STATE OF NEW YORK

1031--C

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. STEWART-COUSINS, ADDABBO, BIAGGI, HOYLMAN, LIU, MANNION, PARKER, RAMOS, SALAZAR, SANDERS, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted 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 the location of environmental facilities

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

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

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

9. "Environmental justice community" shall mean an economically 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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ble pollution burden and includes, but is not 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. "Disadvantaged community" shall have the same meaning as subdivision five of section 75-0101 of this chapter.

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

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

14. "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 or disadvantaged community.

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

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

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

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

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

(d) alternatives to the proposed action;

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

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

(g) the growth-inducing aspects of the proposed action, where applicable and significant;

(h) effects of the proposed action on the use and conservation of energy resources, where applicable and significant, provided that in the case of an electric generating facility, the statement shall include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan and the climate leadership and community protection act;

(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~~

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

tionate or inequitable or both disproportionate and inequitable pollution burden on an environmental justice community or a disadvantaged community; and

(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.

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

§ 4. 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 action that is not a minor project as defined in subdivision three of section 70-0105 of this chapter and that may directly or indirectly affect an environmental justice community or a disadvantaged community, the responsible agency shall prepare or cause to be prepared an existing burden report and shall consider such report in determining whether such 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 or a disadvantaged community. The existing burden report shall include baseline monitoring data collected in the affected environmental justice community or disadvantaged community within two years of the application for a permit or approval; shall identify each existing pollution source or categories of sources affecting the community and the potential routes of human exposure to pollution from that source or categories of sources; the potential or documented cumulative human health effects of such pollution; and the potential or projected contribution of the proposed action to existing pollution burdens in the community and potential health effects of such contribution, taking into account existing pollution burdens. When an action is to be carried out or approved by two or more agencies, such determination shall be made as early as possible after the designation of the lead agency.

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

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

revealed in the environmental impact statement process will be minimized or avoided. **No action shall be carried out or approved if it 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 or a disadvantaged community.**

10. The construction or expansion of any solid waste facility, landfill or transfer facility in an economically distressed area, minority community or disadvantaged community shall be presumed to directly or indirectly have an adverse effect on such community and an existing burden report shall be prepared and evaluated prior to taking any action. Transfer facilities where waste is only transferred from vehicle to vehicle shall not be exempt from the requirements of this subdivision.

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

(i) Actions or classes of actions that are likely to require preparation of environmental impact statements**, including actions which 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 or a disadvantaged community**;

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

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

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