

# SENATE, No. 232

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# STATE OF NEW JERSEY

## 219th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator LORETTA WEINBERG**

**District 37 (Bergen)**

**SYNOPSIS**

Concerns environmental permits in burdened communities.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning environmental permits in certain areas, and  
2 supplementing Title 13 of the Revised Statutes.

3

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

6

7 1. As used in this act: “Burdened community” means any  
8 census tract, as delineated in the most recent federal decennial  
9 census, that is ranked in the bottom 33 percent of census tracts in  
10 the State for median annual household income.

11 “Cumulative impacts” means an exposure, public health or  
12 environmental risk, or other effect occurring in a specific  
13 geographical area, including from any environmental pollution  
14 emitted or released routinely, accidentally, or otherwise, from any  
15 source, and assessed based on the combined past, present, and  
16 reasonably foreseeable emissions and discharges affecting the  
17 geographical area. “Cumulative impacts” shall be evaluated based  
18 on any applicable guidance issued by department.

19 “Facility” means any: (1) electric generating facility with a  
20 capacity of more than ten megawatts; (2) resource recovery facility  
21 or incinerator; (3) sludge combustor or incinerator; (4) sewage  
22 treatment plant with a capacity of more than 50 million gallons per  
23 day; (5) transfer station, recycling center, or other solid waste  
24 facility with a combined monthly volume in excess of 25 tons; (6)  
25 landfill, including, but not limited to, a landfill that accepts ash,  
26 construction or demolition debris, or solid waste; (7) medical waste  
27 incinerator; or (8) major source of air pollution, as defined by the  
28 federal “Clean Air Act,” 42 U.S.C.s.7401 et seq.

29 “Permit” means any permit, registration, or license issued by the  
30 Department of Environmental Protection establishing the regulatory  
31 and management requirements for an ongoing regulated activity as  
32 authorized by federal law or the following State laws: R.S.12:5-1 et  
33 seq.; P.L.1975, c.232 (C.13:1D-29 et al.); the “Solid Waste  
34 Management Act,” P.L.1970, c.39 (C.13:1E-1 et seq.); section 17 of  
35 P.L.1975, c.326 (C.13:1E-26); the “Comprehensive Regulated  
36 Medical Waste Management Act,” P.L.1989, c.34 (C.13:1E-48.1 et  
37 al.); P.L.1989, c.151 (C.13:1E-99.21a et al.); the “New Jersey  
38 Statewide Mandatory Source Separation and Recycling Act,”  
39 P.L.1987, c.102 (C.13:1E-99.11 et al.); the “Pesticide Control Act  
40 of 1971,” P.L.1971, c.176 (C.13:1F-1 et seq.); the “Industrial Site  
41 Recovery Act,” P.L.1983, c.330 (C.13:1K-6 et al.); the “Toxic  
42 Catastrophe Prevention Act,” P.L.1985, c.403 (C.13:1K-19 et seq.);  
43 “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.);  
44 the “Freshwater Wetlands Protection Act,” P.L.1987, c.156  
45 (C.13:9B-1 et al.); the “Coastal Area Facility Review Act,”  
46 P.L.1973, c.185 (C.13:19-1 et seq.); the “Highlands Water  
47 Protection and Planning Act,” P.L.2004, c.120 (C.13:20-1 et seq.),  
48 the “Air Pollution Control Act (1954),” P.L.1954, c.212 (C.26:2C-1

1 et seq.); the “Water Supply Management Act,” P.L.1981, c.262  
2 (C.58:1A-1 et al.); P.L.1947, c.377 (C.58:4A-5 et seq.); the “Water  
3 Pollution Control Act,” P.L.1977, c.74 (C.58:10A-1 et seq.);  
4 P.L.1986, c.102 (C.58:10A-21 et seq.); the “Safe Drinking Water  
5 Act,” P.L.1977, c.224 (C.58:12A-1 et al.); the “Flood Hazard Area  
6 Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.); except that  
7 “permit” shall not include: (1) any general permit issued by the  
8 department pursuant to subsection h. of section 13 of P.L.1967,  
9 c.106 (C.26:2C-9.2), or (2) any general permit issued by the  
10 department for remedial activity pursuant to subsection d. of section  
11 1 of P.L.1993, c.351 (C.58:10A-7.2).

