

**SENATE CONCURRENT  
RESOLUTION No. 180**

**STATE OF NEW JERSEY  
216th LEGISLATURE**

INTRODUCED OCTOBER 19, 2015

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**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:**

**Senator Pou, 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.

5  
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 Senate of the State of New Jersey (the  
14 *General Assembly 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

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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.