

**ASSEMBLY CONCURRENT
RESOLUTION No. 101**

**STATE OF NEW JERSEY
218th LEGISLATURE**

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

**Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)
Assemblyman BOB ANDRZEJCZAK
District 1 (Atlantic, Cape May and Cumberland)
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)**

Co-Sponsored by:

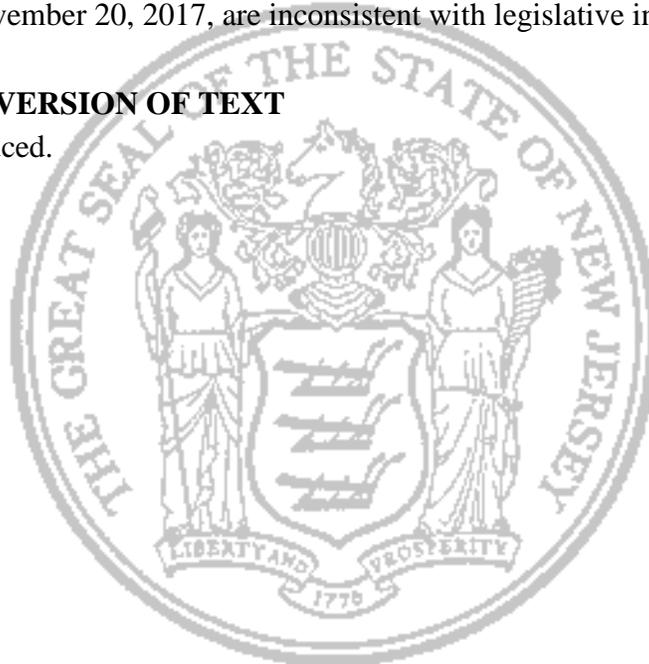
**Assemblymen Armato, Peterson, Assemblywoman N.Munoz,
Assemblymen Houghtaling, Harold J. Wirths, Space and Giblin**

SYNOPSIS

Determines that the Department of Agriculture beekeeping regulations, proposed November 20, 2017, are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/18/2018)

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 certain Department of Agriculture proposed regulations pursuant
3 to Article V, Section IV, paragraph 6 of the Constitution of the
4 State of New Jersey.

5
6 **WHEREAS**, Article V, Section IV, paragraph 6 of the Constitution of
7 the State of New Jersey provides that the Legislature may review
8 any rule or regulation adopted or proposed by an administrative
9 agency to determine if the rule or regulation is consistent with the
10 intent of the Legislature as expressed in the language of the statute
11 which the rule or regulation is intended to implement and, upon a
12 finding that the rule or regulation is not consistent with legislative
13 intent, may transmit the finding to the Governor and the head of the
14 agency; and

15 **WHEREAS**, On November 20, 2017, the Department of Agriculture,
16 contrary to assurances offered concerning revision of the draft
17 regulations informally circulated in July 2017, proposed for public
18 comment in the New Jersey Register rules and regulations affecting
19 beekeeping practices in the State; and

20 **WHEREAS**, The Department of Agriculture was advised in July 2017
21 by several legislators, the New Jersey Farm Bureau, and the New
22 Jersey Beekeepers Association that the draft regulations, now
23 proposed regulations, were contrary to the legislative intent of laws
24 affecting bees compiled in Titles 4 and 40 of the Revised Statutes;
25 and

26 **WHEREAS**, Preserving the State's bee populations and apiary activities
27 are of the utmost importance to the agriculture in the State and the
28 public welfare; and

29 **WHEREAS**, There have been many news reports on the environmental
30 dangers affecting bees and pollinators as well as dire predictions
31 involving climate change, reports of alarming depletions of bee
32 populations that may be connected with these changes, butterfly
33 die-offs and alterations to butterfly migration patterns, and the
34 serious threat to human survival that the loss of pollinators
35 represents regardless of the causes; and

36 **WHEREAS**, Beyond the specifics of any statute, there is a clear
37 indication of the Legislature's intent to protect bees and the apiary
38 industries in the State expressed by its efforts to respond to the
39 crisis by not only introducing numerous bills but enacting no less
40 than seven new laws in the past four years to protect pollinators,
41 five of which specifically protect bees and facilitate apiary activities
42 in the State; and

43 **WHEREAS**, The plain language and intent of the Legislature expressed
44 in these laws also indicate that the proposed regulations are
45 inconsistent with legislative intent; and

46 **WHEREAS**, Section 2 of P.L.2015, c.76 (C.4:6-24) requires the
47 Department of Agriculture, when developing standards for
48 beekeeping to be set forth in regulation, to "consult with the New