12

13 2. a. No later than 120 days after the effective date of this act,  
14 the Department of Environmental Protection, in consultation with  
15 the Secretary of State, shall adopt, pursuant to the “Administrative  
16 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), a list of  
17 burdened communities in the State. The department shall update  
18 the list of burdened communities periodically as new data on  
19 median annual household income becomes available and upon  
20 promulgation by the federal government of a new federal decennial  
21 census.

22 b. No later than 60 days after a burdened community is  
23 designated pursuant to subsection a. of this section, the governing  
24 body of the municipality in which the burdened community is  
25 located, in consultation with appropriate community groups, shall  
26 designate a representative of the burdened community.

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28 3. a. Beginning 180 days after the effective date of this act,  
29 the Department of Environmental Protection shall not grant a permit  
30 for a new facility, or for the expansion of an existing facility,  
31 located in whole or in part in a burdened community unless the  
32 permit applicant first:

33 (1) Prepares a report assessing the environmental impact of the  
34 proposed new facility, or expansion of an existing facility,  
35 including any cumulative impacts on the burdened community, any  
36 adverse environmental effects that cannot be avoided should the  
37 permit be granted, and the public health impact on the burdened  
38 community of the proposed new facility or expansion of an existing  
39 facility;

40 (2) Transmits the report required to be prepared pursuant to  
41 paragraph (1) of this subsection at least 30 days in advance of the  
42 public hearing required pursuant to paragraph (3) of this subsection  
43 to the department, the governing body and the clerk of the  
44 municipality in which the burdened community is located, and the  
45 designated representative of the burdened community. The report  
46 shall be made available to the public at least 30 days prior to the  
47 public hearing required pursuant to paragraph (3) of this subsection;  
48 and

1 (3) Organizes and conducts a public hearing in a location  
2 convenient as much as possible to all interested parties. The permit  
3 applicant shall publish public notices of the hearing in at least two  
4 newspapers circulating within the burdened community not less  
5 than 21 days prior to the hearing. At least 14 days prior to the date  
6 set for such hearing, a copy of the public notice shall be sent to the  
7 department, the governing body and the clerk of the municipality in  
8 which the burdened community is located, and the designated  
9 representative of the burdened community. At the public hearing,  
10 the permit applicant shall provide clear, accurate, and complete  
11 information about the proposed new facility or expansion of an  
12 existing facility and the potential environmental and health impacts  
13 of the new or expanded facility. The hearing shall provide an  
14 opportunity for meaningful public participation by residents of the  
15 burdened community. Following the public hearing, the  
16 commissioner shall consider the testimony presented and evaluate  
17 any revisions or conditions to the permit that may be necessary to  
18 reduce the adverse impact to the public health or to the environment  
19 in the burdened community.

20 b. The department shall not issue a decision on the permit  
21 application until at least 60 days after the public hearing held  
22 pursuant to this section. Notwithstanding the provisions of any  
23 other law, or rule or regulation adopted pursuant thereto, to the  
24 contrary, the department may deny a permit application in a  
25 burdened community upon a finding that the approval of the permit  
26 would, together with the cumulative impacts posed by the existing  
27 conditions, including conditions resulting from permitted activities,  
28 in the burdened community, constitute an unreasonable risk to the  
29 health of the residents of the burdened community and to the  
30 environment in the burdened community.

31 c. The department, when evaluating an application for a permit  
32 pursuant to this section, shall assess the community support for the  
33 proposed new facility or expansion of an existing facility, as  
34 demonstrated through the public hearing conducted pursuant to  
35 subsection a. of this section, letters of support for, or opposition to,  
36 the proposed new or expanded facility, and any ordinance or  
37 resolution adopted by the governing body of the municipality in  
38 which the burdened community is located. The department shall  
39 consider community support, or the lack thereof, in its decision to  
40 grant or deny a permit.

41 d. If a permit applicant is applying for more than one permit for  
42 a proposed new facility or expansion of an existing facility, the  
43 permit applicant shall only be required to comply with the  
44 provisions of this section once, unless the department, in its  
45 discretion, determines that more than one public hearing is  
46 necessary due to the complexity of the proposed new or expanded  
47 facility. Nothing in this section shall be construed to limit the

1 authority of the department to hold or require additional public  
2 hearings, as may be required by any other law, rule, or regulation.

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4 4. a. The Department of Environmental Protection may adopt,  
5 pursuant to the provisions of the “Administrative Procedure Act,”  
6 P.L.1968, c.410 (C.52:14B-1 et seq.) rules and regulations to  
7 implement the provisions of this act.

