

SENATE, No. 1150

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JANUARY 30, 2014

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

Concerns environmental permits in low-income, minority communities.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning environmental permits in certain areas, and
2 supplementing Title 13 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Burdened community" means an area within a municipality that
9 is designated as such pursuant to the provisions of subsection b. of
10 section 2 of this act.

11 "Household income" means income as defined for the purposes
12 of determining eligibility for a free or reduced price lunch pursuant
13 to the federal school lunch program.

14 "Low-income household" means a residence with a household
15 income that does not exceed 2.50 times the official federal poverty
16 level based on family size, established and adjusted under Section
17 673(2) of Subtitle B, the "Community Services Block Grant Act,"
18 Pub. L.97-35 (42 U.S.C. s.9902(2)), for the year preceding the year
19 in which a designation of a burdened community is sought.

20 "Minority group" means any group enjoying special protection
21 under the civil rights provisions of the Constitution of the United
22 States and the federal "Voting Rights Act of 1965," 42 U.S.C.
23 s.1973 et seq., as amended and supplemented.

24 "Permit" means any permit, registration or license issued by the
25 Department of Environmental Protection establishing the regulatory
26 and management requirements for an ongoing regulated activity as
27 authorized by federal law or the following State laws: R.S.12:5-1 et
28 seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the "Solid Waste
29 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of
30 P.L.1975, c.326 (C.13:1E-26); the "Comprehensive Regulated
31 Medical Waste Management Act," P.L.1989, c.34 (C.13:1E-48.1 et
32 al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the "New Jersey
33 Statewide Mandatory Source Separation and Recycling Act,"
34 P.L.1987, c.102 (C.13:1E-99.11 et al.); the "Pesticide Control Act
35 of 1971," P.L.1971, c.176 (C.13:1F-1 et seq.); the "Industrial Site
36 Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.); the "Toxic
37 Catastrophe Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.);
38 "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.);
39 the "Freshwater Wetlands Protection Act," P.L.1987, c.156
40 (C.13:9B-1 et al.); the "Coastal Area Facility Review Act,"
41 P.L.1973, c.185 (C.13:19-1 et seq.); the "Highlands Water
42 Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et seq.),
43 the "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1
44 et seq.); the "Water Supply Management Act," P.L.1981, c.262
45 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the "Water
46 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);
47 P.L.1986, c.102 (C.58:10A-21 et seq.); the "Safe Drinking Water

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1 Act," P.L.1977, c.224 (C.58:12A-1 et al.); the "Flood Hazard Area
2 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

3 "Person" means any individual, corporation, company,
4 partnership, firm, association, political subdivision of this State, or
5 State or interstate agency.

6
7 2. a. The Department of Environmental Protection shall
8 designate an area within any municipality in the State a burdened
9 community pursuant to the provisions of this section. The
10 department may designate an area a burdened community pursuant
11 to a petition filed by any person or upon its own initiative. The
12 department shall grant or deny a petition within 60 days of its
13 receipt. A person who petitions the department to designate an area
14 within the municipality a burdened community shall include in the
15 application:

16 (1) A map of the area that is the subject of the application;

17 (2) A list of the facilities in the area for which the department
18 has issued a permit the affect the public health, the environment,
19 and the quality of life in the community;

20 (3) Any demographic or household information that will assist
21 the department in assessing the income levels in the area;

22 (4) The name and contact information of a designated
23 representative of the burdened community; and

24 (5) Any other information the applicant deems relevant
25 concerning the conditions in the area that is the subject of the
26 application.

27 b. The department shall designate an area a burdened
28 community upon a finding that the area meets the following criteria:

29 (1) At least one-half of the households in the area qualify as
30 low-income households;

31 (2) At least one-half of the area's residents are members of a
32 minority group;

33 (3) There is in the area at least one "major facility" as defined
34 pursuant to section 2 of P.L.1954, c.212 (C.26:2C-2);

35 (4) There is in the area at least one property that is included on
36 the list of known hazardous discharge sites maintained pursuant to
37 the provisions of P.L.1982, c.202 (C.58:10-23.15 et seq.); and

38 (5) There is in the area at least one facility:

39 (a) that has been issued a permit pursuant to the provisions of
40 P.L.1977, c.74 (C.58:10A-1 et seq.);

41 (b) regulated pursuant to the provisions of P.L.1985, c.403
42 (C.13:1K-19 et seq.); or

43 (c) regulated pursuant to the provisions of P.L.1970, c.39
44 (C.13:1E-1 et seq.).

