

# STATE OF NEW YORK

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3211--B

2021-2022 Regular Sessions

## IN SENATE

January 28, 2021

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Introduced by Sens. RAMOS, BIAGGI, BRISPORT, HOYLMAN, LIU, MAY, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- 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

#### Section 59-0101. Declaration of legislative findings and intent.

##### 59-0103. Definitions.

##### 59-0105. Enhanced public participation plan.

##### 59-0107. Environmental assessment.

##### 59-0109. Applicant certification.

##### 59-0111. Prohibitions.

#### § 59-0101. 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

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

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1 inequitable pollution burden, caused by historic siting of sources of  
2 pollution in those communities.

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

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

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

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

32 § 59-0103. Definitions.

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

35 2. "Disadvantaged community" shall have the same meaning as in subdi-  
36 vision five of section 75-0101 of this chapter.

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

39 § 59-0105. Enhanced public participation plan.

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

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

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

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

1 (c) The location of sensitive receptors in the disadvantaged communi-  
2 ty, including hospitals, schools, elder care facilities, day care facil-  
3 ities, parks, and other sensitive areas identified by the community,  
4 including a map showing the location of such receptors;

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

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

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

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

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

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

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

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

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

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

1 provided and issues raised by members of the community and may require  
2 the applicant to provide additional information to address issues  
3 raised, require revisions to the application, or impose permit condi-  
4 tions necessary to avoid or mitigate adverse project impacts.

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

10 § 59-0107. Environmental assessment.

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

14 § 59-0109. Applicant certification.

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

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

27 § 59-0111. Prohibitions.

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

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

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

44 § 2. This act shall take effect immediately.