



LEGISLATURE'S OVERSIGHT RESPONSIBILITY TO ENSURE DEP ACCOUNTABILITY

DESCRIPTION

The Department of Environmental Protection (DEP) regulates some business activities in an effort to protect the environment and human health, and NJBIA understands their role. However, we have seen the department push its own agenda forward in a manner that we believe will have a detrimental impact on the economic viability of the State.

In recent years, the department has proposed unreasonable regulations that make compliance more difficult and make it more costly to operate businesses in this State. The regulations also create disincentives for businesses to stay in New Jersey and make it less attractive to those businesses contemplating New Jersey as a viable option for relocation. This benefits no one.

While legislators pass legislation to protect the environment and human health, they generally do not look at how they are implemented by the DEP.

Legislators should consider the regulatory impacts of their legislation before it gets signed into law, and also should require more accountability and transparency from the department in how laws are implemented.

BACKGROUND

Over the past 10 years, legislation which provides the DEP with the authority to propose and adopt rules has been so broadly drafted that the DEP has had unchecked power. Under the authority of current statutes, the department has tripled air permit fees, nearly doubled site remediation fees, raised fines dramatically and created disincentives toward development and economic growth in the State.

NJBIA POSITION

NJBIA understands the DEP's role to protect the environment and human health. However, the DEP has gone unchecked with regard to the administration of funds and the implementation of regulations. NJBIA believes that more scrutiny over the expenditure of funds will provide the Legislature with a better understanding of the programs that the DEP administers. Furthermore, providing a forum in the Legislature to publicly vet concerns with the overall regulatory process will ensure that regulations are being adopted with the interests of all impacted parties in mind and are in line with legislative intent.

ARGUMENTS IN SUPPORT OF DEP ACCOUNTABILITY

Below, are concepts we believe the Legislature should embrace to ensure that the intent of the law is adhered to through the regulatory process. NJBIA urges the Legislature to:

- Hold DEP financially accountable for the funds it administers by requiring annual reports on fund balances and progress reports on expenditures. DEP oversees a variety of different funds from bond act monies, constitutionally dedicated funds, federal funds, and revolving accounts for a variety of different loan programs. In the aggregate, these funds contain over \$1 billion dollars. Whether or not the funds have dedicated purposes, the DEP should inform the Legislature on the status of these accounts, and how these funds are being spent.
- Hold open legislative hearings to provide a forum for the regulated community to air concerns with the regulatory process and provide the opportunity for legislators to ask questions on regulations impacting their constituents. Under the current Administrative Procedures Act, DEP is required to have hearings for the public to comment on their proposed regulations. In many cases, these are one-sided forums where questions are not answered and concerns go unaddressed. Legislative hearings would provide a much-needed oversight of DEP's rule-making activities and provide a forum for legislators to inquire if programs established through statutes are being implemented in line with the Legislature's intent.
- Expand the Regulatory Flexibility Act to require DEP and other departments to consider the impact regulations have on small businesses. Provide adequate time for the DEP to develop regulations. Many times the department is given only three or six months to develop regulations. Providing more time may allow for more input from the regulated community.
- Use unambiguous language that clearly spells out the intent of the bill and provides specific boundaries within which the department can implement it. Many times, the department's interpretation of legislative intent and its authority under such acts is much broader than was originally envisioned by the Legislature.

LEGISLATIVE HISTORY

A-741 was introduced on January 8, 2008 and referred to the Assembly Environment and Solid Waste Committee. It would require the DEP to submit an annual financial report on status of certain fund balances. NJBIA would recommend amending the bill to require the DEP to give a progress report of expenditures from these funds.

A-832 was voted out of the General Assembly by a vote of 75-1-1 on March 17, 2008. The bill would expand New Jersey's Regulatory Flexibility Act to require the DEP, and other departments, to consider the impact regulations have on small businesses.

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