

# STATE OF NEW YORK

3211--A

Cal. No. 337

2021-2022 Regular Sessions

## IN SENATE

January 28, 2021

Introduced by Sen. RAMOS -- 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

AN ACT to amend the environmental conservation law, in relation to requiring applicants for major projects located near environmental justice communities to submit an enhanced public participation plan

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

Section 1. The environmental conservation law is amended by adding a new article 58 to read as follows:

### ARTICLE 58

#### ENVIRONMENTAL JUSTICE COMMUNITIES

Section 58-0101. Declaration of legislative findings and intent.

58-0103. Definitions.

58-0105. Enhanced public participation plan.

58-0107. Environmental assessment.

58-0109. Applicant certification.

58-0111. Prohibitions.

§ 58-0101. Declaration of legislative findings and intent.

1. The legislature finds and declares that it is the policy of the state of New York to promote environmental justice and incorporate measures for achieving environmental justice into the state's programs, policies, regulations, legislative proposals and activities. The legislature further finds and declares that economically distressed and minority communities in the state have long borne a disproportionate and inequitable pollution burden, caused by historic siting of sources of pollution in those communities.

2. Many economically distressed and minority communities in the state suffer from elevated rates of respiratory illnesses, including asthma,

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

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1 bronchitis, and emphysema, and other adverse health effects associated  
2 with the long-term and chronic exposure to multiple sources of pollution  
3 resulting from the disproportionate and inequitable siting of pollution  
4 sources in those communities.

5 3. The intersection of high asthma rates, environmental pollution, and  
6 environmental justice communities is prevalent in New York City's "Asth-  
7 ma Alley," which comprises parts of Queens, the Bronx, and Brooklyn. In  
8 Astoria, Queens, two generating stations provide nearly half of New York  
9 City's electricity. This area experiences asthma rates greater than the  
10 borough average.

11 4. The disproportionate and inequitable siting of pollution sources in  
12 economically distressed and minority communities is in large part the  
13 result of inadequate notice to those communities of the proposed siting  
14 of those sources and inadequate opportunities for community input and  
15 participation during the environmental permit process.

16 5. The legislature hereby finds it in the interest of public health  
17 and safety to require major projects located in or adjacent to environ-  
18 mental justice communities to undergo review and to comply with enhanced  
19 notice and public participation requirements. The legislature further  
20 finds that enhanced notice and public participation requirements for  
21 environmental justice communities is consistent with the purposes,  
22 intent and requirements of the climate leadership and community  
23 protection act. It is the intent of the legislature that economically  
24 distressed and minority communities be provided with enhanced notice of  
25 proposed projects and enhanced opportunities for input and participation  
26 during the environmental permit process so that those communities have a  
27 greater voice in the siting of new or expanded sources of pollution.

28 § 58-0103. Definitions.

29 1. "Adjacent to" shall mean within a radius of one mile from the prop-  
30 erty boundary where a proposed action is located or will occur.

31 2. "Environmental justice community" shall mean an economically  
32 distressed or minority community bearing a disproportionate or inequita-  
33 ble pollution burden and includes, but is not limited to, environmental  
34 justice areas identified by the department.

35 3. "Economically distressed area" shall mean an area characterized by  
36 a poverty rate of at least twenty percent or an unemployment rate of at  
37 least one hundred twenty-five percent of the statewide unemployment  
38 rate.

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

42 5. "Major project" shall mean a project which is not a minor project  
43 as defined in subdivision three of section 70-0105 of this chapter.

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

47 § 58-0105. Enhanced public participation plan.

48 1. The applicant for a major project located in or adjacent to an  
49 environmental justice community shall, as part of its application to the  
50 department for a permit or approval, submit a written enhanced public  
51 participation plan to the department for review and approval. The  
52 department shall provide for a public comment period on the enhanced  
53 public participation plan of not less than thirty days. The department  
54 may, after conclusion of the public comment period, require the appli-  
55 cant to revise the enhanced public participation plan to address issues

1 raised during the public comment period or to ensure that the plan  
2 complies with the requirements of this section.

