

**ASSEMBLY CONCURRENT  
RESOLUTION No. 192**

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**STATE OF NEW JERSEY**

**217th LEGISLATURE**

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INTRODUCED JUNE 20, 2016

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblywoman L. GRACE SPENCER**

**District 29 (Essex)**

**Assemblywoman ELIZABETH MAHER MUOIO**

**District 15 (Hunterdon and Mercer)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblyman REED GUSCIORA**

**District 15 (Hunterdon and Mercer)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington)**

**Co-Sponsored by:**

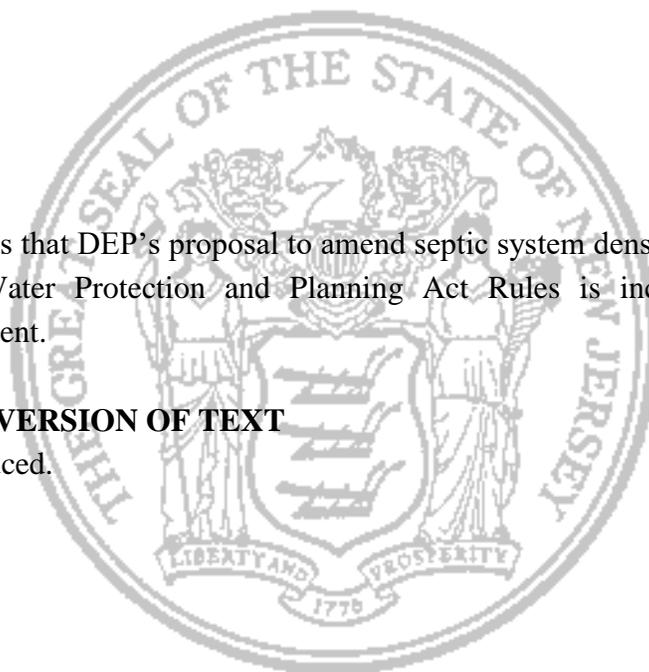
**Assemblywoman Caride, Assemblyman Caputo, Assemblywoman Pinkin  
and Assemblyman Eustace**

**SYNOPSIS**

Determines that DEP's proposal to amend septic system density standards in Highlands Water Protection and Planning Act Rules is inconsistent with legislative intent.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/20/2016)**

1 **A CONCURRENT RESOLUTION** concerning legislative review of  
2 certain proposed Department of Environmental Protection  
3 regulations pursuant to Article V, Section IV, paragraph 6 of the  
4 Constitution of the 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 May 2, 2016, the Department of Environmental  
16 Protection (DEP) proposed for public comment in the New Jersey  
17 Register, at 48 N.J.R. 677(a), a rule proposal to revise the septic  
18 system density standards in the Highlands Water Protection and  
19 Planning Act Rules; and  
20 **WHEREAS**, The Highlands Water Protection and Planning Act  
21 (“Highlands Act”), P.L.2004, c.120 (C.13:20-1 et al.), establishes a  
22 comprehensive, long-term approach to the protection and  
23 preservation of the drinking water and natural resources of the New  
24 Jersey Highlands Region, which is the source of the drinking water  
25 for more than half of the residents of New Jersey and contains other  
26 exceptional natural resources such as clean air, contiguous forest  
27 lands, wetlands, pristine watersheds, and habitat for fauna and flora,  
28 includes many sites of historic significance, and provides abundant  
29 recreational opportunities for the citizens of the State; and  
30 **WHEREAS**, The Highlands Act states that this comprehensive approach  
31 to protecting the Highlands Region includes the identification of a  
32 preservation area “that would be subjected to stringent water and  
33 natural resource protection standards, policies, planning, and  
34 regulation,” and directs the DEP to develop and enforce an  
35 environmental permitting program with statutorily established  
36 standards in the preservation area of the Highlands Region, and the  
37 act contains very specific standards to be included in this permitting  
38 program; and  
39 **WHEREAS**, With regard to septic system density, the Highlands Act  
40 requires the DEP’s rules to include “a septic system density  
41 standard established at a level to prevent the degradation of water  
42 quality, or to require the restoration of water quality, and to protect  
43 ecological uses from individual, secondary, and cumulative  
44 impacts, in consideration of deep aquifer recharge available for  
45 dilution”; and  
46 **WHEREAS**, The existing septic system density standards contained in  
47 the DEP’s rules were originally adopted in May 2005, and  
48 subsequently readopted in 2006, and the methodology used by the

