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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- ENVIRONMENTAL JUSTICE
IMPACT STATEMENTS

Introduced By: Senators Mack, Anderson, Calkin, and Acosta

Date Introduced: March 17, 2022

Referred To: Senate Judiciary

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 6.3

4 ENVIRONMENTAL JUSTICE IMPACT STATEMENTS

5 **42-6.3-1. Definitions.**

6 (a) As used in this chapter:

7 (1) "Department" means the department of environmental management.

8 (2) "Environmental or public health stressors" means sources of environmental pollution,
9 including, but not limited to, concentrated areas of air pollution, mobile sources of air pollution,
10 contaminated sites, transfer stations or other solid waste facilities, recycling facilities, scrap yards,
11 and point-sources of water pollution including, but not limited to, water pollution from facilities or
12 combined sewer overflows; or conditions that may cause potential public health impacts, including,
13 but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, and
14 developmental problems in the overburdened community.

15 (3) "Facility" means any:

16 (i) Major source of air pollution;

17 (ii) Resource recovery facility or incinerator;

18 (iii) Sludge processing facility, combustor, or incinerator;

1 (iv) Sewage treatment plant with a capacity of more than fifty million (50,000,000) gallons
2 per day;

3 (v) Transfer station or other solid waste facility, or recycling facility intending to receive
4 at least one hundred (100) tons of recyclable material per day;

5 (vi) Scrap metal facility;

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

8 (viii) Medical waste incinerator,

9 Except that "facility" shall not include a facility that uses regulated medical waste
10 processing equipment that accepts regulated medical waste for disposal, including a medical waste
11 incinerator, that is attendant to a hospital or university and intended to process self-generated
12 regulated medical waste.

13 (4) "Limited English proficiency" means that a household does not have an adult that
14 speaks English "very well" according to the United States Census Bureau.

15 (5) "Low-income household" means a household that is at or below twice the poverty
16 threshold as that threshold is determined annually by the United States Census Bureau.

17 (6) "Major source" means a major source of air pollution as defined by the federal Clean
18 Air Act, Pub. L. 88-206, 42 U.S.C. Sections 7401 -- 7671a, or which directly emits, or has the
19 potential to emit, one hundred (100) tons per year or more of any air pollutant, or other applicable
20 criteria set forth in the federal Clean Air Act, Pub. L. 88-206, 42 U.S.C. Sections 7401 -- 7671q.

21 (7) "Overburdened community" means any census block group, as determined in
22 accordance with the most recent United States Census, in which:

23 (i) At least thirty-five percent (35%) of the households qualify as low-income households;

24 (ii) At least forty percent (40%) of the residents identify as minority or as members of a
25 state recognized tribal community; or

26 (iii) At least forty percent (40%) of the households have limited English proficiency.

27 (8) "Permit" means any individual permit, registration, or license issued by the department
28 to a facility establishing the regulatory and management requirements for a regulated activity under
29 the following state laws: chapter 64 of title 42, chapter 37.1 of title 45, chapters 18.9, 19.1, 9.7
30 through 19.12 and 19.14 of title 23; except that "permit" shall not include any authorization or
31 approval necessary to perform a remediation, as defined pursuant to chapter 19.14 of title 23 or any
32 authorization or approval required for a minor modification of a facility's major source permit for
33 activities or improvements that do not increase emissions.

34 **42-6.3-2 List of overburdened communities.**

1 No later than one hundred twenty (120) days after the effective date of this chapter, the
2 department shall publish and maintain on its Internet website a list of overburdened communities
3 in the state. The department shall update the list of overburdened communities at least once every
4 two (2) years. The department shall notify a municipality if any part of the municipality has been
5 designated an overburdened community pursuant to this chapter.

