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I N S E N A T E

January 10, 2011

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

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

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

1 Section 1. Subdivisions 6, 7 and 8 of section 8-0105 of the environ-
2 mental conservation law, as amended by chapter 228 of the laws of 1976,
3 are amended to read as follows:
4 6. "Environment OR ENVIRONMENTAL" means the physical conditions which
5 will be affected by a proposed action, including land, air, water,
6 minerals, flora, fauna, noise, objects of historic or aesthetic signif-
7 icance, existing patterns of population concentration, distribution, or
8 growth, and existing community or neighborhood character. "ENVIRONMENT"
9 AND "ENVIRONMENTAL" SHALL INCLUDE THE SOCIAL, ECONOMIC, AND INFRASTRUC-
10 TURAL IMPACTS ON THE PHYSICAL CONDITIONS AFFECTED BY A PROPOSED ACTION
11 OR ACTIONS. "ENVIRONMENT" AND "ENVIRONMENTAL" SHALL ENCOMPASS ADVERSE,
12 BENEFICIAL AND CUMULATIVE IMPACTS TO HUMAN HEALTH, LAND, AIR, SUNLIGHT
13 AND PATTERN, MINERALS, FLORA, FAUNA, WATER, NATURAL HABITATS, WETLANDS,
14 FLOODPLAINS, WATERSHED, SEWERAGE SYSTEMS, NOISE, EXISTING AND IMPENDING
15 POPULATION CONCENTRATIONS AND GROWTH PATTERNS, EXISTING COMMUNITY OR
16 NEIGHBORHOOD CHARACTER, NEIGHBORHOOD AMENITIES, POLICE AND FIRE DEPART-
17 MENTS, HOSPITALS, ELEMENTARY AND SECONDARY SCHOOLS, PUBLIC TRANSIT
18 SYSTEMS, ROADS AND ROADWAY PATTERNS, PUBLIC PARKING, PARKS AND PUBLIC
19 RECREATIONAL FACILITIES, AND RESOURCES OF AGRICULTURAL, HISTORIC LAND-
20 MARK AND AESTHETIC SIGNIFICANCE.
21 7. "DRAFT ENVIRONMENTAL IMPACT STATEMENT" MEANS A DETAILED PRELIMINARY
22 REPORT TO BE PREPARED AT THE INCEPTION OF PROPOSED ACTIONS THAT DELINE-
23 ATES THE ENVIRONMENTAL IMPACT PROPOSED ACTIONS WILL HAVE ON THE SPECIFIC
24 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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1 PROPOSED ACTIONS; TO INFORM THE PUBLIC AND OTHER PUBLIC AGENCIES AS
2 EARLY AS POSSIBLE ABOUT PROPOSED ACTIONS THAT MAY SIGNIFICANTLY AFFECT
3 THE QUALITY OF THE ENVIRONMENT; AND TO SOLICIT COMMENTS WHICH WILL
4 ASSIST THE AGENCY IN THE DECISION MAKING PROCESS IN DETERMINING THE
5 ENVIRONMENTAL CONSEQUENCES OF THE PROPOSED ACTION. THE DRAFT STATEMENT
6 SHALL RESEMBLE IN FORM AND CONTENT THE ENVIRONMENTAL IMPACT STATEMENT TO
7 BE PREPARED AFTER COMMENTS HAVE BEEN RECEIVED AND CONSIDERED PURSUANT TO
8 SUBDIVISION TWO OF SECTION 8-0109 OF THIS ARTICLE; HOWEVER, THE LENGTH
9 AND DETAIL OF THE DRAFT ENVIRONMENTAL STATEMENT SHALL REFLECT THE
10 PRELIMINARY NATURE OF THE PROPOSAL AND THE EARLY STAGE AT WHICH IT IS
11 PREPARED.

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

18 9. "[Environmental] FINAL ENVIRONMENTAL impact statement" means a
19 detailed statement setting forth the matters specified in [section
20 8-0109 of this article] SUBDIVISION SEVEN OF THIS SECTION. It includes
21 any comments on a draft environmental statement which are received
22 pursuant to section 8-0109 of this article, and the agency's response to
23 such comments, to the extent that such comments raise issues not
24 adequately resolved in the draft environmental statement.

