

# STATE OF NEW YORK

4378--A

Cal. No. 341

2021-2022 Regular Sessions

## IN SENATE

February 4, 2021

Introduced by Sens. BRISPORT, HINCHEY, SALAZAR -- 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

AN ACT to amend the environmental conservation law, in relation to establishing the "pollution justice act of 2021" and implementing a plan to replace peaker plants with renewable energy systems

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

1 Section 1. This act shall be known and may be cited as the "pollution  
2 justice act of 2021".

3 § 2. Article 19 of the environmental conservation law is amended by  
4 adding a new title 13 to read as follows:

5 TITLE 13

6 PEAKER PLANTS

7 Section 19-1301. Statement of findings.

8 19-1303. Definitions.

9 19-1305. Mandatory replacement and compliance plan.

10 19-1307. Extensions for cause.

11 19-1309. Prohibitions.

12 19-1311. Exemptions.

13 § 19-1301. Statement of findings.

14 1. Electric generating units that generally operate during periods of  
15 peak electricity demand are known as peaker plants. Many peaker plants  
16 in the state are older fossil fuel-fired units that emit greenhouse  
17 gases and a variety of other harmful air pollutants including sulfur  
18 oxides, nitrogen oxides, particulates and mercury.

19 2. A substantial number of peaker plants are located in or adjacent to  
20 environmental justice communities in the city of New York and Long  
21 Island that already bear disproportionate pollution burdens due to a

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

LBD04461-02-1

1 history of siting pollution sources in those communities. More than one  
2 million New Yorkers live within one mile of a peaker plant.

3 3. Pollutants from peaker plants contribute to significant public  
4 health problems. According to the New York city department of health and  
5 mental hygiene's air pollution and the health of New Yorkers report:  
6 "each year, PM2.5 pollution in (New York City) causes more than 3,000  
7 deaths, 2,000 hospital admissions for lung and heart conditions, and  
8 approximately 6,000 emergency department visits for asthma in children  
9 and adults." According to the report, each year exposures to ozone  
10 concentrations above background levels cause an estimated "400 premature  
11 deaths, 850 hospitalizations for asthma and 4,500 emergency department  
12 visits for asthma."

13 4. Peaker plants often operate during summer months when air pollution  
14 levels are highest and their emissions add to existing pollution burdens  
15 in environmental justice communities and contribute to adverse health  
16 effects in those communities from air pollution.

17 5. The owners and operators of peaker plants have received billions of  
18 dollars in capacity payments from ratepayers over the last decade to  
19 subsidize operation of their plants, even though the plants primarily  
20 operate during peak load periods.

21 6. Fossil fuel-burning peaker plants can be replaced with renewable  
22 energy systems that will eliminate or significantly reduce air pollution  
23 impacts to environmental justice communities from peaker plant oper-  
24 ations.

25 7. Replacement of fossil fuel-burning peaker plants with renewable  
26 energy systems is in the public interest, will save millions of dollars  
27 in environmental and human health-related damages, will promote environ-  
28 mental justice and will assist in meeting the greenhouse gas emission  
29 reduction and energy storage goals of the climate leadership and commu-  
30 nity protection act.

31 § 19-1303. Definitions.

32 1. "Adjacent to" shall mean within a radius of one mile from the plant  
33 property boundary.

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

38 3. "Environmental justice community" means an economically distressed  
39 area or minority community and includes, but is not limited to, environ-  
40 mental justice areas identified by the department.

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

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

47 6. "Operating permit" shall have the meaning set forth in subdivision  
48 eighteen of section 19-0107 of this article.

49 7. "Renewable energy systems" shall have the meaning set forth in  
50 section sixty-six-p of the public service law and may also include firm  
51 zero emission resources such as long-duration energy storage.

52 8. "Replace" or "replacement" means the construction and operation of  
53 a renewable energy system, battery or energy storage, or transmission  
54 and distribution infrastructure that enables the provision of the equiv-  
55 alent maximum annual power output achieved by the replaceable peaker

1 plant during any single year during the ten years preceding the  
2 submission of an application to renew an operating permit.

3 9. "Replaceable peaker plant" means a major electric generating facil-  
4 ity as defined in paragraph b of subdivision one of section 19-0312 of  
5 this article that burns coal, oil, diesel or natural gas and was opera-  
6 tional and generated electricity less than fifteen percent of the year  
7 during at least two years between two thousand ten through two thousand  
8 nineteen and that is located in or adjacent to an environmental justice  
9 community.

10 § 19-1305. Mandatory replacement and compliance plan.

