

# STATE OF NEW YORK

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5735--A

2021-2022 Regular Sessions

## IN ASSEMBLY

February 24, 2021

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Introduced by M. of A. JOYNER -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the highway law, in relation to enacting the "schools impacted by gross highways (SIGH) act"; and to amend the environmental conservation law and the education law, in relation to including certain schools in environmental impact statements for the construction of a major roadway

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 "schools  
2 impacted by gross highways (SIGH) act".

3 § 2. Legislative findings and intent. The purpose of this act is to  
4 address the disproportionate impact of environmental hazards on Black  
5 and Brown communities, specifically to protect children and young adults  
6 from the health risks associated with long-term exposure to pollutants  
7 which derive from living and attending school in close proximity to  
8 major roadways and highway projects. Traffic is one of the most signif-  
9 icant sources of air pollution in both the indoor and outdoor school  
10 environment.

11 Pollutants directly emitted from cars, trucks, and other motor vehi-  
12 cles are found in higher concentrations near major roads, with the high-  
13 est levels within the first five hundred (500) feet of a roadway --  
14 children who attend schools near roadways have increased risks of expo-  
15 sure and the detrimental health impacts therefrom. Children who experi-  
16 ence consistent exposure to air pollution have increased risks of asth-  
17 ma, chronic respiratory issues, reduced lung function, cardiovascular  
18 effects, and neurobehavioral dysfunction. These effects are long-lasting  
19 and contribute to changes in overall school performance for students.

20 In addition to the health effects caused by air pollution, major road-  
21 ways create a considerable amount of noise pollution. Children are

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

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1 particularly susceptible to the effects of loud, constant noise, which  
2 comes from close proximity to highways. This often causes trouble with  
3 tasks at school -- reading attention, problem-solving and memory are  
4 most affected.

5 Research led by the University of Minnesota and the University of  
6 Washington quantified the racial gap between those who cause air  
7 pollution and those who breathe it. Poor air quality is the largest  
8 environmental health risk in the United States. Fine particulate matter  
9 (PM), especially that which is emitted from vehicles, is especially  
10 harmful and is responsible for more than 100,000 deaths annually.  
11 However, not everyone is equally exposed to poor air quality, nor are  
12 all people equally responsible for causing it.

13 Researchers found that fine PM pollution is disproportionately caused  
14 by the non-Hispanic white majority, but disproportionately inhaled by  
15 Black and Hispanic minorities. A 2019 Report commissioned by the New  
16 York Civil Liberties Union found 53.1% of Black and Latinx children live  
17 within 500 feet of a major roadway.

18 Black and Latinx children are already at risk for high morbidity rates  
19 and exposed to urban poverty; this combination of risks has catastrophic  
20 effects for their academic functioning. Schools that have larger  
21 percentages of low income students and students of color are exposed to  
22 more respiratory hazards from air toxins. Pastor et al. (2006) conducted  
23 a study on schools, air pollution, and environmental justice. The study  
24 showed Black zip codes are less healthy places for all children because  
25 they tend to be close to sources of pollution such as busy highways;  
26 resulting in poorer air quality.

27 Decades of racial segregation, redlining, and the systemic placement  
28 of pollution-emitting infrastructure in Black and Brown communities have  
29 played a role in this disparity. The American Lung Association says that  
30 one of the major reasons that respiratory illnesses are so prevalent in  
31 communities of color is the proximity of those communities to producers  
32 of hazardous air pollutants, such as major roadways.

33 § 3. The highway law is amended by adding a new section 332 to read as  
34 follows:

35 § 332. Prohibited construction of schools within six hundred feet of a  
36 major roadway. 1. For purposes of this section, the following terms  
37 shall have the following meanings:

38 (a) "best available control technologies" (BACT) shall have the same  
39 meaning as defined by 6 NYCRR 200.1, and where applicable shall include  
40 without limitation the installation of a heating, ventilation, and air  
41 conditioning (HVAC) system to improve air quality within the school  
42 buildings, the installation of insulation within the school facility  
43 walls to mitigate noise pollution, pollutant absorbing plants, indoor  
44 playground options that cater to children with severe asthma, and  
45 capping of all soil owned by a school within six hundred feet of school  
46 facilities;

47 (b) "environmental justice community" shall have the same meaning as  
48 defined by subdivision nine of section 8-0105 of the environmental  
49 conservation law;

50 (c) "major roadway" shall mean a controlled access primary roadway of  
51 the state highway system or state thruway system that has a traffic  
52 volume along such roadway of not less than thirty thousand motor vehi-  
53 cles per day;

54 (d) "pollutant" or "pollutants" shall refer to the six pollutants  
55 regulated by the Clean Air Act, 42 U.S.C. Section 7401, including  
56 ground-level ozone, particulate matter, carbon monoxide, lead, sulfur

dioxide, and nitrogen oxide, as well as other pollutants caused by major roadways including but not limited to, particulate matter, carbon monoxide, oxides of nitrogen, and benzene emitted into the air;

(e) "school construction project" shall mean the acquisition of land, expansion of an existing structure or structures or construction of facilities to develop and construct a school building or buildings;

(f) "school facility" shall refer to buildings, grounds, playing fields, and parking lots used in the facilitation of education for school aged children in pre-kindergarten through twelfth grade; and

(g) "air quality index" shall refer to the air quality classifications and standards established by the department of environmental conservation in 6 NYCRR parts 256 and 257.

