

SENATE COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 25, 2020

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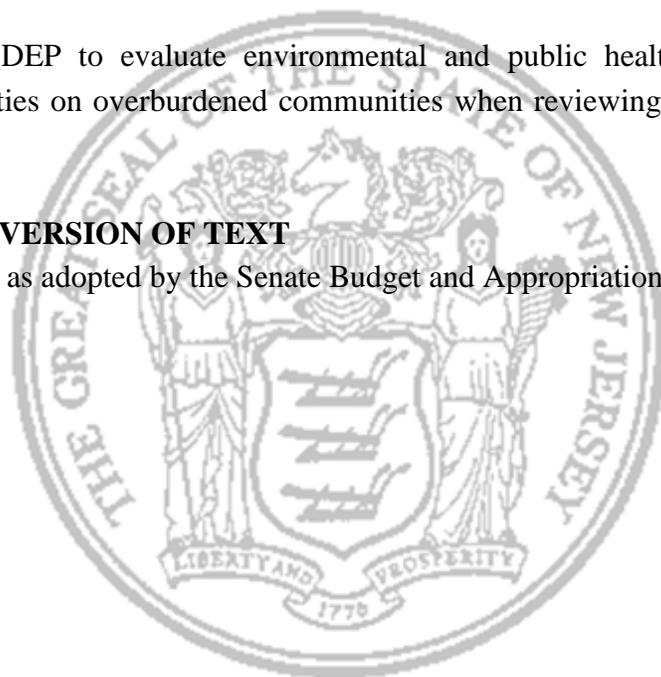
Senators Turner and Addiego

SYNOPSIS

Requires DEP to evaluate environmental and public health stressors of certain facilities on overburdened communities when reviewing certain permit applications.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



1 AN ACT concerning the disproportionate environmental and public
2 health impacts of pollution on overburdened communities, and
3 supplementing Title 13 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares that all New Jersey
9 residents, regardless of income, race, ethnicity, color, or national
10 origin, have a right to live, work, and recreate in a clean and healthy
11 environment; that, historically, New Jersey's low-income
12 communities and communities of color have been subject to a
13 disproportionately high number of environmental and public health
14 stressors, including pollution from numerous industrial,
15 commercial, and governmental facilities located in those
16 communities; that, as a result, residents in the State's overburdened
17 communities have suffered from increased adverse health effects
18 including, but not limited to, asthma, cancer, elevated blood lead
19 levels, cardiovascular disease, and developmental disorders; that
20 children are especially vulnerable to the adverse health effects
21 caused by exposure to pollution, and that such health effects may
22 severely limit a child's potential for future success; that the adverse
23 effects caused by pollution impede the growth, stability, and long-
24 term well-being of individuals and families living in overburdened
25 communities; that the legacy of siting sources of pollution in
26 overburdened communities continues to pose a threat to the health,
27 well-being, and economic success of the State's most vulnerable
28 residents; and that it is past time for the State to correct this
29 historical injustice.

30 The Legislature further finds and declares that no community
31 should bear a disproportionate share of the adverse environmental
32 and public health consequences that accompany the State's
33 economic growth; that the State's overburdened communities must
34 have a meaningful opportunity to participate in any decision to
35 allow in such communities certain types of facilities which, by the
36 nature of their activity, have the potential to increase environmental
37 and public health stressors; and that it is in the public interest for
38 the State, where appropriate, to limit the future placement and
39 expansion of such facilities in overburdened communities.

40
41 2. As used in this act:

42 "Department" means the Department of Environmental
43 Protection.

44 "Environmental or public health stressors" means sources of
45 environmental pollution, including, but not limited to, concentrated

1 areas of air pollution, mobile sources of air pollution, contaminated
2 sites, transfer stations or other solid waste facilities, recycling
3 facilities, scrap yards, and point-sources of water pollution
4 including, but not limited to, water pollution from facilities or
5 combined sewer overflows; or conditions that may cause potential
6 public health impacts, including, but not limited to, asthma, cancer,
7 elevated blood lead levels, cardiovascular disease, and
8 developmental problems in the overburdened community.

