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

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2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to environmental impact statements

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

Section 1. Subdivisions 6, 7 and 8 of section 8-0105 of the environmental conservation law, as amended by chapter 228 of the laws of 1976, are amended to read as follows:

6. "Environment OR ENVIRONMENTAL" means the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character. "ENVIRONMENT" AND "ENVIRONMENTAL" SHALL INCLUDE THE SOCIAL, ECONOMIC, AND INFRASTRUCTURAL IMPACTS ON THE PHYSICAL CONDITIONS AFFECTED BY A PROPOSED ACTION OR ACTIONS. "ENVIRONMENT" AND "ENVIRONMENTAL" SHALL ENCOMPASS ADVERSE, BENEFICIAL AND CUMULATIVE IMPACTS TO HUMAN HEALTH, LAND, AIR, SUNLIGHT AND PATTERN, MINERALS, FLORA, FAUNA, WATER, NATURAL HABITATS, WETLANDS, FLOODPLAINS, WATERSHED, SEWERAGE SYSTEMS, NOISE, EXISTING AND IMPENDING POPULATION CONCENTRATIONS AND GROWTH PATTERNS, EXISTING COMMUNITY OR NEIGHBORHOOD CHARACTER, NEIGHBORHOOD AMENITIES, POLICE AND FIRE DEPARTMENTS, HOSPITALS, ELEMENTARY AND SECONDARY SCHOOLS, PUBLIC TRANSIT SYSTEMS, ROADS AND ROADWAY PATTERNS, PUBLIC PARKING, PARKS AND PUBLIC RECREATIONAL FACILITIES, AND RESOURCES OF AGRICULTURAL, HISTORIC LANDMARK AND AESTHETIC SIGNIFICANCE.

7. "DRAFT ENVIRONMENTAL IMPACT STATEMENT" MEANS A DETAILED PRELIMINARY REPORT TO BE PREPARED AT THE INCEPTION OF PROPOSED ACTIONS THAT DELINEATES THE ENVIRONMENTAL IMPACT PROPOSED ACTIONS WILL HAVE ON THE SPECIFIC LOCATION AND WITHIN A ONE-HALF MILE RADIUS AROUND THE LOCATION OF

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

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PROPOSED ACTIONS; TO INFORM THE PUBLIC AND OTHER PUBLIC AGENCIES AS EARLY AS POSSIBLE ABOUT PROPOSED ACTIONS THAT MAY SIGNIFICANTLY AFFECT THE QUALITY OF THE ENVIRONMENT; AND TO SOLICIT COMMENTS WHICH WILL ASSIST THE AGENCY IN THE DECISION MAKING PROCESS IN DETERMINING THE ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION. THE DRAFT STATEMENT SHALL RESEMBLE IN FORM AND CONTENT THE ENVIRONMENTAL IMPACT STATEMENT TO BE PREPARED AFTER COMMENTS HAVE BEEN RECEIVED AND CONSIDERED PURSUANT TO SUBDIVISION TWO OF SECTION 8-0109 OF THIS ARTICLE; HOWEVER, THE LENGTH AND DETAIL OF THE DRAFT ENVIRONMENTAL STATEMENT SHALL REFLECT THE PRELIMINARY NATURE OF THE PROPOSAL AND THE EARLY STAGE AT WHICH IT IS PREPARED.

8. "ENVIRONMENTAL ASSESSMENT REPORT" MEANS A FORM COMPLETED BY AN APPLICANT TO ASSIST AN AGENCY IN DETERMINING THE ENVIRONMENTAL SIGNIFICANCE OF A PROPOSED ACTION AND SHALL CONTAIN ENOUGH INFORMATION TO DESCRIBE THE PROPOSED ACTION, ITS LOCATION, PURPOSE AND THE POTENTIAL IMPACT ON THE ENVIRONMENT AT THE SPECIFIC LOCATION AND WITHIN A ONE-HALF MILE RADIUS AROUND THE LOCATION OF THE PROPOSED ACTION.