2. (a) Beginning five years after the effective date of this section, the development and construction of any new school construction project or school facility where any of the lands or grounds of such project are within six hundred feet of a major roadway shall be prohibited unless the department, and agency preparing the environmental impact statement in accordance with article eight of the environmental conservation law, have both determined that:

(i) the pollutants or pollution sources around such project do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school or school facilities;

(ii) the pollutants or pollution sources around such project will not negatively impact the air quality index in and around school facilities relative to baseline index levels measured before commencement of construction as measured in the existing burden report defined in section 8-0105 of the environmental conservation law; and

(iii) neither short-term or long-term exposure to the levels of pollutants or pollution sources around such project poses significant health risks to students.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, if the governing body for the school or school facility finds that neither subparagraphs (ii) or (iii) of paragraph (a) of this subdivision can be met, and the governing body is unable to locate an alternative site due to a severe shortage of sites that otherwise meet the requirements of this section, provided that an alternative site analysis determining the lack of alternative sites shall be made available to the public no less than sixty days prior to such determination.

3. (a) The department shall, when planning the construction of a major roadway and considering the location for such roadway or reviewing any major roadway project over which the department of transportation has oversight, identify each school facility located within six hundred feet of the planned roadway and shall, to the greatest extent practicable, site such roadway no less than six hundred feet from each such school facility.

(b) If there is no available alternative for development of a major roadway, such that the roadway or a portion thereof shall be located within six hundred feet of an existing school facility or school construction project, the department shall, in consultation with the affected school district or districts, incorporate best available control technologies into its development and construction plans to ensure that the air quality index in and around school facilities is lower during and after construction and for no fewer than three years after project completion than baseline index levels before commencement of construction as measured in the existing burden report defined in

section 8-0105 of the environmental conservation law. Nothing in this section shall be construed to require the affected school district or districts to expend monies on such best available control technologies that exceed the amount of state and federal funding available for the major roadway project.

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

9. "Environmental justice community" means an economically distressed or minority community bearing a disproportionate or inequitable pollution burden and shall include, but not be limited to, environmental justice areas identified by the department.

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

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

12. "Ethnic group" shall mean a group identified in paragraph (a), (b), (c), or (d) of subdivision eight of section three hundred ten of the executive law.

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

§ 5. Paragraphs (i), (i) and (j) of subdivision 2 of section 8-0109 of the environmental conservation law, paragraph (i) as added by chapter 182 of the laws of 1990, paragraph (i) as amended by chapter 238 of the laws of 1991, and paragraph (j) as amended by chapter 219 of the laws of 1990, are amended and a new paragraph (k) is added to read as follows:

(i) effects of proposed action on solid waste management where applicable and significant; [~~and~~]

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

(k) effects of the construction of a major roadway, as such term is defined in section three hundred thirty-two of the highway law, identify and set forth the name of each school located within six hundred feet of the bounds of the proposed action, and consider whether the action may cause or contribute to, either directly or indirectly, a disproportionate or inequitable or both disproportionate and inequitable pollution burden on an environmental justice community; and

[~~(j)~~] (l) such other information consistent with the purposes of this article as may be prescribed in guidelines issued by the commissioner pursuant to section 8-0113 of this chapter.

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

As early as possible in the formulation of a proposal for an action, the responsible agency shall make an initial determination as to whether or not an environmental impact statement need be prepared for the action. In making such determination for any proposed construction of a major roadway action, as defined in section three hundred thirty-two of the highway law, that is not a minor project and that may directly or indirectly affect an environmental justice community school facility,

1 the responsible agency shall prepare or cause to be prepared an existing  
2 burden report and shall consider such report in determining whether such  
3 action may cause or contribute to, either directly or indirectly, a  
4 disproportionate or inequitable, or both disproportionate and inequita-  
5 ble pollution burden on an environmental justice community school facil-  
6 ity. The existing burden report shall include baseline monitoring data  
7 collected in the affected environmental justice community within two  
8 years of the application for a permit or approval; shall identify each  
9 existing pollution source or categories of sources affecting the commu-  
10 nity and the potential routes of human exposure to pollution from such  
11 source or categories of sources; the potential or documented cumulative  
12 human health effects of such pollution; and the potential or projected  
13 contribution of the proposed action to existing pollution burdens in the  
14 community and potential health effects of such contribution, taking into  
15 account existing pollution burdens. When an action is to be carried out  
16 or approved by two or more agencies, such determination shall be made as  
17 early as possible after the designation of the lead agency.

