

# 2023 -- H 6196

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## STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

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### A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENVIRONMENTAL JUSTICE  
ACT

Introduced By: Representatives Alzate, Batista, Giraldo, Potter, Boylan, Speakman,  
Henries, Felix, Morales, and Tanzi

Date Introduced: March 24, 2023

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND  
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 17.11

4 ENVIRONMENTAL JUSTICE ACT

5 42-17.11-1. Short title.

6 This chapter shall be known and may be cited as the "Environmental Justice Act".

7 42-17.11-2. Definitions.

8 As used in this chapter:

9 (1) "Council" means the coastal resources management council.

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

16 (3) "Department" means the department of environmental management (DEM).

17 (4) "Director" means the director of the department of environmental management.

18 (5) "Environmental justice" means the fair treatment and meaningful involvement of all

1   people regardless of race, color, national origin, English language proficiency, or income with  
2   respect to the development, implementation, and enforcement of environmental laws, regulations,  
3   and policies.

4       (6) "Environmental justice focus area" means a neighborhood, community, census tract or  
5   other geographically bounded region that meets one or more of the following criteria and has been  
6   designated as such pursuant to § 42-17.11-3:

7           (i) Annual median household income is not more than sixty-five percent (65%) of the  
8   statewide annual median household income;

9           (ii) Minority population is equal to or greater than forty percent (40%) of the population;

10          (iii) Twenty-five percent (25%) or more of the households lack English language  
11   proficiency; or

12          (iv) Minorities comprise twenty-five percent (25%) or more of the population and the  
13   annual median household income of the municipality in the proposed area does not exceed one  
14   hundred fifty percent (150%) of the statewide annual median household income.

15       (8) "Fair treatment" means no group of people should bear a disproportionate share of the  
16   negative environmental consequences resulting from industrial, governmental, or commercial  
17   operations or policies.

18       (9) "Meaningful involvement" means:

19           (i) People have an opportunity to participate in decisions about activities that may affect  
20   their environment and/or health;

21           (ii) The public's contribution can influence the regulatory agency's decision;

22           (iii) Community concerns will be considered in the decision-making process; and

23           (iv) Decision makers will seek out and facilitate the involvement of those potentially  
24   affected.

25       (10) "Permit" means any permit, registration, or license issued or renewed by the  
26   department or the council establishing the regulatory and management requirements for a regulated  
27   activity as authorized by federal law or state law where there is a possibility of cumulative impacts  
28   in an environmental justice focus area, including any consistency determination made by the  
29   council.

30       (11) "Permitted activity" means permitting for any of the following facilities:

31           (i) Electric generating facility;

32           (ii) Resource recovery facility or incinerator;

33           (iii) Sludge combustor facility or incinerator;

34           (iv) Transfer station, recycling center, or other solid waste facility;

- 1       (v) Landfill, including, but not limited to, a landfill that accepts ash, construction or  
2 demolition debris, or solid waste;
- 3       (vi) Medical waste incinerator;
- 4       (vii) Pyrolysis or gasification facility;
- 5       (viii) Scrap metal facility;
- 6       (ix) Auto salvage operations and/or facility;
- 7       (x) Asphalt plant;
- 8       (xi) Petroleum storage facility;
- 9       (xii) Ethylene oxide manufacturing and/or storage facility;
- 10      (xiii) Construction and/or demolition debris processing facility; or
- 11      (xiv) The renewal of any permit listed in this definition.

12      **42-17.11-3. Establishment of environmental justice areas.**

13      (a) No later than nine (9) months after the effective date of this chapter, the department  
14 shall propose the designation of environmental justice focus areas in the state. The department shall  
15 periodically, upon the publication of either the federal decennial census or an update to the relevant  
16 state or federal data, propose new designations or the removal thereof.

17      (b) The director may propose additional designations of an environmental justice focus  
18 area upon the petition of at least ten (10) residents of a geographically bounded area. In order to be  
19 considered, the petition shall include a detailed statement explaining why the area was not initially  
20 included and provide justification for its designation as an environmental justice area.

21      (c) Within six (6) months of any proposed designation or removal of designation, the  
22 department shall:

23       (1) Prepare and publish a report establishing the justification for its designation or the  
24 removal of its designation.

25       (2) Transmit the report prepared pursuant to subsection (c)(1) of this section at least thirty  
26 (30) days in advance of the public hearing required pursuant to subsection (c)(3) of this section to  
27 the governing body and clerk of the municipality in which the environmental justice focus area  
28 designation is being considered. The public shall be notified of the proposed change in designation  
29 via publication through the council's and the department's websites and through a newspaper,  
30 newsletters or other media that specifically focus on the community near the site.

31       (3) Organize and conduct a public hearing that provides for the fair treatment and  
32 meaningful participation of the public. The department shall publish public notices of the hearing  
33 through the department's websites and through a newspaper, newsletter and other media that  
34 specifically focus on the community near the site not less than twenty-one (21) days prior to the

1    hearing. When appropriate, the notices shall be published in Spanish, Portuguese and other  
2    languages. At least fourteen (14) days prior to the date set for such hearing, a copy of the public  
3    notice shall be sent to the governing body and the clerk of the municipality in which the  
4    environmental justice focus area designation is being made. At the public hearing, the department  
5    shall present its report and take public comment regarding the designation at that time or by written  
6    comment following the hearing until such time as a designation is made. The department shall make  
7    available a transcript of the hearings to an interested party upon request.

