STATE OF NEW YORK

2385

2019-2020 Regular Sessions

IN SENATE

January 24, 2019

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to establishing a permanent environmental justice advisory group and an environmental justice interagency coordinating council

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

Section 1. The environmental conservation law is amended by adding a new article 48 to read as follows:

ARTICLE 48

ENVIRONMENTAL JUSTICE

Section 48-0101. Declaration of policy.
48-0103. Definitions.
48-0105. Permanent environmental justice advisory group.
48-0107. Powers and duties.
48-0109. Agency responsibilities.
48-0111. Environmental justice interagency coordinating council.
48-0113. Separability.

§ 48-0101. Declaration of policy.

1. It is hereby declared to be the policy of this state that all people, regardless of race, color, religion, national origin or income, have a right to fair treatment and meaningful involvement in the development, implementation and enforcement of laws, regulations and policies that affect the quality of the environment.

2. It shall further be the policy of the state that no group of people, including a racial, ethnic or socioeconomic group, should be disproportionately exposed to pollution or bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial operations, or the execution of federal, state, local or tribal programs and policies.

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

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3. It shall further be the policy of the state that no group of people, including a racial, ethnic or socioeconomic group, should suffer from inequitable allocation of public resources or financial assistance for environmental protection and stewardship, including environmental remediation, pollution prevention, open space acquisition and/or other protection and stewardship activities.

4. It shall further be the policy of the state that opportunities for citizen involvement in the development, implementation and enforcement of laws, regulations and policies that affect the quality of the environment be as reflective of the diversity of interests and perspective found within the affected community as possible, including those of racial, ethnic and socioeconomic groups; that they be provided as early as possible in the decision making process prior to the selection of a preferred course of action by federal, state, local or tribal agencies; that they provide full, timely and accessible disclosure and sharing of information by the government agency or agencies involved, including the provision of technical data and the assumptions upon which any analyses are based; and that they allow all people, regardless of race, color, religion, national origin or income, the opportunity to have their views heard and considered, including opportunities for two-way dialogue.

§ 48-0103. Definitions.

As used in this article:

1. "Advisory group" means the permanent environmental justice advisory group established by section 48-0105 of this article.

2. "Agency" means any department, board, bureau, commission, division, office, council, committee or officer of the state, or any public authority or public benefit corporation at least one of whose members is appointed by the governor.

3. "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, religion, national origin or income with respect to the development, implementation and enforcement of laws, regulations and policies affecting the quality of the environment.

4. "Fair treatment" means that no group of people, including a racial, ethnic or socioeconomic group, should be disproportionately exposed to pollution or bear 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, and further means that no such group of people should suffer from inequitable allocation of public resources or financial assistance for environmental protection and stewardship, including environmental remediation, pollution prevention, open space acquisition and other protection and stewardship activities.

5. "Meaningful involvement" means the provision of opportunities for citizen participation in decision making that are as reflective of the diversity of interests and perspective found within the affected community as possible, including those of racial, ethnic and socioeconomic groups; that are provided as early as possible in the decision making process prior to the selection of a preferred course of action by a decision making agency or agencies; that provide full, timely and accessible disclosure and sharing of information by the government agency or agencies involved, including the provision of technical data and the assumptions upon which any analyses are based; and that allow all people, regardless of race, color, religion, national origin or income, the opportunity to have their views heard and considered, including opportunities for two-way dialogue.

§ 48-0105. Permanent environmental justice advisory group.

1. The permanent environmental justice advisory group is hereby established in the department to consist of seventeen members, as follows:

(a) Five members shall be representatives of community-based organizations that advise or assist minority and low-income communities on environmental matters.

(b) Four members shall be representatives of businesses that hold permits or otherwise operate subject to this chapter.

(c) Two members shall be representatives of environmental conservation offices of local government.

(d) The remaining members shall be representatives of state or national organizations promoting environmental conservation, researchers, educators and members of the general public.

(e) One of the members appointed pursuant to each of paragraphs (a), (b), (c) and (d) of this subdivision shall be appointed by the temporary president of the senate, and one of the members appointed pursuant to each of paragraphs (a), (b), (c) and (d) of this subdivision shall be appointed by the speaker of the assembly. One member shall be appointed by the minority leader of the senate and one member shall be appointed by the minority leader of the assembly. The remaining members appointed pursuant to this subdivision shall be appointed by the governor. The replacement of any member shall be in accordance with the provisions contained in this section for appointment of members.

2. (a) Each member of the advisory group shall serve for a term of four years or until his or her successor is appointed. A member appointed to fill a vacancy shall serve the remainder of the term of the member he or she is appointed to succeed. The members of the advisory group shall receive no compensation for their services but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties hereunder.

(b) The advisory group shall select a chair from among the members. The advisory group shall meet as frequently as necessary, but not less than three times per year. Such meetings shall be held at such locations as the advisory group may determine. All such meetings shall be subject to the open meetings law. At least one meeting annually shall be held jointly with the environmental justice interagency coordinating council established pursuant to section 48-0111 of this article. Each member of the advisory group shall be entitled to designate in writing a representative to attend meetings in his or her place and to vote or otherwise act on his or her behalf in his or her absence.

