

3361

2009-2010 Regular Sessions

I N S E N A T E

March 17, 2009

Introduced by Sen. KRUGER -- (at request of the Adirondack Park Agency)
-- read twice and ordered printed, and when printed to be committed to
the Committee on Finance

AN ACT to amend the executive law, in relation to applications for minor
and major projects before the Adirondack park agency

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

1 Section 1. Paragraphs b and d of subdivision 2, paragraphs b, c, d and
2 e of subdivision 3, paragraph c of subdivision 6, the opening paragraph
3 and subparagraphs 1 and 2 of paragraph b of subdivision 8, and paragraph
4 c of subdivision 10 of section 809 of the executive law, paragraphs b
5 and d of subdivision 2, paragraphs b, c, d and e of subdivision 3, para-
6 graph c of subdivision 6 as amended and the opening paragraph and
7 subparagraphs 1 and 2 of paragraph b of subdivision 8 as added by chap-
8 ter 428 of the laws of 1979 and paragraph c of subdivision 10 as amended
9 by chapter 578 of the laws of 1979, are amended to read as follows:
10 b. [On or before] WITHIN fifteen [calendar] days [after] OF the
11 receipt of [such] A MINOR PROJECT application, OR, WITHIN THIRTY DAYS OF
12 THE RECEIPT OF A MAJOR PROJECT APPLICATION, the agency shall [notify]
13 MAIL WRITTEN NOTICE TO the project sponsor by certified mail INDICATING
14 whether or not the application is complete. For the purposes of this
15 section, a "complete application" shall mean an application for a permit
16 which is in an approved form and is determined by the agency to be
17 complete for the purpose of commencing review of the application but
18 which may need to be supplemented during the course of review as to
19 matters contained in the application in order to enable the agency to
20 make the findings and determinations required by this section. If the
21 agency fails to mail such notice within [such fifteen-day] THE APPLICA-
22 BLE TIME period, the application shall be deemed complete. If the agency
23 determines the application is not complete, the notice shall include a
24 concise statement of the respects in which the application is incom-

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

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plete. [The submission by the project sponsor of the requested additional information shall commence a new fifteen calendar day period for agency review of the additional information for the purposes of determining completeness.] WITHIN FIFTEEN DAYS OF THE SUBMISSION BY THE PROJECT SPONSOR OF REQUESTED ADDITIONAL INFORMATION, THE AGENCY SHALL MAIL WRITTEN NOTICE TO THE PROJECT SPONSOR BY CERTIFIED MAIL INDICATING WHETHER OR NOT THE APPLICATION IS COMPLETE. If the agency determines the application is complete, the notice shall so state.

d. [Immediately upon] UPON determining that an application is complete, the agency shall, except in relation to minor projects, cause a notice of application to be published in the next available environmental notice bulletin published by the department of environmental conservation pursuant to section 3-0306 of the environmental conservation law[, which publication shall be not later than ten calendar days after the date of such notice]. The time period for public comment on a permit application shall be stated in the notice of application. The agency shall at the same time mail a copy of the notice of application completion to the Adirondack park local government review board and to the persons named in paragraph a of subdivision two of this section, and invite their comments.

b. In the case of an application for a permit for which no public hearing has been held, the agency SHALL MAIL ITS decision [shall be mailed on or before] WITHIN ninety [calendar] days or, in the case of a minor project, WITHIN forty-five [calendar] days[, after] OF (I) THE DATE the agency [notifies] MAILS the project sponsor NOTICE that the application is complete or [after] (II) THE DATE ON WHICH the application is deemed complete pursuant to the provisions of this section.

c. In the case of an application for a permit for which a public hearing has been held, the agency SHALL MAIL ITS decision [shall be mailed on or before] WITHIN sixty [calendar] days [after] OF receipt by the agency of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section three hundred two of the state administrative procedure act.

