

6558--A

Cal. No. 306

2013-2014 Regular Sessions

I N A S S E M B L Y

April 9, 2013

Introduced by M. of A. SWEENEY, WEISENBERG, GLICK, LIFTON, JAFFEE, THIELE, ABINANTI, OTIS, ENGLEBRIGHT, ROSENTHAL, ROZIC, SCHIMEL, MOSLEY, GOTTFRIED, BARRETT, LUPARDO, GOLDFEDER, COLTON, JACOBS -- Multi-Sponsored by -- M. of A. FAHY, SKARTADOS -- read once and referred to the Committee on Environmental Conservation -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the environmental conservation law, the agriculture and markets law and the public health law, in relation to the consideration of future climate risk including sea level rise projections and other weather-related data; and in relation to requiring the preparation of model local zoning laws relating to climate risk

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

- 1 Section 1. This act shall be known as and may be cited as the "commu-
2 nity risk and resiliency act".
3 S 2. Subdivision 2 of section 6-0107 of the environmental conservation
4 law is amended by adding a new paragraph k to read as follows:
5 K. TO MITIGATE FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM
6 SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD
7 OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF
8 APPLICABLE.
9 S 3. Item (e) of subparagraph (ii) of paragraph d of subdivision 1 of
10 section 17-1909 of the environmental conservation law, as added by chap-
11 ter 565 of the laws of 1989, is amended to read as follows:
12 (e) conforms with applicable rules and regulations of the department,
13 INCLUDING A DEMONSTRATION THAT DESIGN AND CONSTRUCTION CONSIDER FUTURE
14 CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED
15 ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER
16 EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

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

LBD10228-10-4

1 S 4. Paragraphs g and h of subdivision 2 of section 27-1103 of the
2 environmental conservation law, as amended by chapter 618 of the laws of
3 1987, are amended and a new paragraph i is added to read as follows:

4 g. The impact on the municipality where the facility is to be cited in
5 terms of health, safety, cost and consistency with local planning,
6 zoning or land use laws and ordinances, [and]

7 h. The nature of the probable environmental impact, including specifi-
8 cation of the predictable adverse effects on the natural environment and
9 ecology, public health and safety, scenic, historic, cultural and recre-
10 ational value, water and air quality, wildlife and an evaluation of
11 measures to mitigate adverse effects[.], AND

12 I. THE FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND
13 FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE
14 EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICA-
15 BLE.

16 S 5. Subdivision 1 of section 40-0113 of the environmental conserva-
17 tion law is amended by adding a new paragraph i to read as follows:

18 I. REQUIREMENTS FOR CONSIDERATION OF FUTURE CLIMATE RISK INCLUDING SEA
19 LEVEL RISE, STORM SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICT-
20 ING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD
21 RISK ANALYSIS DATA IF APPLICABLE.

22 S 6. Subdivision 3 of section 49-0203 of the environmental conserva-
23 tion law is renumbered subdivision 4 and a new subdivision 3 is added to
24 read as follows:

25 3. THE DEPARTMENT AND THE OFFICE SHALL CONSIDER FUTURE CLIMATE RISK
26 INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED ON AVAILABLE
27 DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUD-
28 ING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

29 S 7. Paragraph a of subdivision 2 of section 54-0303 of the environ-
30 mental conservation law, as added by chapter 610 of the laws of 1993 and
31 as designated by chapter 170 of the laws of 1994, is amended to read as
32 follows:

33 a. The commissioner of the office of parks, recreation and historic
34 preservation may enter into an agreement for the maintenance and opera-
35 tion of open space land conservation projects in urban areas or metro-
36 politan park projects by a municipality, or a not-for-profit corporation
37 or unincorporated association which demonstrates to the commissioner's
38 satisfaction that [it] THE FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE,
39 STORM SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKE-
40 LIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS
41 DATA IF APPLICABLE, HAS BEEN CONSIDERED AND THE MUNICIPALITY is finan-
42 cially or otherwise capable of operating and maintaining the project for
43 the benefit of the public and of maximizing public access to such
44 project. Any such agreement shall contain such provisions as shall be
45 necessary to ensure that its operation and maintenance are consistent
46 with and in furtherance of this article and shall be subject to the
47 approval of the director of the budget, the comptroller and, as to form,
48 the attorney general.

49 S 8. Subdivision 3 of section 54-0503 of the environmental conserva-
50 tion law, as added by chapter 610 of the laws of 1993, is amended to
51 read as follows:

52 3. A closure investigation report which complies with the requirements
53 of applicable regulations of the department, INCLUDING A DEMONSTRATION
54 THAT FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND
55 FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE

1 EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICA-
2 BLE, HAS BEEN CONSIDERED, shall have been submitted.

3 S 9. Section 54-0504 of the environmental conservation law, as added
4 by section 4 of part L of chapter 59 of the laws of 2005, is amended to
5 read as follows:

6 S 54-0504. Eligibility to receive state assistance payments for municipi-
7 pal landfill gas management projects.

8 Any municipality which is the owner or operator of a landfill may
9 apply for state assistance payments toward the cost of a municipal land-
10 fill gas management project. Any application for a municipal landfill
11 gas management project must comply with all applicable rules and regu-
12 lations promulgated by the department, INCLUDING A DEMONSTRATION THAT
13 FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING,
14 BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME
15 WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS
16 BEEN CONSIDERED.

