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IN ASSEMBLY

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Introduced by M. of A. PRETLOW, LAVINE, THIELE, ANDERSON, REYES, SIMON, L. ROSENTHAL, GOTTFRIED, GLICK, SEPTIMO, NIOU, ZINERMAN -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 the location of environmental facilities

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

1 Section 1. Legislative intent. The legislature finds and declares that
2 each community in the state should equitably share the responsibilities,
3 burdens, and benefits of managing and solving the state's environmental
4 problems and the facilities necessary to accomplish such ends. The
5 legislature further declares that there has been an inequitable pattern
6 in the siting of environmental facilities in minority and economically
7 distressed communities, which have borne a disproportionate and inequi-
8 table share of such facilities. Consistent with its commitment to
9 providing equal justice for its citizens, the state has a responsibility
10 to establish requirements for the consideration of such decisions by
11 state and local governments in order to insure equality of treatment for
12 all communities.

13 § 2. Section 8-0105 of the environmental conservation law is amended
14 by adding five new subdivisions 9, 10, 11, 12, and 13 to read as
15 follows:

16 9. "Environmental justice community" shall mean an economically
17 distressed or minority community bearing a disproportionate or inequita-
18 ble pollution burden and includes, but is not limited to, environmental
19 justice areas identified by the department.

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

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

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

8 12. "Ethnic group" shall mean those groups identified in the defi-
9 inition of minority group member in subdivision eight of section three
10 hundred ten of the executive law.

11 13. "Existing burden report" shall mean the report required by subdi-
12 vision four of section 8-0109 of this article describing the existing
13 pollution burden in an environmental justice community.

14 § 3. Subdivision 2 of section 8-0109 of the environmental conservation
15 law, as amended by chapter 219 of the laws of 1990, paragraph (h) as
16 amended by chapter 519 of the laws of 1992, paragraph (i) as added by
17 chapter 182 of the laws of 1990, and paragraph (i) as amended by chapter
18 238 of the laws of 1991, is amended to read as follows:

19 2. All agencies (or applicant as hereinafter provided) shall prepare,
20 or cause to be prepared by contract or otherwise an environmental impact
21 statement on any action they propose or approve which may have a signif-
22 icant effect on the environment. Such a statement shall include a
23 detailed statement setting forth the following:

24 (a) a description of the proposed action and its environmental
25 setting;

26 (b) the environmental impact of the proposed action including short-
27 term and long-term effects;

28 (c) any adverse environmental effects which cannot be avoided should
29 the proposal be implemented;

30 (d) alternatives to the proposed action;

31 (e) any irreversible and irretrievable commitments of resources which
32 would be involved in the proposed action should it be implemented;

33 (f) mitigation measures proposed to minimize the environmental impact;

34 (g) the growth-inducing aspects of the proposed action, where applica-
35 ble and significant;

36 (h) effects of the proposed action on the use and conservation of
37 energy resources, where applicable and significant, provided that in the
38 case of an electric generating facility, the statement shall include a
39 demonstration that the facility will satisfy electric generating capaci-
40 ty needs or other electric systems needs in a manner reasonably consist-
41 ent with the most recent state energy plan and the climate leadership
42 and community protection act;

43 (i) effects of proposed action on solid waste management where appli-
44 cable and significant; [~~and~~

45 ~~(i)] (j) effects of any proposed action on, and its consistency with,
46 the comprehensive management plan of the special groundwater protection
47 area program, as implemented by the commissioner pursuant to article
48 fifty-five of this chapter; [~~and~~~~

49 ~~(j)] (k) effects of any proposed action on environmental justice
50 communities, including whether the action may cause or contribute to,
51 either directly or indirectly, a disproportionate or inequitable or both
52 disproportionate and inequitable pollution burden on an environmental
53 justice community; and~~

54 (l) such other information consistent with the purposes of this arti-
55 cle as may be prescribed in guidelines issued by the commissioner pursu-
56 ant to section 8-0113 of this chapter.

1 Such a statement shall also include copies or a summary of the
2 substantive comments received by the agency pursuant to subdivision four
3 of this section, and the agency response to such comments. The purpose
4 of an environmental impact statement is to provide detailed information
5 about the effect which a proposed action is likely to have on the envi-
6 ronment, to list ways in which any adverse effects of such an action
7 might be minimized, and to suggest alternatives to such an action so as
8 to form the basis for a decision whether or not to undertake or approve
9 such action. Such statement should be clearly written in a concise
10 manner capable of being read and understood by the public, should deal
11 with the specific significant environmental impacts which can be reason-
12 ably anticipated and should not contain more detail than is appropriate
13 considering the nature and magnitude of the proposed action and the
14 significance of its potential impacts.

