Committee Meeting

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

Senate Concurrent Resolution No. 66

“Prohibits adoption of DEP’s proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules”

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: June 16, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Richard J. Codey
Senator Samuel D. Thompson

ALSO PRESENT:

Judith L. Horowitz
Michael R. Molimock
Office of Legislative Services
Committee Aides
Alison Accetola
Senate Majority
Committee Aide
Brian Alpert
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey
REVISED COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - JUNE 16, 2016

The public may address comments and questions to Judith L. Horowitz or Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Pamela Petrone, Secretary, at (609) 847-3855, fax (609) 292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Senate Environment and Energy Committee will meet on Thursday, June 16, 2016 at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The following bills will be considered:

S-1570
Smith, B/Bateman

Authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through use of voluntary special assessments.

S-1986
Cruz-Perez/Cunningham

Establishes "Milkweed for Monarchs" program.

S-2000
Beach

Authorizes prescribed burning in certain circumstances.

S-2278
Vitale/Rice

Provides gross income tax deduction for certain home elevation expenses.

*SCR-66
Lesniak/Smith, B

Prohibits adoption of DEP's proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

(OVER)
Sweeney/Kean, T

Issued 6/9/16
*Revised 6/13/16 - SCR-66 added for consideration.

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website http://www.njleg.state.nj.us or call 800-792-8630 (toll-free in NJ) or 609-847-3905.
SENATE CONCURRENT
RESOLUTION No. 66

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 16, 2016

Sponsored by:
Senator RAYMOND J. LESNIAK
District 20 (Union)
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS
Prohibits adoption of DEP’s proposed rules and regulations to revise its
Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and
Stormwater Management Rules.

CURRENT VERSION OF TEXT
As introduced.

(Sponsorship Updated As Of: 3/8/2016)
A CONCURRENT RESOLUTION concerning legislative review of
rules and regulations pursuant to Article V, Section IV,
paragraph 6 of the Constitution of the State of New Jersey and
prohibiting the adoption of certain proposed Department of
Environmental Protection rules and regulations.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the
Constitution of the State of New Jersey, the Legislature may review
any rule or regulation adopted or proposed by an administrative
agency to determine if it is consistent with the intent of the
Legislature, and invalidate an adopted rule or regulation or prohibit
the adoption of a proposed rule or regulation if it finds that the rule
or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or
adopted, is not consistent with legislative intent, Article V, Section
IV, paragraph 6 provides that the Legislature shall transmit its
findings in the form of a concurrent resolution to the Governor and
the head of the Executive Branch agency which promulgated, or
plans to promulgate, the rule or regulation, and the agency shall
have 30 days from the time the concurrent resolution is transmitted
to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or
proposed rule or regulation, Article V, Section IV, paragraph 6
provides that the Legislature may invalidate or prohibit the adoption
of the proposed rule or regulation, following a public hearing held
by either House on the invalidation or prohibition, the placement of
a transcript of the public hearing on the desks of the members of
each House of the Legislature in open meeting followed by the
passage of at least 20 calendar days, and a vote of a majority of the
authorized membership of each House in favor of a concurrent
resolution invalidating or prohibiting the adoption of the rule or
regulation; and

WHEREAS, On June 1, 2015, the Department of Environmental
Protection proposed for public comment in the New Jersey Register
a rule proposal to revise its Flood Hazard Area Control Act
(FHACA) Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone
Management (CZM) Rules, N.J.A.C.7:7E-1.1 et seq. (revised on
July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater
Management (SWM) Rules, N.J.A.C.7:8-1.1 et seq.; and

WHEREAS, The notice of proposal lists the following statutes as the
authority for the rule proposal: N.J.S.A.13:1D-1 et seq. (the statute
establishing the department); N.J.S.A.13:1D-29 et seq. (commonly
referred to as the “90-Day Law”); N.J.S.A.13:20-1 et seq. (the
“Highlands Water Protection and Planning Act”); N.J.S.A.58:10A-
1 et seq. (the “Water Pollution Control Act”); N.J.S.A.58:11A-1 et
seq. (the “Water Quality Planning Act”); and N.J.S.A.58:16A-50 et
seq. (the “Flood Hazard Area Control Act”); and
WHEREAS, Assembly Concurrent Resolution No. 249 and Senate Concurrent Resolution No. 180 declared that the proposal by the Department of Environmental Protection, published for public comment in the New Jersey Register on June 1, 2015, to revise the Flood Hazard Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone Management Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management Rules, N.J.A.C.7:8-1.1 et seq. is not consistent with legislative intent; and

