

STATE OF NEW YORK

8830

IN SENATE

April 22, 2022

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed,
and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to the
location of environmental facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The legislature finds and declares that
2 each community in the state should equitably share the responsibilities,
3 burdens, and benefits of managing and solving the state's environmental
4 problems and the facilities necessary to accomplish such ends. The
5 legislature further declares that there has been an inequitable pattern
6 in the siting of environmental facilities in minority and economically
7 distressed communities, which have borne a disproportionate and inequi-
8 table share of such facilities. Consistent with its commitment to
9 providing equal justice for its citizens, the state has a responsibility
10 to establish requirements for the consideration of such decisions by
11 state and local governments in order to insure equality of treatment for
12 all communities.

13 § 2. Section 8-0105 of the environmental conservation law is amended
14 by adding a new subdivision 9 to read as follows:

15 9. "Disadvantaged community" shall have the same meaning as subdivi-
16 sion five of section 75-0101 of this chapter.

17 § 3. Subdivision 2 of section 8-0109 of the environmental conservation
18 law, as amended by chapter 219 of the laws of 1990, paragraph (h) as
19 amended by chapter 519 of the laws of 1992, paragraph (i) as added by
20 chapter 182 of the laws of 1990, and paragraph (i) as amended by chapter
21 238 of the laws of 1991, is amended to read as follows:

22 2. All agencies (or applicant as hereinafter provided) shall prepare,
23 or cause to be prepared by contract or otherwise an environmental impact
24 statement on any action they propose or approve which may have a signif-
25 icant effect on the environment. Such a statement shall include a
26 detailed statement setting forth the following:

27 (a) a description of the proposed action and its environmental
28 setting;

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

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1 (b) the environmental impact of the proposed action including short-
2 term and long-term effects;

3 (c) any adverse environmental effects which cannot be avoided should
4 the proposal be implemented;

5 (d) alternatives to the proposed action;

6 (e) any irreversible and irretrievable commitments of resources which
7 would be involved in the proposed action should it be implemented;

8 (f) mitigation measures proposed to minimize the environmental impact;

9 (g) the growth-inducing aspects of the proposed action, where applica-
10 ble and significant;

11 (h) effects of the proposed action on the use and conservation of
12 energy resources, where applicable and significant, provided that in the
13 case of an electric generating facility, the statement shall include a
14 demonstration that the facility will satisfy electric generating capaci-
15 ty needs or other electric systems needs in a manner reasonably consist-
16 ent with the most recent state energy plan;

17 (i) effects of proposed action on solid waste management where appli-
18 cable and significant; [~~and~~

19 ~~(i)] (j) effects of any proposed action on, and its consistency with,~~
20 the comprehensive management plan of the special groundwater protection
21 area program, as implemented by the commissioner pursuant to article
22 fifty-five of this chapter; [~~and~~

23 ~~(j)] (k) such other information consistent with the purposes of this~~
24 article as may be prescribed in guidelines issued by the commissioner
25 pursuant to section 8-0113 of this chapter[~~-~~]; and

26 (l) effects of any proposed action on disadvantaged communities,
27 including whether the action may cause or increase a disproportionate or
28 inequitable or both disproportionate and inequitable pollution burden on
29 a disadvantaged community.

30 Such a statement shall also include copies or a summary of the
31 substantive comments received by the agency pursuant to subdivision four
32 of this section, and the agency response to such comments. The purpose
33 of an environmental impact statement is to provide detailed information
34 about the effect which a proposed action is likely to have on the envi-
35 ronment, to list ways in which any adverse effects of such an action
36 might be minimized, and to suggest alternatives to such an action so as
37 to form the basis for a decision whether or not to undertake or approve
38 such action. Such statement should be clearly written in a concise
39 manner capable of being read and understood by the public, should deal
40 with the specific significant environmental impacts which can be reason-
41 ably anticipated and should not contain more detail than is appropriate
42 considering the nature and magnitude of the proposed action and the
43 significance of its potential impacts.

44 § 4. The opening paragraph of subdivision 4 of section 8-0109 of the
45 environmental conservation law, as amended by chapter 219 of the laws of
46 1990, is amended to read as follows:

47 As early as possible in the formulation of a proposal for an action,
48 the responsible agency shall make an initial determination as to whether
49 or not an environmental impact statement need be prepared for the
50 action. In making such determination for any proposed action that is
51 not a minor project as defined in subdivision three of section 70-0105
52 of this chapter the responsible agency shall consider whether such
53 action may cause or increase a disproportionate or inequitable or both
54 disproportionate and inequitable burden on a disadvantaged community
55 that is directly or significantly indirectly affected by such action.