9 “Facility” means any: (1) major source of air pollution; (2)
10 resource recovery facility or incinerator; (3) sludge processing
11 facility, combustor, or incinerator; (4) sewage treatment plant with
12 a capacity of more than 50 million gallons per day; (5) transfer
13 station or other solid waste facility, or recycling facility intending
14 to receive at least 100 tons of recyclable material per day; (6) scrap
15 metal facility; (7) landfill, including, but not limited to, a landfill
16 that accepts ash, construction or demolition debris, or solid waste;
17 or (8) medical waste incinerator.

18 “Limited English proficiency” means that a household does not
19 have an adult that speaks English “very well” according to the
20 United States Census Bureau.

21 “Low-income household” means a household that is at or below
22 twice the poverty threshold as that threshold is determined annually
23 by the United States Census Bureau.

24 “Major source” means a major source of air pollution as defined
25 by the federal “Clean Air Act,” 42 U.S.C. s.7401 et seq., or in rules
26 and regulations adopted by the department pursuant to the “Air
27 Pollution Control Act,” P.L.1954, c.212 (C.26:2C-1 et seq.).

28 “Overburdened community” means any census block group, as
29 determined in accordance with the most recent United States
30 Census, in which: (1) at least 35 percent of the households qualify
31 as low-income households; (2) at least 40 percent of the residents
32 identify as minority or as members of a State recognized tribal
33 community; or (3) at least 40 percent of the households have limited
34 English proficiency.

35 “Permit” means any individual permit, registration, or license
36 issued by the department to a facility establishing the regulatory and
37 management requirements for a regulated activity under the
38 following State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-
39 29 et al.); the “Solid Waste Management Act,” P.L.1970, c.39
40 (C.13:1E-1 et seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the
41 “Comprehensive Regulated Medical Waste Management Act,”
42 P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151 (C.13:1E-
43 99.21a et al.); the “New Jersey Statewide Mandatory Source
44 Separation and Recycling Act,” P.L.1987, c.102 (C.13:1E-

1 99.11 et al.); the “Pesticide Control Act of 1971,” P.L.1971, c.176
2 (C.13:1F-1 et seq.); “The Wetlands Act of 1970,” P.L.1970, c.272
3 (C.13:9A-1 et seq.); the “Freshwater Wetlands Protection Act,”
4 P.L.1987, c.156 (C.13:9B-1 et al.); the “Coastal Area Facility
5 Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands
6 Water Protection and Planning Act,” P.L.2004, c.120 (C.13:20-
7 1 et seq.), the “Air Pollution Control Act (1954),” P.L.1954, c.212
8 (C.26:2C-1 et seq.); the “Water Supply Management Act,”
9 P.L.1981, c.262 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-
10 5 et seq.); the “Water Pollution Control Act,” P.L.1977, c.74
11 (C.58:10A-1 et seq.); P.L.1986, c.102 (C.58:10A-21 et seq.); the
12 “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-
13 50 et seq.).

14

15 3. No later than 120 days after the effective date of this act, the
16 department shall publish and maintain on its Internet website a list
17 of overburdened communities in the State. The department shall
18 update the list of overburdened communities at least once every two
19 years. The department shall notify a municipality if any part of the
20 municipality has been designated an overburdened community
21 pursuant to this act.

22

23 4. a. Beginning 180 days after the effective date of this act, the
24 department shall not consider complete for review any application
25 for a permit for a new facility or for the expansion of an existing
26 facility, or any application for the renewal of an existing facility’s
27 major source permit, if the facility is located, or proposed to be
28 located, in whole or in part, in an overburdened community, unless
29 the permit applicant first:

30 (1) Prepares an environmental justice impact statement that
31 assesses the potential environmental and public health stressors
32 associated with the proposed new or expanded facility, or with the
33 existing major source, as applicable, including any adverse
34 environmental or public health stressors that cannot be avoided if
35 the permit is granted, and the environmental or public health
36 stressors already borne by the overburdened community as a result
37 of existing conditions located in or affecting the overburdened
38 community;

39 (2) Transmits the environmental justice impact statement
40 required to be prepared pursuant to paragraph (1) of this subsection,
41 at least 60 days in advance of the public hearing required pursuant
42 to paragraph (3) of this subsection, to the department and to the
43 governing body and the clerk of the municipality in which the
44 overburdened community is located. Upon receipt, the department

