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States' Environmental Justice Statutes: Delaware



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[7 DE Code § 6042](#)

[29 DE Code § 8016A](#)

[House Concurrent Resolution No. 40](#)

Current through ch. 268 of the 151st General Assembly (2021-2022).

§ 6042. Civil and administrative penalties; Community Environmental Project Fund.

(a) There is hereby established a Community Environmental Project Fund, referred to herein as the "Fund." The Fund shall be held as a separate account within the Department and may be invested by the State Treasurer in securities consistent with investment policies established by the Cash Management Policy Board.

(b) The Fund shall consist of 25 percent of all civil or administrative penalties collected by the Department pursuant to § 4015, § 6005, § 6617, § 7011, § 7214, § 7906, § 9109, or § 9111 of this title. Twenty-five percent of such civil and administrative penalties are hereby appropriated to the Fund, subject to the requirements of this section.

(c) Moneys shall be expended from the Fund only for Community Environmental Projects, referred to herein as "Projects." As used herein the term "Community Environmental Project" means a project that is undertaken for the purpose of effecting pollution elimination, minimization, or abatement, or improving conditions within the environment so as to eliminate or minimize risks to human health, or enhancement of natural resources for the purposes of improving indigenous habitats or the recreational opportunities of the citizens of the Delaware. The Secretary may, by regulation, provide for further definition of such Projects.

(d) The Secretary, after consultation with the Community Involvement Advisory Council, shall give priority to Community Environmental Projects which benefit communities that are most impacted by specific infraction(s) or violation(s). Specifically, the Secretary, at his or her discretion, shall determine whether a proposed Project is located within the watershed or airshed adversely affected by a violation or infraction as part of the evaluation process. The Secretary shall ensure that records identify the location of each civil or administrative penalty. No provision of this section shall be construed to require the Department to expend funds from the Fund in the absence of a suitable Project within the community where the violation or infraction occurred. The Secretary may also determine that the requirements of this subsection cannot practicably be met with respect to expenditures from the Fund associated with a penalty from a facility or location because such amount is insufficient or too large to be an appropriate expenditure. The expenditure of funds required under this subsection may be



waived by the Secretary, with the concurrence of the Director of the Office of Management and Budget and Controller General.

(e) In the event that the requirements of this section conflict with applicable federal or State of Delaware requirements pertaining to the establishment and collection of penalties or other assessments by the Department, such requirements shall take precedence over the conflicting requirements of this section.

(f) The Department shall submit quarterly reports on the progress of the expenditures and/or projects conducted with the Community Environmental Project Fund to the Governor and members of the General Assembly. All of the expenditures made by or on behalf of the Fund, together with an explanation the process utilized for selecting and prioritizing Projects, shall be reported annually to the Joint Finance Committee in the Department's budget presentation.

§ 8016A. Community Involvement Advisory Council and Community Ombudsman

(a) There is established the Community Involvement Advisory Council.

(b) The Community Involvement Advisory Council shall serve in an advisory capacity to the Secretary of the Department of Natural Resources and Environmental Control and shall consider such matters as the relationships and interactions between the Department and local communities throughout the State, communication and information flow between the Department and these communities, public participation in the decision-making processes of the Department, ensuring, to the extent practicable, that no community in the State is disparately affected by environmental impacts, matters related to addressing adverse environmental impacts on communities and other such matters as may be referred to it by the Governor or the Secretary. The Council may also study, research, plan and advise the Secretary on matters it deems appropriate to enable the Department to relate to and interact with communities in the best manner possible.

(c) The Community Involvement Advisory Council shall be composed of 11 members who shall be appointed by the Governor as follows:

- (1) Four members shall be appointed for 3-year terms.
- (2) Four members shall be appointed for initial 2-year terms.
- (3) Three members shall be appointed for initial 1-year terms.
- (4) Thereafter, all new appointees shall serve for a term of 3 years.

(d) Council membership shall include representatives from communities, community-based nonprofit organizations, environmental organizations, health-care providers, local government, academic institutions and business/industry. Community representation shall include representatives of communities that potentially may be adversely impacted by environmental factors or conditions.



(e) Members of the Council shall serve without compensation, except that they may be reimbursed for reasonable and necessary expenses incidental to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for reelection.

(g) Any replacement appointment to the Council to fill a vacancy prior to the expiration of a term shall be filled for the remainder of the term.

(h) The Department shall establish a position of Community Ombudsperson to serve as a liaison between the Department and communities statewide. The Department may establish Community Assistance Providers as may be appropriated by the General Assembly. The Community Ombudsperson and Community Assistance Providers shall engage communities in identifying and understanding environmental issues and addressing or resolving environmental problems, advocate for communities, assist communities in obtaining information on environmental issues, and serve as a point of contact for the Department with communities and community organizations. The Secretary shall provide to the General Assembly annually a summary of the activities and an assessment of the effectiveness of the Community Ombudsperson program.

Creating the “Justice Forty Oversight Committee”, H.C.R. No. 40, 151st General Assembly (2021) (Passed 6/30/21).

SPONSOR: Rep. Lambert & Sen. Pinkney Reps. Dorsey Walker, S. Moore, Morrison, Wilson-Anton; Sen. Lockman

HOUSE OF REPRESENTATIVES

151st GENERAL ASSEMBLY

HOUSE CONCURRENT RESOLUTION NO. 40

CREATING THE "JUSTICE FORTY OVERSIGHT COMMITTEE."

