

THE MINUTES

N.J. Governor Signs “Environmental Justice” Bill

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What is the Environmental Justice Act? N.J. Governor Phil Murphy signed into law on September 18, 2020 a bill providing significant regulatory requirements for owners and developers intending to build or expand facilities in N.J. urban areas. The bill known as the Environmental Justice Act (EJA) requires owners and developers constructing and/or expanding certain types of facilities that require permits from the N.J. Dept. of Environmental Protection (NJDEP) to conduct hearings in the communities where the facilities are located. The specific purpose of the hearings is to determine the impact of the facility in creating or increasing environmental “stressors” (as undefined in the Act) for the Burdened Community (a term defined as a community ranked in the bottom 33% of census tracts in NJ for median annual household income).

What Does the Act Require? While it is hard to predict exactly the EJA's impact, clearly, it will provide a number of obstacles for development of the defined facilities in Burdened Communities. The requirements include filing of an Environmental Justice Impact Statement with the NJDEP, as well as publication of the Statement by the developer in specific publications (English language and non-English language) at least 60 days before any required hearings are held. The Impact Statement must be filed with the NJDEP and the municipal governing body and clerk. Thereafter, the NJDEP is required to publish the statement on its website and arrange for publication in both English and non-English language publications. The hearing conducted also must conform to a number of requirements, and the transcript of the hearing must be provided to the NJDEP who is not permitted to act on the application for at least 60 days following the hearing.

“This act shall take effect immediately.”

What is the Impact on Design Professionals? Of greatest concern for design professionals such as architects, engineers, planners and others who provide professional services for the affected facilities is the prospect of liability. It will be difficult early on and until firm administrative guidelines are established to plan for and design such facilities. Design Professionals may be called upon by owners to assist in the preparation of the Impact Statements or testify at hearings conducted for that purpose. All relevant professionals are urged to review the EJA to determine how the services which form their scope of work will be affected. At a bare minimum, such Professionals should counsel their clients as to the existence of the EJA, the basic statutory mandates and the need to plan for the administrative requirements posed by the Impact Statements, hearings and other demands of the Act. Additionally, you may wish to consider an indemnification provision to your written contract which specifically protects you from liability for violations of the Act or consequential damages caused by same (delays, fines, penalties, impact of permit denials, no-cost redesigns, etc.).

The professionals of Chiumento McNally stand ready to provide advice and guidance to negotiate the precarious path laid out by the EJA. Call today for further analysis and recommendations.

To view the Act in full, visit <http://cmsfirm.com/content/resources>