

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 1700

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 24, 2019

The Senate Environment and Energy Committee favorably reports Senate Bill No. 1700 with committee amendments.

This bill, as amended, would require a person seeking a permit for a new facility, or for the expansion of an existing facility, located in a burdened community, to meet certain additional requirements before they can obtain the permit.

Under the bill, as amended, a “burdened community” is defined as any census tract, as delineated in the most recent federal decennial census, that is ranked in the bottom 33 percent of census tracts in the State for median household income. “Facility” is defined as any: (1) electric generating facility with a capacity of more than ten megawatts; (2) resource recovery facility or incinerator; (3) sludge combustor or incinerator; (4) sewage treatment plant with a capacity of more than 50 million gallons per day; (5) transfer station, recycling center, or other solid waste facility with a combined monthly volume in excess of 25 tons; (6) landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste; (7) medical waste incinerator; or (8) major source of air pollution, as defined by the federal “Clean Air Act.”

The bill, as amended, would require the Department of Environmental Protection (DEP), in consultation with the Secretary of State, no later than 120 days after the date of enactment of the bill, to adopt a list of burdened communities in the State. The DEP would be required to update the list of burdened communities periodically as new data on median annual household income becomes available and upon promulgation by the federal government of a new federal decennial census. No later than 60 days after a burdened community is designated under the bill, the governing body of the municipality in which the burdened community is located would be required to designate a representative of the burdened community.

Under the bill, as amended, beginning 180 days after the date of enactment of the bill, the DEP would not be permitted to grant certain environmental permits for any new facility, or for the expansion of an existing facility, located in whole or in part in a burdened community, unless the permit applicant first:

(1) prepares a report assessing the environmental impact of the proposed new or expanded facility. The report would assess the environmental impact on the burdened community including cumulative impacts, any adverse environmental effects that cannot be avoided should the permit be granted, and the public health impact on the burdened community of the proposed new or expanded facility;

(2) transmits the report at least 30 days in advance of the public hearing required under the bill to the DEP, the governing body and the clerk of the municipality in which the burdened community is located, and the designated representative of the burdened community. The permit applicant would be required to make the report available to the public at least 30 days prior to the public hearing; and

(3) organizes and conducts a public hearing in a location as convenient as possible to all interested parties. The bill establishes specific requirements for public notice of the hearing. At the public hearing, the permit applicant would be required to provide clear, accurate, and complete information about the proposed new or expanded facility and its potential environmental and health impacts in the burdened community. The permit applicant would also be required to provide an opportunity for meaningful public participation by residents of the burdened community. Following the hearing, the DEP would be required to consider testimony presented at the public hearing, and evaluate any revisions or conditions to the permit that may be necessary to reduce the adverse impact to the public health or to the environment in the burdened community.

Under the bill, as amended, the DEP would not be permitted to issue a decision on the permit application until at least 60 days after the public hearing. The DEP would have the authority to deny a permit application in a burdened community upon a finding that approval of the permit, together with the cumulative impacts posed by the proposed new or expanded facility, would constitute an unreasonable risk to the health of the residents of the burdened community and to the environment in that community. The DEP, when evaluating an application for a permit under the bill, would be required to assess community support for the proposed new or expanded facility, and be required to consider such support, or the lack thereof, in its decision to grant or deny a permit.

The bill, as amended, provides that if a permit applicant is applying for more than one permit for a proposed new or expanded facility, the applicant would only be required to comply with the provisions of the bill once, unless the DEP, in its discretion, determines that more than one public hearing is necessary due to the complexity of the new or expanded facility.

The committee amendments to the bill:

(1) remove the criteria and process for designating a burdened community in section 2 of the bill, and provide a new definition for the term “burdened community”;

(2) provide that, no later than 120 days after the date of enactment of the bill, the DEP would be required to adopt a list of burdened communities and update that list periodically;

(3) provide that, no later than 60 days after a burdened community is designated, the municipality in which the burdened community is located would be required to designate a representative of the burdened community.

(4) limit application of the bill to “a new facility, or the expansion of an existing facility,” and provides a definition for the term “facility”;

(5) provide that, beginning 180 days after the date of enactment of the bill, the DEP would not be permitted to grant a permit for a new or expanded facility located in whole or in part in a burdened community unless the permit applicant meets certain requirements, including preparing and transmitting an environmental impact report and organizing and conducting a public hearing;

(6) change the responsibility for the preparation of the report on the environmental impact of the facility and organization of the public hearing from the DEP to the permittee;

(7) provide a definition for the term “cumulative impacts,” and authorize the DEP to issue guidance on how to evaluate cumulative impacts under the bill;

(8) provide that a permit would not include, and thus the bill’s requirements would not apply to: (a) any general permit issued by the DEP pursuant to subsection h. of section 13 of P.L.1967, c.106 (C.26:2C-9.2), or (b) any general permit issued by the DEP for remedial activity pursuant to subsection d. of section 1 of P.L.1993, c.351 (C.58:10A-7.2);

(9) provide that, at the public hearing required under the bill, the permit applicant would be required to provide clear, accurate, and complete information about the proposed new or expanded facility and its potential environmental and health impacts, and an opportunity for meaningful public participation by members of the burdened community;

(10) prohibit the DEP from issuing a permit for the proposed new or expanded facility until at least 60 days after the public hearing;

(11) remove a provision from the bill that prohibits the DEP from approving an application for a project in a burdened community unless the governing body of the municipality in which the burdened community is located adopts an ordinance approving the project;

(12) require the DEP, when evaluating an application for a permit covered under the bill, to assess the community support for the proposed new or expanded facility, and to consider community support, or the lack thereof, in its decision to grant or deny a permit;

(13) provide that, if the permit applicant is applying for more than one permit for a proposed new or expanded facility, the permit applicant is only required to comply with the provisions of the bill

once, unless the DEP determines that more than one public hearing is necessary due to the complexity of the proposed new or expanded facility; and

(14) remove certain definitions that are no longer applicable, and make other technical and clarifying changes to the bill.