1 DEP to establish those standards was found to be appropriate as  
2 part of a fact-finding hearing conducted by the Office of  
3 Administrative Law in response to a challenge brought by the New  
4 Jersey Farm Bureau; and

5 **WHEREAS**, An Initial Decision by the Office of Administrative Law,  
6 dated March 24, 2009, concluded that the originally adopted septic  
7 system density standards set out in the DEP's rules were a valid  
8 exercise of the agency's discretion, and this finding, that the DEP  
9 acted properly in adopting its septic system density standards, was  
10 adopted as a Final Decision on July 13, 2009; and

11 **WHEREAS**, The DEP's rule proposal states that the proposed standards  
12 "could result in up to 1,145 additional septic systems, or about 12  
13 percent more individual septic systems than under the existing  
14 rule"; and

15 **WHEREAS**, Even properly operating and maintained septic systems  
16 discharge nutrients, such as phosphates and nitrates, and some  
17 bacteria or viruses to groundwater, and improperly sited or  
18 maintained septic systems can discharge even more contaminants to  
19 groundwater, resulting in contamination of groundwater and surface  
20 water resources; and

21 **WHEREAS**, When nutrients such as phosphorus and nitrogen are  
22 discharged from septic systems into the groundwater, they  
23 contaminate drinking water supplies, and also represent a  
24 potentially significant nonpoint source of pollution; and

25 **WHEREAS**, Septic systems may also contribute to the contamination of  
26 groundwater by toxic chemicals; and the contaminants that may  
27 enter groundwater through septic systems include heavy metals and  
28 toxic chemicals from small commercial establishments, ingredients  
29 in household products, and organic chemicals typically found in  
30 septic tank cleaning products; and

31 **WHEREAS**, According to a 2015 report, "Potable Water Supplied in  
32 2011 by New Jersey's Highlands," published by the New Jersey  
33 Geological and Water Survey, in 2011 the Highlands Region  
34 supplied 136 billion gallons of water or approximately one-third of  
35 the total amount of potable water used in the State, and Highlands  
36 water was distributed to 332 municipalities in 16 counties, home to  
37 70% of the State's population; and

38 **WHEREAS**, This is an increase from estimates in 1999 which  
39 calculated that 107 billion gallons of the State's potable water came  
40 from the Highlands Region and was used in 292 municipalities,  
41 demonstrating that the Highlands Region serves an increasingly  
42 important role in the State's potable water supply deserving of  
43 strong environmental protections; and

44 **WHEREAS**, The provisions of the Highlands Act with regard to the  
45 septic system density standards have not changed since enactment  
46 of the act, and there is no provision in the Highlands Act directing  
47 the DEP to review and weaken its originally adopted rules; and

1 **WHEREAS**, The new standards contained in the May 2, 2016 rule  
2 proposal do not comply with the requirement in the Highlands Act  
3 for the septic system density standards to be established at a level to  
4 prevent the degradation of water quality, or to require the  
5 restoration of water quality, and to protect ecological uses; and

6 **WHEREAS**, The proposed new standards do not promote the  
7 restoration of water quality nor are they established upon a sound  
8 scientific basis that will ensure the non-degradation of water  
9 quality; and

10 **WHEREAS**, The proposed amendments contained in the proposal  
11 published by the DEP in the New Jersey Register on May 2, 2016  
12 to revise the septic system density standards in the Highlands  
13 Water Protection and Planning Act Rules are inconsistent with the  
14 intent of the Legislature; now, therefore,

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

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19 1. The Legislature declares that the proposal by the Department  
20 of Environmental Protection, published for public comment in the  
21 New Jersey Register on May 2, 2016, to revise the septic system  
22 density standards in the Highlands Water Protection and Planning  
23 Act Rules is not consistent with legislative intent.

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

29

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

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#### STATEMENT

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41 This concurrent resolution embodies the finding of the  
42 Legislature that the Department of Environmental Protection's  
43 proposal to revise the septic system density standards in the  
44 Highlands Water Protection and Planning Act Rules, published for  
45 public comment in the New Jersey Register on May 2, 2016, is not  
46 consistent with the intent of the Legislature.

47 The Commissioner of Environmental Protection will have 30  
48 days from the date of transmittal of this resolution to amend or

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1 withdraw the proposed rules and regulations, or the Legislature  
2 may, by passage of another concurrent resolution, exercise its  
3 authority under the Constitution to invalidate the rules and  
4 regulations in whole or in part.