STATE OF NEW YORK

6530

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

Introduced by M. of A. BARNWELL -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to requiring applicants for major projects located near environmental justice communities to submit an enhanced public participation plan

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 58 to read as follows:

ARTICLE 58

ENVIRONMENTAL JUSTICE COMMUNITIES

Section 58-0101. Declaration of legislative findings and intent.
58-0103. Definitions.
58-0105. Enhanced public participation plan.
58-0107. Environmental assessment.
58-0109. Applicant certification.
58-0111. Prohibitions.

§ 58-0101. Declaration of legislative findings and intent.

1. The legislature finds and declares that it is the policy of the state of New York to promote environmental justice and incorporate measures for achieving environmental justice into the state's programs, policies, regulations, legislative proposals and activities. The legislature further finds and declares that economically distressed and minority communities in the state have long borne a disproportionate and inequitable pollution burden, caused by historic siting of sources of pollution in those communities.

2. Many economically distressed and minority communities in the state suffer from elevated rates of respiratory illnesses, including asthma, bronchitis, and emphysema, and other adverse health effects associated with the long-term and chronic exposure to multiple sources of pollution

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

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resulting from the disproportionate and inequitable siting of pollution sources in those communities.

3. The intersection of high asthma rates, environmental pollution, and environmental justice communities is prevalent in New York City's "Asthma Alley," which comprises parts of Queens, the Bronx, and Brooklyn. In Astoria, Queens, two generating stations provide nearly half of New York City's electricity. This area experiences asthma rates greater than the borough average.

4. The disproportionate and inequitable siting of pollution sources in economically distressed and minority communities is in large part the result of inadequate notice to those communities of the proposed siting of those sources and inadequate opportunities for community input and participation during the environmental permit process.

5. The legislature hereby finds it in the interest of public health and safety to require major projects located in or adjacent to environmental justice communities to undergo review and to comply with enhanced notice and public participation requirements. The legislature further finds that enhanced notice and public participation requirements for environmental justice communities is consistent with the purposes, intent and requirements of the climate leadership and community protection act. It is the intent of the legislature that economically distressed and minority communities be provided with enhanced notice of proposed projects and enhanced opportunities for input and participation during the environmental permit process so that those communities have a greater voice in the siting of new or expanded sources of pollution.

§ 58-0103. Definitions.

1. "Adjacent to" shall mean within a radius of one mile from the property boundary where a proposed action is located or will occur.

2. "Environmental justice community" shall mean an economically distressed or minority community bearing a disproportionate or inequitable pollution burden and includes, but is not limited to, environmental justice areas identified by the department.

3. "Economically distressed area" shall mean an area characterized by a poverty rate of at least twenty percent or an unemployment rate of at least one hundred twenty-five percent of the statewide unemployment rate.

4. "Ethnic group" shall mean those groups identified in the definition of minority group member in subdivision eight of section three hundred ten of the executive law.

5. "Major project" shall mean a project which is not a minor project as defined in subdivision three of section 70-0105 of this chapter.

6. "Minority community" shall mean any census tract, census block, or census block group that includes twenty-five percent or more of any ethnic group.

§ 58-0105. Enhanced public participation plan.

1. The applicant for a major project located in or adjacent to an environmental justice community shall, as part of its application to the department for a permit or approval, submit a written enhanced public participation plan to the department for review and approval. The department shall provide for a public comment period on the enhanced public participation plan of not less than thirty days. The department may, after conclusion of the public comment period, require the applicant to revise the enhanced public participation plan to address issues raised during the public comment period or to ensure that the plan complies with the requirements of this section.