18 § 7. Subdivision 8 of section 8-0109 of the environmental conservation  
19 law, as amended by chapter 252 of the laws of 1977, is amended to read  
20 as follows:

21 8. When an agency decides to carry out or approve an action which has  
22 been the subject of an environmental impact statement, it shall make an  
23 explicit finding that the requirements of this section have been met and  
24 that consistent with social, economic and other essential consider-  
25 ations, to the maximum extent practicable, adverse environmental effects  
26 revealed in the environmental impact statement process will be minimized  
27 or avoided. No action related to construction of a school facility, as  
28 defined in section three hundred thirty-two of the highway law, shall be  
29 carried out or approved if it may cause or contribute to, either direct-  
30 ly or indirectly, a disproportionate or inequitable, or both dispropor-  
31 tionate and inequitable pollution burden on a school facility located in  
32 an environmental justice community.

33 § 8. Subparagraph (i) of paragraph (c) of subdivision 2 of section  
34 8-0113 of the environmental conservation law, as added by chapter 612 of  
35 the laws of 1975, is amended to read as follows:

36 (i) Actions or classes of actions that are likely to require prepara-  
37 tion of environmental impact statements, including actions which may  
38 cause or contribute to, either directly or indirectly, a dispropor-  
39 tionate or inequitable or both disproportionate and inequitable  
40 pollution burden on a school facility in an environmental justice commu-  
41 nity;

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

44 (m) The form and content of an existing burden report which shall, at  
45 the minimum, include baseline monitoring data collected in the affected  
46 environmental justice community school facility within two years of the  
47 application for a permit or approval and shall identify: (i) each exist-  
48 ing pollution source or categories of sources affecting the school  
49 facility in an environmental justice community and the potential routes  
50 of human exposure to pollution from that source or categories of sourc-  
51 es; (ii) ambient concentration of regulated air pollutants and regulated  
52 or unregulated toxic air pollutants; (iii) traffic volume; (iv) noise  
53 and odor levels; (v) exposure or potential exposure to lead paint; (vi)  
54 exposure or potential exposure to contaminated drinking water supplies;  
55 (vii) proximity to solid or hazardous waste management facilities,  
56 wastewater treatment plants, hazardous waste sites, and petroleum or



chemical manufacturing, storage, treatment or disposal facilities; (viii) the potential or documented cumulative human health effects of the foregoing pollution sources; and (ix) the potential or projected contribution of the proposed action to existing pollution burdens on the school facility and potential health effects of such contribution, taking into account existing pollution burdens.

§ 10. Section 408 of the education law is amended by adding a new subdivision 7 as follows:

7. Beginning upon the effective date of this subdivision, no school building shall be erected, purchased, or enlarged within a distance of six hundred feet of a major roadway, as defined in section three hundred thirty-two of the highway law, nor shall the advertisement for bids for the execution of the plans and specifications for such school buildings be placed in any school district until the plans and specifications shall have been submitted to the commissioner and her approval endorsed thereon. The commissioner shall not approve such plans and specifications unless the department of transportation and the agency preparing the environmental impact statement in accordance with article eight of the environmental conservation law have determined that the pollution sources around such project do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at or otherwise use the school building or the exceptions set forth in section three hundred thirty-two of the highway law would otherwise apply.

§ 11. 1. (a) Within 90 days of the effective date of this section, the New York State Department of Transportation or designee shall begin a statewide census of public school facilities currently enrolling students that are within 600 feet of a major roadway. The New York State Department of Transportation shall make this data available annually on its public-facing website, indicating each school by its name and zip code, as well as reporting the average air quality index for the year as compiled by the Department of Environmental Conservation and asthma outcomes as compiled by the Department of Health.

(b) The Department of Environmental Conservation may request and shall receive from any department, division, board, bureau, commission or other agency of the state or any state public authority such assistance, information and data as will enable it to properly carry out its powers and duties under this section.

2. (a) After the first year of implementation, upon determination of sufficient available resources, school districts with a school located near a major roadway as defined in section 332 of the highway law shall report updates on maintenance and quality assurance for air quality mitigation measures, including but not limited to whether school facilities currently have ventilation systems, including but not limited to:

- (i) the name and model of ventilation system;
- (ii) the date of installation;
- (iii) the date of the last maintenance check; and
- (iv) the dates of any upcoming maintenance checks or updates to the system.

(b) Previous year data collections shall remain available to the public on the school's website.

§ 12. This act shall take effect on the first of April next succeeding the date upon which it shall have become a law; provided, however, that section ten of this act shall take effect five years after it shall have become law; and provided further that school construction projects with requests for qualifications issued prior to such effective date shall be

1 permitted to continue notwithstanding the provisions of this act. Effec-  
2 tive immediately, the addition, amendment and/or repeal of any rule or  
3 regulation necessary for the implementation of this act on its effective  
4 date are authorized to be made and completed on or before such effective  
5 date.