S T A T E O F N E W Y O R K

6617--B

Cal. No. 623

I N S E N A T E

February 14, 2014

Introduced by Sens. SAVINO, ADDABBO, AVELLA, BOYLE, CARLUCCI, DILAN, ESPAILLAT, GIANARIS, GIPSON, GRISANTI, HASSELL-THOMPSON, HOYLMAN, KLEIN, KRUEGER, LANZA, LATIMER, LAVALLE, MARCELLINO, MARTINS, PARKER, PERALTA, PERKINS, SAMPSON, SERRANO, SMITH, SQUADRON, TKACZYK, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the environmental conservation law, the agriculture and markets law and the public health law, in relation to the consideration of future climate risk including sea level rise projections and other weather-related data; and in relation to requiring the preparation of model local zoning laws relating to climate risk

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known as and may be cited as the "community risk and resiliency act".

S 2. Subdivision 2 of section 6-0107 of the environmental conservation law is amended by adding a new paragraph k to read as follows:

K. TO MITIGATE FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

S 3. Item (e) of subparagraph (ii) of paragraph d of subdivision 1 of section 17-1909 of the environmental conservation law, as added by chapter 565 of the laws of 1989, is amended to read as follows:

(e) conforms with applicable rules and regulations of the department, INCLUDING A DEMONSTRATION THAT DESIGN AND CONSTRUCTION CONSIDER FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD10228-19-4

S 4. Paragraphs g and h of subdivision 2 of section 27-1103 of the environmental conservation law, as amended by chapter 618 of the laws of 1987, are amended and a new paragraph i is added to read as follows:

g. The impact on the municipality where the facility is to be cited in terms of health, safety, cost and consistency with local planning, zoning or land use laws and ordinances, [and]

h. The nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and ecology, public health and safety, scenic, historic, cultural and recreational value, water and air quality, wildlife and an evaluation of measures to mitigate adverse effects[.], AND

I. THE FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

S 5. Paragraph b of subdivision 1 of section 40-0113 of the environmental conservation law, as added by chapter 672 of the laws of 1986, is amended to read as follows:

b. Minimum standards and schedules for design, construction, installation, operation, maintenance, repair, monitoring, testing and inspection of facilities. Schedules shall be based on factors such as type of facility, type and quantity of hazardous substances stored, facility age, condition and construction type, soil conditions, location of facility relative to water supplies, surrounding population, and other environmental factors INCLUDING BUT NOT LIMITED TO FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF AVAILABLE.

S 6. Subdivision 3 of section 49-0203 of the environmental conservation law is renumbered subdivision 4 and a new subdivision 3 is added to read as follows:

3. THE DEPARTMENT AND THE OFFICE SHALL CONSIDER FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

S 7. Paragraph a of subdivision 2 of section 54-0303 of the environmental conservation law, as added by chapter 610 of the laws of 1993 and as designated by chapter 170 of the laws of 1994, is amended to read as follows:

a. The commissioner of the office of parks, recreation and historic preservation may enter into an agreement for the maintenance and operation of open space land conservation projects in urban areas or metropolitan park projects by a municipality, or a not-for-profit corporation or unincorporated association which demonstrates to the commissioner's satisfaction that [it] THE FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED AND THE MUNICIPALITY, NOT-FOR-PROFIT CORPORATION OR UNINCORPORATED ASSOCIATION is financially or otherwise capable of operating and maintaining the project for the benefit of the public and of maximizing public access to such project. Any such agreement shall contain such provisions as shall be necessary to ensure that its operation and maintenance are consistent with and in furtherance of this article and shall be subject to the approval of the director of the budget, the comptroller and, as to form, the attorney general.

S 8. Subdivision 3 of section 54-0503 of the environmental conservation law, as added by chapter 610 of the laws of 1993, is amended to read as follows:

3. A closure investigation report which complies with the requirements of applicable regulations of the department, INCLUDING A DEMONSTRATION THAT FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED, shall have been submitted.

S 9. Subdivision 1 of section 17-1015 of the environmental conservation law, as amended by chapter 334 of the laws of 2008, is amended to read as follows:

1. The department shall, pursuant to section 17-0303 of this article, promulgate rules and regulations establishing standards for existing and new petroleum bulk storage facilities which shall include, but not be limited to, design, equipment requirements, construction, installation and maintenance. In proposing, preparing and compiling such rules and regulations, the department shall INCLUDE CONSIDERATION OF THE FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE. THE DEPARTMENT SHALL consult with the state petroleum bulk storage code advisory council IN PROPOSING, PREPARING AND COMPILING SUCH RULES AND REGULATIONS. In addition, the department shall consult with the state fire prevention and building code council to assure that such rules and regulations are consistent with the uniform fire prevention and building code.

S 10. Subdivisions 1 and 5 of section 54-1101 of the environmental conservation law, as amended by chapter 309 of the laws of 1996, are amended to read as follows:

1. The secretary is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to municipalities toward the cost of any local waterfront revitalization program, INCLUDING PLANNING PROJECTS TO MITIGATE FUTURE PHYSICAL CLIMATE RISKS. Eligible costs include planning, studies, preparation of local laws, and construction projects.

