

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

3361--A

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 -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee

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

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

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

9 A notice of application completion shall not be required in the case
10 of applications for minor projects which the agency determines to be
11 complete when filed. Such applications shall be deemed complete for the
12 purposes of this section upon the date of receipt.

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

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

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

38 d. If the agency determines to hold a public hearing on an application
39 for a permit, the agency shall [notify] MAIL WRITTEN NOTICE TO the
40 project sponsor of its determination by certified mail [on or before
41 sixty calendar] WITHIN NINETY days or, in the case of a minor project,
42 WITHIN forty-five [calendar] days [after] OF (I) THE DATE the agency
43 [notifies] MAILS the project sponsor NOTICE that the application is
44 complete or [after] (II) THE DATE the application is deemed complete
45 pursuant to the provisions of this section. The determination of whether
46 or not to hold a public hearing on an application shall be based on
47 whether the agency's evaluation or comments of the review board, local
48 officials or the public on a project raise substantive and significant
49 issues relating to any findings or determinations the agency is required
50 to make pursuant to this section, including the reasonable likelihood
51 that the project will be disapproved or can be approved only with major
52 modifications because the project as proposed may not meet statutory or
53 regulatory criteria or standards. The agency shall also consider the
54 general level of public interest in a project. [No project may be disap-
55 proved without a public hearing first being held thereon.] THE AGENCY
56 BOARD MAY DENY A PERMIT FOR A COMPLETE APPLICATION WITHOUT FIRST HOLDING

1 A PUBLIC HEARING. HOWEVER, IF AN APPLICATION IS DENIED WITHOUT A PUBLIC
2 HEARING, THE PROJECT SPONSOR MUST WITHIN FIFTEEN DAYS OF THE DATE OF THE
3 NOTICE OF THE DECISION DENYING THE PERMIT MAKE A WRITTEN REQUEST FOR A
4 HEARING PRIOR TO ANY APPEAL OR REQUEST FOR RECONSIDERATION. SUCH HEARING
5 MUST COMMENCE WITHIN FORTY-FIVE DAYS OF THE DATE OF RECEIPT BY THE AGEN-
6 CY OF THE WRITTEN REQUEST. THE AGENCY DECISION MUST BE MADE WITHIN THE
7 TIME FRAMES PROVIDED IN PARAGRAPH C OF THIS SUBDIVISION.

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

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

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

53 (1) In the case of a request TO THE AGENCY FOR A CHANGE TO THE PERMIT
54 which does not involve a material change in [permit conditions] THE
55 PERMITTED PROJECT, the applicable law, environmental conditions or tech-
56 nology since the date of issuance of the existing permit, the agency

1 shall [on or before] WITHIN fifteen [calendar] days after the receipt of
2 a request mail a written determination to the permit holder of its deci-
3 sion on the request. [If the decision is to deny the request, the permit
4 holder shall be afforded an opportunity for hearing and notice of such
5 decision shall be given by the agency in the next available issue of the
6 environmental notice bulletin.] IN SUCH CASE, THE AGENCY MAY GRANT OR
7 DENY THE REQUEST WITHOUT A HEARING.

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

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

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

1 B. A PERMIT HOLDER MAY APPEAL THE TERMS AND CONDITIONS OF ANY PERMIT
2 WITHIN THIRTY DAYS OF ISSUANCE OF THE PERMIT, AND AN ADDITIONAL THIRTY
3 DAYS TO APPEAL MAY BE ALLOWED UPON GOOD CAUSE SHOWN. AN APPEAL OF A
4 PERMIT ISSUED PURSUANT TO DELEGATED AUTHORITY UNDER THIS ARTICLE SHALL
5 BE DETERMINED BY THE AGENCY'S MEMBERS. AN AFFIRMATIVE VOTE OF TWO-THIRDS
6 OF THE AGENCY'S MEMBERS SHALL BE REQUIRED TO MODIFY A PERMIT DETERMI-
7 NATION MADE BY THE AGENCY'S MEMBERS.

8 S 3. This act shall take effect immediately and shall apply to appli-
9 cations received after such date.