8                 (d) No later than thirty (30) days after any public hearing held pursuant to subsection (c)(3)  
9    of this section, the department shall either make final or rescind its designation of an environmental  
10   justice focus area. Such determination shall contain the department's findings and response to the  
11   public comment received. The department, when evaluating the designation, shall assess the  
12   community support for the designation, as demonstrated through the public hearing conducted  
13   pursuant to subsection (c)(3) of this section, letters of support for, or opposition to, the proposed  
14   new or expanded facility, and any ordinance or resolution adopted by the governing body of the  
15   municipality in which the environmental justice focus area is located. The department shall rescind  
16   the designation upon a finding of:

17                 (1) The annual median household income of the proposed area is greater than one hundred  
18   twenty-five percent (125%) of the statewide median household income;

19                 (2) A majority of persons age twenty-five (25) years and older in the proposed area have a  
20   college education;

21                 (3) The proposed area does not bear an unfair burden of environmental pollution; or

22                 (4) The designation is not supported by the community as demonstrated by the public  
23   hearing held pursuant to subsection (c)(3) of this section.

24                 (e) Not later than sixty (60) days after making the designation of an environmental justice  
25   focus area final, the governing body of the municipality in which the environmental justice focus  
26   area is located, after providing for the fair treatment and meaningful participation of the public,  
27   shall designate a representative of the environmental justice focus area.

28                 **42-17.11-4. Permit requirements in an environmental justice focus area.**

29                 (a) The department and the council shall not approve any permitted activity in an  
30   environmental justice focus area or within one-half (1/2) mile of an environmental justice focus  
31   area, unless the permit applicant first:

32                 (1) Prepares a report assessing the environmental impact of the proposed permitted activity,  
33   including any cumulative impacts on the environmental justice focus area, any adverse  
34   environmental effects that cannot be avoided should the permit be granted, and the public health

1      impact on the environmental justice focus area of the proposed permitted activity;

2            (2) Transmits the report required to be prepared pursuant to subsection (a)(1) of this section  
3        at least thirty (30) days in advance of the public hearing required pursuant to subsection (a)(3) of  
4        this section to the department or council, the governing body and the clerk of the municipality in  
5        which the environmental justice focus area is located, and the designated representative of the  
6        environmental justice focus area. The report shall be made available to the public at least thirty (30)  
7        days prior to the public hearing required pursuant to subsection (a)(3) of this section; and

8            (3) Organizes and conducts a public hearing that provides for the fair treatment and  
9        meaningful involvement of the public. The permit applicant shall publish public notices of the  
10       hearing through the council and/or department's website and through a newspaper, newsletters and  
11       other media that specifically focus on the community near the site not less than twenty-one (21)  
12       days prior to the hearing. When appropriate, the notices shall be published in Spanish, Portuguese  
13       or other languages. At least fourteen (14) days prior to the date set for such hearing, a copy of the  
14       public notice shall be sent to the department or the council, the governing body and the clerk of the  
15       municipality in which the environmental justice focus area is located, and the designated  
16       representative of the environmental justice focus area. At the public hearing, the permit applicant  
17       shall provide clear, accurate, and complete information about the proposed permitted activity and  
18       the potential environmental and health impacts of the permitted activity. The council and/or  
19       department, in addition to receiving testimony during the public hearing, shall accept written  
20       testimony or comments following the public hearing until such time as a decision on the permit is  
21       issued. The applicant shall within seven (7) days provide a transcript of the public hearing to the  
22       department, who shall make it available to an interested party upon request.

23            (b) The department or council shall not issue a decision on the permit application until at  
24        least forty-five (45) days after the public hearing held pursuant to subsection (a)(3) of this section.  
25        Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto to  
26        the contrary, the department or council may deny a permit application in an environmental justice  
27        focus area upon a finding that the approval of the permit would, together with the cumulative  
28        impacts posed by the existing conditions, including conditions resulting from already permitted  
29        activities, in the environmental justice focus area, constitute an unreasonable risk to the health of  
30        the residents of the environmental justice focus area or to the environment in the environmental  
31        justice focus area.

32            (c) The department or council, when evaluating an application for a permit pursuant to this  
33        section, shall assess the community support for the proposed permitted activity, as demonstrated  
34        through the public hearing conducted pursuant to subsection (a)(3) of this section, letters of support

1       for, or opposition to, the proposed permitted activity, and any ordinance or resolution adopted by  
2       the governing body of the municipality in which the environmental justice focus area is located.  
3       Community support or opposition alone shall be insufficient grounds on which to approve or deny  
4       a permit, though the department shall respond to any claim made by members of the public, their  
5       representatives, and/or their experts that the proposed permit is inconsistent with an applicable law,  
6       rule or regulation.

7           (d) If a permit applicant is applying for more than one permit for a proposed permitted  
8       activity, the permit applicant shall only be required to comply with the provisions of this section  
9       once for the same facility in the same location, unless the department, in its discretion, determines  
10      that more than one public hearing is necessary due to the complexity of the proposed permitted  
11      activity. Nothing in this section shall be construed to limit the authority of the department to hold  
12      or require additional public hearings.

13       **42-17.11-5. Implementation.**

14           (a) The department and council shall adopt rules and regulations to implement the  
15      provisions of this chapter.

16           (b) The department may issue guidance on how to evaluate cumulative impacts pursuant  
17      to § 42-17.11-4(a)(1). The department shall publish the guidance document on its website.

18       SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENVIRONMENTAL JUSTICE  
ACT

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- 1        This act would require the department of environmental management to create a list of
  - 2        environmental justice areas. Upon adoption of the list of environmental justice areas, the act would
  - 3        establish requirements which would have to be met by an applicant prior to the department of
  - 4        environmental management (DEM) or the coastal resources management council (CRMC) issuing
  - 5        permits for an activity that would have an environmental impact or would increase the cumulative
  - 6        impacts on an environmental justice area.
- 7        This act would take effect upon passage.

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