6 **42-6.3-3. Permitting procedure.**

7 (a) Beginning September 1, 2022, or immediately upon the adoption of the rules and
8 regulations required pursuant § 46-6.3-3, the department shall not consider complete for review
9 any application for a permit for a new facility or for the expansion of an existing facility, or any
10 application for the renewal of an existing facility's major source permit, if the facility is located, or
11 proposed to be located, in whole or in part, in an overburdened community, unless the permit
12 applicant first:

13 (1) Prepares an environmental justice impact statement that assesses the potential
14 environmental and public health stressors associated with the proposed new or expanded facility,
15 or with the existing major source, as applicable, including any adverse environmental or public
16 health stressors that cannot be avoided if the permit is granted, and the environmental or public
17 health stressors already borne by the overburdened community as a result of existing conditions
18 located in or affecting the overburdened community;

19 (2) Transmits the environmental justice impact statement required to be prepared pursuant
20 to subsection (a)(1) of this section, at least sixty (60) days in advance of the public hearing required
21 pursuant to subsection (a)(3) of this section, to the department and to the governing body and the
22 clerk of the municipality in which the overburdened community is located. Upon receipt, the
23 department shall publish the environmental justice impact statement on its Internet website; and

24 (3) Organizes and conducts a public hearing in the overburdened community.

25 (b) The permit applicant shall publish a notice of the public hearing in at least two (2)
26 newspapers circulating within the overburdened community, including one local non-English
27 language newspaper, if applicable, not less than sixty (60) days prior to the public hearing. The
28 permit applicant shall provide a copy of the notice to the department, and the department shall
29 publish the notice on its Internet website. The notice of the public hearing shall provide the date,
30 time, and location of the public hearing, a description of the proposed new or expanded facility or
31 existing major source, as applicable, a map indicating the location of the facility, a brief summary
32 of the environmental justice impact statement, information on how an interested person may review
33 a copy of the complete environmental justice impact statement, an address for the submittal of
34 written comments to the permit applicant, and any other information deemed appropriate by the

1 department. At least sixty (60) days prior to the public hearing, the permit applicant shall send a
2 copy of the notice to the department and to the governing body and the clerk of the municipality in
3 which the overburdened community is located. The applicant shall invite the municipality to
4 participate in the public hearing.

5 (c) At the public hearing, the permit applicant shall provide clear, accurate, and complete
6 information about the proposed new or expanded facility, or existing major source, as applicable,
7 and the potential environmental and public health stressors associated with the facility. The permit
8 applicant shall accept written and oral comments from any interested party, and provided an
9 opportunity for meaningful public participation at the public hearing. The permit applicant shall
10 transcribe the public hearing and, no later than ten (10) days after the public hearing, submit the
11 transcript along with any written comments received, to the department. Following the public
12 hearing, the department shall consider the testimony presented and any written comments received,
13 and evaluate the issuance of, or conditions to, the permit, as necessary in order to avoid or reduce
14 the adverse environmental or public health stressors affecting the overburdened community.

15 (d) The department may require the applicant to consolidate the public hearing held
16 pursuant to this section with any other public hearing held or required by the department regarding
17 the permit application, provided the public hearing meets the other requirements of this section.
18 The department shall consider a request by a permit applicant to consolidate required public
19 hearings and, if the request is granted by the department, the consolidation shall not preclude an
20 application from being deemed complete for review pursuant to subsections (a), (b) and (c) of this
21 section.

22 (e) Notwithstanding any other law, rule or regulation to the contrary, the department shall
23 not issue a decision on an application for a permit for a new facility or for the expansion of an
24 existing facility, or on an application for the renewal of an existing facility's major source permit,
25 if such facility is located, or proposed to be located, in whole or in part, in an overburdened
26 community until at least forty-five (45) days after the public hearing held pursuant to this section.