2. The enhanced public participation plan shall, at a minimum, include the following:

(a) A description of the proposed project, including potential environmental impacts of the proposed project;

(b) A description of the environmental justice community in which the proposed project is located or which is located adjacent to the proposed project, including a map or maps of the project and environmental justice community;

(c) The location of sensitive receptors in the environmental justice community, including hospitals, schools, elder care facilities, day care facilities, parks, and other sensitive areas identified by the community, including a map showing the location of such receptors;

(d) A list, developed in consultation with the environmental justice community, of representative stakeholders in the community, including but not limited to residents, local elected officials, and community-based organizations;

(e) A description of the manner in which public notices and other written information about the proposed project will be posted and distributed in the community and updated on a regular basis and in a timely manner;

(f) A schedule for holding public meetings in the environmental justice community for the purpose of providing information about the proposed project, answering questions about the project, and receiving input from the community about the project;

(g) The location in the environmental justice community of easily accessible document repositories where written information about the project will be made available, and establishment of a document website where such information will be posted;

(h) An implementation schedule for all measures set forth in the plan; and

(i) Provision for submission by the applicant of quarterly progress reports to the department and the environmental justice community concerning implementation of the plan.

3. Written information provided to the environmental justice community concerning the proposed project shall be presented in an easy-to-read, understandable format using plain language. Upon request by the community, written information shall be translated into languages other than English for comprehension by non-English speaking stakeholders.

4. At least three public information meetings shall be held during the permit review process at times and locations convenient for the stakeholders identified in the enhanced public participation plan. Written notice of public information meetings shall be provided at least two weeks prior to the scheduled date of the meeting to each stakeholder identified in the enhanced public participation plan and shall be conspicuously posted at the document repositories and on the document website.

5. The first meeting shall be held subsequent to submission by the applicant of the permit application and enhanced public participation plan but prior to the department's issuance of a notice of complete application; the second meeting shall be held after the department's issuance of a notice of complete application but prior to the department's final decision on the application; and the third meeting shall be held during the public comment period on the draft environmental impact statement for the project. Representatives of the applicant and the department shall attend each public information meeting. The department may, in consultation with the affected environmental justice community,

require additional public information meetings regardless of whether such additional meetings are included in the enhanced public participation plan.

6. Public information meetings shall provide an opportunity for meaningful public participation and input by residents of the environmental justice community and each meeting shall provide an opportunity for members of the community to make statements, raise issues, and ask the applicant and the department questions about the proposed project. After each public information meeting, the department shall consider the statements provided and issues raised by members of the community and may require the applicant to provide additional information to address issues raised, require revisions to the application, or impose permit conditions necessary to avoid or mitigate adverse project impacts.

7. The document repository shall contain copies of: (a) the enhanced public participation plan approved by the department; (b) all written submissions by the applicant to the department; and (c) all written communications between the applicant and the department concerning the proposed project.

§ 58-0107. Environmental assessment.

An applicant subject to the requirements of this section shall submit to the department, as part of its application, a completed full environmental assessment form in compliance with article eight of this chapter.

§ 58-0109. Applicant certification.

1. Upon completion of the enhanced public participation plan, the applicant shall submit written certification to the department that it has complied with the plan, including a final report summarizing issues raised by the environmental justice community and how those issues were resolved or addressed. The certification shall be signed by the applicant, or the applicant's agent, and submitted to the department prior to a final decision on the application.

2. The department shall provide a public comment period of not less than thirty days on the applicant's certification and final report. Following close of the public comment period, the department shall issue a written determination whether the applicant has fully and completely implemented the enhanced public participation plan.

§ 58-0111. Prohibitions.

1. The department shall not issue a notice of complete application for a proposed project subject to the requirements of this article unless the applicant has submitted an enhanced public participation plan and the department has approved the plan.

2. The department shall not accept as complete a draft environmental impact statement prepared pursuant to article eight of this chapter for a project subject to the requirements of this article unless the applicant has an enhanced public participation plan approved by the department and has, as of the date of submission of the draft environmental impact statement, complied with the schedule for implementing the plan.

3. The department shall not issue a permit or approval for a proposed project subject to the requirements of this article unless the applicant has submitted the certification and final report required by subdivision one of section 58-0109 and the department has issued the written determination required by subdivision two of section 58-0109.

§ 2. This act shall take effect immediately.