for the Task Force's Report and Legislation. He continued by saying that, as the Legislation currently stands, the Delaware Center for the Inland Bays could support it.

Mr. Morrill referenced a provision in the legislation that said “a Clean Water Fee shall be reduced by 30% for households and entities located within municipalities and within those unincorporated portions of a county that have created a local stormwater utility.” He added that under the new funding scheme he does not know how to do that. He asked members if they should delete this section.

Mr. Killmer said to delete it. The Task Force had no objections to deleting it.

Senator Townsend asked all DNREC representatives to bring a Project Prioritization List to the next meeting. He continued by saying that the members of the Senate Democratic Caucus want to see this list, and so will other Senators and Representatives. He continued by saying that he would like them broken up between Senatorial Districts and Representative Districts.

Mr. Haggerty suggested that the Conservation Districts and the agriculture community may have a list of projects as well.

Senator Townsend moved the discussion to the future Task Force meeting dates. He announced that they are booking the Tidewater Utilities room for May 18<sup>th</sup> for 11:00 a.m. He also noted that they will circulate future dates as soon as possible.

Mr. Morrill stated that the Task Force should get a professional infographic for each of the Representative and Senatorial districts with projects and needs in each district.

Senator Townsend asked if Task Force members had additional comments or concerns. Seeing none, he asked the public if anyone had any comments. As there were none, the meeting was brought to a close at 1:33 p.m.

*Pages 11-20 include documents discussed during the Task Force meeting:*

**Notes re: Updated Draft Legislation**

Michelle, attached is the latest draft of the bill. It is considerably cleaned up, but it still has some highlighted areas, representing recent major changes and items that the Task Force needs to resolve. Please circulate to the group for tomorrow's meeting. Here's a summary of what's new:

All: attached is the latest draft of the bill, incorporating recent major developments in purple

1. Enlarge Trust Board to 5, by adding Secretary of Agriculture and Secretary of Health and Social Services
2. Change fee collection to PIT, business licenses, and GRT surcharges. Able to lower household fee to \$35, if desired. Department of Finance appears amenable. Estimated low collection costs <1%
3. Individuals pay \$35 surcharge on income tax returns. One fee for married couples. (550,000 filers x \$35 = \$19,250,000)
4. Businesses requiring a Delaware Business License (currently \$75 per year), pay a surcharge of \$45. (50,000 business licenses x \$45 = \$2,250,000)
5. Businesses that make enough to be above filing threshold for the Gross Receipts Tax pay \$180. (est. 5,000 business filers x \$180 = \$900,000)
6. As described above, the Clean Water Trust Fund would receive approximately \$22,400,000 in annual revenue.
7. DNREC authorized to use up to 10% of the CWF for administrative costs, including any costs associated with fee billing and collection
8. Incorporated or highlighted Bruce Jones' comments for discussion.
9. Set-asides that were omitted in the previous draft by mistake are back in.

Still needed, Task Force discussion of items in yellow and drafting support for items in blue. The Synopsis will need to be rewritten after all the decisions are made.

Cordially,

*Paul*



SPONSOR: Rep. Mulrooney & Sen. Townsend

HOUSE OF REPRESENTATIVES  
148th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLES 29, 7, AND 30 OF THE DELAWARE CODE RELATING TO THE CLEAN WATER ACT FOR DELAWARE ACT.

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 Title 29, Chapter 80 of the Delaware Code by making 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 that:

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

(2) Delaware's continued economic vitality is dependent upon maintaining the state's water and wastewater infrastructure, protecting and enhancing the state's water resources as an attraction for tourism and new employers.

(3) As of the date of this Act:

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

b. 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.

c. Many Delaware communities are at risk from flooding and drainage hazards.

(2) "Authorization Act" means an act of the General Assembly, concurred in by three fourths of all the members of each House, 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.) as the same may be amended from time to time.

(4) "Clean Water Fee" means the Clean Water for Delaware Fee established pursuant to §8075 of this subchapter.

