
Committee Meeting

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

Senate Concurrent Resolution No. 66

“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”

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: June 16, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Richard J. Codey
Senator Samuel D. Thompson



ALSO PRESENT:

Judith L. Horowitz
Michael R. Molimock
Office of Legislative Services
Committee Aides

Alison Accettola
Senate Majority
Committee Aide

Brian Alpert
Senate Republican
Committee Aide

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey



BOB SMITH
Chairman

LINDA R. GREENSTEIN
Vice-Chairwoman

RICHARD J. CODEY
CHRISTOPHER "KIP" BATEMAN
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New Jersey State Legislature

SENATE ENVIRONMENT
AND ENERGY COMMITTEE
STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

REVISED COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - JUNE 16, 2016

The public may address comments and questions to Judith L. Horowitz or Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Pamela Petrone, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Senate Environment and Energy Committee will meet on Thursday, June 16, 2016 at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The following bills will be considered:

S-1570 Smith, B/Bateman	Authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through use of voluntary special assessments.
S-1986 Cruz-Perez/Cunningham	Establishes "Milkweed for Monarchs" program.
S-2000 Beach	Authorizes prescribed burning in certain circumstances.
S-2278 Vitale/Rice	Provides gross income tax deduction for certain home elevation expenses.
*SCR-66 Lesniak/Smith, B	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.

(OVER)

Senate Environment And Energy Committee

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June 16, 2016

SJR-61
Sweeney/Kean, T

Recognizes 100th anniversary of National Park Service on August 25,
2016.

Issued 6/9/16

*Revised 6/13/16 - SCR-66 added for consideration.

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website <http://www.njleg.state.nj.us> or call 800-792-8630 (toll-free in NJ) or 609-847-3905.

**SENATE CONCURRENT
RESOLUTION No. 66**

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED FEBRUARY 16, 2016

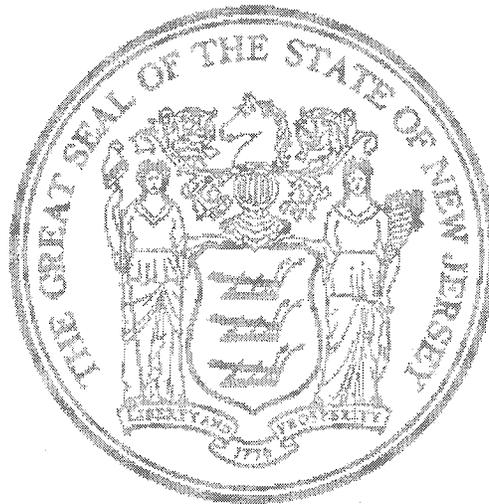
Sponsored by:
Senator RAYMOND J. LESNIAK
District 20 (Union)
Senator BOB SMITH
District 17 (Middlesex and Somerset)

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: 3/8/2016)

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 Senate of the State of New Jersey (the
 38 *General Assembly 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.

SCR66 LESNIAK, B.SMITH

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1 2. Copies of this concurrent resolution, as filed with the
2 Secretary of State, shall be transmitted by the Clerk of the General
3 Assembly or the Secretary of the Senate to the Governor, the
4 Commissioner of Environmental Protection, and the Office of
5 Administrative Law.

6

7 3. This concurrent resolution shall take effect immediately.

8

9

10

STATEMENT

11

12 Pursuant to Article V, Section IV, paragraph 6 of the
13 Constitution of the State of New Jersey, this concurrent resolution
14 prohibits adoption of the rules and regulations proposed by the
15 Department of Environmental published for public comment in the
16 New Jersey Register on June 1, 2015, to revise the Flood Hazard
17 Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone
18 Management Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6,
19 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management
20 Rules, N.J.A.C.7:8-1.1 et seq.

21

22 As required by the Constitution, the Legislature previously
23 informed the Department of Environmental Protection, through
24 Senate Concurrent Resolution No. 180 of 2015, of the Legislature's
25 finding that this rule proposal is not consistent with legislative
intent.

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APPENDIX

Testimony
submitted by
Dwight W. Pittenger
President
New Jersey Builders Association

1x

pnf: 1-5

(This is an excerpt from the Senate Environment and Energy Committee meeting held June 16, 2016, regarding Senate Concurrent Resolution 66.)

SENATOR BOB SMITH (Chair): Governor Codey, I don't know what your schedule is like today. Are you -- You're here.

SENATOR CODEY: Obviously. (laughter)

SENATOR SMITH: No, but I mean, you're going to be here for a while?

SENATOR CODEY: Yes.

SENATOR SMITH: Okay, because the one--

SENATOR CODEY: Why?

SENATOR SMITH: --SCR--

SENATOR CODEY: That sounds like a threat. (laughter)

SENATOR SMITH: No, no. The SCR-- Senator Bateman is not here today. His dad was hurt, and he's with him in the hospital. SCR-66, which we planned to release today -- it's essential that you're here. There's no more testimony on it. In fact, maybe what we should do is just get it done.