5. The secretary shall impose such contractual requirements and conditions upon any municipality which receives state assistance payments pursuant to this article as may be necessary and appropriate to ensure that a public benefit shall accrue from the use of such funds by the municipality INCLUDING BUT NOT LIMITED TO, A DEMONSTRATION THAT FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED.

S 11. Subdivision 1 of section 54-1105 of the environmental conservation law, as added by chapter 610 of the laws of 1993, is amended to read as follows:

1. The commissioner is authorized to provide on a competitive basis, within amounts appropriated, state assistance payments to a municipality or a not-for-profit corporation toward the cost of any coastal rehabilitation project approved by the commissioner PROVIDED THAT THE COMMISSIONER DETERMINES THAT FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED.

S 12. Subdivision 2 of section 325 of the agriculture and markets law is amended by adding a new paragraph (f) to read as follows:

(F) IN EVALUATING APPLICATIONS FOR FUNDING, THE COMMISSIONER SHALL CONSIDER WHETHER FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED.

S 13. Section 1161 of the public health law, as added by chapter 413 of the laws of 1996, is amended to read as follows:

S 1161. Eligible projects; priority ranking. Subject to the provisions of section thirty-two of the chapter of the laws of 1996 which added this section, in consultation with the commissioner of environmental conservation, the commissioner shall establish and maintain a list of potentially eligible projects and shall establish, pursuant to rules and regulations, a process for listing potentially eligible projects identified by potential recipients and a priority ranking system for the purpose of providing financial assistance to recipients for such projects under this title. In establishing such system, the commissioner shall take into account the public health significance of such potentially eligible projects which shall include, but need not be limited to, an assessment of (i) public health and safety; (ii) population affected; (iii) attainment of state drinking water quality goals and standards; (iv) taking into consideration the water resources management strategy pursuant to title twenty-nine of article fifteen of the environmental conservation law; (V) TAKING INTO CONSIDERATION FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE; and [(v)] (VI) compliance with state and federal law, rules and regulations.

S 14. The department of state, in cooperation with the department of environmental conservation, shall prepare model local laws that include consideration of future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events including hazard risk analysis and shall make such laws available to municipalities.

S 14-a. Section 23-0305 of the environmental conservation law is amended by adding a new subdivision 8-a to read as follows:

8-A. THE DEPARTMENT SHALL INCLUDE CONSIDERATION OF FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, TO PERMITS ISSUED PURSUANT TO TITLE FIVE OF THIS ARTICLE.

S 15. Section 70-0117 of the environmental conservation law is amended by adding a new subdivision 9 to read as follows:

9. APPLICANTS FOR MAJOR PROJECTS. APPLICANTS FOR MAJOR PROJECTS FOR THE REGULATORY PROGRAMS OF PARAGRAPHS (A), (F), (H), (I), (J), (K) AND (M) OF SUBDIVISION 3 OF SECTION 70-0107 OF THIS ARTICLE SHALL BE REQUIRED TO DEMONSTRATE THAT FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED.

S 16. The department of environmental conservation, in consultation with the department of state, no later than January 1, 2017 shall prepare guidance on the implementation of this act, including but not limited to available and relevant data sets and risk analysis tools and

available data predicting the likelihood of future extreme weather events. In addition, the department of environmental conservation and the department of state shall develop additional guidance on the use of resiliency measures that utilize natural resources and natural processes to reduce risk.

S 17. The environmental conservation law is amended by adding a new section 3-0319 to read as follows:

S 3-0319. SEA LEVEL RISE PROJECTIONS.

THE DEPARTMENT SHALL, NO LATER THAN JANUARY FIRST, TWO THOUSAND SIXTEEN, ADOPT REGULATIONS ESTABLISHING SCIENCE-BASED STATE SEA LEVEL RISE PROJECTIONS. IN ADOPTING SUCH REGULATIONS, THE DEPARTMENT SHALL CONSIDER INFORMATION INCLUDING, BUT NOT LIMITED TO, REPORTS OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, THE NATIONAL OCEANIC ATMOSPHERIC ADMINISTRATION CLIMATE ASSESSMENT, THE SEA LEVEL RISE TASK FORCE REPORT CREATED PURSUANT TO CHAPTER SIX HUNDRED THIRTEEN OF THE LAWS OF TWO THOUSAND SEVEN, PROJECTIONS PREPARED BY THE NEW YORK CITY PANEL ON CLIMATE CHANGE AND ANY OTHER RELEVANT REGIONAL, STATE AND LOCAL REPORTS. THE DEPARTMENT SHALL UPDATE SUCH REGULATIONS NO LESS THAN EVERY FIVE YEARS.

S 18. Nothing in this act shall limit the existing authority of the department of environmental conservation to address climate risk due to sea level rise, storm surges, and flooding.

S 19. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to all applications and/or permits received after the adoption of guidance on the implementation of this act but no later than January 1, 2017.