WHEREAS, On January 11, 2016, Senate Concurrent Resolution No. 180 received final approval by the Legislature and was filed with the Secretary of State and transmitted to the Commissioner of Environmental Protection; and

WHEREAS, Senate Concurrent Resolution No. 180 expressed the Legislature’s finding that the Department of Environmental Protection’s June 1, 2015 proposal was not consistent with legislative intent and informed the department, pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, that the department shall have 30 days following transmittal of that concurrent resolution to amend or withdraw the proposed rules and regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to prohibit the adoption of the proposed rules and regulations in whole or in part; and

WHEREAS, The Department of Environmental Protection has failed to amend or withdraw, or provide any notification to the Legislature of its intention to amend or withdraw, the proposed regulations within 30 days after the transmission of Senate Concurrent Resolution No. 180; and

WHEREAS, Prior to voting on a concurrent resolution to invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation, a public hearing shall be held on invalidating or prohibiting the adoption of the proposed rule and the transcript of that hearing shall be placed on the desk of each member of the Senate and each member of the General Assembly; now, therefore,

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

1. The Legislature prohibits adoption of the proposed rules and regulations published by the Department of Environmental Protection for public comment in the New Jersey Register on June 1, 2015, to revise the Flood Hazard Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone Management Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management Rules, N.J.A.C.7:8-1.1 et seq.
2. Copies of this concurrent resolution, as filed with the Secretary of State, shall be transmitted by the Clerk of the General Assembly or the Secretary of the Senate to the Governor, the Commissioner of Environmental Protection, and the Office of Administrative Law.

3. This concurrent resolution shall take effect immediately.

STATEMENT

Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, this concurrent resolution prohibits adoption of the rules and regulations proposed by the Department of Environmental published for public comment in the New Jersey Register on June 1, 2015, to revise the Flood Hazard Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone Management Rules, N.J.A.C.7:7E-1.1 et seq. (revised on July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management Rules, N.J.A.C.7:8-1.1 et seq.

As required by the Constitution, the Legislature previously informed the Department of Environmental Protection, through Senate Concurrent Resolution No. 180 of 2015, of the Legislature's finding that this rule proposal is not consistent with legislative intent.
TABLE OF CONTENTS

APPENDIX

Testimony
submitted by
Dwight W. Pittenger
President
New Jersey Builders Association

1x

pnf: 1-5
SENATOR BOB SMITH (Chair): Governor Codey, I don’t know what your schedule is like today. Are you -- You’re here.

SENATOR CODEY: Obviously. (laughter)

SENATOR SMITH: No, but I mean, you’re going to be here for a while?

SENATOR CODEY: Yes.

SENATOR SMITH: Okay, because the one--

SENATOR CODEY: Why?

SENATOR SMITH: --SCR--

SENATOR CODEY: That sounds like a threat. (laughter)

SENATOR SMITH: No, no. The SCR-- Senator Bateman is not here today. His dad was hurt, and he’s with him in the hospital. SCR-66, which we planned to release today -- it’s essential that you’re here. There’s no more testimony on it. In fact, maybe what we should do is just get it done.

MS. HOROWITZ (Committee Aide): Okay.

SENATOR SMITH: We’ve had three hearings on the Proposed Flood Rules. And to give the Department its due, there’s been a process, and I think the DEP has substantially improved what was the original Proposed Rule. In fact, the original Proposed Rule was fraught with problems. They’ve made a number of changes that have improved it. However, our question as a Legislature is -- the Rule in its final version and
the Supplemental Rule that’s been proposed, do they meet with legislative intent? That’s the question.

Now, while there’s been a lot of progress, it’s not quite there, in my opinion. I’m just-- And everybody is going to get a chance to speak on it.