(5) "Clean Water Fee Account" means the account established under §8075 of this subchapter and into which the Clean Water Fee shall be deposited.

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

(7) "Combined Sewer System" means ....

(8) "Conservation Project" means a project with the primary purpose of improving water quality, fish and wildlife habitat, a project that preserves intact habitat to mitigate impacts to threatened species, a waterway or land conservation project, a habitat or stream restoration, projects that offset impacts to natural resources including natural resources restoration, enhancement and creation, a wetlands or stormwater mitigation bank, a project that generates water quality or quantity credits or a recreational infrastructure project as permitted by §5423 of Title 30 or §6102A of this title; provided however, that no regional infrastructure project hereunder shall be deemed to be a Conservation Project unless it is related to the provision, preservation, or maintenance of clean water or water quality.

(9) "Cost" means the cost of all 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 and legal services, and all other expenses necessary or incident to all or part of a Project.

(10) "Council" means the Water Infrastructure Advisory Council established pursuant to 29 Del. C. §8011.

(11) "Delaware Conservation Trust Fund" means the Delaware Land and Water Conservation Trust Fund established pursuant to Del. C. §

(12) "DHSS" means the Department of Health and Social Services.

(13) "DNREC" or "Department" means the Department of Natural Resources and Environmental Control.

(14) "Drinking Water Fund" means the Delaware Safe Drinking Water Revolving Fund established pursuant to 29 Del. C. §7903(14).

(15) "Employee" means, for purposes of the definitions of personal business and small business, ...

(25) “Safe Drinking Water Act” means the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the same may be amended from time to time.

(26) “Small Business” means any not for profit enterprise, sheltered workshop, or for profit business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop (i) employs fewer than 50 employees, (ii) has gross receipts of less than \$10,000,000 and (iii) is not owned, operated or controlled by another business enterprise.

(27) “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 1,000 customer connections. This term includes nonprofit, non-community water systems owned or operated by a nonprofit group or organization.

(28) “Stormwater management system” means any equipment, plants, structures, machinery, apparatus management practices, or land, or any combination thereof, acquired, used, constructed, implemented or operated to prevent nonpoint source pollution, abate improper cross-connections and interconnections between stormwater and sewer systems, minimize stormwater runoff and flooding, reduce soil erosion, or induce groundwater recharge, enhance Stormwater runoff volume reduction, or any combination thereof.

(29) “Trust” means the Delaware Clean Water Trust Fund authorized pursuant to this subchapter.

(30) “Trust Board” or “Board” means the board of directors of the Trust established pursuant to §8073 of this subchapter.

(31) “Wastewater” means residential, commercial, industrial, or agricultural liquid waste, sewage, seepage, stormwater runoff, or any combination thereof, or other liquid residue discharged or collected into a sewer system or stormwater management system, or any combination thereof.

(32) “Wastewater treatment system” means any equipment, plants, structures, 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 stormwater runoff and 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, stormwater management systems, and other personal property and appurtenances necessary for their use or operation. “Wastewater treatment system” shall include a stormwater management system or a combined sewer system.

(33) “Wastewater treatment system project” means any work relating to the acquisition, construction, improvement, repair or reconstruction of all or part of any structure, facility, or equipment or real or personal property necessary for, or ancillary to any wastewater treatment system

(34) “Water Pollution Control Fund” means the Delaware Water Pollution Control Revolving Fund established under §8003 of this title.

the Senate of the General Assembly, the Controller General and the Auditor of Accounts. Each such report, shall contain a complete operating and financial statement covering the Trust's operations during the past fiscal year of the Trust and shall include copies of the audits required to be obtained by the Trust pursuant to this chapter.

(g) No director, officer, employee or agent of the Trust shall be interested, 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 shall not affect the validity of bonds issued pursuant to this chapter.

(h) No director, officer, employee, or agent of the Trust shall be deemed to have forfeited or shall forfeit any other state office or employment or any benefits or emoluments thereof by reason of acceptance of an office of the Trust or services therefor, subject to this chapter

#### §8074. Powers of the Trust related to Clean Water for Delaware Projects

(a) The Trust shall be responsible for oversight of the financial assets of the Funds to maximize, and coordinate the management of, the resources available for projects.

