

STATE OF NEW YORK

6584--A

2023-2024 Regular Sessions

IN ASSEMBLY

April 20, 2023

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

AN ACT to amend the environmental conservation law, in relation to requiring applicants for major projects located near disadvantaged 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 59 to read as follows:

ARTICLE 59

ENHANCED PUBLIC PARTICIPATION IN DISADVANTAGED COMMUNITIES

Section 59-0101. Declaration of legislative findings and intent.

59-0103. Definitions.

59-0105. Enhanced public participation plan.

59-0107. Environmental assessment.

59-0109. Applicant certification.

59-0111. Prohibitions.

§ 59-0101. 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, bronchitis, and emphysema, and other adverse health effects associated

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

LBD06077-05-3

1 with the long-term and chronic exposure to multiple sources of pollution
2 resulting from the disproportionate and inequitable siting of pollution
3 sources in those communities.

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

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

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

27 § 59-0103. Definitions.

28 1. "Adjacent to" shall mean within a radius of one mile from the prop-
29 erty.

30 2. "Disadvantaged community" shall have the same meaning as in subdivi-
31 sion five of section 75-0101 of this chapter.

32 3. "Major project" shall mean a project which is not a minor project
33 as defined in subdivision three of section 70-0105 of this chapter.

34 § 59-0105. Enhanced public participation plan.

35 1. The applicant for a major project located in or adjacent to an a
36 disadvantaged community shall, as part of its application to the depart-
37 ment for a permit or approval in accordance with article seventy of this
38 chapter, submit a written enhanced public participation plan to the
39 department for review and approval. The department shall provide for a
40 public comment period on the enhanced public participation plan of not
41 less than sixty days. The department may, after conclusion of the public
42 comment period, require the applicant to revise the enhanced public
43 participation plan to address issues raised during the public comment
44 period or to ensure that the plan complies with the requirements of this
45 section.

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

48 (a) A description of the proposed project, including potential envi-
49 ronmental impacts of the proposed project and whether the project may
50 cause or increase a disproportionate pollution burden on the disadvan-
51 tagged community;

52 (b) A description of the disadvantaged community in which the proposed
53 project is located or which is located adjacent to the proposed project,
54 including a map or maps of the project and disadvantaged community;

55 (c) The location of sensitive receptors in the disadvantaged communi-
56 ty, including hospitals, schools, elder care facilities, day care facil-

ities, parks, and other sensitive areas identified by the community, including a map showing the location of such receptors;

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

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

(f) A schedule for holding public meetings in the disadvantaged community for the purpose of providing information about the proposed project including what major project decisions will be made and when, answering questions about the project, receiving input from the community about the project, and describing how such input will be incorporated into project design, development, and implementation;

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

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

(i) Provision for submission by the applicant of quarterly progress reports to the department and the disadvantaged community concerning implementation of the plan.

3. Written information provided to the disadvantaged community concerning the proposed project shall be presented in an easy-to-read, understandable format using plain language, and upon request shall be translated into the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau, and other commonly spoken languages in the community.

4. At least three public information meetings shall be held during the permit review process at times and locations convenient for the stakeholders identified in the enhanced public participation plan, and shall be of sufficient length to allow for meaningful public input. Written notice of public information meetings shall be provided at least two weeks prior to the scheduled date of the meeting to each stakeholder identified in the enhanced public participation plan and shall be conspicuously posted at the document repositories, on the document website, and through other channels widely used by the host community as sources of information, including, but not limited to, print media, broadcast media, social media, libraries, community boards, the offices of elected representatives, and government offices that serve the public. Notices in print, broadcast, and social media shall be made with adequate repetition.

5. The first meeting shall be held subsequent to submission by the applicant of the permit application and enhanced public participation plan but prior to the department's issuance of a notice of complete application; the second meeting shall be held after the department's issuance of a notice of complete application but prior to the department's final decision on the application; and the third meeting shall be held during the public comment period on the draft environmental impact statement for the project. Representatives of the applicant and the department shall attend each public information meeting. The department

1 may, in consultation with the affected disadvantaged community, require
2 additional public information meetings regardless of whether such addi-
3 tional meetings are included in the enhanced public participation plan.

4 6. Public information meetings shall provide an opportunity for mean-
5 ingful public participation and input by residents of the disadvantaged
6 community and each meeting shall provide an opportunity for members of
7 the community to make statements, raise issues, and ask the applicant
8 and the department questions about the proposed project. Readily under-
9 standable visual information concerning environmental impacts must be
10 presented. After each public information meeting, the department shall
11 consider the statements provided and issues raised by members of the
12 community and may require the applicant to provide additional informa-
13 tion to address issues raised, require revisions to the application, or
14 impose permit conditions necessary to avoid or mitigate adverse project
15 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 § 59-0107. Environmental assessment.

22 An applicant for a project subject to the requirements of this article
23 shall submit to the department, as part of its application, a completed
24 full environmental assessment form in compliance with article eight of
25 this chapter.

26 § 59-0109. Applicant certification.

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

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

39 § 59-0111. Prohibitions.

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

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

50 3. The department shall not issue a permit or approval for a proposed
51 project subject to the requirements of this article unless the applicant
52 has submitted the certification and final report required by subdivision
53 one of section 59-0109 of this article and the department has issued the
54 written determination required by subdivision two of section 59-0109 of
55 this article.

1 § 2. This act shall take effect on the one hundred eightieth day after
2 it shall have become a law. Effective immediately, the addition, amend-
3 ment and/or repeal of any rule or regulation necessary for the implemen-
4 tation of this act on its effective date are authorized to be made and
5 completed on or before such effective date.