STATE OF NEW YORK

8877

IN SENATE

August 5, 2020

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the highway law, in relation to enacting the "schools impacted by gross highways (SIGH) act"; and to amend the environmental conservation law, in relation to including certain schools in environmental impact statements for the construction of a major roadway

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "schools impacted by gross highways (SIGH) act".

§ 2. Legislative findings and intent. The purpose of this act is to address the disproportionate impact of environmental hazards on Black and Brown communities, specifically to protect children and young adults from the health risks associated with long-term exposure to pollutants which derive from living and attending school in close proximity to major roadways and highway projects. Traffic is one of the most significant sources of air pollution in both the indoor and outdoor school environment.

Pollutants directly emitted from cars, trucks, and other motor vehicles are found in higher concentrations near major roads, with the highest levels within the first five hundred (500) feet of a roadway -- children who attend schools near roadways have increased risks of exposure and the detrimental health impacts therefrom. Children who experience consistent exposure to air pollution have increased risks of asthma, chronic respiratory issues, reduced lung function, cardiovascular effects, and neurobehavioral dysfunction. These effects are long-lasting and contribute to changes in overall school performance for students.

In addition to the health effects caused by air pollution, major roadways create a considerable amount of noise pollution. Children are particularly susceptible to the effects of loud, constant noise, which comes from close proximity to highways. This often causes trouble with tasks at school -- reading attention, problem-solving and memory are most affected.

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

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Research led by the University of Minnesota and the University of Washington quantified the racial gap between those who cause air pollution and those who breathe it. Poor air quality is the largest environmental health risk in the United States. Fine particulate matter (PM), especially that which is emitted from vehicles, is especially harmful and is responsible for more than 100,000 deaths annually. However, not everyone is equally exposed to poor air quality, nor are all people equally responsible for causing it.

Researchers found that fine PM pollution is disproportionately caused by the non-Hispanic white majority, but disproportionately inhaled by Black and Hispanic minorities. A 2019 Report commissioned by the New York Civil Liberties Union found 53.1% of Black and Latinx children live within 500 feet of a major roadway. Comparatively just 4% of white students live within 250 feet from major roadways.

Black and Latinx children are already at risk for high morbidity rates and exposed to urban poverty; this combination of risks has catastrophic effects for their academic functioning. Schools that have larger percentages of low income students and students of color are exposed to more respiratory hazards from air toxins. Pastor et al. (2006) conducted a study on schools, air pollution, and environmental justice. The study showed Black zip codes are less healthy places for all children because they tend to be close to sources of pollution such as busy highways; resulting in poorer air quality.

Decades of racial segregation, redlining, and the systemic placement of pollution-emitting infrastructure in Black and Brown communities have played a role in this disparity. The American Lung Association says that one of the major reasons that respiratory illnesses are so prevalent in communities of color is the proximity of those communities to producers of hazardous air pollutants, such as major roadways.

§ 3. The highway law is amended by adding a new section 67 to read as follows:

§ 67. Prohibited construction of schools within six hundred feet of a major roadway. 1. For purposes of this section, the following terms shall have the following meanings:

(a) "asthma medication" shall mean any type of daily asthma treatment medications, including but not limited to inhalers and nebulizers;

(b) "best available control technologies" (BACT) shall mean any technology reasonably available to the entity overseeing development of a source of pollution that can be employed in order to minimize the amount of the pollutants that are produced. Such technology may be employed in the form of equipment or may be employed as an alteration to the processes of development;

(c) "entity" shall mean any company, organization, or agency interested in the construction of a school within six hundred feet of a major highway; or any company, organization, or agency interested in the construction of a major roadway within six hundred feet of a school enrolling students in grades pre-kindergarten through twelfth grade;

(d) "environmental justice" shall mean the mitigation of identifiable environmental hazards that have a disproportionate impact on a particular community, defined on the basis of race, income, national origin or color, such that all people and communities are able to enjoy equal protection from environmental hazards and equal enforcement of environmental laws and regulations;

(e) "environmental justice community" shall mean a community, typically consisting of members of marginalized racial or ethnic groups and/or low income households, that may bear or has historically borne a

disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies;

(f) "major roadway" shall mean a primary roadway of the state highway system or state thruway system that provides limited access to such roadway and has a traffic volume along such roadway of not less than thirty thousand motor vehicles per day;

(g) "near a major roadway" shall be considered as any part of the school facility which is located five hundred feet or less from a major roadway;

(h) "pollutant" or "pollutants" shall refer to the six pollutants regulated by the Clean Air Act, 42 U.S.C. Section 7401, including ground-level ozone, particulate matter, carbon monoxide, lead, sulfur dioxide, and nitrogen oxide, as well as other pollutants caused by major roadways including but not limited to, particulate matter, carbon monoxide, oxides of nitrogen, and benzene emitted into the air;

(i) "school construction project" shall mean the acquisition of land, renovation of an existing structure or structures or construction of facilities to develop and construct a school building or buildings;

(j) "school facility" shall refer to buildings, grounds, playing fields, and parking lots used in the facilitation of education for school aged children in pre-kindergarten through twelfth grade; and

(k) "school health office" shall refer to health services provided in any school building serving students in pre-kindergarten through twelfth grade, including but not limited to nurses, mental health specialists, and behavioral specialists.