My major issues -- I have two major issues with the Flood Rules, all right? Number one, the fact that they’re separated so that you have a Proposed Rule, and a Supplemental Rule which will kick in at some point in the future. There is a credibility issue because of the way the process was handled. These Flood Rules were done in such a way that there wasn’t quite the public participation that there should have been. And as a result, there are a lot of credibility issues about whether the Supplemental Rule will get adopted or not. They could always be dropped; always be radically changed. And the Supplemental Rule that’s proposed does add to the improvement of the Flood Rule. So that’s issue number one, in my mind.

The second issue is the legislative intent question, and it’s right on target. We, as a Legislature, have consistently supported the sanctity of C1 buffers for our C1 streams. Now, these are the purest waters that we have in the State of New Jersey, and I think what the DEP has tried to do -- and it was their mission -- they wanted to not have overlapping rules and regulations. And the overlapping rules and regulations are, with regard to those C1 buffers, Flood Rules and Storm Rules. And the problem is that the way in which the Rule, and even the Supplemental Rule, was proposed, is that it doesn’t quite get to that level of protection that we now have.
And by the way, kudos to Bill Wolfe. We heard all kinds of testimony over these three meetings. But the one that stuck in my mind is that there is no guarantee that there will be no deterioration with regard to the State’s Water Quality Standards if there’s development in that first 150 feet of buffer along the C1 streams. And that’s the missing critical legislative intent item for me. That’s the one issue that just wasn’t done the way it should be done.

So that being said, I’m going to ask other members if they have any comments on this; I’d be happy to take comments on the SCR.

Senator Greenstein.

SENATOR LINDA R. GREENSTEIN: (Vice Chair): Well, I agree with everything you said.

SENATOR SMITH: Okay.

SENATOR GREENSTEIN: And I feel strongly that the sanctity of the C1 buffers has to be at the top of our consideration. When we passed this, we had a certain intention. And while things are a little bit better -- we saw a few changes that were better -- it seems like we’re still not there.

So I think this Bill is extremely important, and needs to be passed.

SENATOR SMITH: Okay.

Governor, anything you’d like to say?

SENATOR CODEY: I mean, I agree with what Linda just said. But I think the Department has done, and tried to do, a very, very good job on the whole issue. And I think they worked very, very hard.

SENATOR SMITH: They did.
Senator Thompson, anything you want to say? (no response)

Okay. (laughter)

So one further comment -- this is pretty radical stuff. I mean, this is not a day that any Senator should take joy in, all right? The DEP is part of our government. And in effect, we’re rejecting their five-and-a-half years of work on trying to develop better Flood Rules. I take no joy in this vote. And I will also tell you that -- and some may disagree in the audience -- they’ve made a legitimate effort, I think, to make the Rules better. They just haven’t quite gotten to the finish line.

And another reason this is radical -- does anybody remember us ever overturning Proposed Rules?

SENATOR GREENSTEIN: Didn’t we do it with Civil Service?

I can’t remember.

SENATOR SMITH: What’s that?

MS. ACCETTOLA (Committee Aide): Didn’t we do it with job banding?

SENATOR GREENSTEIN: Civil Service.

SENATOR SMITH: Job banding?

SENATOR GREENSTEIN: Job banding; right.

MS. ACCETTOLA: Yes, that’s the only other time.

SENATOR SMITH: That’s the only other time.

All right; so this is a vote I personally take with regret. And I am also a little concerned about the fact that you start this process -- I don’t think the Legislature, every day of the week, should be second-guessing Proposed Rules, all right? That’s-- On the other hand, you have to make sure that the Legislature carries out its responsibility.
And there is no testimony on this today; we’ve had three meetings. Anybody feel we didn’t have enough testimony to make up our minds? (no response) I mean, we have exhaustively reviewed this.

So that being said, I’m going to move the release of the SCR.

SENATOR GREENSTEIN: Second.

SENATOR SMITH: Senator Greenstein is going to second that motion.

And Ms. Horowitz, if you’d take a roll call vote, please.

MS. HOROWITZ: On Senate Concurrent Resolution No. 66, Senator Thompson.

SENATOR THOMPSON: No.

MS. HOROWITZ: Governor Codey.

SENATOR CODEY: Yes.

MS. HOROWITZ: Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

And the SCR is released.

(END OF EXCERPT)