ASSEMBLY, No. 2241

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Requires DEP to obtain legislative approval and authorization before increasing fee or imposing new fee, but retains DEP authority to use ordinary administrative procedure when decreasing fee.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT requiring the Department of Environmental Protection to obtain legislative approval before increasing a fee or imposing a new fee, authorizing the department to use ordinary administrative procedure when decreasing a fee, amending P.L.1991, c.417, and amending and supplementing P.L.1991, c.427.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. (New section) a. Notwithstanding any other law, rule, or regulation to the contrary, and except as may be otherwise provided by this section, all fees that the Department of Environmental Protection is authorized to assess, charge, or impose, as set forth by law, rule, or regulation, shall be frozen at the lower of (1) the rates charged as of January 1, 2009, or (2) the rates charged as of the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), unless the fee is exempted from the freeze by law enacted after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

b. Fees frozen pursuant to this section shall not be increased by the department unless legislative approval and authorization for such increase is first obtained in accordance with the provisions of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill). However, the department may, at any time, decrease any fee that has been frozen pursuant to this section, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

2. (New section) a. Anytime the department proposes to increase any fee, or to impose any new fee, it shall submit a fee amendment proposal to the Legislature, requesting enactment into law of the proposed fee increase or new fee, as the case may be. Such fee amendment proposal shall be submitted to the Legislature in accordance with various other departmental reporting requirements, as follows:

(1) Except as otherwise authorized by paragraph (2) of this subsection, the department shall include a fee amendment proposal in its annual fee report, filed in a timely manner with the Legislature in accordance with the provisions of section 2 of P.L.1991, c.427 (C.13:1D-9.2);

(2) If the department intends to propose an increase in, or the imposition of new, permit-related fees only, it may include a permit-related fee amendment proposal in a semi-annual permitting

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

report, filed in a timely manner with the Legislature in accordance with the provisions of section 2 of P.L.1991, c.417 (C.13:1D-115).

b. A fee amendment proposal, which is submitted to the Legislature in accordance with the provisions of subsection a. of this section, shall include:

(1) the information required to be published in the New Jersey Register, pursuant to subsection c. of this section; and

(2) an express request seeking enactment into law of the fee increase or new fee, as identified in the department's fee amendment proposal.

The fee amendment proposal may address one fee change or multiple fee change proposals.

c. At least 90 days prior to its submission of a report and fee amendment proposal to the Legislature, in accordance with the provisions of subsections a. and b. of this section, the department shall publish a notice in the New Jersey Register indicating its intent to seek the enactment into law of the new or increased regulatory fee, pursuant to P.L. , c. (C.) (pending before the Legislature as this bill). The department's notice shall include:

(1) a list identifying each fee that the department is proposing to increase, with citations to the implementing law and regulatory program under which the fees are being assessed, charged, or imposed, and the amount of each proposed increase;

(2) a list identifying each new fee that the department is proposing to assess, charge, or impose, with citations to the implementing law and regulatory program under which the fees would be assessed, charged, or imposed, and the amount of each proposed new fee;

(3) a detailed justification explaining the department's financial need and reasons for proposing the fee changes identified pursuant to paragraph (1) or (2) of this subsection; and

(4) a cost-benefit analysis that assesses how the increase in the fee, or the imposition of a new fee, will not impose an unreasonable financial hardship on the regulated community.

d. The provisions of this section shall not apply whenever the department proposes to decrease a fee. Any such fee decrease may be proposed and adopted by the department, at any time, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

3. Section 2 of P.L.1991, c.427 (C.13:1D-9.2) is amended to read as follows:

2. On or before December 31, 1991 and December 31 of each year thereafter, the department shall submit to the Governor, **[**the Legislature, and**]** the State Auditor , and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a written report setting forth information concerning the imposition, collection and

expenditure of fees imposed by the department. The report shall contain a section setting forth the following information:

a. A list of the fees imposed or assessed, by program, during the preceding fiscal year, and the statutory or regulatory authority for each;

b. An explanation of the methodology used to calculate the fees for each specific program;

c. The total amount of fees imposed, by specific program where appropriate, during the preceding fiscal year;

d. The total amount of fees collected, by program where appropriate, and the total amount of all fees collected for all programs during the preceding fiscal year, and all fees reappropriated for the preceding fiscal year from the next preceding fiscal year;

e. The total amount of fees expended for each program and the grand total expended during the preceding fiscal year;

f. The percentage of each program listed according to this section which is funded by fees, appropriations from the General Fund, appropriations of bond revenues, federal funds, and other sources;

g. Estimates of the total amount of fees, by program where appropriate, anticipated to be imposed, collected, expended and carried forward during the current fiscal year and the next fiscal year;

h. The number of licenses, permits , or other approvals applied for and issued pursuant to each program;