(b) At such time as the Trust determines that demand for funding for projects exceeds all available resources, the Trust is authorized to issue bonds, notes, and other obligations as set forth in §8077 of this subchapter.

(c) The Trust shall receive recommendations from the Water Infrastructure Advisory Council and issue loans and grants in consideration of the common platform developed by the Council for soliciting, prioritizing, and determining creditworthiness, closing, and managing loans and grants in accordance with EPA policy. Recommendations of projects to the Trust from the Water Infrastructure Advisory Council shall conform with the following:

##### (1) Agricultural Project Set Aside

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

(b) If additional resources from the Clean Water Fund are to be provided for any project, the Council shall consider the addition of such funds using the Council's overall project prioritization process

##### (2) Hazardous Substance Clean Up Aside

(a) The Department shall provide a list of all active HSCA projects that have a direct impact on water quality to the Council for inclusion in the Council's annual plan.

(b) If additional resources from the Clean Water Fund or other sources are to be provided for any HSCA project, the Council shall

(2) Each holder of a Delaware Business License shall be assessed a Clean Water Fee levied as a surcharge on the license fee at a rate of \$45 per annum, provided that a business holding multiple business licenses shall not be liable for more than one surcharge per year.

(3) Each business entity filing a Delaware Gross Receipts Tax return shall be assessed a Clean Water Fee levied as a surcharge on their monthly or quarterly returns levied at the rate of \$180 per annum, provided that filers who did not reach the filing income threshold the previous year shall not be liable for the Clean Water Fee surcharge.

~~(4) For all business entities not included in the definition of Personal Business or Small Business, the Clean Water Fee shall be levied at the fixed rate of \$500.00 per annum.~~

~~(5) Each farm shall be liable for only one Clean Water Fee.~~

(6) The Clean Water Fee shall be reduced by 30% for households and entities located within municipalities and within those unincorporated portions of a county that have created a local stormwater utility which assesses at least \$50 per year.

(7) Persons and entities liable for payment of the Clean Water Fee shall be subject, to billing beginning July 1, 2017 for Fiscal Year 2018.

(c) Collection of Clean Water Fee; Reimbursement of Expenses

(1) DNREC shall oversee the billing and collection of the Clean Water Fee and may contract with the Department of Finance and other public or private entities to provide billing and collection systems and services for the Clean Water Fee. The Department shall reimburse said agencies for the costs they incur collecting the fee.

~~(1) When the status of a payor is in question, DNREC shall determine the appropriate classification as a household/residential, personal business, small business, or business user.~~

(2) DNREC shall be considered a "claimant agency" under §545(b)(1), Title 30 of the Delaware Code for collection of the Clean Water Fee.

(d) Clean Water Fee Account.

(1) The Secretary will manage and administer the Clean Water Fee Account for the exclusive purpose of funding specific, sustainable activities designed to enhance the State's water quality in accordance with the Trust's fiscal policies and the Clean Water Plan. The Clean Water Fee Account may be expended for the purposes of this subchapter including, but not limited to, providing low-interest loans, grants, leveraged financing, and other incentives, including the purchase or funding the development of water quality or quantity credits, to implement Projects, including those designated to reduce toxins and hazardous substance releases, pollution, sediment, or nutrient loads, and bacteria impacts in the surface and ground waters of Delaware as well as to increase the resiliency of communities, enhance economic development, and reduce the risk of flooding.

(1) Utilize and enhance natural infrastructure to provide ecological benefits that both improve water quality, provide flood and drainage mitigation and improve community resilience to extreme weather, sea-level rise, and other climate impacts.

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

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

(c) The loans or grants made pursuant to this section shall be made subject, to such terms and conditions as the Council shall determine to be consistent with the purposes hereof. Each loan by the Trust and the terms and conditions thereof shall be consistent with the fiscal policies established by the Trust.

