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I N   S E N A T E

February 14, 2014

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Introduced by Sens. SAVINO, HOYLMAN, LANZA, LATIMER, TKACZYK -- 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

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:

1     Section 1. This act shall be known as and may be cited as the "commu-  
2     nity risk and resiliency act".  
3     S 2. Subdivision 2 of section 6-0107 of the environmental conservation  
4     law is amended by adding a new paragraph k to read as follows:  
5     K. TO MITIGATE FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM  
6     SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD  
7     OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF  
8     APPLICABLE.  
9     S 3. Item (e) of subparagraph (ii) of paragraph d of subdivision 1 of  
10    section 17-1909 of the environmental conservation law, as added by chap-  
11    ter 565 of the laws of 1989, is amended to read as follows:  
12    (e) conforms with applicable rules and regulations of the department,  
13    INCLUDING A DEMONSTRATION THAT DESIGN AND CONSTRUCTION CONSIDER FUTURE  
14    CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED  
15    ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER  
16    EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE.  
17    S 4. Paragraphs g and h of subdivision 2 of section 27-1103 of the  
18    environmental conservation law, as amended by chapter 618 of the laws of  
19    1987, are amended and a new paragraph i is added to read as follows:  
20    g. The impact on the municipality where the facility is to be cited in  
21    terms of health, safety, cost and consistency with local planning,  
22    zoning or land use laws and ordinances, [and]

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

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1 h. The nature of the probable environmental impact, including specifi-  
2 cation of the predictable adverse effects on the natural environment and  
3 ecology, public health and safety, scenic, historic, cultural and recre-  
4 ational value, water and air quality, wildlife and an evaluation of  
5 measures to mitigate adverse effects[.], AND

6 I. THE FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND  
7 FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE  
8 EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICA-  
9 BLE.

10 S 5. Subdivision 1 of section 40-0113 of the environmental conserva-  
11 tion law is amended by adding a new paragraph i to read as follows:

12 I. REQUIREMENTS FOR CONSIDERATION OF FUTURE CLIMATE RISK INCLUDING SEA  
13 LEVEL RISE, STORM SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICT-  
14 ING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD  
15 RISK ANALYSIS DATA IF APPLICABLE.

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

19 3. THE DEPARTMENT AND THE OFFICE SHALL CONSIDER FUTURE CLIMATE RISK  
20 INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED ON AVAILABLE  
21 DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUD-  
22 ING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

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

27 a. The commissioner of the office of parks, recreation and historic  
28 preservation may enter into an agreement for the maintenance and opera-  
29 tion of open space land conservation projects in urban areas or metro-  
30 politan park projects by a municipality, or a not-for-profit corporation  
31 or unincorporated association which demonstrates to the commissioner's  
32 satisfaction that [it] THE FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE,  
33 STORM SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKE-  
34 LIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS  
35 DATA IF APPLICABLE, HAS BEEN CONSIDERED AND THE MUNICIPALITY is finan-  
36 cially or otherwise capable of operating and maintaining the project for  
37 the benefit of the public and of maximizing public access to such  
38 project. Any such agreement shall contain such provisions as shall be  
39 necessary to ensure that its operation and maintenance are consistent  
40 with and in furtherance of this article and shall be subject to the  
41 approval of the director of the budget, the comptroller and, as to form,  
42 the attorney general.

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

46 3. A closure investigation report which complies with the requirements  
47 of applicable regulations of the department, INCLUDING A DEMONSTRATION  
48 THAT FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND  
49 FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE  
50 EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICA-  
51 BLE, HAS BEEN CONSIDERED, shall have been submitted.

52 S 9. Section 54-0504 of the environmental conservation law, as added  
53 by section 4 of part L of chapter 59 of the laws of 2005, is amended to  
54 read as follows:

55 S 54-0504. Eligibility to receive state assistance payments for munici-  
56 pal landfill gas management projects.

Any municipality which is the owner or operator of a landfill may apply for state assistance payments toward the cost of a municipal landfill gas management project. Any application for a municipal landfill gas management project must comply with all applicable rules and regulations promulgated by the department, INCLUDING A DEMONSTRATION THAT FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED.

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 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 CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND 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 CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND 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 CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND 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

1 commissioner shall take into account the public health significance of  
2 such potentially eligible projects which shall include, but need not be  
3 limited to, an assessment of (i) public health and safety; (ii) popu-  
4 lation affected; (iii) attainment of state drinking water quality goals  
5 and standards; (iv) taking into consideration the water resources  
6 management strategy pursuant to title twenty-nine of article fifteen of  
7 the environmental conservation law; (V) TAKING INTO CONSIDERATION FUTURE  
8 CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED  
9 ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER  
10 EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE; and [(v)]  
11 (VI) compliance with state and federal law, rules and regulations.

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

18 S 15. Major permits for the regulatory programs of paragraphs (f),  
19 (h), (i), (j), (k) and (m) of subdivision 3 of section 70-0107 of the  
20 environmental conservation law and article 23, article 40 and title 10  
21 of article 17 of the environmental conservation law shall require appli-  
22 cants to demonstrate that future climate risk including sea level rise,  
23 storm surges and flooding, based on available data predicting the like-  
24 lihood of future extreme weather events, including hazard risk analysis  
25 data if applicable, has been considered.

26 S 16. The department of environmental conservation, in consultation  
27 with the department of state, shall prepare guidance on the implementa-  
28 tion of this act, including but not limited to available and relevant  
29 data sets and risk analysis tools. In addition, the department of envi-  
30 ronmental conservation and the department of state shall develop addi-  
31 tional guidance on the use of resiliency measures that utilize natural  
32 resources and natural processes to reduce risk.

33 S 17. The environmental conservation law is amended by adding a new  
34 article 58 to read as follows:

#### 35 ARTICLE 58

#### 36 SEA LEVEL RISE PROJECTIONS

37 SECTION 58-0101. SEA LEVEL RISE PROJECTIONS.

38 S 58-0101. SEA LEVEL RISE PROJECTIONS.

39 THE DEPARTMENT SHALL, NO LATER THAN JANUARY FIRST, TWO THOUSAND  
40 SIXTEEN, ADOPT REGULATIONS ESTABLISHING SCIENCE-BASED STATE SEA LEVEL  
41 RISE PROJECTIONS. IN ADOPTING SUCH REGULATIONS, THE DEPARTMENT SHALL  
42 CONSIDER INFORMATION INCLUDING, BUT NOT LIMITED TO, THE NATIONAL OCEANIC  
43 ATMOSPHERIC ADMINISTRATION, AND THE SEA LEVEL RISE TASK FORCE REPORT  
44 CREATED PURSUANT TO CHAPTER SIX HUNDRED THIRTEEN OF THE LAWS OF TWO  
45 THOUSAND SEVEN. THE DEPARTMENT SHALL UPDATE SUCH REGULATIONS NO LESS  
46 THAN BIENNIALLY.

47 S 18. This act shall take effect on the one hundred eightieth day  
48 after it shall have become a law and shall apply to all applications  
49 and/or permits received after such date.