

# Why The “Rain Tax” Is A Bad Idea For New Jersey Property Owners

---

February 25, 2019 | by Jason Rittie

By now many of you have heard about New Jersey’s proposed “rain tax.” It is part of pending legislation known as the “Clean Stormwater and Flood Reduction Act.” Although the proposed legislation has been around for many years, previously vetoed by former Gov. Chris Christie, Gov. Phil Murphy appears to be ready to sign the legislation.

If Gov. Phil Murphy signs the legislation, local municipalities and counties will be allowed to create stormwater utilities. The intent and purpose of the legislation is to allow these stormwater management utilities to control the amount of stormwater runoff and pollutants washing into New Jersey’s existing sewer systems and waterways. The legislation also proposes that the stormwater utilities be funded by fees assessed against property owners. The legislation applies to all types of residential, commercial and industrial properties. Although some Legislators state that the intent of the legislation is not to assess fees against residential properties, there is not an exception for residential property owners. As we know, there are residential properties in New Jersey that are large estates and contain a fair amount of impervious coverage, which would be impacted by the legislation.

The proposed legislation would allow a stormwater utility to “charge and collect reasonable fees and other charges in an attempt to recover stormwater utility’s costs for stormwater management.” As stated in the legislation, “[t]hese fees and other charges could be charged to and collected from the owner or occupant, or both, of any real property from which originates stormwater runoff which directly or indirectly enters the stormwater management system or the waters of the State.” The fees are to be “based on a fair and equitable approximation of the proportionate contribution of stormwater runoff from a real property.” There are, however, allowances for partial fee reductions or credits for any property that maintains or operates a stormwater management system that complies with the State and local stormwater management standards. The legislation further allows for liens to be placed against real property for unpaid fees, similar to unpaid real estate taxes.

If Gov. Phil Murphy signs the legislation, it will be interesting to watch the financial impacts of this “rain tax” on property owners. The legislation does not provide for any public participation by real property owners in the process of either establishing the fees, or in the determination of the proportionate contribution of stormwater runoff from real property. The legislation also has no mechanism or provision to allow a property owner to file an appeal from the stormwater utility’s fee. As such, a property owner is faced with a “rain tax” and no ability to challenge either the amount of the fee, or the determination of contribution of stormwater runoff from the real property. And, if unpaid, the “rain tax” becomes a lien against real property.

In addition to the “rain tax”, the legislation may further increase costs and expenses to an existing property owner by requiring installation of on-site stormwater management controls in order to receive the partial fee reductions or credits. The process for developing and installing stormwater management mechanisms is not an easy task, or an inexpensive endeavor. New Jersey already has a sophisticated set of rules and regulations by New Jersey Department of Environmental Protection, and substantially all municipalities have a set of Land Use and Zoning Ordinances which already mandate stormwater management practices. Property owners seeking to develop or re-develop properties already need to comply with these existing rules, regulations and ordinances. For existing and developed properties impacted by the “rain tax” but now looking to reduce the fees or obtain credits, these property owners would be required to hire a professional engineer to develop a stormwater management plan. The stormwater management plan would most likely require some form of a site plan approval through the Municipality’s Planning/Zoning Board and, in some instances, require additional approval and permitting through New Jersey’s Department of Environmental Protection. Once approved, the property owner would then need to actually install, construct and monitor the stormwater management devices or mechanisms.

For all of the above reasons, if signed into law, the legislation can potentially have a devastating impact on New Jersey property owners by creating additional fees and expenses. New Jersey already has one of the highest property taxes in the United States. We will continue to watch the Governor’s actions on this controversial tax, and will update here accordingly.