MS. HOROWITZ (Committee Aide): Okay.

SENATOR SMITH: We've had three hearings on the Proposed Flood Rules. And to give the Department its due, there's been a process, and I think the DEP has substantially improved what was the original Proposed Rule. In fact, the original Proposed Rule was fraught with problems. They've made a number of changes that have improved it. However, our question as a Legislature is -- the Rule in its final version and

the Supplemental Rule that's been proposed, do they meet with legislative intent? That's the question.

Now, while there's been a lot of progress, it's not quite there, in my opinion. I'm just-- And everybody is going to get a chance to speak on it.

My major issues -- I have two major issues with the Flood Rules, all right? Number one, the fact that they're separated so that you have a Proposed Rule, and a Supplemental Rule which will kick in at some point in the future. There is a credibility issue because of the way the process was handled. These Flood Rules were done in such a way that there wasn't quite the public participation that there should have been. And as a result, there are a lot of credibility issues about whether the Supplemental Rule will get adopted or not. They could always be dropped; always be radically changed. And the Supplemental Rule that's proposed does add to the improvement of the Flood Rule. So that's issue number one, in my mind.

The second issue is the legislative intent question, and it's right on target. We, as a Legislature, have consistently supported the sanctity of CI buffers for our CI streams. Now, these are the purest waters that we have in the State of New Jersey, and I think what the DEP has tried to do -- and it was their mission -- they wanted to not have overlapping rules and regulations. And the overlapping rules and regulations are, with regard to those CI buffers, Flood Rules and Storm Rules. And the problem is that the way in which the Rule, and even the Supplemental Rule, was proposed, is that it doesn't quite get to that level of protection that we now have.

And by the way, kudos to Bill Wolfe. We heard all kinds of testimony over these three meetings. But the one that stuck in my mind is that there is no guarantee that there will be no deterioration with regard to the State's Water Quality Standards if there's development in that first 150 feet of buffer along the CI streams. And that's the missing critical legislative intent item for me. That's the one issue that just wasn't done the way it should be done.

So that being said, I'm going to ask other members if they have any comments on this; I'd be happy to take comments on the SCR.

Senator Greenstein.

SENATOR LINDA R. GREENSTEIN: (Vice Chair): Well, I agree with everything you said.

SENATOR SMITH: Okay.

SENATOR GREENSTEIN: And I feel strongly that the sanctity of the CI buffers has to be at the top of our consideration. When we passed this, we had a certain intention. And while things are a little bit better -- we saw a few changes that were better -- it seems like we're still not there.

So I think this Bill is extremely important, and needs to be passed.

SENATOR SMITH: Okay.

Governor, anything you'd like to say?

SENATOR CODEY: I mean, I agree with what Linda just said. But I think the Department has done, and tried to do, a very, very good job on the whole issue. And I think they worked very, very hard.

SENATOR SMITH: They did.

Senator Thompson, anything you want to say? (no response)

Okay. (laughter)

So one further comment -- this is pretty radical stuff. I mean, this is not a day that any Senator should take joy in, all right? The DEP is part of our government. And in effect, we're rejecting their five-and-a-half years of work on trying to develop better Flood Rules. I take no joy in this vote. And I will also tell you that -- and some may disagree in the audience -- they've made a legitimate effort, I think, to make the Rules better. They just haven't quite gotten to the finish line.

And another reason this is radical -- does anybody remember us ever overturning Proposed Rules?

SENATOR GREENSTEIN: Didn't we do it with Civil Service? I can't remember.

SENATOR SMITH: What's that?

MS. ACCETTOLA (Committee Aide): Didn't we do it with job banding?

SENATOR GREENSTEIN: Civil Service.

SENATOR SMITH: Job banding?

SENATOR GREENSTEIN: Job banding; right.

MS. ACCETTOLA: Yes, that's the only other time.

SENATOR SMITH: That's the only other time.

All right; so this is a vote I personally take with regret. And I am also a little concerned about the fact that you start this process -- I don't think the Legislature, every day of the week, should be second-guessing Proposed Rules, all right? That's-- On the other hand, you have to make sure that the Legislature carries out its responsibility.

And there is no testimony on this today; we've had three meetings. Anybody feel we didn't have enough testimony to make up our minds? (no response) I mean, we have exhaustively reviewed this.

So that being said, I'm going to move the release of the SCR.

SENATOR GREENSTEIN: Second.

SENATOR SMITH: Senator Greenstein is going to second that motion.

And Ms. Horowitz, if you'd take a roll call vote, please.

MS. HOROWITZ: On Senate Concurrent Resolution No. 66, Senator Thompson.

SENATOR THOMPSON: No.

MS. HOROWITZ: Governor Codey.

SENATOR CODEY: Yes.

MS. HOROWITZ: Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

And the SCR is released.

(END OF EXCERPT)