

STATE OF NEW YORK

6530--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 19, 2021

Introduced by M. of A. BARNWELL, THIELE, LAVINE, SIMON, EPSTEIN, L. ROSENTHAL, BURGOS, REYES, MAMDANI, DICKENS, ZINERMAN, FERNANDEZ, HEVESI, GONZALEZ-ROJAS, SEPTIMO, COLTON, BURDICK, GIBBS -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to requiring applicants for major projects located near disadvantaged 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:

1 Section 1. The environmental conservation law is amended by adding a
2 new article 59 to read as follows:

ARTICLE 59

DISADVANTAGED COMMUNITIES

3
4
5 Section 59-0101. Declaration of legislative findings and intent.

6 59-0103. Definitions.

7 59-0105. Enhanced public participation plan.

8 59-0107. Environmental assessment.

9 59-0109. Applicant certification.

10 59-0111. Prohibitions.

11 § 59-0101. Declaration of legislative findings and intent.

12 1. The legislature finds and declares that it is the policy of the
13 state of New York to promote environmental justice and incorporate meas-
14 ures for achieving environmental justice into the state's programs,
15 policies, regulations, legislative proposals and activities. The legis-
16 lature further finds and declares that economically distressed and
17 minority communities in the state have long borne a disproportionate and
18 inequitable pollution burden, caused by historic siting of sources of
19 pollution in those communities.

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

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1 2. Many economically distressed and minority communities in the state
2 suffer from elevated rates of respiratory illnesses, including asthma,
3 bronchitis, and emphysema, and other adverse health effects associated
4 with the long-term and chronic exposure to multiple sources of pollution
5 resulting from the disproportionate and inequitable siting of pollution
6 sources in those communities.

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

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

18 5. The legislature hereby finds it in the interest of public health
19 and safety to require major projects located in or adjacent to disadvan-
20 tagged communities to undergo review and to comply with enhanced notice
21 and public participation requirements. The legislature further finds
22 that enhanced notice and public participation requirements for disadvan-
23 tagged communities is consistent with the purposes, intent and require-
24 ments of the climate leadership and community protection act. It is the
25 intent of the legislature that economically distressed and minority
26 communities be provided with enhanced notice of proposed projects and
27 enhanced opportunities for input and participation during the environ-
28 mental permit process so that those communities have a greater voice in
29 the siting of new or expanded sources of pollution.

30 § 59-0103. Definitions.

31 1. "Adjacent to" shall mean within a radius of one mile from the prop-
32 erty.

33 2. "Disadvantaged community" shall have the same meaning as in subdivi-
34 vision five of section 75-0101 of this chapter.

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

37 § 59-0105. Enhanced public participation plan.

38 1. The applicant for a major project located in or adjacent to an a
39 disadvantaged community shall, as part of its application to the depart-
40 ment for a permit or approval, submit a written enhanced public partic-
41 ipation plan to the department for review and approval. The department
42 shall provide for a public comment period on the enhanced public partic-
43 ipation plan of not less than thirty days. The department may, after
44 conclusion of the public comment period, require the applicant to revise
45 the enhanced public participation plan to address issues raised during
46 the public comment period or to ensure that the plan complies with the
47 requirements of this section.

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

50 (a) A description of the proposed project, including potential envi-
51 ronmental impacts of the proposed project;

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

55 (c) The location of sensitive receptors in the disadvantaged communi-
56 ty, including hospitals, schools, elder care facilities, day care facil-

1 ities, parks, and other sensitive areas identified by the community,
2 including a map showing the location of such receptors;

3 (d) A list, developed in consultation with the disadvantaged communi-
4 ty, of representative stakeholders in the community, including but not
5 limited to residents, local elected officials, and community-based
6 organizations;

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

11 (f) A schedule for holding public meetings in the disadvantaged commu-
12 nity for the purpose of providing information about the proposed
13 project, answering questions about the project, and receiving input from
14 the community about the project;

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

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

21 (i) Provision for submission by the applicant of quarterly progress
22 reports to the department and the disadvantaged community concerning
23 implementation of the plan.

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

29 4. At least three public information meetings shall be held during the
30 permit review process at times and locations convenient for the stake-
31 holders identified in the enhanced public participation plan. Written
32 notice of public information meetings shall be provided at least two
33 weeks prior to the scheduled date of the meeting to each stakeholder
34 identified in the enhanced public participation plan and shall be
35 conspicuously posted at the document repositories and on the document
36 website.

37 5. The first meeting shall be held subsequent to submission by the
38 applicant of the permit application and enhanced public participation
39 plan but prior to the department's issuance of a notice of complete
40 application; the second meeting shall be held after the department's
41 issuance of a notice of complete application but prior to the depart-
42 ment's final decision on the application; and the third meeting shall be
43 held during the public comment period on the draft environmental impact
44 statement for the project. Representatives of the applicant and the
45 department shall attend each public information meeting. The department
46 may, in consultation with the affected disadvantaged community, require
47 additional public information meetings regardless of whether such addi-
48 tional meetings are included in the enhanced public participation plan.

49 6. Public information meetings shall provide an opportunity for mean-
50 ingful public participation and input by residents of the disadvantaged
51 community and each meeting shall provide an opportunity for members of
52 the community to make statements, raise issues, and ask the applicant
53 and the department questions about the proposed project. After each
54 public information meeting, the department shall consider the statements
55 provided and issues raised by members of the community and may require
56 the applicant to provide additional information to address issues

1 raised, require revisions to the application, or impose permit condi-
2 tions necessary to avoid or mitigate adverse project impacts.

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

8 § 59-0107. Environmental assessment.

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

12 § 59-0109. Applicant certification.

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

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

25 § 59-0111. Prohibitions.

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

30 2. The department shall not accept as complete a draft environmental
31 impact statement prepared pursuant to article eight of this chapter for
32 a project subject to the requirements of this article unless the appli-
33 cant has an enhanced public participation plan approved by the depart-
34 ment and has, as of the date of submission of the draft environmental
35 impact statement, complied with the schedule for implementing the plan.

36 3. The department shall not issue a permit or approval for a proposed
37 project subject to the requirements of this article unless the applicant
38 has submitted the certification and final report required by subdivision
39 one of section 59-0109 of this article and the department has issued the
40 written determination required by subdivision two of section 59-0109 of
41 this article.

42 § 2. This act shall take effect immediately.