

**ASSEMBLY CONCURRENT
RESOLUTION No. 249**

**STATE OF NEW JERSEY
216th LEGISLATURE**

INTRODUCED NOVEMBER 16, 2015

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Assemblyman TIM EUSTACE

District 38 (Bergen and Passaic)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblywoman ELIZABETH MAHER MUOIO

District 15 (Hunterdon and Mercer)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblymen Diegnan and Gusciora

SYNOPSIS

Determines that DEP's proposal to revise Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules is inconsistent with legislative intent.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/12/2016)

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

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6 **WHEREAS**, Article V, Section IV, paragraph 6 of the Constitution of
7 the State of New Jersey provides that the Legislature may review
8 any rule or regulation adopted or proposed by an administrative
9 agency to determine if the rule or regulation is consistent with the
10 intent of the Legislature as expressed in the language of the statute
11 which the rule or regulation is intended to implement and, upon a
12 finding that the rule or regulation is not consistent with legislative
13 intent, may transmit the finding to the Governor and the head of the
14 agency; and

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

22 **WHEREAS**, The notice of proposal lists the following statutes as the
23 authority for the rule proposal: N.J.S.A.13:1D-1 et seq. (the statute
24 establishing the department); N.J.S.A.13:1D-29 et seq. (commonly
25 referred to as the “90-Day Law”); N.J.S.A.13:20-1 et seq. (the
26 “Highlands Water Protection and Planning Act”); N.J.S.A.58:10A-
27 1 et seq. (the “Water Pollution Control Act”); N.J.S.A.58:11A-1 et
28 seq. (the “Water Quality Planning Act”); and N.J.S.A.58:16A-50 et
29 seq. (the “Flood Hazard Area Control Act”); and

30 **WHEREAS**, According to the rule proposal, the department is
31 proposing comprehensive changes to the FHACA Rules to reduce
32 unnecessary regulatory burden, add appropriate flexibility, provide
33 better consistency with federal, State, and local requirements, create
34 additional permits-by-rule and general permits, and address
35 implementation issues identified since the repeal and
36 repromulgation of the rules in November 2007, and the “proposed
37 amendments, repeals, and new rules consolidate similar provisions,
38 simplify language, incorporate additional detail and description
39 regarding the substantive standards that must be met to undertake
40 regulated activities, and harmonize certain procedural provisions
41 with the Department's other land use regulations”; and

42 **WHEREAS**, The proposal further notes that it is proposing related
43 amendments to the CZM Rules and the SWM Rules for consistency
44 with the FHACA Rules regarding development in flood hazard
45 areas and the preservation of vegetation and habitat within and
46 adjacent to surface waters; and

47 **WHEREAS**, Notwithstanding the above description, the proposal
48 includes lessening and removing protections for headwaters,

1 allowing development in vulnerable areas and mitigation elsewhere,
2 weakening stream buffer requirements, and making it easier to
3 obtain permits to build in flood-prone areas; and

4 **WHEREAS**, In a state as densely populated as New Jersey that suffers
5 from severe and chronic flooding events, causing on some
6 occasions significant property damage and inflicting incalculable
7 harm to the economy of the State, the protection and preservation of
8 New Jersey's water resources, including the quality and quantity of
9 the State's limited water supply, are essential to the quality of life
10 and the economic health of the citizens of the State; and

11 **WHEREAS**, The Legislature has repeatedly found and declared that it is
12 the policy of this State to restore, enhance, and maintain the
13 chemical, physical, and biological integrity of its waters, to protect
14 public health, to safeguard fish and aquatic life and scenic and
15 ecological values, and to enhance the domestic, recreational,
16 agricultural, industrial, and other beneficial uses of water; and

17 **WHEREAS**, The Legislature, and the voters of the State, have
18 repeatedly supported the acquisition of flood-prone lands in order to
19 remove people and property from harm's way, and the proposed
20 regulatory changes to allow development and the disturbance of
21 vegetation in riparian zones are contrary to the State's efforts in this
22 regard; and