9. "[Environmental] FINAL ENVIRONMENTAL impact statement" means a detailed statement setting forth the matters specified in [section 8-0109 of this article] SUBDIVISION SEVEN OF THIS SECTION. It includes any comments on a draft environmental statement which are received pursuant to section 8-0109 of this article, and the agency's response to such comments, to the extent that such comments raise issues not adequately resolved in the draft environmental statement.

[8. "Draft environmental impact statement" means a preliminary statement prepared pursuant to section 8-0109 of this article.]

S 2. Section 8-0109 of the environmental conservation law, as amended by chapter 252 of the laws of 1977, subdivisions 2 and 4 as amended and subdivision 9 as added by chapter 219 of the laws of 1990, paragraph (h) of subdivision 2 as amended by chapter 519 of the laws of 1992, paragraph (i) of subdivision 2 as added by chapter 182 of the laws of 1990, paragraph (i) of subdivision 2 and the fourth undesignated paragraph of subdivision 4 as amended by chapter 238 of the laws of 1991, the fifth undesignated paragraph of subdivision 4 and subdivision 6 as amended by chapter 641 of the laws of 2005, the opening paragraph of subdivision 5 as amended by chapter 749 of the laws of 1991 and subdivision 7 as amended by chapter 336 of the laws of 1987, is amended to read as follows:

S 8-0109. Preparation of DRAFT AND FINAL environmental impact statement.

1. Agencies shall use all practicable means to realize the policies and goals set forth in this article, and shall act and choose alternatives which, consistent with ENVIRONMENTAL, social, economic, INFRASTRUCTURAL and other essential considerations, to the maximum extent practicable, minimize or avoid adverse [environmental] effects, including effects revealed in the DRAFT AND FINAL environmental impact statement process.

2. All agencies (or applicant as hereinafter provided) shall prepare, or cause to be prepared by contract or otherwise [an] A DRAFT AND FINAL environmental impact statement on any action they propose or approve which may OR SHALL have a significant effect on the environment. Such a statement shall include a detailed statement setting forth the following:

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

(b) the SHORT-TERM AND LONG-TERM environmental impact of the proposed action [including short-term and long-term effects] AND THE IMPACT WITH-

IN AN AREA INCLUDING, BUT NOT LIMITED TO, A ONE-HALF MILE RADIUS AROUND THE LOCATION OF THE PROPOSED ACTION;

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

(d) alternatives to the proposed action;

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

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

(g) the growth-inducing aspects of the proposed action, where applicable and significant;

(h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant, provided that in the case of an electric generating facility, the statement shall include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan;

(i) effects of proposed action on solid waste management where applicable and significant. THE STATEMENT SHALL INCLUDE A DEMONSTRATION THAT SOLID WASTE DISPOSAL FACILITIES MEET OR EXCEED THE CAPACITY NECESSARY FOR THE PROPOSED ACTION AND IN A MANNER CONSISTENT WITH SOUND, COMPREHENSIVE SOLID WASTE MANAGEMENT PLANNING; [and

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

(j)] (K) EFFECTS OF ANY PROPOSED ACTION ON, AND ITS CONSISTENCY WITH, A MUNICIPALITY'S COMPREHENSIVE PLAN; AND

(L) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this [chapter] ARTICLE.

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

3. An agency may require an applicant to submit an environmental ASSESSMENT report to assist the agency in carrying out its responsibilities, including the initial determination and, (where the applicant does not prepare the DRAFT environmental impact statement), the preparation of [an] THE DRAFT environmental impact statement under this article. The agency may request such other information from an applicant necessary for the review of environmental impacts. Notwithstanding any use of outside resources or work, agencies shall make their own independent judgment of the scope, contents and adequacy of [an] THE DRAFT environmental impact statement.