11 1. The owner or operator of a replaceable peaker plant shall submit to  
12 the department as part of an application to renew an operating permit a  
13 mandatory replacement and compliance plan that shall include, at a mini-  
14 mum, the following:

15 a. The number of days and hours such plant operated during each of the  
16 previous ten years;

17 b. The annual power output of such plant for each of the previous ten  
18 years;

19 c. The fuel or fuels utilized by such plant to generate power;

20 d. A proposed strategy to replace the plant with renewable energy  
21 systems or battery storage or a combination thereof. The strategy shall,  
22 at a minimum, set forth the type or types of renewable energy systems  
23 and battery storage to be utilized, the proposed location or locations  
24 of such renewable energy systems and battery storage, and the electric  
25 generating capacity of such renewable energy systems and battery stor-  
26 age;

27 e. A timetable for implementation of the proposed replacement strategy  
28 that shall not exceed five years from the date of renewal of the operat-  
29 ing permit and that shall ensure that the renewable energy systems and  
30 battery storage are fully operational, and the operations of the peaker  
31 plant can be completely replaced, on or before five years from the date  
32 of renewal of the operating permit; and

33 f. A demonstration of how the proposed renewable energy systems and  
34 battery storage strategy and timetable for implementation will comply  
35 with the renewable energy goals set forth in section sixty-six-p of the  
36 public service law.

37 2. The department shall provide public notice of the mandatory  
38 replacement and compliance plan and an opportunity for public comment on  
39 the plan of not less than sixty days. The department shall hold at least  
40 two public hearings on the plan in the affected environmental justice  
41 community or communities, with such public hearings offering video  
42 participation and accessibility.

43 3. After review and consideration of public comments, the department  
44 shall approve, approve with modifications or disapprove the plan.

45 4. Upon approval of the mandatory replacement and compliance plan, the  
46 owner or operator of the replaceable peaker plant shall implement the  
47 plan in accordance with the schedule set forth in the plan and provide  
48 to the department an annual compliance and progress report beginning one  
49 year after the department approves the plan. The department shall make  
50 each annual compliance and progress report available on its website.

51 5. If the department disapproves a proposed plan, the department shall  
52 inform the owner or operator of the replaceable peaker plant in writing  
53 of the reasons for such disapproval and shall identify the portions of  
54 the disapproved plan that need to be modified. The owner or operator  
55 shall submit a modified plan within sixty days of receiving the depart-  
56 ment's written notice of disapproval. The modified plan shall be subject

1 to the notice and public comment and hearing procedures set forth in  
2 this section.

3 § 19-1307. Extensions for cause.

4 1. The owner or operator of a replaceable peaker plant may apply to  
5 the department for a single five-year extension of the deadline for  
6 replacement set forth in section 19-1305 of this article.

7 2. The department shall provide public notice of the application for  
8 any such extension, and an opportunity for public comment on such appli-  
9 cation, of not less than sixty days. The department shall hold at least  
10 two public hearings on the application in the affected environmental  
11 justice community or communities, with such public hearings offering  
12 video participation and accessibility. Any such public hearings shall  
13 also explore the option of transitioning the replaceable peaker plant  
14 into the ownership or control of the New York power authority, an entity  
15 that currently owns and operates several peaker plants in the state, to  
16 manage the transition to renewable energy and battery storage systems.

17 3. After review and consideration of public comments, the department  
18 shall approve, approve with modifications, or disapprove the application  
19 for a single five-year extension.

20 4. The department may only grant an application for an extension  
21 request upon a showing by the applicant, by clear and convincing  
22 evidence, that (a) replacement of the plant with renewable energy  
23 systems and battery storage by the deadline is not feasible, (b) the  
24 department of public service, in consultation with the New York inde-  
25 pendent system operator, has made a written determination that extending  
26 the deadline for the plant is necessary to maintain reliability of the  
27 electric grid, and (c) the continued operation of the peaker plant would  
28 not result in adverse health impacts for the impacted environmental  
29 justice communities.

30 § 19-1309. Prohibitions.

31 1. Except as provided in section 19-1307 of this title, no person  
32 shall operate a replaceable peaker plant that is not in compliance with  
33 the requirements of this title and the department shall not issue an  
34 operating permit or renew an operating permit for a replaceable peaker  
35 plant that does not have an approved mandatory replacement and compli-  
36 ance plan.

37 2. The department shall not issue an operating permit or renew an  
38 operating permit for a replaceable peaker plant that has not completed  
39 implementation of a mandatory replacement and compliance plan by the  
40 deadline set forth in the plan.

41 § 19-1311. Exemptions.

42 1. A replaceable peaker plant is not subject to the requirements of  
43 this title if the owner or operator of the plant has submitted written  
44 notification to the department of public service that the plant will be  
45 permanently retired on or before the first day of January, two thousand  
46 twenty-six.

47 2. The department shall, effective on or before the first day of Janu-  
48 ary, two thousand twenty-six, revoke the operating permit of a replacea-  
49 ble peaker plant for which written notification has been provided to the  
50 department of public service pursuant to subdivision one of this  
51 section.

52 § 3. This act shall take effect immediately.