

# STATE OF NEW YORK

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1031--B

2021-2022 Regular Sessions

## IN SENATE

January 6, 2021

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Introduced by Sen. STEWART-COUSINS -- 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

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:

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

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

16 9. "Environmental justice community" shall mean an economically  
17 distressed or minority community bearing a disproportionate or inequita-  
18 ble pollution burden and includes, but is not limited to, environmental  
19 justice areas identified by the department.

20 10. "Economically distressed area" shall mean an area characterized by  
21 a poverty rate of at least twenty percent; or an unemployment rate of at

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

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1 least one hundred twenty-five percent of the statewide unemployment  
2 rate.

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

6 12. "Ethnic group" shall mean those groups identified in the defi-  
7 nition of minority group member in subdivision eight of section three  
8 hundred ten of the executive law.

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

12 § 3. Subdivision 2 of section 8-0109 of the environmental conservation  
13 law, as amended by chapter 219 of the laws of 1990, paragraph (h) as  
14 amended by chapter 519 of the laws of 1992, paragraph (i) as added by  
15 chapter 182 of the laws of 1990, and paragraph (i) as amended by chapter  
16 238 of the laws of 1991, is amended to read as follows:

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

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

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

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

28 (d) alternatives to the proposed action;

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

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

32 (g) the growth-inducing aspects of the proposed action, where applica-  
33 ble and significant;

34 (h) effects of the proposed action on the use and conservation of  
35 energy resources, where applicable and significant, provided that in the  
36 case of an electric generating facility, the statement shall include a  
37 demonstration that the facility will satisfy electric generating capaci-  
38 ty needs or other electric systems needs in a manner reasonably consist-  
39 ent with the most recent state energy plan and the climate leadership  
40 and community protection act;

41 (i) effects of proposed action on solid waste management where appli-  
42 cable and significant; [~~and~~

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

47 ~~(j)]~~ (k) effects of any proposed action on environmental justice  
48 communities, including whether the action may cause or contribute to,  
49 either directly or indirectly, a disproportionate or inequitable or both  
50 disproportionate and inequitable pollution burden on an environmental  
51 justice community; and

52 (l) such other information consistent with the purposes of this arti-  
53 cle as may be prescribed in guidelines issued by the commissioner pursu-  
54 ant to section 8-0113 of this chapter.

55 Such a statement shall also include copies or a summary of the  
56 substantive comments received by the agency pursuant to subdivision four

1 of this section, and the agency response to such comments. The purpose  
2 of an environmental impact statement is to provide detailed information  
3 about the effect which a proposed action is likely to have on the envi-  
4 ronment, to list ways in which any adverse effects of such an action  
5 might be minimized, and to suggest alternatives to such an action so as  
6 to form the basis for a decision whether or not to undertake or approve  
7 such action. Such statement should be clearly written in a concise  
8 manner capable of being read and understood by the public, should deal  
9 with the specific significant environmental impacts which can be reason-  
10 ably anticipated and should not contain more detail than is appropriate  
11 considering the nature and magnitude of the proposed action and the  
12 significance of its potential impacts.

13 § 4. The opening paragraph of subdivision 4 of section 8-0109 of the  
14 environmental conservation law, as amended by chapter 219 of the laws of  
15 1990, is amended to read as follows:

16 As early as possible in the formulation of a proposal for an action,  
17 the responsible agency shall make an initial determination as to whether  
18 or not an environmental impact statement need be prepared for the  
19 action. In making such determination for any proposed action that is  
20 not a minor project as defined in subdivision three of section 70-0105  
21 of this chapter and that may directly or indirectly affect an environ-  
22 mental justice community, the responsible agency shall prepare or cause  
23 to be prepared an existing burden report and shall consider such report  
24 in determining whether such action may cause or contribute to, either  
25 directly or indirectly, a disproportionate or inequitable or both  
26 disproportionate and inequitable pollution burden on an environmental  
27 justice community. The existing burden report shall include baseline  
28 monitoring data collected in the affected environmental justice communi-  
29 ty within two years of the application for a permit or approval; shall  
30 identify each existing pollution source or categories of sources affect-  
31 ing the community and the potential routes of human exposure to  
32 pollution from that source or categories of sources; the potential or  
33 documented cumulative human health effects of such pollution; and the  
34 potential or projected contribution of the proposed action to existing  
35 pollution burdens in the community and potential health effects of such  
36 contribution, taking into account existing pollution burdens. When an  
37 action is to be carried out or approved by two or more agencies, such  
38 determination shall be made as early as possible after the designation  
39 of the lead agency.

40 § 5. Subdivision 8 of section 8-0109 of the environmental conservation  
41 law, as amended by chapter 252 of the laws of 1977, is amended to read  
42 as follows:

43 8. When an agency decides to carry out or approve an action which has  
44 been the subject of an environmental impact statement, it shall make an  
45 explicit finding that the requirements of this section have been met and  
46 that consistent with social, economic and other essential consider-  
47 ations, to the maximum extent practicable, adverse environmental effects  
48 revealed in the environmental impact statement process will be minimized  
49 or avoided. No action shall be carried out or approved if it may cause  
50 or contribute to, either directly or indirectly, a disproportionate or  
51 inequitable or both disproportionate and inequitable pollution burden on  
52 an environmental justice community.

53 § 6. Subparagraph (i) of paragraph (c) of subdivision 2 of section  
54 8-0113 of the environmental conservation law, as added by chapter 612 of  
55 the laws of 1975, is amended to read as follows:

1 (i) Actions or classes of actions that are likely to require prepara-  
2 tion of environmental impact statements, including actions which may  
3 cause or contribute to, either directly or indirectly, a dispropor-  
4 tionate or inequitable or both disproportionate and inequitable  
5 pollution burden on an environmental justice community;

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

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

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