



2021 ASSEMBLY BILL 787

January 4, 2022 - Introduced by Representatives STUBBS, CABRERA, BOWEN, ANDERSON, BALDEH, BROSTOFF, CONLEY, CONSIDINE, EMERSON, HEBL, HONG, B. MEYERS, MILROY, NEUBAUER, OHNSTAD, POPE, S. RODRIGUEZ, SHANKLAND, SHELTON, SINICKI, SNODGRASS, SUBECK and VINING, cosponsored by Senators L. TAYLOR, JOHNSON, AGARD, ERPENBACH, ROYS, SMITH and LARSON. Referred to Committee on Environment.

- 1 **AN ACT** *to create* 23.405 of the statutes; **relating to:** report on environmental
2 impacts to vulnerable communities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill prohibits the Department of Natural Resources from issuing certain permits for the operation of a facility that is located in a vulnerable community unless the permit applicant complies with required reporting requirements. "Vulnerable community" is defined as any census block group in which at least 50 percent of the households qualify as low-income households and either of the following apply: 1) at least 40 percent of the residents identify as Black, African American, Asian American, Hispanic, or Latino or as members of a federally recognized Indian tribe or band, or 2) at least 40 percent of the households have limited English proficiency.

Under current law, DNR issues various permits for the operation of facilities as part of DNR's regulation of air and water pollution and hazardous and solid waste. Under the bill, DNR may not issue permits for those facilities located in vulnerable communities unless the permit applicant 1) prepares a report assessing the environmental impact of the facility, 2) makes the report available to the public and provides the report to DNR and to the municipality in which the vulnerable community is located, and 3) conducts a public hearing in the municipality in which the vulnerable community is located.

DNR must consider community support and any testimony presented at the public hearing in its decision to grant or deny a permit and must evaluate revisions or conditions to the permit that may be necessary to reduce the adverse impact to the

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public health or to the environment in the vulnerable community. DNR may deny an application for a permit for a facility in a vulnerable community if DNR finds that the cumulative impact of the facility that would be covered by the permit, in addition to the existing conditions in the vulnerable community, constitute an unreasonable risk to the environment and the health of the residents in the vulnerable community.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 23.405 of the statutes is created to read:

2 **23.405 Report on environmental impacts to vulnerable communities.**

3 **(1)** In this section:

4 (a) “Cumulative impacts” means the combined past, present, and foreseeable
5 future emissions and discharges occurring in a specific geographical area that are
6 assessed based upon guidance issued by the department for exposure, public health
7 or environmental risk, or other effects to the geographical area.

8 (b) “Facility” means any facility, the operation of which requires a permit issued
9 by the department under ch. 283, 285, 289, or 291.

10 (c) “Limited English proficiency” means a household without an adult that
11 speaks English “very well” according to the U.S. bureau of the census.

12 (d) “Low-income household” means a household with an income that is not
13 more than 200 percent of the federal poverty level as determined annually by the
14 U.S. bureau of the census.

15 (e) “Vulnerable community” means any census block group, as delineated in the
16 most recent federal decennial census, in which at least 50 percent of the households
17 qualify as low-income households and any of the following apply:

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1 1. Not less than 40 percent of the residents of the census block group identify
2 as Black, African American, Asian American, Hispanic, or Latino or as members of
3 a federally recognized Indian tribe or band located in this state.

4 2. Not less than 40 percent of the households in the census block group have
5 limited English proficiency.

6 **(2)** The department shall identify and maintain a list of vulnerable
7 communities in the state. The department shall update the list as necessary to
8 reflect the most recent data on household income and the most recent federal
9 decennial census.

10 **(3)** The department may not issue a permit under ch. 283, 285, 289, or 291 for
11 the operation of a facility that is located wholly or partly within a vulnerable
12 community unless the permit applicant does all of the following:

13 (a) Prepares a report assessing the environmental impact of the facility,
14 including any cumulative impacts on the vulnerable community, any adverse
15 environmental effects that could not be avoided if the permit were issued, and the
16 public health impact on the vulnerable community.

17 (b) Makes the report available to the public and provides the report to the
18 department and the governing body and municipal clerk for the municipality in
19 which the vulnerable community is located.

20 (c) Not less than 30 days after providing the report to the department and the
21 governing body and municipal clerk under par. (b), conducts a public hearing in the
22 municipality in which the vulnerable community is located. The permit applicant
23 shall conduct the public hearing in a manner that provides clear, accurate, and
24 complete information about the facility and that provides the opportunity for
25 meaningful public participation by residents of the vulnerable community. Not less

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1 than 21 days prior to the hearing, the permit applicant shall publish public notices
2 of the hearing in no fewer than 2 newspapers circulating within the vulnerable
3 community. Not less than 14 days prior to the hearing, the permit applicant shall
4 provide a copy of the public notice to the department and the governing body and the
5 municipal clerk of the municipality in which the vulnerable community is located.

6 (4) If a permit applicant is applying for more than one permit for a proposed
7 new or expanded facility that is subject to sub. (3), the permit applicant is not
8 required to comply with sub. (3) more than once for permits applicable to that facility.

9 (5) Following a public hearing conducted under sub. (3) (c), the department
10 shall consider community support and any testimony presented in its decision to
11 grant or deny a permit and shall evaluate any revisions or conditions to the permit
12 that may be necessary to reduce the adverse impact to public health or to the
13 environment in the vulnerable community.

14 (6) The department shall issue a decision on a permit application that is subject
15 to sub. (3) not less than 60 days following the public hearing held as required by sub.
16 (3) (c). The department may deny an application for a permit for the operation of a
17 facility that is located wholly or partly within a vulnerable community if the
18 department finds that the cumulative impact of the facility, in addition to the
19 existing conditions in the vulnerable community, constitute an unreasonable risk to
20 the environment and the health of the residents in the vulnerable community.

21 (7) The department may promulgate any rules necessary to administer this
22 section.

23 **SECTION 2. Effective dates.** This act takes effect on the first day of the 6th
24 month beginning after publication, except as follows:

