

SENATE, No. 315

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators SCOTT and CONNORS

1 AN ACT concerning the costs that may be recovered by the
2 Department of Environmental Protection through the assessment of
3 statutorily authorized fees for services provided in conjunction with
4 regulatory programs and supplementing Title 13 of the Revised
5 Statutes.

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7 **BE IT ENACTED** *by the Senate and General Assembly of the State*
8 *of New Jersey:*

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10 1. This act shall be known and may be cited as the "Department of
11 Environmental Protection Fiscal Accountability Act of 1994."

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13 2. The Legislature finds and declares that regulatory programs
14 enacted by the Legislature and administered by the Department of
15 Environmental Protection are intended to protect the environment by
16 preventing inappropriate levels of pollutants from entering the
17 environment or by preventing inappropriate development; that
18 protecting the environment from inappropriate levels of pollutants or
19 development benefits all of the people of New Jersey; that it is entirely
20 appropriate for direct costs associated with regulatory programs to be
21 paid for by the regulated community and that it is equally appropriate
22 for the indirect costs of those regulatory programs to be paid for by
23 all the beneficiaries of the regulatory programs; and that it is
24 incumbent upon the Legislature to provide standards for the
25 Department of Environmental Protection to follow in determining the
26 extent to which the costs of regulatory programs are shared between
27 the regulated community and the general beneficiaries of the
28 regulatory programs.

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30 3. As used in this act:

31 "Department" means the Department of Environmental Protection;

32 "Direct cost" means any cost determined by the department to be
33 a cost directly necessitated by processing permits or applications, or
34 otherwise administering a regulatory program. Unless otherwise
35 required pursuant to federal law or regulations, direct cost does not

1 mean; payment of salaries and operation of the department's Office of
2 the Commissioner, payment of salaries and operation of the
3 department's Office of Management and Budget, payment of salaries
4 and operation of the department's Office of Communications, payment
5 of salaries and operation of the department's Office of Legislative and
6 Governmental Affairs, payment of salaries and operation of the
7 Governor's office, payment for the services or salaries of Deputies
8 Attorney General, payment of services or salaries of employees of the
9 Office of Administrative Law, payment of rent for buildings and office
10 space, or payment for guard service;

11 "Fee" means any fee for services charged to any person by the
12 department in association with any regulatory program;

13 "Regulatory Program" means any program administered by the
14 department pursuant to federal law or authorized by the following
15 State laws: R.S.12:5-1 et seq.; P.L.1975, c.232 (C.13:1D-29 et seq.);
16 the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et
17 seq.); section 17 of P.L.1975, c.326 (C.13:1E-26); the
18 "Comprehensive Regulated Medical Waste Management Act,"
19 P.L.1989, c.34 (C.13:1E-48.1 et al.); P.L.1989, c.151
20 (C.13:1E-99.21a et al.); the "New Jersey Statewide Mandatory Source
21 Separation and Recycling Act," P.L.1987, c.102 (C.13:1E-99.11 et
22 al.); the "Pesticide Control Act of 1971," P.L.1971, c.176 (C.13:1F-1
23 et seq.); the "Industrial Site Recovery Act," P.L.1983, c.330
24 (C.13:1K-6 et seq.); the "Toxic Catastrophe Prevention Act,"
25 P.L.1985, c.403 (C.13:1K-19 et seq.); "The Wetlands Act of 1970,"
26 P.L.1970, c.272 (C.13:9A-1 et seq.); the "Freshwater Wetlands
27 Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); the "Coastal
28 Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the
29 "Air Pollution Control Act (1954)," P.L.1954, c.212 (C.26:2C-1 et
30 seq.); the "Water Supply Management Act," P.L.1981, c.262
31 (C.58:1A-1 et seq.); P.L.1947, c.377 (C.58:4A-5 et seq.); the "Water
32 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.);
33 P.L.1986, c.102 (C.58:10A-21 et seq.); the "Safe Drinking Water
34 Act," P.L.1977, c.224 (C.58:12A-1 et seq.); the "Flood Hazard Area
35 Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

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37 4. For any fee schedule established by the department in association
38 with any regulatory program, the fee schedule shall be established so
39 as to reasonably result in the recovery of no more than the direct costs
40 attributable to the respective regulatory program.

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42 5. All fees collected pursuant to section 4 of this act shall be
43 deposited in the general fund notwithstanding the provision of any
44 other law, rule, or regulation to the contrary.

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46 6. This act shall take effect on July 1, 1996.

STATEMENT

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3 This bill provides that only the direct costs of a regulatory program
4 administered by the Department of Environmental Protection can be
5 charged to the regulated community by way of permit and other fees.
6 Those costs not directly related to the operation of the regulatory
7 program, such as the Commissioner's staff, the services of the Office
8 of the Attorney General, and building rent, as well as other such costs,
9 may not be recouped by the department in its fee assessments.

10 Rather, the sponsor's intent is for these indirect program costs to be
11 paid for by revenues generated from the general public. Using general
12 fund revenues to pay for indirect program costs is justified because of
13 the public benefits accrued from the provision of these services and
14 because the public as a whole have and continue to contribute to the
15 environmental problems that these regulatory programs are designed
16 to address. Indirect costs have traditionally been paid for by general
17 fund revenue until a trend over the past several years began to shift
18 these costs onto the regulated community as a way to save money
19 within the budget. In part as a result of this shifting of indirect
20 program costs from the general public to the regulated community, the
21 cost of permits began to rapidly escalate. The current high cost of
22 environmental permits has created an economic burden on those
23 businesses and individuals who need permits or other departmental
24 approvals and has made New Jersey less competitive in its attempt to
25 attract business.

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30 Provides that DEP may only assess direct program costs in permit
31 fees.