23 **WHEREAS**, The Legislature found and declared, in the Water Pollution
24 Control Act, that it is in the interest of the people of this State to
25 minimize direct regulation by the federal government of wastewater
26 dischargers by enacting legislation to continue and extend the
27 powers and responsibilities of the Department of Environmental
28 Protection for administering the State's water pollution control
29 program, so that the State may implement the permit system
30 required by the federal act; and

31 **WHEREAS**, The federal Clean Water Act requires states to establish
32 and maintain water quality standards that include anti-degradation
33 policies to maintain and protect high quality state waters from
34 increased loadings of pollutants resulting from regulated activities,
35 such as development and direct or indirect discharges; and

36 **WHEREAS**, The United States Environmental Protection Agency
37 Region 2 recently submitted comments to the Department of
38 Environmental Protection on the June 1, 2015 proposal to revise the
39 Flood Hazard Area Control Act Rules, Coastal Zone Management
40 Rules, and Stormwater Management Rules stating, among other
41 things, that "measurable changes to Category 1 (C1) waters as a
42 result of proposed changes to the rules would not comply with New
43 Jersey's water quality standards"; and

44 **WHEREAS**, While the Legislature supports and encourages regulatory
45 changes that reduce complexity, correct conflicting regulations, and
46 streamline the permitting process, the regulatory changes proposed
47 by the Department of Environmental Protection in its June 1, 2015
48 proposal go far beyond doing such and would weaken the State's

1 protection for flood-prone lands and water quality, resulting in
2 more flooding and more pollutants entering State waters, and any
3 regulatory changes that jeopardize the State's ability to implement
4 the National Pollutant Discharge Elimination System program are
5 inconsistent with the intent of the Legislature; and

6 **WHEREAS**, The proposed amendments, repeals, and new rules
7 contained in the proposal published by the Department of
8 Environmental Protection in the New Jersey Register on June 1,
9 2015 to revise the Flood Hazard Area Control Act Rules, Coastal
10 Zone Management Rules, and Stormwater Management Rules are
11 inconsistent with the intent of the Legislature; now, therefore,

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

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16 1. The Legislature declares that the proposal by the Department
17 of Environmental Protection, published for public comment in the
18 New Jersey Register on June 1, 2015, to revise the Flood Hazard
19 Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone
20 Management Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6,
21 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management
22 Rules, N.J.A.C.7:8-1.1 et seq. is not consistent with legislative
23 intent.

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25 2. Copies of this resolution, as filed with the Secretary of State,
26 shall be transmitted by the Secretary of the Senate or the Clerk of
27 the General Assembly to the Commissioner of Environmental
28 Protection.

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30 3. Pursuant to Article V, Section IV, paragraph 6 of the
31 Constitution of the State of New Jersey, the Commissioner of
32 Environmental Protection shall have 30 days following transmittal
33 of this resolution to amend or withdraw the proposed rules and
34 regulations or the Legislature may, by passage of another
35 concurrent resolution, exercise its authority under the Constitution
36 to invalidate the rules and regulations in whole or in part.

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STATEMENT

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41 This concurrent resolution embodies the finding of the
42 Legislature that the Department of Environmental Protection's
43 proposal to revise the Flood Hazard Area Control Act Rules,
44 Coastal Zone Management Rules, and Stormwater Management
45 Rules, published for public comment in the New Jersey Register on
46 June 1, 2015, is not consistent with the intent of the Legislature.

47 The Commissioner of Environmental Protection will have 30
48 days from the date of transmittal of this resolution to amend or

ACR249 MCKEON, SPENCER

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1 withdraw the proposed rules and regulations, or the Legislature
2 may, by passage of another concurrent resolution, exercise its
3 authority under the Constitution to invalidate the rules and
4 regulations in whole or in part.