

# STATE OF NEW YORK

4378--B

2021-2022 Regular Sessions

## IN SENATE

February 4, 2021

Introduced by Sens. BRISPORT, BIAGGI, HINCHEY, HOYLMAN, JACKSON, KRUEGER, MAY, RAMOS, RIVERA, 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 -- recommended 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 establishing the "pollution justice act of 2022" 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 2022".

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

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

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1 gases and a variety of other harmful air pollutants including sulfur  
2 oxides, nitrogen oxides, particulates and mercury.

3 2. A substantial number of peaker plants are located in or adjacent to  
4 disadvantaged communities in the city of New York and Long Island that  
5 already bear disproportionate pollution burdens due to a history of  
6 siting pollution sources in those communities. More than one million New  
7 Yorkers live within one mile of a peaker plant.

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

18 4. Peaker plants often operate during summer months when air pollution  
19 levels are highest and their emissions add to existing pollution burdens  
20 in disadvantaged communities and contribute to adverse health effects in  
21 those communities from air pollution.

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

26 6. Fossil fuel-burning peaker plants can be replaced with renewable  
27 energy systems that will eliminate or significantly reduce air pollution  
28 impacts to disadvantaged communities from peaker plant operations.

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

35 § 19-1303. Definitions.

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

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

40 3. "Operating permit" shall have the meaning set forth in subdivision  
41 eighteen of section 19-0107 of this article.

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

45 5. "Replace" or "replacement" means the construction and operation of  
46 a renewable energy system, battery or energy storage, or transmission  
47 and distribution infrastructure that enables the provision of the equiv-  
48 alent maximum annual power output achieved by the replaceable peaker  
49 plant during any single year during the ten years preceding the  
50 submission of an application to renew an operating permit.

51 6. "Replaceable peaker plant" means a major electric generating facil-  
52 ity as defined in paragraph b of subdivision one of section 19-0312 of  
53 this article that burns coal, oil, diesel or natural gas and was opera-  
54 tional and generated electricity less than fifteen percent of the year  
55 during at least two years between two thousand ten through two thousand

1 nineteen and that is located in or adjacent to a disadvantaged communi-  
2 ty.

3 § 19-1305. Mandatory replacement and compliance plan.

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

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

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

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

13 d. A proposed strategy to replace the plant with renewable energy  
14 systems or battery storage or a combination thereof. The strategy shall,  
15 at a minimum, set forth the type or types of renewable energy systems  
16 and battery storage to be utilized, the proposed location or locations  
17 of such renewable energy systems and battery storage, and the electric  
18 generating capacity of such renewable energy systems and battery stor-  
19 age;

20 e. A timetable for implementation of the proposed replacement strategy  
21 that shall not exceed five years from the date of renewal of the operat-  
22 ing permit and that shall ensure that the renewable energy systems and  
23 battery storage are fully operational, and the operations of the peaker  
24 plant can be completely replaced, on or before five years from the date  
25 of renewal of the operating permit; and

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

30 2. The department shall provide public notice of the mandatory  
31 replacement and compliance plan and an opportunity for public comment on  
32 the plan of not less than sixty days. The department shall hold at least  
33 two public hearings on the plan in the affected disadvantaged community  
34 or communities, with such public hearings offering video participation  
35 and accessibility.

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

38 4. Upon approval of the mandatory replacement and compliance plan, the  
39 owner or operator of the replaceable peaker plant shall implement the  
40 plan in accordance with the schedule set forth in the plan and provide  
41 to the department an annual compliance and progress report beginning one  
42 year after the department approves the plan. The department shall make  
43 each annual compliance and progress report available on its website.

44 5. If the department disapproves a proposed plan, the department shall  
45 inform the owner or operator of the replaceable peaker plant in writing  
46 of the reasons for such disapproval and shall identify the portions of  
47 the disapproved plan that need to be modified. The owner or operator  
48 shall submit a modified plan within sixty days of receiving the depart-  
49 ment's written notice of disapproval. The modified plan shall be subject  
50 to the notice and public comment and hearing procedures set forth in  
51 this section.

52 § 19-1307. Extensions for cause.

53 1. The owner or operator of a replaceable peaker plant may apply to  
54 the department for a single five-year extension of the deadline for  
55 replacement set forth in section 19-1305 of this title.

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

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

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

24 § 19-1309. Prohibitions.

25 1. Except as provided in section 19-1307 of this title, no person  
26 shall operate a replaceable peaker plant that is not in compliance with  
27 the requirements of this title and the department shall not issue an  
28 operating permit or renew an operating permit for a replaceable peaker  
29 plant that does not have an approved mandatory replacement and compli-  
30 ance plan.

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

35 § 19-1311. Exemptions.

36 1. A replaceable peaker plant is not subject to the requirements of  
37 this title if the owner or operator of the plant has submitted written  
38 notification to the department of public service that the plant will be  
39 permanently retired on or before the first day of January, two thousand  
40 twenty-seven.

41 2. The department shall, effective on or before the first day of Janu-  
42 ary, two thousand twenty-seven, revoke the operating permit of a  
43 replaceable peaker plant for which written notification has been  
44 provided to the department of public service pursuant to subdivision one  
45 of this section.

46 § 3. This act shall take effect immediately.