STATE OF NEW YORK

5233

2021-2022 Regular Sessions

IN ASSEMBLY

February 12, 2021

Introduced by M. of A. BARCLAY, BRABENEC, BYRNE, WALSH, B. MILLER, MANKTELOW, ASHBY, DiPIETRO, GALLAHAN, JENSEN, J. M. GIGLIO, LEMONDES, DeSTEFANO, GOODELL, HAWLEY, LAWLER, SIMPSON -- Multi-Sponsored by -- M. of A. BROWN -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the parks, recreation and historic preservation law, and the state finance law, in relation to environmental assessment of historic preservation plan

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

Section 1. Subdivision 6 of section 8-0111 of the environmental conservation law, as added by chapter 612 of the laws of 1975, is amended to read as follows:

6. Lead Agency. When an action is to be carried out or approved by two or more agencies, the **department shall be designated as lead agency and** determination of whether the action may have a significant effect on the environment shall be made by the [~~lead agency~~] **department** having principal responsibility for carrying out or approving such action and [~~such agency~~] shall prepare[~~, or cause to be prepared by contract or otherwise,~~] the environmental impact statement for the action if such a statement is required by this article. [~~In the event that there is a question as to which is the lead agency, any agency may submit the question to the commissioner and the commissioner shall designate the lead agency, giving due consideration to the capacity of such agency to fulfill adequately the requirements of this article.~~]

§ 2. Paragraph (a) of subdivision 3 of section 70-0109 of the environmental conservation law is amended by adding a new subparagraph (iii) to read as follows:

(iii) In the case of an application for a state pollutant discharge elimination system (SPDES) permit issued in lieu of a national pollutant discharge elimination system permit, such decision shall be mailed on or

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

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before thirty calendar days after the department mails written notice to the applicant that the application is complete or on or before thirty calendar days after the application is deemed complete pursuant to the provisions of this article.

§ 3. Subdivision 5 of section 8-0109 of the environmental conservation law, as amended by chapter 252 of the laws of 1977, and the opening paragraph as amended by chapter 749 of the laws of 1991, is amended to read as follows:

5. After the filing of a draft environmental impact statement the agency shall determine whether or not to conduct a public hearing on the environmental impact of the proposed action. If the agency determines to hold such a hearing, it shall commence the hearing within [~~sixty~~] **thirty** days of the filing and unless the proposed action is withdrawn from consideration shall prepare the environmental impact statement within [~~forty-five~~] **thirty** days after the close of the hearing, except as otherwise provided. The need for such a hearing shall be determined in accordance with procedures adopted by the agency pursuant to section 8-0113 of this article. If no hearing is held, the agency shall prepare and make available the environmental impact statement within [~~sixty~~] **thirty** days after the filing of the draft, except as otherwise provided.

Notwithstanding the specified time periods established by this article, an agency shall vary the times so established herein for preparation, review and public hearings to coordinate the environmental review process with other procedures relating to review and approval of an action. An application for a permit or authorization for an action upon which a draft environmental impact statement is determined to be required shall not be complete until such draft statement has been filed and accepted by the agency as satisfactory with respect to scope, content and adequacy for purposes of [~~paragraph~~] **subdivision** four of this section. Commencing upon such acceptance, the environmental impact statement process shall run concurrently with other procedures relating to the review and approval of the action so long as reasonable time is provided for preparation, review and public hearings with respect to the draft environmental impact statement.

§ 4. Subdivisions 3 and 4 of section 14.07 of the parks, recreation and historic preservation law, as added by chapter 354 of the laws of 1980, are amended to read as follows:

3. **The commissioner shall determine which properties within the state are eligible for inclusion on the state register. Eligibility shall be determined by whether the edge of a property is located within a mile of any property designated as a state historic place or national historic place, or a property is located in an area where cultural or historical activities are likely to have occurred based on archaeological precedent or historical evidence. The commissioner shall update the list of eligible properties for the state register every three years. The initial list shall be published in draft form and made available for public comment with a public comment period of no less than sixty days, and be the subject of no less than at least three public hearings throughout the state. Subsequent additions to the register of any properties shall be the subject of at least one public hearing and a public comment period of no less than thirty days. The commissioner shall publish a map of all properties included on the list of eligible properties for the state register on its website, and provide a copy of such map to all state agencies, public authorities and municipal governments.**

4. Statewide comprehensive historic preservation plan. The commissioner, in consultation with the board, shall prepare a statewide comprehen-

sive historic preservation plan. This plan may include proposals for the preservation and use of registered property. The annual state plan submitted to the Heritage Conservation and Recreation Service in the United States Department of Interior may substantially be used in preparing this plan. The agency preservation officers shall cooperate and municipal officials may cooperate with the commissioner in the promulgation of plans and proposals in relation to historic places within their respective jurisdictions. The commissioner shall update the plan annually. The commissioner shall annually notify every agency preservation officer and municipal official of the availability of the state plan or the annual update and a copy of the annual plan or update shall be sent to every agency preservation officer and municipal official requesting such a plan or update.

[~~4.~~] 5. From funds available from the federal government for historic preservation purposes which may be used for reimbursement as hereinafter provided, and funds appropriated by the state for the purpose of assisting local and regional preservation programs, or for the purpose of archaeological survey as may be required by the commissioner pursuant to permit requirements under article eight or seventeen of the environmental conservation law, including funds for other such survey and planning, the commissioner may provide reimbursement to municipalities and private organizations which undertake surveys and studies of historic places and cultural resources, prepare local historic preservation reports or otherwise assist the commissioner in carrying out his historic preservation responsibilities.

§ 5. The state finance law is amended by adding a new section 99-ii to read as follows:

§ 99-ii. The New York state archaeological survey assistance fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of environmental conservation a fund for the reimbursement of costs associated with an archaeological survey, when a municipality or private organization is directly required by the commissioner of the office of parks, recreation and historic preservation, the commissioner of the department of environmental conservation, or any related state agency head in the state to undertake the survey. The administration of such fund shall be the sole responsibility of the commissioner of the office of parks, recreation and historic preservation.

2. The fund will consist of appropriated federal funds for the purpose of archaeological surveying or appropriated state funds for the purpose of archaeological surveying.

3. In developing the administration of the fund, the commissioner of the office of parks, recreation and historic preservation, in conjunction with the commissioner of the department of environmental conservation, shall develop guidelines for the reimbursement of costs associated with an archaeological survey undertaken by a municipality or a private organization. Such guidelines shall, at a minimum, provide that:

(a) if an archaeological survey does not yield any historical or cultural artifacts, the costs of such survey shall be fully reimbursed by the fund;

(b) if an archaeological survey does yield historical or cultural artifacts and the cost of such survey is under one hundred thousand dollars, at least half the cost of such survey shall be reimbursed by the fund;

(c) if an archaeological survey does yield historical or cultural artifacts and the cost of such survey is over one hundred thousand

dollars, the commissioner of the office of parks, recreation and historic preservation shall determine an appropriate reimbursement level, provided that such reimbursement by the fund shall be no less than twenty-five percent.

4. Within ninety days of the effective date of this section, the commissioner of the office of parks, recreation and historic preservation shall establish rules and regulations for administering the fund, including, but not limited to, an application process, a timeline for reimbursing municipalities or private organizations that are directly required to undertake an archaeological survey, and any other rules or regulations that the commissioner deems necessary.

§ 6. This act shall take effect immediately.