(c) Staff services for the advisory group shall be performed, insofar as practicable, by personnel of the department. The advisory group may request and shall receive from any state agency such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein.

§ 48-0107. Powers and duties.

The advisory group shall have the power and duty to:

1. adopt a model environmental justice policy applicable generally to state agencies that engage in activities or operations that may have a significant effect on the environment, including but not limited to through the adoption of rules and regulations, issuance of permits, acquisition or maintenance of property, or approval, funding or undertaking of projects. Such policy shall be adopted not later than one year after the effective date of this article. The advisory group shall develop the model policy in consultation with representatives of minority and low-income communities, regulated parties, the environmental

justice interagency coordinating council and other state agencies and the public and shall hold a public hearing thereon in each judicial department. Notice of such hearings and notice of the adoption of the model policy shall be published in the state register;

2. advise state agencies of their responsibilities under section 48-0109 of this article;

3. monitor compliance with the environmental justice policies of state agencies, make recommendations to the governor, legislature and state agencies on measures to improve such policies, and report not less than annually on the extent to which agencies are in compliance with the requirements of this article and other state laws and Federal laws and regulations relating to environmental justice;

4. provide comments on any proposed rule, regulation or policy of a state or federal agency related to environmental justice;

5. accept, as agent of the state, any grant including federal grants or any gift for the purposes of this article. Any monies so received may be expended by the advisory group to effectuate any purpose of this article, subject to the applicable provisions of the state finance law;

6. conduct public hearings with respect to any matter within the scope of its functions, powers and duties;

7. adopt, amend and repeal by-laws governing its organization and operation and such rules and regulations, consistent with this article, as it deems necessary to administer this article; and

8. do any and all things necessary or convenient to carry out its functions, powers and duties under this article.

§ 48-0109. Agency responsibilities.

1. Each state agency that engages in activities or operations that have a significant effect on the environment, including but not limited to through the adoption of rules and regulations, issuance of permits, acquisition or maintenance of property, or approval, funding or undertaking of projects, shall be guided in its decision making on such activities or operations by an environmental justice policy. Each such agency shall adopt rules and regulations setting forth its environmental justice policy not later than six months after the adoption of a model environmental justice policy pursuant to section 48-0107 of this article. The agency thereafter shall comply in all respects with the environmental justice policy set forth in its rules and regulations; provided, however, that in the absence of such rules and regulations, the agency shall comply in all respects with the model environmental justice policy.

2. Each state agency subject to the requirements of subdivision one of this section shall:

(a) appoint a staff member of the agency to serve as environmental justice coordinator, to provide information to the public on the policies, activities and operations of the agency related to environmental justice and to act as liaison to the environmental justice advisory group;

(b) notify the advisory group of the appointment of an environmental justice coordinator; and

(c) develop an environmental justice training plan which includes the provision of workshops and written materials to appropriate staff regarding environmental justice and implementation of the agency's environmental justice policy.

3. This section shall apply to any state agency notwithstanding any exemption such agency may have from other laws, including but not limited to any exemption from article eight of this chapter.

§ 48-0111. Environmental justice interagency coordinating council.

1. There is hereby established an environmental justice interagency coordinating council which shall have the power and duty to:

(a) coordinate the activities of agencies required to adopt an environmental justice policy pursuant to section 48-0109 of this article in development and implementation of such policies;

(b) make annual reports to the governor and the legislature concerning the implementation and effectiveness of agency environmental justice policies, including the adequacy of funding available and difficulties encountered; and

(c) serve as a clearinghouse for state agencies and the public for information on environmental justice policies, environmental justice coordinators in state agencies and related activities of state agencies, and maintain information services, including but not limited to an Internet site and a toll-free telephone number, to inform the public on environmental justice.

2. The environmental justice coordinating council shall include the commissioner; the commissioner of the department of economic development; the commissioner of the department of transportation; the president of the environmental facilities corporation; the president of the New York State energy research and development authority; the chairman of the public service commission; the chairman of the power authority of the State of New York; the executive director of the New York State office of science, technology and academic research; or their designees; and every staff member chosen by an agency to serve as environmental justice coordinator pursuant to section 48-0109 of this article. The council shall consult with the permanent environmental justice advisory group; representatives of minority and low-income communities, including community-based organizations that advise or assist minority and low-income communities on environmental matters; representatives of businesses that hold permits or otherwise operate subject to this chapter; representatives of local governments; representatives of local, state, or national organizations promoting environmental conservation; researchers and educators; and any other parties the council deems appropriate.

3. The coordinating council shall meet at least quarterly and shall designate one of its members to serve as chairperson and one of its members to serve as secretary for the development and dissemination of minutes and reports. All such meetings shall be subject to the open meetings law. At least one meeting annually shall be held jointly with the permanent environmental justice advisory group established pursuant to section 48-0105 of this article. Each member shall be entitled to designate in writing a representative to attend meetings in his or her place and to vote or otherwise act on his or her behalf in his or her absence.

§ 48-0113. Separability.

If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.