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I N A S S E M B L Y

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Introduced by M. of A. SWEENEY, WEISENBERG, GLICK, LIFTON, JAFFEE, THIELE, ABINANTI, OTIS, ENGLEBRIGHT, ROSENTHAL, ROZIC, SCHIMEL, MOSLEY, GOTTFRIED, BARRETT, LUPARDO, GOLDFEDER, COLTON, JACOBS, BUCHWALD, TITONE, ORTIZ, MAYER, SKOUFIS -- Multi-Sponsored by -- M. of A. BRONSON, FAHY, GALEF, MALLIOTAKIS, McDONALD, MILLMAN, RIVERA, SKARTADOS, WEINSTEIN -- 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 -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, 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 PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE,
6 AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING
7 THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK
8 ANALYSIS DATA IF 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

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

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1 PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR
2 FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE
3 EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICA-
4 BLE.

5 S 4. Paragraphs g and h of subdivision 2 of section 27-1103 of the
6 environmental conservation law, as amended by chapter 618 of the laws of
7 1987, are amended and a new paragraph i is added to read as follows:

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

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

16 I. THE FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR
17 STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE
18 LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANAL-
19 YSIS DATA IF APPLICABLE.

20 S 5. Paragraph b of subdivision 1 of section 40-0113 of the environ-
21 mental conservation law, as added by chapter 672 of the laws of 1986, is
22 amended to read as follows:

23 b. Minimum standards and schedules for design, construction, installa-
24 tion, operation, maintenance, repair, monitoring, testing and inspection
25 of facilities. Schedules shall be based on factors such as type of
26 facility, type and quantity of hazardous substances stored, facility
27 age, condition and construction type, soil conditions, location of
28 facility relative to water supplies, surrounding population, and other
29 environmental factors INCLUDING BUT NOT LIMITED TO FUTURE PHYSICAL
30 CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING,
31 BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME
32 WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF AVAILABLE.

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

36 3. THE DEPARTMENT AND THE OFFICE SHALL CONSIDER FUTURE PHYSICAL
37 CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING,
38 BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME
39 WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE.

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

44 a. The commissioner of the office of parks, recreation and historic
45 preservation may enter into an agreement for the maintenance and opera-
46 tion of open space land conservation projects in urban areas or metro-
47 politan park projects by a municipality, or a not-for-profit corporation
48 or unincorporated association which demonstrates to the commissioner's
49 satisfaction that [it] THE FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL
50 RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA
51 PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING
52 HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED AND THE
53 MUNICIPALITY, NOT-FOR-PROFIT CORPORATION OR UNINCORPORATED ASSOCIATION
54 is financially or otherwise capable of operating and maintaining the
55 project for the benefit of the public and of maximizing public access to
56 such project. Any such agreement shall contain such provisions as shall

1 be necessary to ensure that its operation and maintenance are consistent
2 with and in furtherance of this article and shall be subject to the
3 approval of the director of the budget, the comptroller and, as to form,
4 the attorney general.

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

8 3. A closure investigation report which complies with the requirements
9 of applicable regulations of the department, INCLUDING A DEMONSTRATION
10 THAT FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM
11 SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELI-
12 HOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS
13 DATA IF APPLICABLE, HAS BEEN CONSIDERED, shall have been submitted.

14 S 9. Subdivision 1 of section 17-1015 of the environmental conserva-
15 tion law, as amended by chapter 334 of the laws of 2008, is amended to
16 read as follows:

17 1. The department shall, pursuant to section 17-0303 of this article,
18 promulgate rules and regulations establishing standards for existing and
19 new petroleum bulk storage facilities which shall include, but not be
20 limited to, design, equipment requirements, construction, installation
21 and maintenance. In proposing, preparing and compiling such rules and
22 regulations, the department shall INCLUDE CONSIDERATION OF THE FUTURE
23 PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR
24 FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE
25 EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICA-
26 BLE. THE DEPARTMENT SHALL consult with the state petroleum bulk storage
27 code advisory council IN PROPOSING, PREPARING AND COMPILING SUCH RULES
28 AND REGULATIONS. In addition, the department shall consult with the
29 state fire prevention and building code council to assure that such
30 rules and regulations are consistent with the uniform fire prevention
31 and building code.

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

35 1. The secretary is authorized to provide on a competitive basis,
36 within amounts appropriated, state assistance payments to municipalities
37 toward the cost of any local waterfront revitalization program, INCLUD-
38 ING PLANNING PROJECTS TO MITIGATE FUTURE PHYSICAL CLIMATE RISKS. Eligi-
39 ble costs include planning, studies, preparation of local laws, and
40 construction projects.

41 5. The secretary shall impose such contractual requirements and condi-
42 tions upon any municipality which receives state assistance payments
43 pursuant to this article as may be necessary and appropriate to ensure
44 that a public benefit shall accrue from the use of such funds by the
45 municipality INCLUDING BUT NOT LIMITED TO, A DEMONSTRATION THAT FUTURE
46 PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR
47 FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE
48 EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICA-
49 BLE, HAS BEEN CONSIDERED.