1 Jersey League of Municipalities, the New Jersey Beekeepers
2 Association, and the Mid-Atlantic Apiculture Research and
3 Extension Consortium, or successor organizations with similar
4 purposes”; and
5 **WHEREAS**, Contrary to this direction and the department’s reference in
6 the summary of its proposed regulations to meetings held
7 concerning development of the regulations, the New Jersey
8 Beekeepers Association and the Mid-Atlantic Apiculture Research
9 and Extension Consortium were not meaningfully consulted
10 concerning the standards or regulations or included in developing
11 the standards and the regulations; and
12 **WHEREAS**, When this fact was brought to the attention of the
13 Department of Agriculture in July 2017, its immediate response
14 was to recognize its oversight by withdrawing the draft regulations
15 and assure concerned legislators and the New Jersey Beekeepers
16 Association that the department would not be moving forward with
17 the proposed regulations; and
18 **WHEREAS**, Nevertheless, no significant changes were made to the
19 regulations prior to the November 20, 2017 proposal to avoid a
20 challenge to their validity; and
21 **WHEREAS**, If the New Jersey Beekeepers Association had been
22 meaningfully consulted as required by law, the association would
23 have brought to the department’s attention that the proposed
24 regulations are contrary to the Legislature’s intent to protect apiary
25 activities in the State and to consider sound science, bee biology,
26 and bee behavior as well as to work with municipalities to facilitate,
27 not prohibit, beekeeping in suburban and urban areas of the State;
28 and
29 **WHEREAS**, The letter of the law set forth in section 2 of P.L.2015,
30 c.76 (C.4:6-24) requires the Department of Agriculture to “consult”
31 with the specified entities concerning the standards; and
32 **WHEREAS**, The dictionary definition of “consult” includes “to seek
33 advice or information from,” “ask guidance from,” “to consider or
34 deliberate; take counsel; confer,” and definitions of “counsel” and
35 “guidance” include “instruction given in directing the judgement or
36 conduct of another,” “leadership,” and “direction,” but no such
37 counsel, guidance, instruction, leadership, or direction was sought
38 or considered in this case, and therefore the proposed regulations
39 and the proposed standards to be implemented by them are
40 inconsistent with the intention of the law; and
41 **WHEREAS**, Coupled with the Legislature’s expressed intent and policy
42 to protect pollinators, the Legislature clearly intended in directing
43 this consultation to have entities intimate with the behavior, habits,
44 health, and needs of bees to be not only solicited for their input but
45 to have their input, informed judgment, and direction incorporated
46 into the development of any standards and regulations affecting
47 bees in the State; and

1 **WHEREAS**, Section 2 of P.L.2015, c.76 (C.4:6-24) also requires the
2 Department of Agriculture to consult with the Mid-Atlantic
3 Apiculture Research and Extension Consortium, which further
4 indicates legislative intent to incorporate sound science and apiary
5 research into the standards and regulations proposed by the
6 Department of Agriculture; and
7 **WHEREAS**, That law also requires that the standards “reflect
8 consideration of: (1) the population densities in rural, suburban,
9 and urban areas of the State; (2) the densities and intensities of
10 development and differing land uses in communities throughout the
11 State; and (3) any other characteristics of various regions of the
12 State that the department determines to be significant to the
13 regulation of apiary activities in the State”; and
14 **WHEREAS**, The proposed regulations do not set forth standards that
15 reflect sound science and research or consideration of suburban and
16 urban areas of the State or regional characteristics of the State as
17 they relate to beekeeping; and
18 **WHEREAS**, The proposed standards and regulations are contrary even
19 to the department’s own established “Best Management Practices
20 for Beekeepers in Populated Areas” which have long guided and
21 supported urban and suburban beekeeping, and therefore all the
22 more clearly do not reflect consideration of the elements specified
23 to be considered pursuant to subsection c. of section 2 of P.L.2015,
24 c.76 (C.4:6-24); and
25 **WHEREAS**, The proposed regulations also ignore the Legislature’s
26 intent expressed in section 1 of P.L.2015, c.76 (C.40:48-1.5),
27 prohibits a municipality from establishing “any restriction or
28 requirement that would result in the prohibition of the breeding or
29 keeping of honey bees, the use of honey bees for pollination, or any
30 activities related thereto, in the municipality,” except as provided
31 pursuant to subsection b. or c. of that section of law; and
32 **WHEREAS**, Subsection b. of section 1 of P.L.2015, c.76 (C.40:48-1.5)
33 authorizes the State to regulate apiary activities in the State
34 pursuant to other State laws concerning bees, including section 2 of
35 P.L.2015, c.76 (C.4:6-24), but the proposed regulations are
36 inconsistent with the Legislature’s intent expressed in section 2 of
37 P.L.2015, c.76 (C.4:6-24); and
38 **WHEREAS**, Subsection c. of section 1 of P.L.2015, c.76 (C.40:48-1.5)
39 requires a municipality addressing a condition or circumstance not
40 resolved by the State standards to consult with the Department of
41 Agriculture, the New Jersey League of Municipalities, the New
42 Jersey Beekeepers Association, and the Mid-Atlantic Apiculture
43 Research and Extension Consortium, or successor organizations
44 with similar purposes; and
45 **WHEREAS**, This provision also requires the subsequent municipal
46 standard adopted by ordinance to address the condition or
47 circumstance and reflect consideration of “honey bee biology and

