SENATE CONCURRENT RESOLUTION No. 180

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED OCTOBER 19, 2015

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Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

Co-Sponsored by:
Senator Pou, Assemblymen DiGianantonio and Gusciora

SYNOPSIS
Determines that DEP’s proposal to revise Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules is inconsistent with legislative intent.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 1/12/2016)
A CONCURRENT RESOLUTION concerning legislative review of certain proposed Department of Environmental Protection regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.

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

WHEREAS, On June 1, 2015, the Department of Environmental Protection proposed for public comment in the New Jersey Register a rule proposal to revise its Flood Hazard Area Control Act (FHACA) Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone Management (CZM) Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management (SWM) Rules, N.J.A.C.7:8-1.1 et seq.; and

WHEREAS, The notice of proposal lists the following statutes as the authority for the rule proposal: N.J.S.A.13:1D-1 et seq. (the statute establishing the department); N.J.S.A.13:1D-29 et seq. (commonly referred to as the “90-Day Law”); N.J.S.A.13:20-1 et seq. (the “Highlands Water Protection and Planning Act”); N.J.S.A.58:10A-1 et seq. (the “Water Pollution Control Act”); N.J.S.A.58:11A-1 et seq. (the “Water Quality Planning Act”); and N.J.S.A.58:16A-50 et seq. (the “Flood Hazard Area Control Act”); and

WHEREAS, According to the rule proposal, the department is proposing comprehensive changes to the FHACA Rules to reduce unnecessary regulatory burden, add appropriate flexibility, provide better consistency with federal, State, and local requirements, create additional permits-by-rule and general permits, and address implementation issues identified since the repeal and repromulgation of the rules in November 2007, and the “proposed amendments, repeals, and new rules consolidate similar provisions, simplify language, incorporate additional detail and description regarding the substantive standards that must be met to undertake regulated activities, and harmonize certain procedural provisions with the Department’s other land use regulations”; and

WHEREAS, The proposal further notes that it is proposing related amendments to the CZM Rules and the SWM Rules for consistency with the FHACA Rules regarding development in flood hazard areas and the preservation of vegetation and habitat within and adjacent to surface waters; and

WHEREAS, Notwithstanding the above description, the proposal includes lessening and removing protections for headwaters,
allowing development in vulnerable areas and mitigation elsewhere,
weakening stream buffer requirements, and making it easier to
obtain permits to build in flood-prone areas; and

WHEREAS, In a state as densely populated as New Jersey that suffers
from severe and chronic flooding events, causing on some
occasions significant property damage and inflicting incalculable
harm to the economy of the State, the protection and preservation of
New Jersey's water resources, including the quality and quantity of
the State's limited water supply, are essential to the quality of life
and the economic health of the citizens of the State; and

WHEREAS, The Legislature has repeatedly found and declared that it is
the policy of this State to restore, enhance, and maintain the
chemical, physical, and biological integrity of its waters, to protect
public health, to safeguard fish and aquatic life and scenic and
ecological values, and to enhance the domestic, recreational,
agricultural, industrial, and other beneficial uses of water; and

WHEREAS, The Legislature, and the voters of the State, have
repeatedly supported the acquisition of flood-prone lands in order to
remove people and property from harm’s way, and the proposed
regulatory changes to allow development and the disturbance of
vegetation in riparian zones are contrary to the State’s efforts in this
regard; and

WHEREAS, The Legislature found and declared, in the Water Pollution
Control Act, that it is in the interest of the people of this State to
minimize direct regulation by the federal government of wastewater
dischargers by enacting legislation to continue and extend the
powers and responsibilities of the Department of Environmental
Protection for administering the State's water pollution control
program, so that the State may implement the permit system
required by the federal act; and

WHEREAS, The federal Clean Water Act requires states to establish
and maintain water quality standards that include anti-degradation
policies to maintain and protect high quality state waters from
increased loadings of pollutants resulting from regulated activities,
such as development and direct or indirect discharges; and

WHEREAS, The United States Environmental Protection Agency
Region 2 recently submitted comments to the Department of
Environmental Protection on the June 1, 2015 proposal to revise the
Flood Hazard Area Control Act Rules, Coastal Zone Management
Rules, and Stormwater Management Rules stating, among other
things, that “measurable changes to Category 1 (C1) waters as a
result of proposed changes to the rules would not comply with New
Jersey’s water quality standards”; and

WHEREAS, While the Legislature supports and encourages regulatory
changes that reduce complexity, correct conflicting regulations, and
streamline the permitting process, the regulatory changes proposed
by the Department of Environmental Protection in its June 1, 2015
proposal go far beyond doing such and would weaken the State’s
protection for flood-prone lands and water quality, resulting in more flooding and more pollutants entering State waters, and any regulatory changes that jeopardize the State’s ability to implement the National Pollutant Discharge Elimination System program are inconsistent with the intent of the Legislature; and

WHEREAS, The proposed amendments, repeals, and new rules contained in the proposal published by the Department of Environmental Protection in the New Jersey Register on June 1, 2015 to revise the Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules are inconsistent with the intent of the Legislature; now, therefore,

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

1. The Legislature declares that the proposal by the Department of Environmental Protection, published for public comment in the New Jersey Register on June 1, 2015, to revise the Flood Hazard Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone Management Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management Rules, N.J.A.C.7:8-1.1 et seq. is not consistent with legislative intent.

2. Copies of this resolution, as filed with the Secretary of State, shall be transmitted by the Secretary of the Senate or the Clerk of the General Assembly to the Commissioner of Environmental Protection.

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

STATEMENT

This concurrent resolution embodies the finding of the Legislature that the Department of Environmental Protection’s proposal to revise the Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules, published for public comment in the New Jersey Register on June 1, 2015, is not consistent with the intent of the Legislature.

The Commissioner of Environmental Protection will have 30 days from the date of transmittal of this resolution to amend or
withdraw the proposed rules and regulations, or the Legislature
may, by passage of another concurrent resolution, exercise its
authority under the Constitution to invalidate the rules and
regulations in whole or in part.