27 (f) Notwithstanding the provisions of any other law, rule or regulation adopted pursuant
28 thereto, to the contrary, the department shall, after review of the environmental justice impact
29 statement prepared pursuant to this chapter and any other relevant information, including testimony
30 and written comments received at the public hearing, deny a permit for a new facility, or for the
31 expansion of an existing facility, or apply new conditions to the renewal of an existing facility's
32 major source permit, upon a finding that approval of the permit, or permit renewal, as proposed,
33 would, together with other environmental or public health stressors affecting the overburdened
34 community, cause or contribute to adverse cumulative environmental or public health stressors in

1 the overburdened community that are higher than those stressors borne by other communities
2 within the state, county, or other geographic unit of analysis as determined by the department
3 pursuant to rule, regulation, or guidance adopted or issued pursuant to § 46-6.3-4, except that where
4 the department determines that a new or expanded facility will serve a compelling public interest
5 in the community where it is to be located, the department may grant a permit that imposes
6 conditions on the construction and operation of the facility to protect the public health .

7 (g) Notwithstanding the provisions of any other law, rule or regulation adopted pursuant
8 thereto to the contrary, the department may, after review of the environmental justice impact
9 statement and any other relevant information, including testimony and written comments received
10 at the public hearing, apply conditions to a permit for the expansion of an existing facility, or the
11 renewal of an existing facility's major source permit, concerning the construction and operation of
12 the facility to protect the public health, upon a finding that approval of a permit or permit renewal,
13 as proposed, would, together with other environmental or public health stressors affecting the
14 overburdened community, cause or contribute to adverse cumulative environmental or public
15 health stressors in the overburdened community that are higher than those stressors borne by other
16 communities within the state, county, or other geographic unit of analysis as determined by the
17 department pursuant to rule, regulation, or guidance adopted or issued pursuant to § 46-6.3-4.

18 (h) If a permit applicant is applying for more than one permit for a proposed new or
19 expanded facility, the permit applicant shall only be required to comply with the provisions of this
20 section once, unless the department, in its discretion, determines that more than one public hearing
21 is necessary due to the complexity of the permit applications necessary for the proposed new or
22 expanded facility. Nothing in this section shall be construed to limit the authority of the department
23 to hold or require additional public hearings, as may be required by any other law, rule, or
24 regulation.

25 (i) Nothing in this section shall be construed to limit the right of an applicant to continue
26 facility operations during the process of permit renewal to the extent such right is conveyed by
27 applicable law, rule, or regulation, including any of the rules and regulations adopted pursuant to
28 chapter 6.2 of title 42, ("act on climate") or the "Air Pollution Control Act (1954)," Pub. L. 1954,
29 chapter 212.

30 (j) In addition to any other fee authorized by law, rule, or regulation, the department shall
31 assess each permit applicant a reasonable fee in order to cover the department's costs associated
32 with the implementation of this chapter, including costs to provide technical assistance to permit
33 applicants and overburdened communities as needed to comply with this chapter.

34 **42-6.3-4. Rules and regulations.**

1 (a) The department shall adopt, pursuant to the chapter 35 of title 42, ("administrative
2 procedure act"), rules and regulations as are necessary to implement the provisions of this chapter.

3 (b) The department may issue technical guidance for compliance with this chapter, which
4 the department shall publish on its Internet website.

5 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
IMPACT STATEMENTS

1 This act would require that the department of environmental management (DEM),
2 beginning September 1, 2022, not consider complete for review any application for a permit for a
3 new polluting facility or for the expansion of an existing polluting facility, or any application for
4 the renewal of an existing polluting facility's major source permit, if the facility is located, or
5 proposed to be located, in whole or in part, in an overburdened community, unless the permit
6 applicant prepares an environmental justice impact statement. The impact statement would assess
7 the potential environmental and public health stressors associated with the proposed new or
8 expanded polluting facility, or with the existing major source, as applicable, including any adverse
9 environmental or public health stressors that cannot be avoided if the permit is granted, and the
10 environmental or public health stressors already borne by the overburdened community as a result
11 of existing conditions located in or affecting an overburdened community.

12 This act would take effect upon passage.

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