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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: Senators Euer, Cano, Mack, Murray, Lauria, Acosta, DiMario, Miller,
Sosnowski, and Britto

Date Introduced: March 23, 2023

Referred To: Senate Environment & Agriculture

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

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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