56 When an action is to be carried out or approved by two or more agencies,

1 such determination shall be made as early as possible after the design-
2 nation of the lead agency.

3 § 5. Subparagraph (i) of paragraph (c) of subdivision 2 of section
4 8-0113 of the environmental conservation law, as added by chapter 612 of
5 the laws of 1975, is amended to read as follows:

6 (i) Actions or classes of actions that are likely to require prepara-
7 tion of environmental impact statements, including actions which may
8 cause or increase, either directly or indirectly, a disproportionate or
9 inequitable or both disproportionate and inequitable pollution burden on
10 a disadvantaged community;

11 § 6. Paragraph (b) of subdivision 2 of section 8-0113 of the environ-
12 mental conservation law, as amended by chapter 252 of the laws of 1977,
13 is amended to read as follows:

14 (b) (i) Criteria for determining whether or not a proposed action may
15 have a significant effect on the environment, taking into account social
16 and economic factors to be considered in determining the significance of
17 an environmental effect;

18 (ii) Such criteria shall include consideration of the extent to which
19 a proposed action may reasonably be expected to cause or increase a
20 disproportionate or inequitable or both disproportionate and inequitable
21 burden on disadvantaged communities;

22 § 7. The environmental conservation law is amended by adding a new
23 section 70-0118 to read as follows:

24 § 70-0118. Disproportionate impacts on disadvantaged communities.

25 1. For the purposes of this section:

26 (a) "Disadvantaged communities" shall have the same meaning as subdivi-
27 vision five of section 75-0101 of this chapter.

28 (b) "Existing burden report" shall mean the report required by this
29 section describing the existing pollution burden in a disadvantaged
30 community.

31 2. When issuing a permit for any project that is not a minor project
32 as defined in subdivision three of section 70-0105 of this article and
33 that may directly or indirectly affect a disadvantaged community, the
34 department shall prepare or cause to be prepared an existing burden
35 report and shall consider such report in determining whether such
36 project may cause or contribute to, either directly or indirectly, a
37 disproportionate or inequitable or both disproportionate and inequitable
38 pollution burden on a disadvantaged community.

39 3. No permit shall be approved or renewed by the department if it may
40 cause or contribute to, either directly or indirectly, a dispropor-
41 tionate or inequitable or both disproportionate and inequitable
42 pollution burden on a disadvantaged community.

43 § 8. Subdivision 1 of section 70-0107 of the environmental conserva-
44 tion law, as added by chapter 723 of the laws of 1977, is amended to
45 read as follows:

46 1. The department, after public hearing, shall adopt rules and regu-
47 lations to assure the efficient and expeditious administration of this
48 article. Such rules and regulations shall include but not be limited to
49 provisions regarding notice, review, public participation and public
50 hearings. Such rules and regulations shall also include the form and
51 content of an existing burden report which shall, at a minimum, include
52 baseline monitoring data collected in the affected disadvantaged commu-
53 nity within two years of the application for a permit or approval and
54 shall identify: (a) each existing pollution source or categories of
55 sources affecting a disadvantaged community and the potential routes of
56 human exposure to pollution from that source or categories of sources;

1 (b) ambient concentration of regulated air pollutants and regulated or
2 unregulated toxic air pollutants; (c) traffic volume; (d) noise and
3 odor levels; (e) exposure or potential exposure to lead paint; (f) expo-
4 sure or potential exposure to contaminated drinking water supplies; (g)
5 proximity to solid or hazardous waste management facilities, wastewater
6 treatment plants, hazardous waste sites, incinerators, recycling
7 facilities, waste transfer facilities and petroleum or chemical manufac-
8 turing, storage, treatment or disposal facilities; (h) the potential or
9 documented cumulative human health effects of the foregoing pollution
10 sources; (i) the potential or projected contribution of the proposed
11 action to existing pollution burdens in the community and potential
12 health effects of such contribution, taking into account existing
13 pollution burdens.

14 § 9. This act shall take effect on the one hundred eightieth day after
15 it shall have become a law; provided that section three of this act
16 shall not apply to any person who has received an initial determination
17 pursuant to subdivision 4 of section 8-0109 of the environmental conser-
18 vation law prior to such date and provided further that section five of
19 this act shall not apply to any determination of significance made prior
20 to such date.