d. If the agency determines to hold a public hearing on an application for a permit, the agency shall [notify] MAIL WRITTEN NOTICE TO the project sponsor of its determination by certified mail [on or before sixty calendar] WITHIN NINETY days or, in the case of a minor project, WITHIN forty-five [calendar] days [after] OF (I) THE DATE the agency [notifies] MAILS the project sponsor NOTICE that the application is complete or [after] (II) THE DATE the application is deemed complete pursuant to the provisions of this section. The determination of whether or not to hold a public hearing on an application shall be based on whether the agency's evaluation or comments of the review board, local officials or the public on a project raise substantive and significant issues relating to any findings or determinations the agency is required to make pursuant to this section, including the reasonable likelihood that the project will be disapproved or can be approved only with major modifications because the project as proposed may not meet statutory or regulatory criteria or standards. The agency shall also consider the general level of public interest in a project. [No project may be disapproved without a public hearing first being held thereon.] THE AGENCY MAY DENY A PROJECT WITHOUT FIRST HOLDING A PUBLIC HEARING. HOWEVER, IF A PROJECT IS DENIED WITHOUT A PUBLIC HEARING, THE PROJECT SPONSOR MAY WITHIN FIFTEEN DAYS OF THE DATE OF THE NOTICE OF THE DECISION DENYING THE PROJECT MAKE A WRITTEN REQUEST FOR A HEARING. SUCH HEARING MUST COMMENCE WITHIN FORTY-FIVE DAYS OF THE DATE OF RECEIPT BY THE AGENCY OF

1 THE WRITTEN REQUEST. THE AGENCY DECISION MUST BE MADE WITHIN THE TIME
2 FRAMES PROVIDED IN PARAGRAPH C OF THIS SUBDIVISION.

3 e. If the agency has notified the project sponsor of its determination
4 to hold a public hearing OR THE PROJECT SPONSOR HAS REQUESTED SUCH HEAR-
5 ING, the sponsor shall not undertake the project during the time period
6 specified in paragraph c of this subdivision. The notice of determi-
7 nation to hold a public hearing shall state that the project sponsor has
8 the opportunity within fifteen days to withdraw his application or
9 submit a new application. A public hearing INITIATED BY THE AGENCY shall
10 commence [on or before] WITHIN ninety [calendar] days, or in the case of
11 a minor project, WITHIN seventy-five days, [after] OF THE DATE ON WHICH
12 the agency [notifies] MAILED NOTICE TO the project sponsor that the
13 application is complete or [after] THE DATE ON WHICH the application is
14 deemed complete pursuant to the provisions of this section. In addition
15 to notice of such hearing being mailed to the project sponsor, such
16 notice shall also be given by publication at least once in the environ-
17 mental notice bulletin and in a newspaper having general circulation in
18 each local government wherein the project is proposed to be located, by
19 conspicuous posting of the land involved, and by individual notice
20 served by certified mail upon each owner of record of the land involved,
21 and by mail upon: the Adirondack park local government review board, the
22 persons named in paragraph a of subdivision two of this section, any
23 adjoining landowner, to the extent reasonably discernible from the
24 latest completed tax assessment roll, and the clerk of any local govern-
25 ment within five hundred feet of the land involved. Public hearings held
26 pursuant to this section shall be consolidated or held jointly with
27 other state or local agencies whenever practicable.

28 c. At any time during the review of an application for a permit or a
29 request by a permit holder for the renewal, reissuance, or modification
30 of an existing permit pursuant to subdivision eight of this section, the
31 agency may request additional information from the project sponsor or
32 permit holder with regard to any matter contained in the application or
33 request when such additional information is necessary for the agency to
34 make any findings or determinations required by law. Such a request
35 shall not extend any time period for agency action contained in this
36 section, UNLESS THE AGENCY DETERMINES THAT SUCH RENEWAL, REISSUANCE, OR
37 MODIFICATION WOULD CONSTITUTE A MATERIAL CHANGE, IN WHICH CASE AT THE
38 AGENCY'S DISCRETION SUCH RENEWAL, REISSUANCE, OR MODIFICATION SHALL BE
39 TREATED AS A NEW APPLICATION WITH NEW TIME PERIODS. Failure by the
40 project sponsor or permit holder to provide such information may be
41 grounds for denial by the agency of the application or request.

42 A permit holder may make written request to the agency for the
43 renewal, reissuance, or modification of an existing permit AFTER THE
44 TIME TO APPEAL HAS EXPIRED. Such a request shall be accompanied by
45 sufficient information supporting the request for the agency action
46 sought. UPON RECEIPT OF ALL THE NECESSARY INFORMATION TO MAKE AN ASSESS-
47 MENT:

48 (1) In the case of a request TO THE AGENCY FOR A CHANGE TO THE PERMIT
49 which does not involve a material change in [permit conditions] THE
50 PERMITTED PROJECT, the applicable law, environmental conditions or tech-
51 nology since the date of issuance of the existing permit, the agency
52 shall [on or before] WITHIN fifteen [calendar] days after the receipt of
53 a request mail a written determination to the permit holder of its deci-
54 sion on the request. [If the decision is to deny the request, the permit
55 holder shall be afforded an opportunity for hearing and notice of such
56 decision shall be given by the agency in the next available issue of the

1 environmental notice bulletin.] IN SUCH CASE, THE AGENCY MAY GRANT OR
2 DENY THE REQUEST WITHOUT A HEARING.