15 § 4. The opening paragraph of subdivision 4 of section 8-0109 of the
16 environmental conservation law, as amended by chapter 219 of the laws of
17 1990, is amended to read as follows:

18 As early as possible in the formulation of a proposal for an action,
19 the responsible agency shall make an initial determination as to whether
20 or not an environmental impact statement need be prepared for the
21 action. In making such determination for any proposed action that is not
22 a minor project as defined in subdivision three of section 70-0105 of
23 this chapter and that may directly or indirectly affect an environmental
24 justice community, the responsible agency shall prepare or cause to be
25 prepared an existing burden report and shall consider such report in
26 determining whether such action may cause or contribute to, either
27 directly or indirectly, a disproportionate or inequitable or both
28 disproportionate and inequitable pollution burden on an environmental
29 justice community. The existing burden report shall include baseline
30 monitoring data collected in the affected environmental justice communi-
31 ty within two years of the application for a permit or approval; shall
32 identify each existing pollution source or categories of sources affect-
33 ing the community and the potential routes of human exposure to
34 pollution from that source or categories of sources; the potential or
35 documented cumulative human health effects of such pollution; and the
36 potential or projected contribution of the proposed action to existing
37 pollution burdens in the community and potential health effects of such
38 contribution, taking into account existing pollution burdens. When an
39 action is to be carried out or approved by two or more agencies, such
40 determination shall be made as early as possible after the designation
41 of the lead agency.

42 § 5. Subdivision 8 of section 8-0109 of the environmental conservation
43 law, as amended by chapter 252 of the laws of 1977, is amended and a new
44 subdivision 10 is added to read as follows:

45 8. When an agency decides to carry out or approve an action which has
46 been the subject of an environmental impact statement, it shall make an
47 explicit finding that the requirements of this section have been met and
48 that consistent with social, economic and other essential consider-
49 ations, to the maximum extent practicable, adverse environmental effects
50 revealed in the environmental impact statement process will be minimized
51 or avoided. No action shall be carried out or approved if it may cause
52 or contribute to, either directly or indirectly, a disproportionate or
53 inequitable or both disproportionate and inequitable pollution burden on
54 an environmental justice community.

55 10. The construction or expansion of any solid waste facility, land-
56 fill or transfer facility in an economically distressed area or minority

1 community shall be presumed to directly or indirectly have an adverse
2 effect on such community and an existing burden report shall be prepared
3 and evaluated prior to taking any action. Transfer facilities where
4 waste is only transferred from vehicle to vehicle shall not be exempt
5 from the requirements of this subdivision.

6 § 6. Subparagraph (i) of paragraph (c) of subdivision 2 of section
7 8-0113 of the environmental conservation law, as added by chapter 612 of
8 the laws of the 1975, is amended to read as follows:

9 (i) Actions or classes of actions that are likely to require prepara-
10 tion of environmental impact statements, including actions which may
11 cause or contribute to, either directly or indirectly, a dispropor-
12 tionate or inequitable or both disproportionate and inequitable
13 pollution burden on an environmental justice community;

14 § 7. Subdivision 2 of section 8-0113 of the environmental conservation
15 law is amended by adding a new paragraph (m) to read as follows:

16 (m) The form and content of an existing burden report which shall, at
17 the minimum, include baseline monitoring data collected in the affected
18 environmental justice community within two years of the application for
19 a permit or approval and shall identify: (i) each existing pollution
20 source or categories of sources affecting an environmental justice
21 community and the potential routes of human exposure to pollution from
22 that source or categories of sources; (ii) ambient concentration of
23 regulated air pollutants and regulated or unregulated toxic air pollu-
24 tants; (iii) traffic volume; (iv) noise and odor levels; (v) exposure or
25 potential exposure to lead paint; (vi) exposure or potential exposure to
26 contaminated drinking water supplies; (vii) proximity to solid or
27 hazardous waste management facilities, wastewater treatment plants,
28 hazardous waste sites, recycling facilities, waste transfer facilities
29 and petroleum or chemical manufacturing, storage, treatment or disposal
30 facilities; (viii) the potential or documented cumulative human health
31 effects of the foregoing pollution sources; (ix) the potential or
32 projected contribution of the proposed action to existing pollution
33 burdens in the community and potential health effects of such contrib-
34 ution, taking into account existing pollution burdens.

35 § 8. This act shall take effect on the thirtieth day after it shall
36 have become a law; provided that section three of this act shall not
37 apply to any person who has received an initial determination pursuant
38 to subdivision 4 of section 8-0109 of the environmental conservation law
39 prior to such date and provided further that section six of this act
40 shall not apply to any determination of significance made prior to such
41 date.