

**ASSEMBLY CONCURRENT
RESOLUTION No. 37**

**STATE OF NEW JERSEY
215th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman REED GUSCIORA

District 15 (Hunterdon and Mercer)

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Co-Sponsored by:

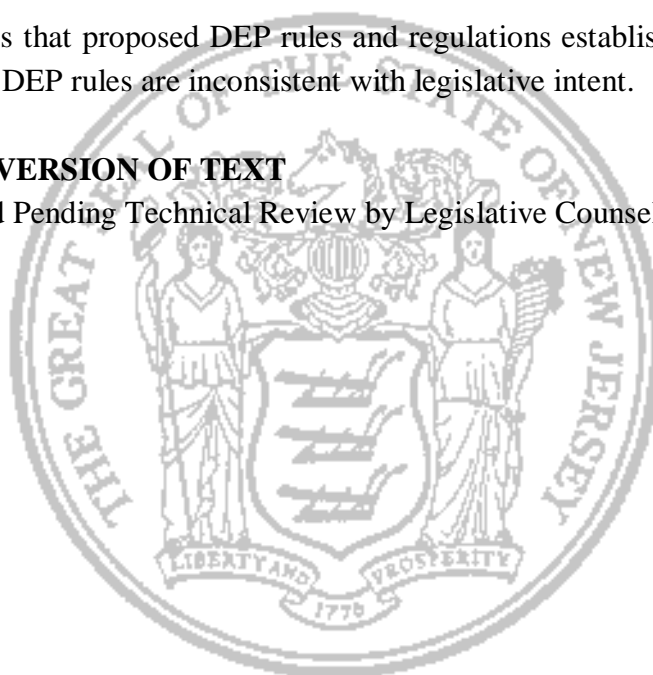
Assemblymen Chivukula and Caputo

SYNOPSIS

Determines that proposed DEP rules and regulations establishing procedure for waiver of DEP rules are inconsistent with legislative intent.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/22/2012)

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 Department of Environmental Protection regulations pursuant to
3 Article V, Section IV, paragraph 6 of the Constitution of the
4 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 March 7, 2011, the Department of Environmental
16 Protection proposed for public comment in the New Jersey Register
17 new rules, proposed to be codified at N.J.A.C.7:1B, to establish a
18 procedure for the waiver of department rules; and
19 **WHEREAS**, The summary of the rule proposal focuses on a discussion
20 of Executive Order No. 2 of 2010 issued by Governor Christie as
21 the reasoning for the proposed new rules and does not provide any
22 support or justification for the proposed rulemaking based on any
23 statutory authority granted to the Department of Environmental
24 Protection; and
25 **WHEREAS**, The notice of proposal lists over 100 statutory citations as
26 the authority for the rule proposal; however, none of these statutes
27 are discussed in the summary of the rule proposal, none of the
28 statutory references provide the Department of Environmental
29 Protection with the authority to promulgate one set of rules and
30 regulations in order to waive other rules and regulations previously
31 adopted pursuant to the “Administrative Procedure Act,” and none
32 of the statutes referenced authorize the department to establish a
33 procedure for the waiver of other department rules; and
34 **WHEREAS**, Of the over 100 statutory citations listed as the authority
35 for the rule proposal, some are incorrect and do not provide the
36 Department of Environmental Protection with any statutory
37 authority for rulemaking, for example: N.J.S.A.39:3-33.1 concerns
38 the registration of motor vehicles by veterans; N.J.S.A.40:55D-1 et
39 seq. is the “Municipal Land Use Law”; N.J.S.A.40A:11-1 et seq. is
40 the “Local Public Contracts Law”; N.J.S.A.45:1-9 requires
41 contractors licensed by the State to indicate their license or
42 certificate number on all contracts, subcontracts, bids and all forms
43 of advertising as a contractor; N.J.S.A.48:3-1 et seq. pertains to the
44 authority of the Board of Public Utilities regarding the rates
45 imposed by public utilities; N.J.S.A.50:1-1 et seq. and
46 N.J.S.A.58:4A-4 are repealed; and N.J.S.A.58:1B-1 et seq. and

1 58:1B-7 deal specifically with the authority of the New Jersey
2 Water Supply Authority; and

3 **WHEREAS**, According to the rule proposal, the new rules would
4 “establish the conditions and procedures for the department to
5 approve waivers from strict compliance with its rules where
6 appropriate to address situations where rules conflict, or a rule is
7 unduly burdensome in specific application, or a net environmental
8 benefit would be realized, or a public emergency exists”; and

9 **WHEREAS**, P.L.2011, c.34 (N.J.S.A.52:14B-26 et seq.) as originally
10 introduced in the Legislature as Senate Bill No. 6 and Assembly
11 Bill No. 2853 included a section that would have authorized State
12 and local agencies responsible for issuing permits or approvals to
13 waive strict compliance with the standards promulgated for issuing
14 those permits or approvals, where necessary to alleviate undue
15 hardship and where the waiver is based on common sense
16 principles, and this section was deleted from the bill as it moved
17 through the legislative process and is not in the final bill as enacted
18 into law; and