(A) THE PURPOSE OF A DRAFT ENVIRONMENTAL STATEMENT IS TO RELATE ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTIONS AT THE INCEPTION OF THE PLAN-

NING PROCESS, TO INFORM THE PUBLIC AND OTHER PUBLIC AGENCIES AS EARLY AS POSSIBLE ABOUT PROPOSED ACTIONS THAT MAY SIGNIFICANTLY AFFECT THE QUALITY OF THE ENVIRONMENT AS DEFINED IN SECTION 8-0105 OF THIS ARTICLE, AND TO SOLICIT COMMENTS WHICH WILL ASSIST THE AGENCY IN THE DECISION MAKING PROCESS IN DETERMINING THE ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION.

(B) THE PURPOSE OF AN ENVIRONMENTAL IMPACT STATEMENT IS TO PROVIDE DETAILED INFORMATION ABOUT THE EFFECT WHICH A PROPOSED ACTION IS LIKELY TO HAVE ON THE ENVIRONMENT, TO LIST WAYS IN WHICH ANY ADVERSE EFFECTS OF SUCH AN ACTION MIGHT BE MINIMIZED, AND TO SUGGEST ALTERNATIVES TO SUCH AN ACTION SO AS TO FORM THE BASIS FOR A DECISION WHETHER OR NOT TO UNDERTAKE OR APPROVE SUCH ACTION. SUCH STATEMENT SHOULD BE CLEARLY WRITTEN IN A CONCISE MANNER CAPABLE OF BEING READ AND UNDERSTOOD BY THE PUBLIC, SHOULD DEAL WITH THE SPECIFIC SIGNIFICANT ENVIRONMENTAL IMPACTS WHICH CAN BE REASONABLY ANTICIPATED AND SHOULD NOT CONTAIN MORE DETAIL THAN IS APPROPRIATE CONSIDERING THE NATURE AND MAGNITUDE OF THE PROPOSED ACTION AND THE SIGNIFICANCE OF ITS POTENTIAL IMPACTS. SUCH A STATEMENT SHALL ALSO INCLUDE COPIES OR A SUMMARY OF THE SUBSTANTIVE COMMENTS RECEIVED BY THE AGENCY PURSUANT TO SUBDIVISION TWO OF THIS SECTION, AND THE AGENCY RESPONSE TO SUCH COMMENTS.

(I) AN ENVIRONMENTAL IMPACT STATEMENT SHALL BE PREPARED FOR ANY ACTION FOUND TO HAVE A SIGNIFICANT IMPACT ON THE SPECIAL GROUNDWATER PROTECTION AREA, AS DEFINED IN SECTION 55-0107 OF THIS CHAPTER. SUCH STATEMENT SHALL MEET THE REQUIREMENTS OF THE MOST DETAILED ENVIRONMENTAL IMPACT STATEMENT REQUIRED BY THIS SECTION OR BY ANY SUCH RULE OR REGULATION PROMULGATED PURSUANT TO THIS SECTION.

(II) FOR ANY ACTION FOR WHICH THE AGENCY DETERMINES THAT SUCH STATEMENT IS NOT REQUIRED AND WHICH WOULD TAKE PLACE IN A SPECIAL GROUNDWATER PROTECTION AREA, AS DEFINED IN SECTION 55-0107 OF THIS CHAPTER, THE AGENCY SHALL SHOW HOW SUCH ACTION WOULD OR WOULD NOT BE CONSISTENT WITH THE COMPREHENSIVE MANAGEMENT PLAN OF THE SPECIAL GROUNDWATER PROTECTION PROGRAM, AS IMPLEMENTED BY THE COMMISSIONER PURSUANT TO ARTICLE FIFTY-FIVE OF THIS CHAPTER.

(C) THE DRAFT STATEMENT SHOULD RESEMBLE IN FORM AND CONTENT THE FINAL ENVIRONMENTAL IMPACT STATEMENT TO BE PREPARED AFTER COMMENTS HAVE BEEN RECEIVED AND CONSIDERED PURSUANT TO SUBDIVISION TWO OF THIS SECTION; HOWEVER, THE LENGTH AND DETAIL OF THE DRAFT ENVIRONMENTAL STATEMENT SHALL REFLECT THE PRELIMINARY NATURE OF THE PROPOSAL AND THE EARLY STAGE AT WHICH IT IS PREPARED.