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

27 S 2. Section 8-0109 of the environmental conservation law, as amended
28 by chapter 252 of the laws of 1977, subdivisions 2 and 4 as amended and
29 subdivision 9 as added by chapter 219 of the laws of 1990, paragraph (h)
30 of subdivision 2 as amended by chapter 519 of the laws of 1992, para-
31 graph (i) of subdivision 2 as added by chapter 182 of the laws of 1990,
32 paragraph (i) of subdivision 2 and the fourth undesignated paragraph of
33 subdivision 4 as amended by chapter 238 of the laws of 1991, the fifth
34 undesignated paragraph of subdivision 4 and subdivision 6 as amended by
35 chapter 641 of the laws of 2005, the opening paragraph of subdivision 5
36 as amended by chapter 749 of the laws of 1991 and subdivision 7 as
37 amended by chapter 336 of the laws of 1987, is amended to read as
38 follows:

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

40 1. Agencies shall use all practicable means to realize the policies
41 and goals set forth in this article, and shall act and choose alterna-
42 tives which, consistent with ENVIRONMENTAL, social, economic, INFRAS-
43 TRUCTURAL and other essential considerations, to the maximum extent
44 practicable, minimize or avoid adverse [environmental] effects, includ-
45 ing effects revealed in the DRAFT AND FINAL environmental impact state-
46 ment process.

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

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

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

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

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. THE STATEMENT SHALL INCLUDE A DEMONSTRATION THAT
19 SOLID WASTE DISPOSAL FACILITIES MEET OR EXCEED THE CAPACITY NECESSARY
20 FOR THE PROPOSED ACTION AND IN A MANNER CONSISTENT WITH SOUND, COMPRE-
21 HENSIVE SOLID WASTE MANAGEMENT PLANNING; [and

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

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

28 (L) such other information consistent with the purposes of this arti-
29 cle as may be prescribed in guidelines issued by the commissioner pursu-
30 ant to section 8-0113 of this [chapter] ARTICLE.

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

45 3. An agency may require an applicant to submit an environmental
46 ASSESSMENT report to assist the agency in carrying out its responsibil-
47 ities, including the initial determination and, (where the applicant
48 does not prepare the DRAFT environmental impact statement), the prepara-
49 tion of [an] THE DRAFT environmental impact statement under this arti-
50 cle. The agency may request such other information from an applicant
51 necessary for the review of environmental impacts. Notwithstanding any
52 use of outside resources or work, agencies shall make their own inde-
53 pendent judgment of the scope, contents and adequacy of [an] THE DRAFT
54 environmental impact statement.

55 (A) THE PURPOSE OF A DRAFT ENVIRONMENTAL STATEMENT IS TO RELATE ENVI-
56 RONMENTAL 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

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

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

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

15 (I) If the agency determines that such statement is required, the
16 agency or the applicant at its option shall prepare or cause to be
17 prepared a draft environmental impact statement. If the applicant does
18 not exercise the option to prepare such statement, the agency shall
19 prepare it, cause it to be prepared, or terminate its review of the
20 proposed action. Such statement shall describe the proposed action and
21 reasonable alternatives to the action, and briefly discuss, on the basis
22 of information then available, the remaining items required to be
23 submitted by subdivision two of this section. [The purpose of a draft
24 environmental statement is to relate environmental considerations to the
25 inception of the planning process, to inform the public and other public
26 agencies as early as possible about proposed actions that may signif-
27 icantly affect the quality of the environment, and to solicit comments
28 which will assist the agency in the decision making process in determin-
29 ing the environmental consequences of the proposed action. The draft
30 statement should resemble in form and content the environmental impact
31 statement to be prepared after comments have been received and consid-
32 ered pursuant to subdivision two of this section; however, the length
33 and detail of the draft environmental statement will necessarily reflect
34 the preliminary nature of the proposal and the early stage at which it
35 is prepared.

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

43 The draft statement shall be filed with the department or other desig-
44 nated agencies and shall be circulated to federal, state, regional and
45 local agencies having an interest in the proposed action and to inter-
46 ested members of the public for comment, as may be prescribed by the
47 commissioner pursuant to section 8-0113. In addition, unless impractica-
48 ble, the draft statement shall be posted on a publicly-available Inter-
49 net website. The website posting of such draft statement may be discon-
50 tinued when the environmental impact statement is posted pursuant to
51 subdivision six of this section.

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

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

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

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

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

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

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

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

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

3 [8.] 9. When an agency decides to carry out or approve an action which
4 has been the subject of [an] THE environmental impact statement PROCESS,
5 it shall make an explicit finding that the requirements of this section
6 have been met and [that consistent with social, economic and other
7 essential considerations], to the maximum extent practicable, adverse
8 environmental [effects] IMPACTS revealed in the DRAFT AND FINAL environ-
9 mental impact statement process will be minimized or avoided.

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

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