

2021 -- S 0105 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

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

Introduced By: Senators Euer, McCaffrey, Sosnowski, Kallman, Valverde, Mack,
Quezada, Cano, and Coyne

Date Introduced: January 26, 2021

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. Definitions.**

6 As used in this chapter:

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

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

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

15 (4) "Director" means the director of the DEM.

16 (5) "Division" means the division of statewide planning.

17 (6) "Environmental justice" means the fair treatment and meaningful involvement of all
18 people regardless of race, color, national origin, English language proficiency, or income with

1 respect to the development, implementation, and enforcement of environmental laws, regulations,
2 and policies.

3 (7) "Environmental justice focus area" refers to a neighborhood, community, census tract
4 or other geographically bounded region that meets one or more of the following criteria:

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

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

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

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

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

16 (9) "Meaningful involvement" means:

17 (i) That people have an opportunity to participate in decisions about activities that may
18 affect their environment and/or health;

19 (ii) The public's contribution can influence the regulator agency's decision;

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

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

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

27 (11) "Permitted activity" means:

28 (i) Permitting for any of the following facilities:

29 (A) Electric generating facility;

30 (B) Resource recovery facility or incinerator;

31 (C) Sludge combustor facility or incinerator;

32 (D) Sewage treatment plant;

33 (E) Transfer station, recycling center, or other solid waste facility;

34 (F) Landfill, including, but not limited to, a landfill that accepts ash, construction or

1 demolition debris, or solid waste;

2 (G) Medical waste incinerator;

3 (H) Pyrolysis or gasification facility; or

4 (ii) Any other activity falling under the regulatory authority of the department or council
5 that has the possibility of increasing the cumulative impacts in an environmental justice focus area
6 as defined in this chapter, including, but not limited to, a major source of air pollution, as defined
7 by the federal "Clean Air Act," 42 U.S.C. § 7401 et seq., or a source of water pollution, as defined
8 by the federal "Clean Water Act," 33 U.S.C. § 1362(6).

9 **42-17.11-2. List of environmental justice areas.**

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

14 (b) The chief executive of the division may propose additional designations of an
15 environmental justice focus area upon the petition of at least ten (10) residents of a geographically
16 bounded area.

17 (c) Within six (6) months of any proposed designation or removal of designation, the
18 division shall:

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

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

28 (3) Organize and conduct a public hearing that provides for the fair treatment and
29 meaningful participation of the public. The division shall publish public notices of the hearing in a
30 newspaper with statewide circulation and through the division's and department's websites and
31 through a newspaper, newsletter and other media that specifically focus on the community near the
32 site not less than twenty-one (21) days prior to the hearing. When appropriate, the notices shall be
33 published in Spanish, Portuguese and other languages. At least fourteen (14) days prior to the date
34 set for such hearing, a copy of the public notice shall be sent to the governing body and the clerk

1 of the municipality in which the environmental justice focus area designation is being made. At the
2 public hearing, the division shall present its report and take public comment regarding the
3 designation.

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

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

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

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

18 (4) It is not supported by the community as demonstrated by the public hearing held
19 pursuant to subsection (c)(3) of this section.

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

24 **42-17.11-3. Permit requirements in an environmental justice focus area.**

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

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

32 (2) Transmits the report required to be prepared pursuant to subsection (a)(1) of this section
33 at least thirty (30) days in advance of the public hearing required pursuant to subsection (a)(3) of
34 this section to the department or council, the governing body and the clerk of the municipality in

1 which the environmental justice focus area is located, and the designated representative of the
2 environmental justice focus area. The report shall be made available to the public at least thirty (30)
3 days prior to the public hearing required pursuant to subsection (a)(3) of this section;

4 (3) Organizes and conducts a public hearing that provides for the fair treatment and
5 meaningful involvement of the public. The permit applicant shall publish public notices of the
6 hearing in a newspaper with statewide circulation and through the department's website and through
7 a newspaper, newsletters and other media that specifically focus on the community near the site
8 not less than twenty-one (21) days prior to the hearing. When appropriate, the notices shall be
9 published in Spanish, Portuguese or other languages. At least fourteen (14) days prior to the date
10 set for such hearing, a copy of the public notice shall be sent to the department or the council, the
11 governing body and the clerk of the municipality in which the environmental justice focus area is
12 located, and the designated representative of the environmental justice focus area. At the public
13 hearing, the permit applicant shall provide clear, accurate, and complete information about the
14 proposed permitted activity and the potential environmental and health impacts of the permitted
15 activity. Following the public hearing, the director or designee shall consider the testimony
16 presented and evaluate any revisions or conditions to the permit that may be necessary to reduce
17 the adverse impact to the public health or to the environment in environmental justice focus area.

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

26 (c) The department or council, when evaluating an application for a permit pursuant to this
27 section, shall assess the community support for the proposed permitted activity, as demonstrated
28 through the public hearing conducted pursuant to subsection (a) of this section, letters of support
29 for, or opposition to, the proposed permitted activity, and any ordinance or resolution adopted by
30 the governing body of the municipality in which the environmental justice focus area is located.
31 The department shall consider community support, or the lack thereof, in its decision to grant or
32 deny a permit.

33 (d) If a permit applicant is applying for more than one permit for a proposed permitted
34 activity, the permit applicant shall only be required to comply with the provisions of this section

1 once for the same facility in the same location, unless the department, in its discretion, determines
2 that more than one public hearing is necessary due to the complexity of the proposed permitted
3 activity. Nothing in this section shall be construed to limit the authority of the department to hold
4 or require additional public hearings.

5 **42-17.11-4. Implementation.**

6 (a) The department and council may adopt rules and regulations to implement the
7 provisions of this chapter.

8 (b) The department may issue guidance on how to evaluate cumulative impacts pursuant §
9 42-17.11-3(a)(1). The department shall publish the guidance document on its website.

10 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 division of statewide planning to create a list of environmental
2 justice areas. Once the list of environmental justice areas is adopted the act would establish
3 requirements which would have to be met by an applicant prior to division of statewide planning
4 or the coastal resources management council issuing permits for an activity that would increase
5 cumulative impacts on an environmental justice area.

6 This act would take effect upon passage.

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