i. The number of personnel, by program, whose positions are funded by fees, and the percentage of the total personnel employed in each such program which this number represents;

j. The number of personnel, by program and funding source, funded by other revenue sources;

k. The number and percentage of personnel throughout the department whose positions are funded, wholly or in part, by fees;

l. The percentage of all departmental revenues and expenditures represented by fees for the appropriate fiscal year;

m. The total amount of all fines or other penalties assessed, and the amounts collected;

n. The total amount, by program, of all fines or other penalties assessed by the department, and the amounts collected, including environmental fines or other penalties collected on behalf of the department, and their disposition; **[**and**]**

o. For each fiscal year following the date on which the Environmental Program Fee Fund is created pursuant to section 3 of **[**this act**]** P.L.1991, c.427 (C.13:1D-9.3), the total amounts of transfers to and from each subaccount ; and

p. Except as otherwise provided by paragraph (2) of subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), if the department intends to seek the

enactment into law of a fee increase, or new fee, the information required by subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) .
(cf: P.L.1991, c.427, s.2)

4. Section 2 of P.L.1991, c.417 (C.13:1D-115) is amended to read as follows:

2. a. The Department of Environmental Protection shall prepare, and submit to the Senate ⟦Environmental Quality⟧ Environment and Energy Committee and the Assembly ⟦Energy and⟧ Environment and Solid Waste Committee, or their successors as designated respectively by the President of the Senate and the Speaker of the General Assembly, a semi-annual permitting report. The semi-annual permitting report submitted pursuant to this subsection shall :

(1) include, for each type of permit issued by the department during the reporting period, summaries of the records required to be maintained pursuant to section 1 of ⟦this act, and⟧ P.L.1991, c.417 (C.13:1D-114);

(2) include any other statistical or other type of information deemed pertinent by the department to evaluate the effectiveness of the permit review capabilities and performance of the department and its various divisions, bureaus, agencies, offices, and other administrative units ⟦. The report shall also⟧ ;

(3) identify recurring problems in the permitting process and procedures, citing any particular types of permits that are chronically subject to significant delays and backlogs and describing the causes thereof;

(4) suggest possible solutions to those recurring problems;

(5) provide an evaluation and analysis of the permit data and information collected and set forth in the report; ⟦and⟧

(6) make recommendations for appropriate legislative or administrative action ; and

(7) include, if the department elects, pursuant to the provisions of paragraph (2) of subsection a. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), to incorporate a permit-related fee amendment proposal in a semi-annual permitting report, the information required by subsection b. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) .

b. The department shall make copies of each semi-annual permitting report available to the public for a charge not to exceed the cost of reproduction.

c. The first report prepared by the department pursuant to ⟦this act⟧ P.L.1991, c.417 (C.13:1D-114 et seq.) shall be submitted to the respective legislative committees not later than July 15, 1992, and shall include information for the period January 1 through June 30,

1992 as well as, to the maximum extent practicable, comparable information for the six month period, beginning July 1 through December 31, 1991. All subsequent reports shall be submitted to the legislative committees not later than the 15th day of the month next following the end of each six month period.
(cf: P.L.1991, c.417, s.2)

5. This act shall take effect immediately.

STATEMENT

This bill would require all fees assessed by the Department of Environmental Protection (DEP) to be frozen at the lower of: (1) the rates charged as of January 1, 2009, or (2) the rates charged as of the date of the bill's enactment. The bill would further require that the DEP obtain legislative approval and authorization prior to increasing a fee or imposing any new fee. However, the bill would retain the DEP's authority to use the State's ordinary administrative procedure when decreasing any of its fees.

Pursuant to the bill's provisions, whenever the department proposes to increase a fee or impose a new fee, the department would be required to first submit to the Legislature, a fee amendment proposal, which expressly requests the enactment into law of the fee increase or new fee. The bill would require a fee amendment proposal to: (1) identify each proposed fee increase or new fee; (2) provide a detailed justification for the proposed fee changes; and (3) include a cost-benefit analysis for each proposed fee change.

The bill would further require the department, at least 90 days prior to its submission of a fee amendment proposal to the Legislature, to publish in the New Jersey Register, a notice of its intent to seek the enactment into law of a proposed fee increase or new fee, pursuant to this bill's provisions. The bill would require the notice to include all of the information contained in the fee amendment proposal.

Although the bill would generally require the department to incorporate any fee amendment proposal in an annual fee report, to be timely filed with the Legislature in accordance with current law concerning such reports, whenever the department proposes to increase, or to impose new, permit-related fees only, the bill would authorize the department to incorporate a permit-related fee amendment proposal in a semi-annual permitting report, to be timely filed with the Legislature in accordance with current law concerning such reports.