STATE OF NEW YORK

1317

2023-2024 Regular Sessions

IN SENATE

January 11, 2023

Introduced by Sen. STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, in relation to the legislative intent of such chapter, and in relation to the effectiveness thereof; and to amend the environmental conservation law, in relation to disproportionate impacts of environmental facility siting on disadvantaged communities; and relating to the scope of certain provisions of the environmental conservation law and the authority of the commissioner of environmental conservation thereunder

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

Section 1. Section 1 of a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, is amended to read 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 **environmental health issues and** 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. **As a result of the inequitable pattern in the siting of environmental facilities, minority and economically distressed communities bear a greater environmental health burden due to the cumulative pollution exposure from multiple 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~~] **ensure no community bears a disproportionate pollution burden, and to actively reduce any such burden** for all communities.

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

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§ 2. Section 8-0105 of the environmental conservation law is amended by adding a new subdivision 10 to read as follows:

10. "Pollution" shall have the same meaning as defined by subdivision nineteen of section 1-0303 of this chapter.

§ 3. Paragraphs (k) and (l) of subdivision 2 of section 8-0109 of the environmental conservation law, as amended by a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, are amended to read as follows:

(k) **effects of any proposed action on disadvantaged communities, including whether the action may cause or increase a disproportionate pollution burden on 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[~~; and~~

~~(l) effects of any proposed action on disadvantaged communities, including whether the action may cause or increase a disproportionate or inequitable or both disproportionate and inequitable pollution burden on a disadvantaged community~~].

§ 4. The opening paragraph of subdivision 4 of section 8-0109 of the environmental conservation law, as amended by a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, 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~~] the responsible agency shall consider whether such action may cause or increase a disproportionate [~~or inequitable or both disproportionate and inequitable~~] **pollution** burden on a disadvantaged community that is directly or significantly indirectly affected by such action. 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. Subparagraph (i) of paragraph (c) of subdivision 2 of section 8-0113 of the environmental conservation law, as amended by a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, 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 increase, either directly or indirectly, a disproportionate or inequitable or both disproportionate and inequitable pollution burden on a disadvantaged community~~];

§ 6. Paragraph (b) of subdivision 2 of section 8-0113 of the environmental conservation law, as amended by a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, is amended to read as follows:

(b) [~~(i)~~] Criteria for determining whether or not a proposed action may have a significant effect on the environment, taking into account social and economic factors to be considered in determining the significance of an environmental effect**, including whether it may cause or**

increase a disproportionate pollution burden on a disadvantaged community;

[~~(ii) Such criteria shall include consideration of the extent to which a proposed action may reasonably be expected to cause or increase a disproportionate or inequitable or both disproportionate and inequitable burden on disadvantaged communities;~~]

§ 7. Section 70-0118 of the environmental conservation law, as added by a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, is amended to read as follows:

§ 70-0118. Disproportionate impacts on disadvantaged communities.

1. For the purposes of this section:

(a) "Disadvantaged communities" shall have the same meaning as subdivision five of section 75-0101 of this chapter.

(b) [~~"Existing burden report" shall mean the report required by this section describing the existing pollution burden in a disadvantaged community.~~

~~2. When issuing~~] "Applicable permit" shall mean a permit [~~for any project that is not a minor project as defined in subdivision three of section 70-0105 of this article and that~~], excluding a general permit, applied for pursuant to:

(i) title fifteen of article fifteen of this chapter for a facility withdrawing and using over twenty million gallons per day of water for cooling purposes;

(ii) article seventeen of this chapter;

(iii) article nineteen of this chapter;

(iv) title seventeen of article twenty-three of this chapter; or

(v) title three, title seven, title nine or title eleven of article twenty-seven of this chapter.

2. (a) When a new project subject to an applicable permit may [~~directly or indirectly affect~~] cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community, the department shall require the applicant to prepare or cause to be prepared an existing burden report [~~and shall consider such report in determining whether such project may cause or contribute to, either directly or indirectly, a disproportionate or inequitable or both disproportionate and inequitable pollution burden on a disadvantaged community~~].

(b) In the case of an application for renewal or modification of an applicable permit not subject to the provisions of paragraph (a) of this subdivision which may cause or contribute more than a de minimis amount of pollution to any disproportionate pollution burden on a disadvantaged community the department shall require the applicant to prepare or cause to be prepared an existing burden report; provided, however that the department may elect not to require such existing burden report if the permit would serve an essential environmental, health, or safety need of the disadvantaged community for which there is no reasonable alternative.