2. On and after the effective date of this section, the development and construction of any new school construction project where any of the lands or grounds of such project lie within a distance of six hundred feet of a major roadway is prohibited.

3. (a) The department shall, when planning the construction of a major roadway and considering the location for such roadway, identify each school lying within the general corridor in which such roadway shall be located and shall, to the greatest extent practicable, site such highway at a distance of six hundred feet or more from each such school.

(b) If there is no available alternative for development of a major roadway, such that the roadway or a portion thereof shall be located within six hundred feet of an existing school facility or school construction project, an environmental impact statement(EIS) shall be created to fully analyze the current and historical environmental impact of the roadway on the existing school facilities or school construction projects, including an analysis of the environmental justice implications and identification of any implicated environmental justice communities. An EIS shall include:

(i) an explanation on the societal, health, economic, and environmental effects that the pupils and workers of the school facility will experience, including an analysis of historical impacts;

(ii) a statement indicating that every available alternative to building the major roadway at least six hundred feet from the existing school facilities or school construction projects was considered; and

(iii) BACTs intended to be used during the development of such major roadway.

§ 4. Paragraphs (i), (i) and (j) of subdivision 2 of section 8-0109 of the environmental conservation law, paragraph (i) as added by chapter 182 of the laws of 1990, paragraph (i) as amended by chapter 238 of the

laws of 1991, and paragraph (j) as amended by chapter 219 of the laws of 1990, are amended and a new paragraph (k) is added to read as follows:

(i) effects of proposed action on solid waste management where applicable and significant; [~~and~~]

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

(k) with respect to the construction of a major roadway, as such term is defined in paragraph (f) of subdivision one of section sixty-seven of the highway law, identify and set forth in the name of each school located within six hundred feet of the proposed corridor in which such roadway is proposed to be located; and

[~~(j)~~] **(l)** such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this chapter.

§ 5. 1. Within 90 days of the effective date of this section, the New York State Department of Transportation or designee shall begin a statewide census of public school facilities currently enrolling students that are within 600 feet of a major roadway. The New York State Department of Transportation shall make this data public, along with a plan for mitigating the impacts of roadway air pollution on each school.

2. On or after the effective date of this section, where a school facility already exists within 600 feet of a major roadway, or an entity seeks to build a major roadway within 600 feet of an existing school, The New York State Department of Transportation shall implement the following mitigation measures in consultation with the school district or designee of the impacted school:

(a) The installation of a Heating, Ventilation, and Air Conditioning (HVAC) system to improve air quality within the school facilities. Maintenance of the HVAC system shall be provided by the New York State Department of Transportation or designee and upgrades to the system may qualify as BACT. Maintenance shall be reported annually, in compliance with subdivision 5 of this section;

(b) The installation of insulation within school facility walls to mitigate noise pollution. Such installation shall take place during periods of time when students will not be occupying the school's facilities; and may

(c) Make a reasonable investment in pollutant absorbing plants for both the inside and outside of the school facilities in order to improve air quality, including but not limited to trees, plants of the palm species, and ferns;

(d) Construct indoor playground options that cater to children with severe asthma; or

(e) Capping of all soil owned by the school within 200 yards of the school's facilities.

3. The New York State Department of Transportation shall hold a 45-day period for public comments and suggestions, during which the entity may receive other suggestions for mitigation from the public, even if an environmental assessment leads to a finding of no significant impact. Each of these suggestions shall be considered and analyzed. If the suggestions are reasonable, they should be considered. Suggestions shall be reasonable if they offer low-cost mitigation measures, or measures cost equivalent to other mitigation strategies considered by the department of transportation and will not cause further harm.

4. The entities overseeing the project development shall employ Best Available Control Technologies (BACT) to minimize the amount of pollution produced during construction. BACTs shall be used for construction equipment and construction processes unless the BACT will redefine the source of the new development, it will not be required per this section. If investment in BACT equipment and processes will change the aim or purpose of the facility, investment in such BACT equipment and processes will not be mandated. If BACTs have been suggested by the community during the 45-day comment period that appear reasonable but are not selected by the developing entity to be implemented, justification as to why the measure was not taken shall be provided to the department of transportation.

5. (a) For a school located near a major roadway, data shall be annually collected on roadway pollutants by the school nurse and administration and publish such data on the school's website.

(b) The compiled data shall include:

(i) the number of students during that school year who self-report respiratory issues and/or asthma; and

(ii) identify which 2 mitigation measures from subdivision 3 of this section the school has decided to implement, including a timeline for implementation of such mitigation measures.

(c) After the first year of implementation, the data collection shall include updates on maintenance and quality assurance for the mitigation measures, including but not limited to whether the school facility currently has a ventilation system, and if so, the data collection shall also include:

(i) the name and model of ventilation system;

(ii) the date of installation;

(iii) the date of the last maintenance check; and

(iv) the dates of any upcoming maintenance checks or updates to the system.

(d) Previous year data collections shall remain available to the public on the school's website.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law.