45 c. Upon designating an area a burdened community, the
46 department shall notify the governing body of the municipality in
47 which the area is located, the applicant, as applicable, and any
48 community leaders as appropriate. Upon consultation with the

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1 governing body of the municipality in which the burdened
2 community is located, and the petitioner if applicable, the
3 department shall designate a representative of the burdened
4 community.

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6 3. a. The Department of Environmental Protection shall not
7 grant a permit for a project located in a burdened community unless
8 the department first:

9 (1) Prepares a report assessing the environmental impact of the
10 proposed project including any cumulative impacts on the
11 community, any adverse environmental effects that cannot be
12 avoided should the permit be granted, and the public health impact
13 on the burdened community of the proposed project;

14 (2) Transmits the report required to be prepared pursuant to
15 paragraph (1) of this subsection at least 30 days in advance of the
16 public hearing required pursuant to paragraph (3) of this subsection
17 to the governing body and the clerk of the municipality in which the
18 burdened community is located, the permit applicant, and the
19 designated representative of the burdened community. The report
20 shall be made available to the public at least 30 days prior to the
21 public hearing required pursuant to paragraph (3) of this subsection;
22 and

23 (3) Conducts a public hearing in a location convenient as much
24 as possible to all interested parties at least 30 days prior to issuing a
25 decision on a permit application. Public notices of the hearing shall
26 be published in at least two newspapers circulating within the
27 burdened community not less than 21 days prior to the hearings. At
28 least 14 days prior to the date set for such hearing, a copy of the
29 public notice shall be sent to the governing body and the clerk of
30 the municipality in which the burdened community is located, the
31 permit applicant, and the designated representative of the burdened
32 community. Following the public hearing, the commissioner shall
33 consider the testimony presented and evaluate any revisions or
34 conditions to the permit that may be necessary to reduce the adverse
35 impact to the public health or to the environment in the burdened
36 community.

37 b. Notwithstanding the provisions of any other law, or rule or
38 regulation adopted pursuant thereto, to the contrary, the department
39 may deny a permit application in a burdened community upon a
40 finding that the approval of the permit would, together with the
41 cumulative adverse health and environmental impacts posed by the
42 existing conditions, including conditions resulting from permitted
43 activities, in the burdened community, constitute an unreasonable
44 risk to the health of the residents of the burdened community and to
45 the environment in the community.

46 c. The department shall not approve a permit application for a
47 project in a burdened community unless the governing body of the

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1 municipality in which the burdened community is located adopts an
2 ordinance approving the project.

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4 4. The Department of Environmental Protection may adopt,
5 pursuant to the provisions of the "Administrative Procedure Act,"
6 P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations to
7 implement the provisions of this act.

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9 5. This act shall take effect on the 180th day after enactment.

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STATEMENT

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14 This bill would authorize the Department of Environmental
15 Protection (DEP) to designate an area within a municipality a
16 "burdened community" and, prior to a DEP determination on a
17 permit application in a burdened community, require an additional
18 environmental evaluation and a public hearing. A burdened
19 community is one in which at least one-half of the households in the
20 area qualify as low-income households, at least one-half of the
21 residents are members of a minority group, and there is at least one
22 "major facility" regulated pursuant to the "Air Pollution Control Act
23 (1954), at least one property that is included on the list of known
24 hazardous discharge sites maintained pursuant to the provisions of
25 P.L.1982, c.202 (C.58:10-23.15 et seq.), and there is one facility
26 regulated pursuant to (1) the "Water Pollution Control Act," (2)
27 the "Toxic Catastrophe Prevention Act," or (3) the "Solid Waste
28 Management Act."

29

30 Before any permit is approved in a burdened community, the
31 DEP would be required to prepare a report assessing the
32 environmental impact of the proposed project and conduct a public
33 hearing in a location convenient as much as possible to all
34 interested parties. Following the public hearing, the DEP would be
35 required to consider the testimony presented and evaluate any
36 revisions or conditions to the permit that may be necessary to
37 reduce the adverse impact on the public health or to the
38 environment in the burdened community. The bill authorizes the
39 department to deny a permit application in a burdened community
40 upon a finding that the approval of the permit would, together with
41 the cumulative adverse health and environmental impacts posed by
42 the existing conditions, including conditions resulting from
43 permitted activities, in the burdened community, constitute an
44 unreasonable risk to the health of the residents of the burdened
45 community and to the environment in the community.

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46 Finally, the bill would prohibit the department from approving a
47 permit unless the governing body of the municipality in which the
48 burdened community is located adopts an ordinance approving the
project.