

STATE OF NEW YORK

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IN ASSEMBLY

January 14, 2021

Introduced by M. of A. PRETLOW, LAVINE, THIELE, ANDERSON, REYES, SIMON, L. ROSENTHAL, GOTTFRIED, GLICK, SEPTIMO, NIOU, ZINERMAN, TAYLOR, RAMOS, HUNTER, STIRPE, BURGOS, HEVESI, SOLAGES -- 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 -- again reported from said committee with amendments, 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 six new subdivisions 9, 10, 11, 12, 13 and 14 to read as
15 follows:

16 9. "Environmental justice community" shall mean an economically
17 distressed or minority community bearing a disproportionate or inequita-

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

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1 ble pollution burden and includes, but is not limited to, environmental
 2 justice areas identified by the department.

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

7 11. "Disadvantaged community" shall have the same meaning as subdivi-
 8 sion five of section 75-0101 of this chapter.

9 12. "Minority community" shall mean any census tract, census block, or
 10 census block group that includes twenty-five percent or more of any
 11 ethnic group.

12 13. "Ethnic group" shall mean those groups identified in the defi-
 13 nition of minority group member in subdivision eight of section three
 14 hundred ten of the executive law.

15 14. "Existing burden report" shall mean the report required by subdi-
 16 vision four of section 8-0109 of this article describing the existing
 17 pollution burden in an environmental justice community or disadvantaged
 18 community.

19 § 3. Subdivision 2 of section 8-0109 of the environmental conservation
 20 law, as amended by chapter 219 of the laws of 1990, paragraph (h) as
 21 amended by chapter 519 of the laws of 1992, paragraph (i) as added by
 22 chapter 182 of the laws of 1990, and paragraph (i) as amended by chapter
 23 238 of the laws of 1991, is amended to read as follows:

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

29 (a) a description of the proposed action and its environmental
 30 setting;

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

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

35 (d) alternatives to the proposed action;

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

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

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

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

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

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

54 ~~(j)] (k) effects of any proposed action on environmental justice~~
 55 ~~communities or disadvantaged communities, including whether the action~~
 56 ~~may cause or contribute to, either directly or indirectly, a dispropor-~~

1 tionate or inequitable or both disproportionate and inequitable
2 pollution burden on an environmental justice community or a disadvan-
3 taged community; and

4 (1) such other information consistent with the purposes of this arti-
5 cle as may be prescribed in guidelines issued by the commissioner pursu-
6 ant to section 8-0113 of this chapter.

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

21 § 4. The opening paragraph of subdivision 4 of section 8-0109 of the
22 environmental conservation law, as amended by chapter 219 of the laws of
23 1990, is amended to read as follows:

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

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

52 8. When an agency decides to carry out or approve an action which has
53 been the subject of an environmental impact statement, it shall make an
54 explicit finding that the requirements of this section have been met and
55 that consistent with social, economic and other essential consider-
56 ations, to the maximum extent practicable, adverse environmental effects

1 revealed in the environmental impact statement process will be minimized
2 or avoided. No action shall be carried out or approved if it may cause
3 or contribute to, either directly or indirectly, a disproportionate or
4 inequitable or both disproportionate and inequitable pollution burden on
5 an environmental justice community or a disadvantaged community.

6 10. The construction or expansion of any solid waste facility, land-
7 fill or transfer facility in an economically distressed area, minority
8 community or disadvantaged community shall be presumed to directly or
9 indirectly have an adverse effect on such community and an existing
10 burden report shall be prepared and evaluated prior to taking any
11 action. Transfer facilities where waste is only transferred from vehicle
12 to vehicle shall not be exempt from the requirements of this subdivi-
13 sion.

14 § 6. Subparagraph (i) of paragraph (c) of subdivision 2 of section
15 8-0113 of the environmental conservation law, as added by chapter 612 of
16 the laws of 1975, is amended to read as follows:

17 (i) Actions or classes of actions that are likely to require prepara-
18 tion of environmental impact statements, including actions which may
19 cause or contribute to, either directly or indirectly, a dispropor-
20 tionate or inequitable or both disproportionate and inequitable
21 pollution burden on an environmental justice community or a disadvan-
22 tagged community;

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

25 (m) The form and content of an existing burden report which shall, at
26 the minimum, include baseline monitoring data collected in the affected
27 environmental justice community or disadvantaged community within two
28 years of the application for a permit or approval and shall identify:
29 (i) each existing pollution source or categories of sources affecting an
30 environmental justice community or a disadvantaged community and the
31 potential routes of human exposure to pollution from that source or
32 categories of sources; (ii) ambient concentration of regulated air
33 pollutants and regulated or unregulated toxic air pollutants; (iii)
34 traffic volume; (iv) noise and odor levels; (v) exposure or potential
35 exposure to lead paint; (vi) exposure or potential exposure to contam-
36 inated drinking water supplies; (vii) proximity to solid or hazardous
37 waste management facilities, wastewater treatment plants, hazardous
38 waste sites, recycling facilities, waste transfer facilities and petro-
39 leum or chemical manufacturing, storage, treatment or disposal facili-
40 ties; (viii) the potential or documented cumulative human health effects
41 of the foregoing pollution sources; (ix) the potential or projected
42 contribution of the proposed action to existing pollution burdens in the
43 community and potential health effects of such contribution, taking into
44 account existing pollution burdens.

45 § 8. This act shall take effect on the thirtieth day after it shall
46 have become a law; provided that section three of this act shall not
47 apply to any person who has received an initial determination pursuant
48 to subdivision 4 of section 8-0109 of the environmental conservation law
49 prior to such date and provided further that section six of this act
50 shall not apply to any determination of significance made prior to such
51 date.