1 shall publish the environmental justice impact statement on its
2 Internet website; and

3 (3) Organizes and conducts a public hearing in the overburdened
4 community. The permit applicant shall publish a notice of the
5 public hearing in at least two newspapers circulating within the
6 overburdened community, including one local non-English
7 language newspaper, if applicable, not less than 60 days prior to the
8 public hearing. The permit applicant shall provide a copy of the
9 notice to the department, and the department shall publish the
10 notice on its Internet website and in the monthly bulletin published
11 pursuant to section 6 of P.L.1975, c.232 (C.13:1D-34). The notice
12 of the public hearing shall provide the date, time, and location of
13 the public hearing, a description of the proposed new or expanded
14 facility or existing major source, as applicable, a map indicating the
15 location of the facility, a brief summary of the environmental
16 justice impact statement, information on how an interested person
17 may review a copy of the complete environmental justice impact
18 statement, an address for the submittal of written comments to the
19 permit applicant, and any other information deemed appropriate by
20 the department. At least 60 days prior to the public hearing, the
21 permit applicant shall send a copy of the notice to the department
22 and to the governing body and the clerk of the municipality in
23 which the overburdened community is located. The applicant shall
24 invite the municipality to participate in the public hearing. At the
25 public hearing, the permit applicant shall provide clear, accurate,
26 and complete information about the proposed new or expanded
27 facility, or existing major source, as applicable, and the potential
28 environmental and public health stressors associated with the
29 facility. The permit applicant shall accept written and oral
30 comments from any interested party, and provided an opportunity
31 for meaningful public participation at the public hearing. The
32 permit applicant shall transcribe the public hearing and, no later
33 than 10 days after the public hearing, submit the transcript along
34 with any written comments received, to the department. Following
35 the public hearing, the department shall consider the testimony
36 presented and any written comments received, and evaluate the
37 issuance of, or conditions to, the permit, as necessary in order to
38 avoid or reduce the adverse environmental or public health stressors
39 affecting the overburdened community.

40 The department may require the applicant to consolidate the
41 public hearing held pursuant to this paragraph with any other public
42 hearing held or required by the department regarding the permit
43 application, provided the public hearing meets the other
44 requirements of this paragraph.

1 b. Notwithstanding the provisions of P.L.1975, c.232
2 (C.13:1D-29 et seq.) or any other law, or rule or regulation adopted
3 pursuant thereto, to the contrary, the department shall not issue a
4 decision on an application for a permit for a new facility or for the
5 expansion of an existing facility, or on an application for the
6 renewal of an existing facility's major source permit, if such facility
7 is located, or proposed to be located, in whole or in part in an
8 overburdened community until at least 45 days after the public
9 hearing held pursuant to paragraph (3) of subsection a. of this
10 subsection.

11 c. Notwithstanding the provisions of any other law, or rule or
12 regulation adopted pursuant thereto, to the contrary, the department
13 shall, after review of the environmental justice impact statement
14 prepared pursuant to paragraph (1) of subsection a. of this section
15 and any other relevant information, including testimony and written
16 comments received at the public hearing, deny a permit for a new
17 facility or for the expansion of an existing facility, or apply new
18 conditions to the renewal of an existing facility's major source
19 permit, upon a finding that approval of the permit or permit
20 renewal, as proposed, would, together with other environmental or
21 public health stressors affecting the overburdened community,
22 cause or contribute to adverse cumulative environmental or public
23 health stressors in the overburdened community that are higher than
24 those borne by other communities within the State, county, or other
25 geographic unit of analysis as determined by the department
26 pursuant to rule, regulation, or guidance.

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

36 e. In addition to any other fee authorized by law, rule, or
37 regulation, the department shall assess each permit applicant a
38 reasonable fee in order to cover the department's costs associated
39 with the implementation of this act, including costs to provide
40 technical assistance to permit applicants and overburdened
41 communities as needed to comply with this act.

42

43 5. a. The department shall adopt, pursuant to the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-

1 1 et seq.) rules and regulations to implement the provisions of this
2 act.

3 b. The department may issue a technical guidance for
4 compliance with this act, which the department shall publish on its
5 Internet website.

6

7 6. This act shall take effect immediately.