(D) THE DRAFT STATEMENT SHALL BE FILED WITH THE DEPARTMENT OR OTHER DESIGNATED AGENCIES AND SHALL BE CIRCULATED TO FEDERAL, STATE, REGIONAL AND LOCAL AGENCIES HAVING AN INTEREST IN THE PROPOSED ACTION AND TO INTERESTED MEMBERS OF THE PUBLIC FOR COMMENT, AS MAY BE PRESCRIBED BY THE COMMISSIONER PURSUANT TO SECTION 8-0113 OF THIS ARTICLE.

(E) IN ADDITION, UNLESS IMPRACTICABLE, THE DRAFT STATEMENT SHALL BE POSTED ON A PUBLICLY-AVAILABLE INTERNET WEBSITE. THE WEBSITE POSTING OF SUCH DRAFT STATEMENT MAY BE DISCONTINUED WHEN THE ENVIRONMENTAL IMPACT STATEMENT IS POSTED PURSUANT TO PARAGRAPH (F) OF THIS SUBDIVISION.

(F) TO THE EXTENT AS MAY BE PRESCRIBED BY THE COMMISSIONER PURSUANT TO SECTION 8-0113 OF THIS ARTICLE, THE ENVIRONMENTAL IMPACT STATEMENT PREPARED PURSUANT TO SUBDIVISION TWO OF THIS SECTION TOGETHER WITH THE COMMENTS OF PUBLIC AND FEDERAL AGENCIES AND MEMBERS OF THE PUBLIC, SHALL BE FILED WITH THE COMMISSIONER, MADE AVAILABLE TO THE PUBLIC, AND, UNLESS IMPRACTICABLE, POSTED ON A PUBLICLY-AVAILABLE INTERNET WEBSITE PRIOR TO ACTING ON THE PROPOSAL WHICH IS THE SUBJECT OF THE ENVIRONMENTAL IMPACT STATEMENT. THE WEBSITE POSTING OF SUCH STATEMENT MAY BE

DISCONTINUED ONE YEAR AFTER ALL NECESSARY PERMITS HAVE BEEN ISSUED BY THE FEDERAL, STATE AND LOCAL GOVERNMENTS.

4. As early as possible in the formulation of a proposal for an action, the responsible agency shall make an initial determination whether an environmental impact statement [need] IS NEEDED TO be prepared for the action. When an action is to be carried out or approved by two or more agencies, such determination shall be made as early as possible after the designation of the lead agency.

[With respect to actions involving the issuance to an applicant of a permit or other entitlement, the agency shall notify the applicant in writing of its initial determination specifying therein the basis for such determination. Notice of the initial determination along with appropriate supporting findings on agency actions shall be kept on file in the main office of the agency for public inspection.]

(I) If the agency determines that such statement is required, the agency or the applicant at its option shall prepare or cause to be prepared a draft environmental impact statement. If the applicant does not exercise the option to prepare such statement, the agency shall prepare it, cause it to be prepared, or terminate its review of the proposed action. Such statement shall describe the proposed action and reasonable alternatives to the action, and briefly discuss, on the basis of information then available, the remaining items required to be submitted by subdivision two of this section. [The purpose of a draft environmental statement is to relate environmental considerations to the inception of the planning process, to inform the public and other public agencies as early as possible about proposed actions that may significantly affect the quality of the environment, and to solicit comments which will assist the agency in the decision making process in determining the environmental consequences of the proposed action. The draft statement should resemble in form and content the environmental impact statement to be prepared after comments have been received and considered pursuant to subdivision two of this section; however, the length and detail of the draft environmental statement will necessarily reflect the preliminary nature of the proposal and the early stage at which it is prepared.

For any action for which the agency determines that such statement is not required and which would take place in a special groundwater protection area, as defined in section 55-0107 of this chapter, the agency shall show how such action would or would not be consistent with the comprehensive management plan of the special groundwater protection program, as implemented by the commissioner pursuant to article fifty-five of this chapter.

