AN ACT
RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENVIRONMENTAL JUSTICE ACT

Introduced By: Senators Euer, McCaffrey, Sosnowski, Kallman, Valverde, Mack, Quezada, Cano, and Coyne
DateIntroduced: January 26, 2021
Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

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

CHAPTER 17.11
ENVIRONMENTAL JUSTICE ACT

42-17.11-1. Definitions.

As used in this chapter:

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

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

(3) "Director" means the director of the DEM.

(4) "Facility" means any:

(i) Electric generating facility with a capacity of more than ten megawatts (10 MW);

(ii) Resource recovery facility or incinerator;

(iii) Sludge combustor facility or incinerator;
(iv) Sewage treatment plant with a capacity of more than fifty million (50,000,000) gallons per day;

(v) Transfer station, recycling center, or other solid waste facility with a combined monthly volume in excess of tons;

(vi) Landfill, including, but not limited to, a landfill that accepts ash, construction or demolition debris, or solid waste;

(vii) Medical waste incinerator;

(viii) Pyrolysis or gasification facility;

(ix) Major source of air pollution, as defined by the federal "Clean Air Act," 42 U.S.C.s.7401 et seq.

(5) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, English language proficiency, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

(6) "Environmental justice focus area" refers to the definition set forth by the DEM in SOP Number BEP-AWC-1, effective 6/26/09 and entitled, "Policy for Considering Environmental Justice in the Review of Investigation and Remediation of Contaminated Properties", which states:

"In order to meet the various needs of different communities, the population in those communities must be clearly and consistently understood by the engineers and scientists within state agencies responsible for overseeing, improving or maintaining a clean and healthful environment, including those agencies responsible for overseeing the investigation and clean-up of properties. The United States Environmental Protection Agency (EPA) uses data from the census to develop population maps in Geographic Information Systems (GIS). In establishing their mapping criteria, EPA calculated (on a regional basis) the percent of the census block group that is minority AND the percent of the block group that is low-income (under two (2) times federal poverty level). Areas mapped by EPA are both (% minority & % low-income) high enough to rank in the top fifteen percent (15%) of block groups. DEM has adopted similar criteria, however, it compared the block groups on a state-wide basis instead of a regional basis. In addition, DEM mapped areas where the percent of the block group that is minority OR the percent of the block group that is low-income (under two (2) times federal poverty level) are high enough to rank in the top fifteen percent (15%) of block groups state-wide. The census blocks meeting these criteria established by the DEM in SOP Number BEP-AWC-1 shall be designated environmental justice focus areas."

(7) "Permit" means any permit, registration, or license issued by the DEM establishing the regulatory and management requirements for an ongoing regulated activity as authorized by federal
law or state law.

42-17.11-2. List of environmental justice areas.

(a) No later than one hundred twenty (120) days after the effective date of this act, the
department of environmental management shall adopt a list of environmental justice focus areas in
the state. The department shall update the list of environmental justice focus areas periodically as
new data becomes available and upon promulgation by the federal government of a new federal
decennial census.

(b) No later than sixty (60) days after an environmental justice focus area is designated
pursuant to subsection (a) of this section, the governing body of the municipality in which the
environmental justice focus area is located, in consultation with appropriate community groups,
shall designate a representative of the environmental justice focus area.

42-17.11-3. Permit requirements in an environmental justice focus area.

(a) Beginning one hundred eighty (180) days after the effective date of this act, the DEM
shall not grant a permit for a new facility, or for the expansion of an existing facility, located in
whole or in part in an environmental justice focus area unless the permit applicant first:

1. Prepares a report assessing the environmental impact of the proposed new facility, or
expansion of an existing facility, including any cumulative impacts on the environmental justice
focus area, any adverse environmental effects that cannot be avoided should the permit be granted,
and the public health impact on the environmental justice focus area of the proposed new facility
or expansion of an existing facility;

2. Transmits the report required to be prepared pursuant to § 42-17.11-3(a)(1) at least
thirty (30) days in advance of the public hearing required pursuant to § 42-17.11-3(a)(3) to the
department, the governing body and the clerk of the municipality in which the environmental justice
focus area is located, and the designated representative of the environmental justice focus area. The
report shall be made available to the public at least thirty (30) days prior to the public hearing
required pursuant to § 42-17.11-3(a)(3);

3. Organizes and conducts a public hearing in a location convenient as much as possible
to all interested parties. The permit applicant shall publish public notices of the hearing in a
newspaper with statewide circulation and through the department's website and through a
newspaper, newsletters and other media that specifically focus on the community near the site not
less than twenty-one (21) days prior to the hearing. When appropriate, the notices shall be published
in Spanish, Portuguese or other languages. At least fourteen (14) days prior to the date set for such
hearing, a copy of the public notice shall be sent to the department, the governing body and the
clerk of the municipality in which the environmental justice focus area is located, and the
designated representative of the environmental justice focus area. At the public hearing, the permit applicant shall provide clear, accurate, and complete information about the proposed new facility or expansion of an existing facility and the potential environmental and health impacts of the new or expanded facility. The hearing shall provide an opportunity for meaningful public participation by residents of the environmental justice focus area. Following the public hearing, the director or designee shall consider the testimony presented and evaluate any revisions or conditions to the permit that may be necessary to reduce the adverse impact to the public health or to the environment in environmental justice focus area.

(b) The department shall not issue a decision on the permit application until at least sixty (60) days after the public hearing held pursuant to this section. Notwithstanding the provisions of any other law, or rule or regulation adopted pursuant thereto, to the contrary, the department may deny a permit application in an environmental justice focus area upon a finding that the approval of the permit would, together with the cumulative impacts posed by the existing conditions, including conditions resulting from permitted activities, in the environmental justice focus area, constitute an unreasonable risk to the health of the residents of the environmental justice focus area or to the environment in the environmental justice focus area.

(c) The department, when evaluating an application for a permit pursuant to this section, shall assess the community support for the proposed new facility or expansion of an existing facility, as demonstrated through the public hearing conducted pursuant to § 42-17.11-3(a), letters of support for, or opposition to, the proposed new or expanded facility, and any ordinance or resolution adopted by the governing body of the municipality in which the environmental justice focus area is located. The department shall consider community support, or the lack thereof, in its decision to grant or deny a permit.

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

42-17.11-4. Implementation.

(a) The department of environmental management may adopt rules and regulations to implement the provisions of this chapter.

(b) The department may issue guidance on how to evaluate cumulative impacts pursuant § 42-17.11-3(a)(1). The department shall publish the guidance document on its website.
SECTION 2. This act shall take effect upon passage.
EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENVIRONMENTAL JUSTICE ACT

***

1 This act would require the department of environmental management (DEM) to create a list of environmental justice areas. Once the list of environmental justice areas is adopted the act would establish requirements which would have to be met by an applicant prior to DEM issuing permits for a new large electric generating facility, resource recovery facility or sludge combustor facility.

6 This act would take effect upon passage.

==========
LC000608
==========