SENATE, No. 232

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)
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SYNOPSIS
Concerns environmental permits in burdened communities.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning environmental permits in certain areas, and
supplementing Title 13 of the Revised Statutes.

BE IT ENACED by the Senate and General Assembly of the State
of New Jersey:

1. As used in this act: “Burdened community” means 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 annual household income.

“Cumulative impacts” means an exposure, public health or
environmental risk, or other effect occurring in a specific
geographical area, including from any environmental pollution
emitted or released routinely, accidentally, or otherwise, from any
source, and assessed based on the combined past, present, and
reasonably foreseeable emissions and discharges affecting the
geographical area. “Cumulative impacts” shall be evaluated based
on any applicable guidance issued by department.

“Facility” means 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,” 42 U.S.C.s.7401 et seq.

“Permit” means any permit, registration, or license issued by the
Department of Environmental Protection establishing the regulatory
and management requirements for an ongoing regulated activity as
authorized by federal law or the following State laws: R.S.12:5-1 et
seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the “Solid Waste
Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of
P.L.1975, c.326 (C.13:1E-26); the “Comprehensive Regulated
Statewide Mandatory Source Separation and Recycling Act,”
P.L.1987, c.102 (C.13:1E-99.11 et al.); the “Pesticide Control Act
of 1971,” P.L.1971, c.176 (C.13:1F-1 et seq.); the “Industrial Site
Catastrophe Prevention Act,” P.L.1985, c.403 (C.13:1K-19 et seq.);
the “Freshwater Wetlands Protection Act,” P.L.1987, c.156
(C.13:9B-1 et al.); the “Coastal Area Facility Review Act,”
P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands Water
Protection and Planning Act,” P.L.2004, c.120 (C.13:20-1 et seq.),
the “Air Pollution Control Act (1954),” P.L.1954, c.212 (C.26:2C-1

2. a. No later than 120 days after the effective date of this act, the Department of Environmental Protection, in consultation with the Secretary of State, shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), a list of burdened communities in the State. The department shall 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.

b. No later than 60 days after a burdened community is designated pursuant to subsection a. of this section, the governing body of the municipality in which the burdened community is located, in consultation with appropriate community groups, shall designate a representative of the burdened community.

3. a. Beginning 180 days after the effective date of this act, the Department of Environmental Protection shall not grant a permit for a 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 facility, or expansion of an existing facility, including any cumulative impacts on the burdened community, 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 facility or expansion of an existing facility;

(2) Transmits the report required to be prepared pursuant to paragraph (1) of this subsection at least 30 days in advance of the public hearing required pursuant to paragraph (3) of this subsection to the department, 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 report shall be made available to the public at least 30 days prior to the public hearing required pursuant to paragraph (3) of this subsection; and
(3) Organizes and conducts a public hearing in a location convenient as much as possible to all interested parties. The permit applicant shall publish public notices of the hearing in at least two newspapers circulating within the burdened community not less than 21 days prior to the hearing. At least 14 days prior to the date set for such hearing, a copy of the public notice shall be sent to the department, the governing body and the clerk of the municipality in which the burdened community is located, and the designated representative of the burdened community. At the public hearing, the permit applicant shall provide clear, accurate, and complete information about the proposed new facility or expansion of an existing facility and the potential environmental and health impacts of the new or expanded facility. The hearing shall provide an opportunity for meaningful public participation by residents of the burdened community. Following the public hearing, the commissioner shall consider the testimony presented 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.

b. The department shall not issue a decision on the permit application until at least 60 days after the public hearing held pursuant to this section. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department may deny a permit application in a burdened community upon a finding that the approval of the permit would, together with the cumulative impacts posed by the existing conditions, including conditions resulting from permitted activities, in the burdened community, constitute an unreasonable risk to the health of the residents of the burdened community and to the environment in the burdened community.

c. The department, when evaluating an application for a permit pursuant to this section, shall assess the community support for the proposed new facility or expansion of an existing facility, as demonstrated through the public hearing conducted pursuant to subsection a. of this section, letters of support for, or opposition to, the proposed new or expanded facility, and any ordinance or resolution adopted by the governing body of the municipality in which the burdened community is located. The department shall consider community support, or the lack thereof, in its decision to grant or deny a permit.

d. If a permit applicant is applying for more than one permit for a proposed new facility or expansion of an existing facility, the permit applicant shall only be required to comply with the provisions of this section once, unless the department, in its discretion, determines that more than one public hearing is necessary due to the complexity of the proposed new or expanded facility. Nothing in this section shall be construed to limit the
authority of the department to hold or require additional public
hearings, as may be required by any other law, rule, or regulation.

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

b. The department may issue guidance on how to evaluate
cumulative impacts pursuant paragraph (1) of subsection a. of
section 3 of this act. The department shall publish the guidance
document on its Internet website.

5. This act shall take effect immediately.

STATEMENT

This bill 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, 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 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, 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, 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 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.