19 **WHEREAS**, If the Legislature had intended for a State agency to
20 proceed with a rulemaking such as the one put forth by the
21 Department of Environmental Protection establishing an omnibus
22 procedure for the waiver of existing rules and regulations, the
23 Legislature could have authorized such a procedure when it was
24 acting on Senate Bill No. 6 and Assembly Bill No. 2853 instead of
25 deleting the waiver provision in that legislation in its entirety; and

26 **WHEREAS**, Based upon the statutory citations listed as the authority
27 for the rule proposal, the Department of Environmental Protection
28 is going far beyond establishing a procedure to waive compliance
29 with its existing rules and regulations for permits and approvals
30 related to economic development projects as the statutory authority
31 citations include a number of statutes related to natural areas, parks
32 and historic resources, such as the “Natural Areas System Act”
33 (N.J.S.A.13:1B-15.12a et seq.), the law establishing the Historic
34 Sites Council (N.J.S.A.13:1B-15.108 et seq.), the law establishing
35 the New Jersey Register of Historic Places (N.J.S.A.13:1B-15.128
36 et seq.), the State Fish and Game Code (N.J.S.A.13:1B-30 et seq.),
37 the “State Park and Forestry Resources Act” (N.J.S.A.13:1L-1 et
38 seq.); the “New Jersey Trails System Act” (N.J.S.A.13:8-30 et
39 seq.), the “New Jersey Green Acres Land Acquisition Act of 1961”
40 (N.J.S.A.13:8A-1 et seq.), the “New Jersey Green Acres Land
41 Acquisition Act of 1971” (N.J.S.A.13:8A-19 et seq.), the “New
42 Jersey Green Acres Land Acquisition and Recreation Opportunities
43 Act” (N.J.S.A.13:8A-35 et seq.), the “Garden State Preservation
44 Trust Act” (N.J.S.A.13:8C-1 et seq.), and the “Farmland
45 Assessment Act of 1964” (N.J.S.A.54:4-23.1 et seq.); and

46 **WHEREAS**, While the “Highlands Water Protection and Planning Act”
47 (N.J.S.A.13:20-1 et al.) provides specific authority for the

1 Highlands permitting review program established by the
2 Department of Environmental Protection pursuant to the act to
3 allow for a waiver of the provisions of a Highlands permitting
4 review on a case-by-case basis for three specific circumstances, the
5 current rule proposal does not conform with the language set forth
6 in section 35 of that act (N.J.S.A.13:20-33) by establishing new
7 waiver criteria not authorized in the law; and

8 **WHEREAS**, The rule proposal also cites the “Site Remediation Reform
9 Act” (N.J.S.A.58:10C-1 et seq.) as providing authority for this rule;
10 however, this law, enacted in 2009, is quite specific in the authority
11 granted to the Department of Environmental Protection, and while
12 it provides the department with numerous responsibilities and
13 discretion in a number of areas, it only authorizes a deviation “from
14 the strict adherence to the regulations” in one specific instance
15 found at N.J.S.A.58:10B-2, and the language in the proposed new
16 rules is contrary to this provision; and

17 **WHEREAS**, A number of the statutory citations identified in the
18 proposal, such as N.J.S.A.58:10B-4 (the Hazardous Discharge Site
19 Remediation Fund), N.J.S.A.58:10B-20 (the Remediation
20 Guarantee Fund), N.J.S.A.58:12A-22 through N.J.S.A.58:12A-25
21 (the “Water Supply Replacement Trust Fund”), are to laws
22 establishing specific funds for enumerated purposes or to
23 appropriations of funds for certain specified purposes and there is
24 no law that authorizes a State agency to waive requirements for
25 complying with designated uses of State funds; and

26 **WHEREAS**, At proposed new N.J.A.C.7:1B-2.1(b), the proposal states
27 that the department will not waive any rule in 12 specific
28 enumerated areas; however, a number of statutes listed as the
29 authority for the rule proposal clearly fall within those 12 specific
30 areas, leading to confusion and a lack of clarity as to how this rule
31 proposal would be implemented and to what it exactly applies; and

32 **WHEREAS**, For all of the above reasons, the proposed rules and
33 regulations to establish a procedure for the waiver of department
34 rules are inconsistent with the statutory authority provided to the
35 Department of Environmental Protection and would undermine the
36 specific rules and regulations adopted pursuant to the authority
37 granted to the department by the Legislature in specific laws; now,
38 therefore,

39

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

42

43 1. The Legislature declares that the rules and regulations
44 proposed in the New Jersey Register on March 7, 2011 by the
45 Department of Environmental Protection to establish a procedure
46 for the waiver of department rules are not consistent with the intent
47 of the Legislature.

