SENATE CONCURRENT RESOLUTION No. 66

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 16, 2016

Sponsored by:
Senator RAYMOND J. LESNIAK
District 20 (Union)
Senator BOB SMITH
District 17 (Middlesex and Somerset)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS
Prohibits adoption of DEP’s proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 6/17/2016)
A CONCURRENT RESOLUTION concerning legislative review of rules and regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey and prohibiting the adoption of certain proposed Department of Environmental Protection rules and regulations.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if it is consistent with the intent of the Legislature, and invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation if it finds that the rule or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or adopted, is not consistent with legislative intent, Article V, Section IV, paragraph 6 provides that the Legislature shall transmit its findings in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation, and the agency shall have 30 days from the time the concurrent resolution is transmitted to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or proposed rule or regulation, Article V, Section IV, paragraph 6 provides that the Legislature may invalidate or prohibit the adoption of the proposed rule or regulation, following a public hearing held by either House on the invalidation or prohibition, the placement of a transcript of the public hearing on the desks of the members of each House of the Legislature in open meeting followed by the passage of at least 20 calendar days, and a vote of a majority of the authorized membership of each House in favor of a concurrent resolution invalidating or prohibiting the adoption of the rule or regulation; 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, Assembly Concurrent Resolution No. 249 and Senate Concurrent Resolution No. 180 declared 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; and

WHEREAS, On January 11, 2016, Senate Concurrent Resolution No. 180 received final approval by the Legislature and was filed with the Secretary of State and transmitted to the Commissioner of Environmental Protection; and

WHEREAS, Senate Concurrent Resolution No. 180 expressed the Legislature’s finding that the Department of Environmental Protection’s June 1, 2015 proposal was not consistent with legislative intent and informed the department, pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, that the department shall have 30 days following transmittal of that concurrent 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 prohibit the adoption of the proposed rules and regulations in whole or in part; and

WHEREAS, The Department of Environmental Protection has failed to amend or withdraw, or provide any notification to the Legislature of its intention to amend or withdraw, the proposed regulations within 30 days after the transmission of Senate Concurrent Resolution No. 180; and

WHEREAS, Prior to voting on a concurrent resolution to invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation, a public hearing shall be held on invalidating or prohibiting the adoption of the proposed rule and the transcript of that hearing shall be placed on the desk of each member of the Senate and each member of the General Assembly; now, therefore,

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

1. The Legislature prohibits adoption of the proposed rules and regulations published by the Department of Environmental Protection 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.
2. Copies of this concurrent resolution, as filed with the Secretary of State, shall be transmitted by the Clerk of the General Assembly or the Secretary of the Senate to the Governor, the Commissioner of Environmental Protection, and the Office of Administrative Law.

3. This concurrent resolution shall take effect immediately.

STATEMENT

Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, this concurrent resolution prohibits adoption of the rules and regulations proposed by the Department of Environmental 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.

As required by the Constitution, the Legislature previously informed the Department of Environmental Protection, through Senate Concurrent Resolution No. 180 of 2015, of the Legislature’s finding that this rule proposal is not consistent with legislative intent.