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

§8077 Clean Water Revenue Bonds; Refunding Bonds; Security for Obligations.

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

(b) Clean Water Revenue Bonds of the Trust shall be negotiable instruments and securities under the Uniform Commercial Code of the State.

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

(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) 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. Said 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 hereby authorized to assign and pledge such notes, bonds or other obligations as security for any Clean Water Revenue Bonds.

(2) 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 Fee Account, Delaware Conservation Trust Fund, and the Hazardous Substance Cleanup Fund.

(3) Pledge of the Clean Water Fee and all amounts held in the Clean Water Fee Account and the Hazardous Substance Cleanup Fund for purposes related to hazardous substances or petroleum releases.

(4) 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.

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

(a) The State does pledge to and covenant and agree with the holders of any bonds of the Trust issued pursuant to the authorization of this subchapter that 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 or to impose the Clean Water Fee, or to fix, establish, charge and collect any rents, fees, rates, payments or other charges 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 and shall 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 of the Trust, together with interest thereon, are fully met, and discharged or provided for.

(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

(12) The Secretary is empowered to 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 Clean Water for Delaware 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 title. In the event of any conflict or inconsistency between the provisions of this section and said subchapter, the provisions of subchapter III of this title shall govern

Section 3. Amend Section 7903(14) of the Delaware Code by making 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 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 chapter 80, subchapter III 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. In the event of any conflict or inconsistency between the provisions of this section and said subchapter, the provisions of Subchapter III, Chapter 80 of this title shall govern.

Section 4. Amend Section 9113, Title 7 of the Delaware Code by making insertions as shown by underline as follows:

§9113. Hazardous Substance Cleanup Fund.

(f) The administration and application of the amount in this Hazardous Substance Cleanup Fund as provided in this chapter shall be subject to the provisions of Subchapter III, Chapter 80 of Title 29. In the event of any conflict or inconsistency between the provisions of this chapter and said subchapter, the provision of subchapter III, Chapter 80 of Title 29 shall control.

Section 5. Amend Section 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 (i) the Delaware Clean Water Trust and (ii) the Secretaries of the Departments of Natural Resources and Environmental Control ("DNREC"), Health and Social Services ("DHSS") and Finance ("DOF") and (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 re-appointed for up to 3 terms. Members shall be

### SYNOPSIS

This legislation establishes a framework for oversight, implementation and a funding source to enhance Delaware's efforts in cleaning up contaminated streams, rivers, bays and groundwater through construction of much needed wastewater, drinking water and stormwater infrastructure projects and increased use of agricultural best practices. 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.

The State currently faces a backlog of water infrastructure projects. Over the next five years, more than \$500 million in wastewater facility upgrades are needed statewide including wastewater and drinking water systems for underserved communities and numerous at-risk systems currently operated by homeowner's associations in Sussex County. In addition, more than \$150 million in stormwater upgrades are needed throughout the state along with more than \$75 million for removing toxics from various waterways. Further, demand for agriculture cost share funds used to reduce pollution from nutrients far surpasses available resources.

Specifically, the legislation creates a Clean Water Fee that will be collected by... Total receipts are estimated to be \$22 million annually. The Clean Water Fee will leverage more than \$60 million in total financing annually for clean water investments and support more than 500 jobs per year in science, engineering and construction. Funds will be placed in a Trust managed by a three-member Board comprised of the Secretary of the Department of Natural Resources and Environmental Control, the Secretary of Finance and an appointed member with financial expertise. The Trust is authorized to issue Clean Water Revenue Bonds upon authorization by the General Assembly. and a Water Infrastructure Council will administer the funds with the goal of assisting municipal and county governments in implementing more affordable water quality infrastructure projects through low- interest loans, grants and other leveraged funds. The Trust and Council are is required to develop a Clean Water Plan, a five-year project priority list and report annually to the General Assembly on its activities.

*[Question: should leveraging of SRF loan programs via issuance of bonds be part of synopsis?]*