

**ASSEMBLY CONCURRENT
RESOLUTION No. 160**

**STATE OF NEW JERSEY
217th LEGISLATURE**

INTRODUCED FEBRUARY 22, 2016

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 ELIZABETH MAHER MUOIO

District 15 (Hunterdon and Mercer)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Co-Sponsored by:

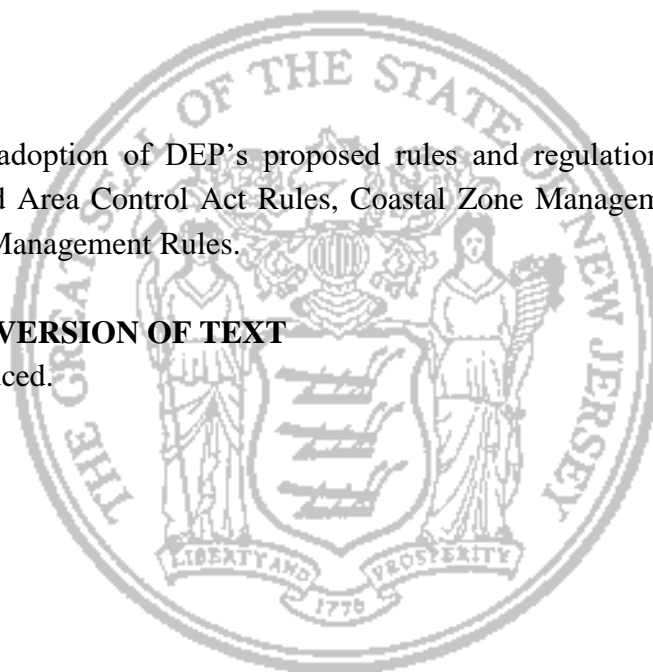
Assemblymen Giblin, Caputo and Gusciora

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: 6/17/2016)

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

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

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

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

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

40 **WHEREAS**, The notice of proposal lists the following statutes as the
41 authority for the rule proposal: N.J.S.A.13:1D-1 et seq. (the statute
42 establishing the department); N.J.S.A.13:1D-29 et seq. (commonly
43 referred to as the “90-Day Law”); N.J.S.A.13:20-1 et seq. (the
44 “Highlands Water Protection and Planning Act”); N.J.S.A.58:10A-
45 1 et seq. (the “Water Pollution Control Act”); N.J.S.A.58:11A-1 et
46 seq. (the “Water Quality Planning Act”); and N.J.S.A.58:16A-50 et
47 seq. (the “Flood Hazard Area Control Act”); and

1 **WHEREAS**, Assembly Concurrent Resolution No. 249 and Senate
2 Concurrent Resolution No. 180 declared that the proposal by the
3 Department of Environmental Protection, published for public
4 comment in the New Jersey Register on June 1, 2015, to revise the
5 Flood Hazard Area Control Act Rules, N.J.A.C.7:13-1.1 et seq.,
6 Coastal Zone Management Rules, N.J.A.C.7:7E-1.1 et seq.
7 (recodified on July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and
8 Stormwater Management Rules, N.J.A.C.7:8-1.1 et seq. is not
9 consistent with legislative intent; and

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

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

25 **WHEREAS**, The Department of Environmental Protection has failed to
26 amend or withdraw, or provide any notification to the Legislature of
27 its intention to amend or withdraw, the proposed regulations within
28 30 days after the transmission of Senate Concurrent Resolution No.
29 180; and

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

36
37 **BE IT RESOLVED** *by the General Assembly of the State of New*
38 *Jersey (the Senate concurring):*
39

40 1. The Legislature prohibits adoption of the proposed rules and
41 regulations published by the Department of Environmental
42 Protection for public comment in the New Jersey Register on June
43 1, 2015, to revise the Flood Hazard Area Control Act Rules,
44 N.J.A.C.7:13-1.1 et seq., Coastal Zone Management Rules,
45 N.J.A.C.7:7E-1.1 et seq. (recodified on July 6, 2015 as N.J.A.C.7:7-
46 1.1 et seq.), and Stormwater Management Rules, N.J.A.C.7:8-1.1 et
47 seq.