3 (2) In the case of a request which may involve a material change as
4 described in subparagraph one of this paragraph, the agency shall [on or
5 before] WITHIN fifteen [calendar] days [after] OF the receipt of a
6 request mail a written determination to the permit holder [that] AS TO
7 WHETHER the request shall be treated as an application for a new permit.

8 c. The project would be consistent with the overall intensity guide-
9 line for the land use area involved. A landowner shall not be allowed to
10 construct, either directly or as a result of a proposed subdivision,
11 more principal buildings on the land included within the project than
12 the overall intensity guideline for the given land use area in which the
13 project is located. [In determining the] THE land area upon which the
14 intensity guideline is calculated [and which is included within a
15 project, the landowner shall only include land under his ownership]
16 INCLUDES THE LAND OWNED BY THE PROJECT SPONSOR THAT IS INCLUDED WITHIN
17 THE PROJECT, and may include [all adjacent land which he owns within
18 that land use area irrespective of such dividing lines as lot lines,
19 roads, rights of way, or streams and, in the absence of local land use
20 programs governing the intensity of land use and development, irrespec-
21 tive of local government boundaries] OTHER LAND WITHIN THE SAME OR ANY
22 MORE RESTRICTIVE LAND USE AREA AND WITHIN THE SAME MUNICIPALITY WITH THE
23 PERMISSION OF THE OWNER OF SUCH OTHER LAND PROVIDED THAT: THE OTHER LAND
24 IS LAWFULLY ELIGIBLE FOR AND WILL BE PERMANENTLY RESTRICTED BY DEED BY
25 ITS OWNER FROM DEVELOPMENT WITH THE SAME NUMBER OF ADDITIONAL PRINCIPAL
26 BUILDINGS ACTUALLY UTILIZED FOR THE PROJECT, THE ADDITIONAL PRINCIPAL
27 BUILDINGS ARE NOT LOCATED WITHIN ONE-QUARTER MILE OF ANY LAKE, POND,
28 RIVER OR STREAM, AND ALL OTHER STATUTORY CONDITIONS FOR PROJECT APPROVAL
29 ARE MET. Principal buildings in existence within the [area included
30 within a project, as such area is defined by the landowner,] PROPERTY
31 BOUNDARIES OF THE LAND ON WHICH ANY PORTION OF THE PROJECT IS SITUATED
32 shall be counted in applying the intensity guidelines. [As between two
33 or more separate landowners in a given land use area the principal
34 buildings on one landowner's property shall not be counted in applying
35 the intensity guidelines to another landowner's project, except that two
36 or more landowners whose lands are directly contiguous and located in
37 the same general tax district or special levy or assessment district
38 may, when acting, in concert in submitting a project, aggregate such
39 lands for purposes of applying the intensity guidelines to their lands
40 thus aggregated.] The area upon which the intensity guideline is calcu-
41 lated shall not include (a) bodies of water, such as lakes and ponds,
42 (b) any land in the same ownership that is directly related to any prin-
43 cipal building in existence on August first, nineteen hundred seventy-
44 three, which land is not included in the project, and (c), in the case
45 of any principal building constructed after August first, nineteen
46 hundred seventy-three, any land in the same or any other ownership that
47 was included within the area of any previous project in order to comply
48 with the overall intensity guideline.

49 S 2. Paragraph b of subdivision 8 of section 809 of the executive law
50 is relettered paragraph c and a new paragraph b is added to read as
51 follows:

52 B. A PERMIT HOLDER MAY APPEAL THE TERMS AND CONDITIONS OF ANY PERMIT
53 WITHIN THIRTY DAYS OF ISSUANCE OF THE PERMIT, AND AN ADDITIONAL THIRTY
54 DAYS TO APPEAL MAY BE ALLOWED UPON GOOD CAUSE SHOWN. AN APPEAL OF A
55 PERMIT ISSUED PURSUANT TO DELEGATED AUTHORITY UNDER THIS ARTICLE SHALL
56 BE DETERMINED BY THE AGENCY'S MEMBERS. AN AFFIRMATIVE VOTE OF TWO-THIRDS

1 OF THE AGENCY'S MEMBERS SHALL BE REQUIRED TO MODIFY A PERMIT DETERMI-
2 NATION MADE BY THE AGENCY'S MEMBERS.
3 S 3. This act shall take effect immediately and shall apply to appli-
4 cations received after such date.