The draft statement shall be filed with the department or other designated agencies and shall be circulated to federal, state, regional and local agencies having an interest in the proposed action and to interested members of the public for comment, as may be prescribed by the commissioner pursuant to section 8-0113. In addition, unless impracticable, the draft statement shall be posted on a publicly-available Internet website. The website posting of such draft statement may be discontinued when the environmental impact statement is posted pursuant to subdivision six of this section.

5.] (II) After the filing of a draft environmental impact statement the agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the agency determines to hold such a hearing, it shall commence the hearing within sixty days of the filing and, unless the proposed action is withdrawn from

consideration, shall prepare the environmental impact statement within forty-five days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the agency pursuant to section 8-0113 of this article. If no hearing is held, the agency shall prepare and make available the FINAL environmental impact statement within sixty days after the filing of the draft, except as otherwise provided.

5. Notwithstanding the specified time periods established by this article, an agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. [An application for a permit or authorization for an action upon which a draft environmental impact statement is determined to be required shall not be complete until such draft statement has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy for purposes of paragraph four of this section.]

6. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement.

[6. To the extent as may be prescribed by the commissioner pursuant to section 8-0113, the environmental impact statement prepared pursuant to subdivision two of this section together with the comments of public and federal agencies and members of the public, shall be filed with the commissioner, made available to the public, and, unless impracticable, posted on a publicly-available Internet website prior to acting on the proposal which is the subject of the environmental impact statement. The website posting of such statement may be discontinued one year after all necessary permits have been issued by the federal, state and local governments.]

7. AN APPLICATION FOR A PERMIT, ENTITLEMENT OR AUTHORIZATION FOR AN ACTION UPON WHICH A DRAFT ENVIRONMENTAL IMPACT STATEMENT IS DETERMINED TO BE REQUIRED SHALL NOT BE COMPLETE UNTIL SUCH DRAFT STATEMENT HAS BEEN FILED AND ACCEPTED BY THE AGENCY AS SATISFACTORY WITH RESPECT TO SCOPE, CONTENT AND ADEQUACY FOR PURPOSES OF SUBDIVISION THREE OF THIS SECTION. THE AGENCY SHALL NOTIFY THE APPLICANT IN WRITING OF ITS INITIAL DETERMINATION SPECIFYING THEREIN THE BASIS FOR SUCH DETERMINATION. NOTICE OF THE INITIAL DETERMINATION ALONG WITH APPROPRIATE SUPPORTING FINDINGS ON AGENCY ACTIONS SHALL BE KEPT ON FILE IN THE MAIN OFFICE OF THE AGENCY FOR PUBLIC INSPECTION.

8. a. An agency may charge a fee to an applicant in order to recover the costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or [an] A FINAL environmental impact statement on the action which the applicant requests from the agency; provided, however, that an applicant may not be charged a separate fee for both the preparation and review of such statements. The technical services of the department may be made available on a fee basis reflecting the costs thereof, to a requesting agency, which fee or fees may appropriately be charged by the agency to the applicant under rules and regulations to be issued under section 8-0113.

b. Such rules and regulations shall require the applicant to reimburse the conservation fund, as established pursuant to subdivision (a) of section eighty-three of the state finance law, in order to recover all costs incurred in preparing or causing to be prepared or reviewing a draft environmental impact statement or [an] A FINAL environmental

impact statement by employees of the department, whose salary and expenses are paid, in whole or in part, from the conservation fund.

[8.] 9. When an agency decides to carry out or approve an action which has been the subject of [an] THE environmental impact statement PROCESS, it shall make an explicit finding that the requirements of this section have been met and [that consistent with social, economic and other essential considerations], to the maximum extent practicable, adverse environmental [effects] IMPACTS revealed in the DRAFT AND FINAL environmental impact statement process will be minimized or avoided.

[9. An environmental impact statement shall be prepared for any action found to have a significant impact on the special groundwater protection area, as defined in section 55-0107 of this chapter. Such statement shall meet the requirements of the most detailed environmental impact statement required by this section or by any such rule or regulation promulgated pursuant to this section.]

S 3. This act shall take effect on the ninetieth day after it shall have become a law.