8 b. The department may issue guidance on how to evaluate  
9 cumulative impacts pursuant paragraph (1) of subsection a. of  
10 section 3 of this act. The department shall publish the guidance  
11 document on its Internet website.

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13 5. This act shall take effect immediately.

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#### STATEMENT

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18 This bill would require a person seeking a permit for a new  
19 facility, or for the expansion of an existing facility, located in a  
20 burdened community, to meet certain additional requirements  
21 before they can obtain the permit.

22 Under the bill, a “burdened community” is defined as any census  
23 tract, as delineated in the most recent federal decennial census, that  
24 is ranked in the bottom 33 percent of census tracts in the State for  
25 median household income. “Facility” is defined as any: (1) electric  
26 generating facility with a capacity of more than ten megawatts; (2)  
27 resource recovery facility or incinerator; (3) sludge combustor or  
28 incinerator; (4) sewage treatment plant with a capacity of more  
29 than 50 million gallons per day; (5) transfer station, recycling  
30 center, or other solid waste facility with a combined monthly  
31 volume in excess of 25 tons; (6) landfill, including, but not limited  
32 to, a landfill that accepts ash, construction or demolition debris, or  
33 solid waste; (7) medical waste incinerator; or (8) major source of air  
34 pollution, as defined by the federal “Clean Air Act.”

35 The bill would require the Department of Environmental  
36 Protection (DEP), in consultation with the Secretary of State, no  
37 later than 120 days after the date of enactment of the bill, to adopt a  
38 list of burdened communities in the State. The DEP would be  
39 required to update the list of burdened communities periodically as  
40 new data on median annual household income becomes available  
41 and upon promulgation by the federal government of a new federal  
42 decennial census. No later than 60 days after a burdened  
43 community is designated under the bill, the governing body of the  
44 municipality in which the burdened community is located would be  
45 required to designate a representative of the burdened community.

46 Under the bill, beginning 180 days after the date of enactment of  
47 the bill, the DEP would not be permitted to grant certain  
48 environmental permits for any new facility, or for the expansion of

1 an existing facility, located in whole or in part in a burdened  
2 community, unless the permit applicant first:

3 (1) prepares a report assessing the environmental impact of the  
4 proposed new or expanded facility. The report would assess the  
5 environmental impact on the burdened community including  
6 cumulative impacts, any adverse environmental effects that cannot  
7 be avoided should the permit be granted, and the public health  
8 impact on the burdened community of the proposed new or  
9 expanded facility;

10 (2) transmits the report at least 30 days in advance of the public  
11 hearing required under the bill to the DEP, the governing body and  
12 the clerk of the municipality in which the burdened community is  
13 located, and the designated representative of the burdened  
14 community. The permit applicant would be required to make the  
15 report available to the public at least 30 days prior to the public  
16 hearing; and

17 (3) organizes and conducts a public hearing in a location as  
18 convenient as possible to all interested parties. The bill establishes  
19 specific requirements for public notice of the hearing. At the public  
20 hearing, the permit applicant would be required to provide clear,  
21 accurate, and complete information about the proposed new or  
22 expanded facility and its potential environmental and health impacts  
23 in the burdened community. The permit applicant would also be  
24 required to provide an opportunity for meaningful public  
25 participation by residents of the burdened community. Following  
26 the hearing, the DEP would be required to consider testimony  
27 presented at the public hearing, and evaluate any revisions or  
28 conditions to the permit that may be necessary to reduce the adverse  
29 impact to the public health or to the environment in the burdened  
30 community.

31 Under the bill, the DEP would not be permitted to issue a  
32 decision on the permit application until at least 60 days after the  
33 public hearing. The DEP would have the authority to deny a permit  
34 application in a burdened community upon a finding that approval  
35 of the permit, together with the cumulative impacts posed by the  
36 proposed new or expanded facility, would constitute an  
37 unreasonable risk to the health of the residents of the burdened  
38 community and to the environment in that community. The DEP,  
39 when evaluating an application for a permit under the bill, would be  
40 required to assess community support for the proposed new or  
41 expanded facility, and be required to consider such support, or the  
42 lack thereof, in its decision to grant or deny a permit.

43 The bill provides that if a permit applicant is applying for more  
44 than one permit for a proposed new or expanded facility, the  
45 applicant would only be required to comply with the provisions of  
46 the bill once, unless the DEP, in its discretion, determines that more  
47 than one public hearing is necessary due to the complexity of the  
48 new or expanded facility.