

SENATE CONCURRENT RESOLUTION No. 28

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1996

By Senator SCOTT

1 A CONCURRENT RESOLUTION concerning legislative review of Department
2 of Environmental Protection regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey.

4
5 BE IT RESOLVED by the Senate of the State of New Jersey (the General
6 Assembly concurring):

7
8 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
9 State of New Jersey, the Legislature may review any rule or regulation
10 adopted or proposed by an administrative agency to determine if the rule or
11 regulation is consistent with the intent of the Legislature as expressed in the
12 language of the statute which the rule or regulation is intended to implement.

13
14 2. a. The Legislature enacted the "Worker and Community Right to Know
15 Act," P.L.1983, c.315 (C.34:5A-1 et seq.) to establish a comprehensive
16 program for the disclosure by certain businesses of information about
17 hazardous substances in the workplace and in the community and to provide
18 a procedure whereby residents of the State may gain access to this
19 information. As expressed in section 2 of P.L.1983, c.315 (C.34:5A-2) the
20 intent of the Legislature was to establish a mechanism by which individuals
21 could better understand hazardous substances in the environment and address
22 the associated risks of these hazardous substances.

23 b. Section 4 of P.L.1983, c.315 (C.34:5A-4) provides that the
24 "Department of Environmental Protection shall develop an environmental
25 hazardous substance list which shall include the list of substances developed by
26 the department for the purposes of the Industrial Survey Project, established
27 pursuant to P.L.1970, c.33 (C.13:1D-1 et seq.) and any substance on the list
28 established by the United States Environmental Protection Agency for
29 reporting pursuant to 42 U.S.C. § 11023 and may include other substances
30 which the department, based on documented scientific evidence, determines
31 pose a threat to the public health and safety." The environmental hazardous
32 substances list currently includes over 300 environmental hazardous
33 substances.

34 c. Section 4 of P.L.1983, c.315 (C.34:5A-4) also requires the department
35 to develop an environmental survey. The environmental survey requires that

1 certain information be supplied to the department concerning substances
2 included on the environmental hazardous substance list. The required
3 information includes the chemical name and Chemical Abstracts Service
4 number of the substance; a description of the use of the substance at the
5 facility; the quantity produced at the facility; the quantity brought into the
6 facility; the quantity consumed at the facility; the quantity shipped out of the
7 facility as a final product or in a product; the stack emissions of the substance
8 from the facility; the non-point source emissions from the facility; the amount
9 of the substance discharged into ground or surface water; the treatment
10 methods and the raw wastewater volume and loadings; and the quantity and
11 method of disposal of the substance. Further, the total quantity of
12 environmental hazardous substances generated at the facility, the quantity
13 recycled, and information pertaining to pollution prevention activities at the
14 facility must be reported. Copies of the environmental survey must be
15 transmitted to the department, the county health agency, and the local police
16 and fire officials. The department is required to maintain files of the
17 environmental surveys for 30 years. Any person may request a copy of an
18 environmental survey from the department. In addition, the environmental
19 survey must be maintained by the employer and shall be made available to
20 facility employees within five working days of a request.

21 d. On January 3, 1994, at 26 N.J.R.123 the department proposed
22 amendments to N.J.A.C.7:1G-2.1 to add several thousand substances to the
23 list of environmental hazardous substances. None of the substances proposed
24 to be added is included in the Industrial Survey Project list or in the list of
25 substances pursuant to 42 U.S.C. § 11023 and the department has furnished
26 no documented scientific evidence that any of the substances proposed to be
27 added pose a threat to the public health and safety. Further, section 24 of
28 P.L.1983, c.315 (C.34:5A-24) provides that "[s]ubstances not included on
29 the environmental hazardous substance list shall not be subject to the reporting
30 provisions of this act." Further, the addition of thousands of substances to the
31 environmental hazardous substance list will result in the generation of
32 voluminous data that will effectively defeat the original intent of the Legislature
33 by confounding individuals with irrelevant information not pertinent to risk
34 management.

35

36 3. a. The Legislature finds that the expanded environmental hazardous
37 substance list contained in the proposed regulations at N.J.A.C.7:1G-2.1 is
38 so voluminous and overinclusive that it prevents individuals from being able to
39 effectively "monitor and detect any adverse health effects attributable
40 thereto," and that the proposed additions to the list contravene the clear and
41 unequivocal text of the underlying act.

42 b. The Legislature therefore finds that this proposed regulation is not
43 consistent with the intent of the Legislature as expressed in the language of the

1 "Worker and Community Right to Know Act," which the regulation is intended
2 to implement.

3

4 4. The Secretary of the Senate and the Clerk of the General Assembly
5 shall transmit a duly authenticated copy of this concurrent resolution to the
6 Governor and the Commissioner of Environmental Protection.

7

8 5. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
9 State of New Jersey, the Commissioner of Environmental Protection shall
10 have 30 days following transmittal of this resolution to amend or withdraw the
11 regulations amending N.J.A.C.7:1G-2.1 as proposed in 26 N.J.R.123 or the
12 Legislature may, by passage of another concurrent resolution, exercise its
13 authority under the Constitution to invalidate in whole or in part the regulations
14 proposed in 26 N.J.R.123 which amend N.J.A.C.7:1G-2.1.

15

16

17

STATEMENT

18

19 This concurrent resolution embodies the finding of the Legislature that
20 regulations proposed by the Department of Environmental Protection, pursuant
21 to the "Worker and Community Right to Know Act" concerning the contents
22 of the environmental hazardous substance list are not consistent with legislative
23 intent pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
24 State of New Jersey. The proposed regulations were published at 26
25 N.J.R.123 and would amend N.J.A.C.7:1G-2.1. The proposed regulations
26 would add thousands of additional substances onto the environmental
27 hazardous substance list.

28 The legislative finding is based upon the finding that the addition of
29 thousands of additional substances onto the list would result in the generation
30 of voluminous data and would thus defeat the intent of the Legislature by
31 confusing individuals with irrelevant information not pertinent to risk
32 management. Additionally, the Legislature finds that the department did not
33 produce scientific documentation to justify each of the substances to be added
34 on the list as is required under the statutory language of the "Worker and
35 Community Right to Know Act."

36 Because of these findings of inconsistency, the Legislature finds that the
37 proposed regulations are inconsistent with legislative intent. Upon the
38 adoption of this concurrent resolution by both houses of the Legislature, the
39 Commissioner of Environmental Protection will have 30 days to amend or
40 withdraw the proposed regulations. After the passage of that time period, the
41 Legislature may exercise its authority under the Constitution to prohibit the
42 proposed regulations, in whole or in part, from taking effect.

43

1

2

3 Determines that proposed list of environmental hazardous substances is

4 inconsistent with legislative intent.