1 behavior” in addition to population density, the density and
2 intensity of development, and type of land use; and
3 **WHEREAS**, These provisions reinforce the Legislature’s intent for
4 consultation with the New Jersey League of Municipalities, the
5 New Jersey Beekeepers Association, and the Mid-Atlantic
6 Apiculture Research and Extension Consortium and the basing of
7 any standard in sound science and understanding of honey bee
8 biology and behavior; and
9 **WHEREAS**, Section 1 of P.L.2015, c.76 (C.40:48-1.5) establishes a
10 process for a municipality to adopt the new standards established
11 pursuant to that law and the Department of Agriculture to delegate
12 to the municipality monitoring and enforcement of those standards;
13 and
14 **WHEREAS**, Section 2 of P.L.2015, c.76 (C.4:6-24) expressly prohibits
15 municipalities from adopting an ordinance, resolution, rule, or
16 regulation concerning the breeding or keeping of honey bees, or any
17 activities related thereto, that does not incorporate the new
18 standards; and
19 **WHEREAS**, The proposed regulations ignore the expressed intent of the
20 Legislature in that law by allowing a municipality to grandfather
21 through a petition to the department municipal apiary standards in
22 effect prior to the enactment of P.L.2015, c.76; and
23 **WHEREAS**, Chapter 6 of Title 4 of the Revised Statutes specifically
24 authorizes the Department of Agriculture to inspect hives and
25 monitor bee health through inspection and enforcement; and
26 **WHEREAS**, The proposed regulations supersede this statutory authority
27 by establishing a new subchapter 7 in the department’s regulations,
28 entitled “Apiary and Municipal Administrative Standards for
29 Breeding and Keeping of Bees and Related Activities,” under
30 which the proposed regulations establish standards of
31 administrative procedure for delegating the authority to monitor and
32 enforce ostensibly all regulations concerning bee health and
33 inspections; and
34 **WHEREAS**, If the Legislature had intended to delegate such authority
35 to municipalities, it would have amended the laws concerning
36 control of diseases among bees found in chapter 6 of Title 4 of the
37 Revised Statutes; and
38 **WHEREAS**, The comment period for the proposed regulations closed
39 January 19, 2018, and to date the department has not withdrawn the
40 proposed regulations; and
41 **WHEREAS**, The New Jersey Beekeepers Association, the Burlington
42 County Board of Agriculture, the Department of Entomology and
43 Wildlife Ecology at the University of Delaware, and the Village of
44 Ridgewood in Bergen County have all submitted comments on the
45 proposed regulations which demonstrate that the proposed
46 regulations are inconsistent with legislative intent because they
47 would have a significant negative impact on beekeeping,
48 agriculture, and the environment; they do not reflect sound science

1 and understanding of honey bee biology and behavior; they allow
2 for the grandfathering of municipal apiary standards that were
3 enacted prior to P.L.2015, c.76; they improperly allow for
4 delegation to municipalities of hive inspections and monitoring and
5 enforcing of bee health; they were proposed without proper
6 consultation with the New Jersey Beekeepers Association and the
7 Mid-Atlantic Apiculture Research and Extension Consortium; and
8 they are overly restrictive and prohibitive for the breeding or
9 keeping of honey bees, and the use of honey bees for pollination, or
10 any activities related thereto, in a municipality; and

11 **WHEREAS**, The proposed regulations, for all the reasons enumerated
12 above, are inconsistent with the intent of the Legislature; now,
13 therefore,

14

15 **BE IT RESOLVED** by the General Assembly of the State of New
16 Jersey (the Senate concurring):

17

18 1. The Legislature declares that the rules and regulations
19 proposed and published in the New Jersey Register on November
20 20, 2017 by the Department of Agriculture concerning beekeeping
21 are not consistent with the legislative intent.

22

23 2. Copies of this resolution, as filed with the Secretary of State,
24 shall be transmitted by the Secretary of the Senate or the Clerk of
25 the General Assembly to the Secretary of Agriculture.

26

27 3. Pursuant to Article V, Section IV, paragraph 6 of the
28 Constitution of the State of New Jersey, the Department of
29 Agriculture shall have 30 days following transmittal of this
30 resolution to amend or withdraw the proposed rules and regulations
31 or the Legislature may, by passage of another concurrent resolution,
32 exercise its authority under the Constitution to invalidate the rules
33 and regulations in whole or in part.

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35

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STATEMENT

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38 This concurrent resolution embodies the finding of the
39 Legislature that the Department of Agriculture proposed regulations
40 concerning beekeeping, published for public comment in the New
41 Jersey Register on November 20, 2017, are not consistent with the
42 intent of the Legislature. The Department of Agriculture has 30
43 days following transmittal of this resolution to amend or withdraw
44 the proposed rules and regulations or the Legislature may, by
45 passage of another concurrent resolution, exercise its authority
46 under the Constitution to invalidate the rules and regulations in
47 whole or in part, pending their adoption.