WHEREAS, President Biden unveiled a plan to rebuild the infrastructure of the United States and the plan sets the target of delivering 40 percent of the overall benefits from the massive investment in clean energy and our infrastructure to disadvantaged communities; and

WHEREAS, through the use of tax credits, grants, and low-cost flexible loans, the President's plan addresses racial and environmental injustice to invest in communities disparately impacted by pollution and provide these communities with the benefits of clean energy investments; and

WHEREAS, many Delawareans see vast areas for improvement in the areas of housing, broadband access, and water systems throughout the State and active participation in the President's plan could help provide affordable housing, reliable and affordable high-speed Internet access, and clean drinking water to everyone in our State; and



WHEREAS, it is important to seize the opportunities provided through this plan and create a committee to locate and help organize disadvantaged communities to ensure that these communities derive the full benefit of these credits, grants, and loans to improve the overall quality of life in Delaware; and

WHEREAS, Delaware cannot afford to fall behind in the push for a cleaner and more just future.

NOW, THEREFORE:

BE IT RESOLVED by the House of Representatives of the 151st General Assembly of the State of Delaware, the Senate concurring therein, that the Justice Forty Committee be established to study and make findings and recommendations regarding environmental justice in this State.

BE IT FURTHER RESOLVED that the Committee be composed of 15 members, as follows:

(1) Three members of the House of Representatives appointed by the Speaker of the House, 2 from the Majority Caucus, 1 of whom shall be member of the Capital Infrastructure Committee of the House of Representative and 1 of whom shall be a member of the Natural Resources Committee of the House of Representatives, and 1 shall be from the Minority Caucus. The Speaker shall appoint the Chair of the Committee.

(2) Three members of the Senate, appointed by the President Pro Tempore of the Senate, 2 from the Majority Caucus, 1 of whom shall be a member of the Capital Improvement Committee of the Senate, and 1 of whom shall be a member of the Environment and Energy Committee of the Senate, and 1 shall be from the Minority Caucus. The President Pro Tempore shall appoint the Vice-Chair of the Committee.

(5) The Secretary of the Department Natural Resources and Environmental Control.

(6) The Director of the Division of Professional Regulation.

(7) The Director of the Delaware State Housing Authority.

(8) The Secretary of the Department of Health and Human Services.

(9) The Secretary of the Department of Agriculture.

(11) The Secretary of the Department of Transportation.

(10) A member of the White House Environmental Justice Advisory Council.

BE IT FURTHER RESOLVED that members serving by virtue of position may designate another individual to attend Committee meetings, and must provide the designation in writing to the Chair. An individual attending a meeting for a member serving by virtue of position has the same duties and rights as the member serving by virtue of position.



BE IT FURTHER RESOLVED that the Chief Clerk of the House notify the Chair of the Committee's creation and provide the Chair with a copy of the legislation creating the Committee.

BE IT FURTHER RESOLVED that the Chair of the Committee be responsible for guiding the administration of the Committee by, at a minimum, doing all of the following:

- (1) Notifying the individuals listed in lines 19 through 33 of the formation of the Committee and the need to appoint a member, if applicable.
- (2) Setting a date, time, and place for the initial meeting.
- (3) Supervising the preparation and distribution of Committee meeting notices, agendas, minutes, correspondence, and reports.
- (4) Sending to the Speaker of the House of Representatives, the President Pro Tempore, and the Director of the Division of Research of Legislative Council, after the first meeting of the Committee, a list of the members of the Committee and the person who appointed them.
- (5) Providing meeting notices, agendas, and minutes to the Director of the Division of Research of Legislative Council.
- (6) Ensuring that the final report of the Committee is submitted to Speaker of the House of Representatives and the President Pro Tempore, with copies to all members of the General Assembly, The Governor, the Director and Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives.

BE IT FURTHER RESOLVED that the Committee must hold its first meeting no later than 60 days after passage.

BE IT FURTHER RESOLVE that a quorum of the Committee is a majority of its members.

BE IT FURTHER RESOLVED that:

- (1) Official action by the Committee, including making findings and recommendations, requires the approval of a quorum of the Committee.
- (2) The Committee may adopt rules necessary for its operation. If the Committee does not adopt rules or if the adopted rules do not govern a given situation, Mason's Manual of Legislative Procedure controls.

BE IT FURTHER RESOLVED that the House Democratic Caucus is responsible for providing reasonable and necessary support staff and materials for the Committee.

BE IT FURTHER RESOLVED additional members, including individuals with experience in the designation and implementation of Opportunity Zones and members of disadvantaged and marginalized communities in this State, may be appointed as needed by the Chair.



BE IT FURTHER RESOLVED that the Committee shall at a minimum, do all of the following:

- (1) Identify disadvantaged and marginalized communities through Delaware with environmental justice impact.
- (2) Identify the infrastructure deficiencies in these communities.
- (3) Assist members of the community in developing a plan to apply for assistance to secure funding for the much needed infrastructure projects.
- (4) Undertake other actions necessary to carry out the purpose of the Committee.

BE IT FURTHER RESOLVED that the Chair must compile a report containing a summary of the Committee's work regarding the issues assigned to it, including any findings and recommendations by, and submit the report to the General Assembly, the Governor, and the Director and Librarian of the Division of Research of Legislative Council, the White House Council on Environmental Quality, and the White House Environmental Justice Advisory Council no later than December 31, 2022.

BE IT FURTHER RESOLVED that this Concurrent Resolution expires on the date the Committee submits its findings and recommendations.

SYNOPSIS

This Concurrent Resolution creates the Justice Forty Oversight Committee to study and make findings and recommendations regarding environmental justice in this State.