(c) Notwithstanding the requirements of paragraphs (a) or (b) of this subdivision, no existing burden report shall be required for an application for a renewal of a permit if an existing burden report has been prepared with respect to such permit within the previous ten years.

3. [~~No permit shall be approved or renewed by the department if it may cause or contribute to, either directly or indirectly, a disproportionate or inequitable or both disproportionate and inequitable~~

~~pollution burden on a disadvantaged community.~~] (a) When considering an application for an applicable permit, the department shall consider the existing burden report, if any, and an administrative record that includes, but is not limited to, comments received from the public in the disadvantaged community.

(b) The department shall not issue an applicable permit for a new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on the disadvantaged community.

(c) In the case of an application for a modification of an applicable permit, the department shall not issue an applicable permit if it determines that the issuance of the permit would significantly increase the existing disproportionate pollution burden on the disadvantaged community.

(d) In the case of an application for renewal of an applicable permit, the department shall not issue an applicable permit if it determines that the project would significantly increase the existing disproportionate pollution burden on the disadvantaged community.

4. The department shall require actions to implement any appropriate operational changes which would reduce the pollution burden on the disadvantaged community as a condition of an applicable permit, only if such actions are reasonable and practicable, as determined by the department.

5. The department, in consultation with the department of health, shall develop the scope of the existing burden report and may adapt such requirements based on whether a permit application is for a new project, modification, or a renewal of a permit. The department shall provide for at least a thirty-day public comment period prior to finalizing the scope of the report. The report shall provide for an assessment of the following information:

(a) relevant baseline data on existing burdens, including from relevant criteria used to designate the particular disadvantaged communities pursuant to subdivision one of section 75-0111 of this chapter;

(b) the environmental or public health stressors already borne by the disadvantaged community as a result of existing conditions located in or affecting the disadvantaged community;

(c) the potential or projected contribution of the proposed action to existing pollution burdens in the community; and

(d) existing and potential benefits of the project to the community including increased housing supply, or alleviation of existing pollution burdens that may be provided by the project, including operational changes to the project that would reduce the pollution burden on the disadvantaged community.

§ 8. Subdivision 1 of section 70-0107 of the environmental conservation law, as amended by a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, is amended to read as follows:

1. The department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article. Such rules and regulations shall include but not be limited to provisions regarding notice, review, public participation and public hearings. [~~Such rules and regulations shall also include the form and content of an existing burden report which shall, at a minimum, include baseline monitoring data collected in the affected disadvantaged community within two years of the application for a permit or approval and~~

~~shall identify: (a) each existing pollution source or categories of sources affecting a disadvantaged community and the potential routes of human exposure to pollution from that source or categories of sources; (b) ambient concentration of regulated air pollutants and regulated or unregulated toxic air pollutants; (c) traffic volume; (d) noise and odor levels; (e) exposure or potential exposure to lead paint; (f) exposure or potential exposure to contaminated drinking water supplies; (g) proximity to solid or hazardous waste management facilities, wastewater treatment plants, hazardous waste sites, incinerators, recycling facilities, waste transfer facilities and petroleum or chemical manufacturing, storage, treatment or disposal facilities; (h) the potential or documented cumulative human health effects of the foregoing pollution sources; (i) 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.~~]

§ 9. Section 9 of a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, is amended to read as follows:

§ 9. This act shall take effect [~~on the one hundred eightieth day~~] **two years** 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 five of this act shall not apply to any determination of significance made prior to such date~~].

§ 10. No addition or amendment made to the environmental conservation law under this act or under a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, shall limit the existing authority of any state entity to deny or condition permits, licenses, or other administrative approvals.

§ 11. No addition or amendment made to the environmental conservation law under this act or under a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, shall relieve any person from compliance with any other requirement to not disproportionately burden disadvantaged communities as identified pursuant to section 75-0111 of the environmental conservation law.

§ 12. The commissioner of environmental conservation is authorized and directed to promulgate rules and regulations in accordance with subdivision one of section 70-0107 of the environmental conservation law to effectuate the provisions of this act and a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D.

§ 13. This act shall take effect immediately; provided, however that sections one, two, three, four, five, six, seven, eight, ten, eleven and twelve of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the environmental conservation law relating to the location of environmental facilities, as proposed in legislative bills numbers S. 8830 and A. 2103-D, takes effect.