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

53 1. The commissioner is authorized to provide on a competitive basis,
54 within amounts appropriated, state assistance payments to a municipality
55 or a not-for-profit corporation toward the cost of any coastal rehabili-
56 tation project approved by the commissioner PROVIDED THAT THE COMMIS-

SIONER DETERMINES THAT FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED.

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

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

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

S 1161. Eligible projects; priority ranking. Subject to the provisions of section thirty-two of the chapter of the laws of 1996 which added this section, in consultation with the commissioner of environmental conservation, the commissioner shall establish and maintain a list of potentially eligible projects and shall establish, pursuant to rules and regulations, a process for listing potentially eligible projects identified by potential recipients and a priority ranking system for the purpose of providing financial assistance to recipients for such projects under this title. In establishing such system, the commissioner shall take into account the public health significance of such potentially eligible projects which shall include, but need not be limited to, an assessment of (i) public health and safety; (ii) population affected; (iii) attainment of state drinking water quality goals and standards; (iv) taking into consideration the water resources management strategy pursuant to title twenty-nine of article fifteen of the environmental conservation law; (V) TAKING INTO CONSIDERATION FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE; and [(v)] (VI) compliance with state and federal law, rules and regulations.

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

S 14-a. Section 23-0305 of the environmental conservation law is amended by adding a new subdivision 8-a to read as follows:

8-A. THE DEPARTMENT SHALL INCLUDE CONSIDERATION OF FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, TO PERMITS ISSUED PURSUANT TO TITLE FIVE OF THIS ARTICLE.

S 15. Section 70-0117 of the environmental conservation law is amended by adding a new subdivision 9 to read as follows:

9. APPLICANTS FOR MAJOR PROJECTS. APPLICANTS FOR MAJOR PROJECTS FOR THE REGULATORY PROGRAMS OF PARAGRAPHS (A), (F), (H), (I), (J), (K) AND (M) OF SUBDIVISION 3 OF SECTION 70-0107 OF THIS ARTICLE SHALL BE REQUIRED TO DEMONSTRATE THAT FUTURE PHYSICAL CLIMATE RISK DUE TO SEA LEVEL RISE, AND/OR STORM SURGES AND/OR FLOODING, BASED ON AVAILABLE DATA PREDICTING THE LIKELIHOOD OF FUTURE EXTREME WEATHER EVENTS, INCLUDING HAZARD RISK ANALYSIS DATA IF APPLICABLE, HAS BEEN CONSIDERED.

1 S 16. The department of environmental conservation, in consultation
2 with the department of state, no later than January 1, 2017 shall
3 prepare guidance on the implementation of this act, including but not
4 limited to available and relevant data sets and risk analysis tools and
5 available data predicting the likelihood of future extreme weather
6 events. In addition, the department of environmental conservation and
7 the department of state shall develop additional guidance on the use of
8 resiliency measures that utilize natural resources and natural processes
9 to reduce risk.

10 S 17. The environmental conservation law is amended by adding a new
11 section 3-0319 to read as follows:

12 S 3-0319. SEA LEVEL RISE PROJECTIONS.

13 THE DEPARTMENT SHALL, NO LATER THAN JANUARY FIRST, TWO THOUSAND
14 SIXTEEN, ADOPT REGULATIONS ESTABLISHING SCIENCE-BASED STATE SEA LEVEL
15 RISE PROJECTIONS. IN ADOPTING SUCH REGULATIONS, THE DEPARTMENT SHALL
16 CONSIDER INFORMATION INCLUDING, BUT NOT LIMITED TO, REPORTS OF THE
17 INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, THE NATIONAL OCEANIC ATMO-
18 SPHERIC ADMINISTRATION CLIMATE ASSESSMENT, THE SEA LEVEL RISE TASK FORCE
19 REPORT CREATED PURSUANT TO CHAPTER SIX HUNDRED THIRTEEN OF THE LAWS OF
20 TWO THOUSAND SEVEN, PROJECTIONS PREPARED BY THE NEW YORK CITY PANEL ON
21 CLIMATE CHANGE AND ANY OTHER RELEVANT REGIONAL, STATE AND LOCAL REPORTS.
22 THE DEPARTMENT SHALL UPDATE SUCH REGULATIONS NO LESS THAN EVERY FIVE
23 YEARS.

24 S 18. Nothing in this act shall limit the existing authority of the
25 department of environmental conservation to address climate risk due to
26 sea level rise, storm surges, and flooding.

27 S 19. This act shall take effect on the one hundred eightieth day
28 after it shall have become a law and shall apply to all applications
29 and/or permits received after the adoption of guidance on the implemen-
30 tation of this act but no later than January 1, 2017.