3 2. The enhanced public participation plan shall, at a minimum, include  
4 the following:

5 (a) A description of the proposed project, including potential envi-  
6 ronmental impacts of the proposed project;

7 (b) A description of the environmental justice community in which the  
8 proposed project is located or which is located adjacent to the proposed  
9 project, including a map or maps of the project and environmental  
10 justice community;

11 (c) The location of sensitive receptors in the environmental justice  
12 community, including hospitals, schools, elder care facilities, day care  
13 facilities, parks, and other sensitive areas identified by the communi-  
14 ty, including a map showing the location of such receptors;

15 (d) A list, developed in consultation with the environmental justice  
16 community, of representative stakeholders in the community, including  
17 but not limited to residents, local elected officials, and community-  
18 based organizations;

19 (e) A description of the manner in which public notices and other  
20 written information about the proposed project will be posted and  
21 distributed in the community and updated on a regular basis and in a  
22 timely manner;

23 (f) A schedule for holding public meetings in the environmental  
24 justice community for the purpose of providing information about the  
25 proposed project, answering questions about the project, and receiving  
26 input from the community about the project;

27 (g) The location in the environmental justice community of easily  
28 accessible document repositories where written information about the  
29 project will be made available, and establishment of a document website  
30 where such information will be posted;

31 (h) An implementation schedule for all measures set forth in the plan;  
32 and

33 (i) Provision for submission by the applicant of quarterly progress  
34 reports to the department and the environmental justice community  
35 concerning implementation of the plan.

36 3. Written information provided to the environmental justice community  
37 concerning the proposed project shall be presented in an easy-to-read,  
38 understandable format using plain language. Upon request by the communi-  
39 ty, written information shall be translated into languages other than  
40 English for comprehension by non-English speaking stakeholders.

41 4. At least three public information meetings shall be held during the  
42 permit review process at times and locations convenient for the stake-  
43 holders identified in the enhanced public participation plan. Written  
44 notice of public information meetings shall be provided at least two  
45 weeks prior to the scheduled date of the meeting to each stakeholder  
46 identified in the enhanced public participation plan and shall be  
47 conspicuously posted at the document repositories and on the document  
48 website.

49 5. The first meeting shall be held subsequent to submission by the  
50 applicant of the permit application and enhanced public participation  
51 plan but prior to the department's issuance of a notice of complete  
52 application; the second meeting shall be held after the department's  
53 issuance of a notice of complete application but prior to the depart-  
54 ment's final decision on the application; and the third meeting shall be  
55 held during the public comment period on the draft environmental impact  
56 statement for the project. Representatives of the applicant and the

1 department shall attend each public information meeting. The department  
2 may, in consultation with the affected environmental justice community,  
3 require additional public information meetings regardless of whether  
4 such additional meetings are included in the enhanced public partic-  
5 ipation plan.

6 6. Public information meetings shall provide an opportunity for mean-  
7 ingful public participation and input by residents of the environmental  
8 justice community and each meeting shall provide an opportunity for  
9 members of the community to make statements, raise issues, and ask the  
10 applicant and the department questions about the proposed project. After  
11 each public information meeting, the department shall consider the  
12 statements provided and issues raised by members of the community and  
13 may require the applicant to provide additional information to address  
14 issues raised, require revisions to the application, or impose permit  
15 conditions necessary to avoid or mitigate adverse project impacts.

16 7. The document repository shall contain copies of: (a) the enhanced  
17 public participation plan approved by the department; (b) all written  
18 submissions by the applicant to the department; and (c) all written  
19 communications between the applicant and the department concerning the  
20 proposed project.

21 § 58-0107. Environmental assessment.

22 An applicant subject to the requirements of this section shall submit  
23 to the department, as part of its application, a completed full environ-  
24 mental assessment form in compliance with article eight of this chapter.

25 § 58-0109. Applicant certification.

26 1. Upon completion of the enhanced public participation plan, the  
27 applicant shall submit written certification to the department that it  
28 has complied with the plan, including a final report summarizing issues  
29 raised by the environmental justice community and how those issues were  
30 resolved or addressed. The certification shall be signed by the appli-  
31 cant, or the applicant's agent, and submitted to the department prior to  
32 a final decision on the application.

33 2. The department shall provide a public comment period of not less  
34 than thirty days on the applicant's certification and final report.  
35 Following close of the public comment period, the department shall issue  
36 a written determination whether the applicant has fully and completely  
37 implemented the enhanced public participation plan.

38 § 58-0111. Prohibitions.

39 1. The department shall not issue a notice of complete application for  
40 a proposed project subject to the requirements of this article unless  
41 the applicant has submitted an enhanced public participation plan and  
42 the department has approved the plan.

43 2. The department shall not accept as complete a draft environmental  
44 impact statement prepared pursuant to article eight of this chapter for  
45 a project subject to the requirements of this article unless the appli-  
46 cant has an enhanced public participation plan approved by the depart-  
47 ment and has, as of the date of submission of the draft environmental  
48 impact statement, complied with the schedule for implementing the plan.

49 3. The department shall not issue a permit or approval for a proposed  
50 project subject to the requirements of this article unless the applicant  
51 has submitted the certification and final report required by subdivision  
52 one of section 58-0109 and the department has issued the written deter-  
53 mination required by subdivision two of section 58-0109.

54 § 2. This act shall take effect immediately.