17 S 10. Subdivisions 1 and 5 of section 54-1101 of the environmental
18 conservation law, as amended by chapter 309 of the laws of 1996, are
19 amended to read as follows:

20 1. The secretary is authorized to provide on a competitive basis,
21 within amounts appropriated, state assistance payments to municipalities
22 toward the cost of any local waterfront revitalization program, INCLUD-
23 ING PLANNING PROJECTS TO MITIGATE FUTURE CLIMATE RISKS. Eligible costs
24 include planning, studies, preparation of local laws, and construction
25 projects.

26 5. The secretary shall impose such contractual requirements and condi-
27 tions upon any municipality which receives state assistance payments
28 pursuant to this article as may be necessary and appropriate to ensure
29 that a public benefit shall accrue from the use of such funds by the
30 municipality INCLUDING BUT NOT LIMITED TO, A DEMONSTRATION THAT FUTURE
31 CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED
32 ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER
33 EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN
34 CONSIDERED.

35 S 11. Subdivision 1 of section 54-1105 of the environmental conserva-
36 tion law, as added by chapter 610 of the laws of 1993, is amended to
37 read as follows:

38 1. The commissioner is authorized to provide on a competitive basis,
39 within amounts appropriated, state assistance payments to a municipality
40 or a not-for-profit corporation toward the cost of any coastal rehabili-
41 tation project approved by the commissioner PROVIDED THAT THE COMMIS-
42 SIONER DETERMINES THAT FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE,
43 STORM SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKE-
44 LIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS
45 DATA IF APPLICABLE, HAS BEEN CONSIDERED.

46 S 12. Subdivision 2 of section 325 of the agriculture and markets law
47 is amended by adding a new paragraph (f) to read as follows:

48 (F) IN EVALUATING APPLICATIONS FOR FUNDING, THE COMMISSIONER SHALL
49 CONSIDER WHETHER FUTURE CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM
50 SURGES AND FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD
51 OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF
52 APPLICABLE, HAS BEEN CONSIDERED.

53 S 13. Section 1161 of the public health law, as added by chapter 413
54 of the laws of 1996, is amended to read as follows:

55 S 1161. Eligible projects; priority ranking. Subject to the
56 provisions of section thirty-two of the chapter of the laws of 1996

1 which added this section, in consultation with the commissioner of envi-
2 ronmental conservation, the commissioner shall establish and maintain a
3 list of potentially eligible projects and shall establish, pursuant to
4 rules and regulations, a process for listing potentially eligible
5 projects identified by potential recipients and a priority ranking
6 system for the purpose of providing financial assistance to recipients
7 for such projects under this title. In establishing such system, the
8 commissioner shall take into account the public health significance of
9 such potentially eligible projects which shall include, but need not be
10 limited to, an assessment of (i) public health and safety; (ii) popu-
11 lation affected; (iii) attainment of state drinking water quality goals
12 and standards; (iv) taking into consideration the water resources
13 management strategy pursuant to title twenty-nine of article fifteen of
14 the environmental conservation law; (V) TAKING INTO CONSIDERATION FUTURE
15 CLIMATE RISK INCLUDING SEA LEVEL RISE, STORM SURGES AND FLOODING, BASED
16 ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER
17 EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE; and [(v)]
18 (VI) compliance with state and federal law, rules and regulations.

19 S 14. The department of state, in cooperation with the department of
20 environmental conservation, shall prepare model local laws that include
21 consideration of climate risk including sea level rise, storm surges and
22 flooding, based on available data predicting the likelihood of future
23 extreme weather events including hazard risk analysis and shall make
24 such laws available to municipalities.

25 S 15. Major permits for the regulatory programs of paragraphs (f),
26 (h), (i), (j), (k) and (m) of subdivision 3 of section 70-0107 of the
27 environmental conservation law and article 23, article 40 and title 10
28 of article 17 of the environmental conservation law shall require appli-
29 cants to demonstrate that future climate risk including sea level rise,
30 storm surges and flooding, based on available data predicting the like-
31 lihood of future extreme weather events, including hazard risk analysis
32 data if applicable, has been considered.

33 S 16. The department of environmental conservation, in consultation
34 with the department of state, shall prepare guidance on the implementa-
35 tion of this act, including but not limited to available and relevant
36 data sets and risk analysis tools. In addition, the department of envi-
37 ronmental conservation and the department of state shall develop addi-
38 tional guidance on the use of resiliency measures that utilize natural
39 resources and natural processes to reduce risk.

40 S 17. The environmental conservation law is amended by adding a new
41 article 58 to read as follows:

42 ARTICLE 58

43 SEA LEVEL RISE PROJECTIONS

44 SECTION 58-0101. SEA LEVEL RISE PROJECTIONS.

45 S 58-0101. SEA LEVEL RISE PROJECTIONS.

46 THE DEPARTMENT SHALL, NO LATER THAN JANUARY FIRST, TWO THOUSAND
47 SIXTEEN, ADOPT REGULATIONS ESTABLISHING SCIENCE-BASED STATE SEA LEVEL
48 RISE PROJECTIONS. IN ADOPTING SUCH REGULATIONS, THE DEPARTMENT SHALL
49 CONSIDER INFORMATION INCLUDING, BUT NOT LIMITED TO, THE NATIONAL OCEANIC
50 ATMOSPHERIC ADMINISTRATION, AND THE SEA LEVEL RISE TASK FORCE REPORT
51 CREATED PURSUANT TO CHAPTER SIX HUNDRED THIRTEEN OF THE LAWS OF TWO
52 THOUSAND SEVEN. THE DEPARTMENT SHALL UPDATE SUCH REGULATIONS NO LESS
53 THAN BIENNIALLY.

54 S 18. This act shall take effect on the one hundred eightieth day
55 after it shall have become a law and shall apply to all applications
56 and/or permits received after such date.