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MODEL STATUTE ELIMINATING AS-OF-RIGHT STATUS OF POLLUTING FACILITIES IN ENVIRONMENTAL JUSTICE AREAS

Bill No. [Number]

Sponsored by [Sponsor]

AN ACT OF THE
[LEGISLATIVE BODY] OF
[STATE]

Section 1. Legislative findings.

[Legislature] finds the following:

1. All [State] residents deserve to live, work, and recreate in a clean and healthy environment free from the burdens of environmental pollution and degradation;
2. Historically, [State]'s communities of color, low-income communities, and other marginalized groups have been subject to disproportionate levels of air, water, and soil pollution, while also being disproportionately impacted by other environmental and public health stressors;
3. As a result, residents of [State]'s disadvantaged communities suffer from increased adverse health effects, including asthma, cancer, elevated blood lead levels, respiratory and cardiovascular disease, and developmental disorders. Because children are particularly vulnerable to the adverse health effects caused by pollution, the environmental and public health impacts of polluting facilities impede the growth, stability, and long-term well-being of overburdened communities and their residents.
4. These disproportionate burdens are in part the result of many years of policy decisions at all levels of government, which continue to pose a threat to the health, well-being, and success of [State]'s most vulnerable residents;
5. No community should bear a disproportionate share of these adverse environmental or public health impacts;
6. The potential for environmental, climate, and public health threats to compound one another and disproportionately impact vulnerable communities requires increased consideration and engagement of impacted communities in decision-making processes;

7. It is in the public interest to limit the future development or expansion of polluting facilities and infrastructure in disadvantaged communities;
8. Even a single polluting facility can have negative consequences for the environmental quality and public health of the surrounding area; and
9. The development or expansion of polluting facilities and infrastructure in disadvantaged communities should not be permitted without careful review taking into consideration the potential harms of the development for the immediate community and vulnerable populations.

Section 2. Definitions.

1. Environmental justice area. The term “environmental justice area” means:
 - a. Any contiguous area made up of one or more census block groups, as determined in accordance with the most recent United States Census or American Community Survey, in which:
 - i. At least 35 percent of the households have an income less than or equal to two times the federal poverty level;
 - ii. At least 40 percent of individuals list their racial status Black or African American; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; or Middle Eastern or North African, or list their ethnicity as Hispanic or Latino;
 - iii. At least 40 percent of the households have limited English proficiency; or
 - iv. At least 35 percent of the people over the age of 25 have not earned a high school diploma;
 - b. Any contiguous area made up of one or more census block groups which fall at or above the 90th percentile for susceptibility to environmental pollution as determined in accordance with the United States Environmental Protection Agency EJSCREEN demographic index or United States Environmental Protection Agency EJSCREEN supplemental demographic index;
 - c. Any area within the lands of a federally recognized Tribe; and
 - d. Any other area identified or approved by [agency] as having a history of environmental disparities, vulnerability to environmental degradation, disproportionate health impacts, or lack of public participation.
2. Lands of a federally recognized Tribe. The term “lands of a federally recognized Tribe” means any land area designated as an American Indian land area under the United States Bureau of Indian Affairs Land Area Representation.
3. Negative environmental impacts. The term “negative environmental impacts” means environmental hazards and other chemical and non-chemical stressors that have the potential to negatively impact human health, well-being, and quality of life in their immediate area, either as a result of their isolated impact or in conjunction with other environmental hazards or stressors.

Section 3. Polluting facilities in environmental justice areas.

1. Notwithstanding the provisions of [Section(s) setting out as-of-right uses], any use that could foreseeably cause or contribute to negative environmental impacts within an environmental justice area, either in isolation or in conjunction with other environmental hazards or stressors, shall not be permitted as-of-right.

- a. This section shall not apply to residential buildings containing twenty or fewer dwelling units and that contain no other uses other than street-level retail.
2. The [local land use agency] may permit the development, extension, or change of use that may contribute to negative environmental impacts within an environmental justice area, provided that the agency finds that:
 - a. The use will not contribute to negative environmental impacts within an environmental justice area, either in isolation or in conjunction with other environmental hazards or stressors; or
 - b. The use is necessary for the public interest of the environmental justice area and no suitable alternative site exists. In determining whether a use is necessary for the public interest, the promise of one or more benefits to the environmental justice area shall not automatically outweigh the burden of pollution generated by the use, and must be considered in light of the full scope of the area's needs, including the need to be free of undue environmental and public health burdens. The existence of a community benefit agreement may be considered evidence that the use is necessary for the public interest.
3. Any finding under [subsection 3.2] that permits a development, extension, or change of use must be accompanied by a detailed written explanation published on the [local land use agency]'s website. This explanation must also include a list of any conditions or safeguards attached to the approval of a permit under [subsection 4].
4. The [local land use agency] shall prescribe reasonable and appropriate conditions or safeguards to minimize the negative environmental impacts of any use permitted under this Section, which may include but are not limited to monitoring and reporting requirements, emissions limitations, mitigation measures, and community engagement plans.
5. The [state environmental protection agency] shall adopt rules and regulations to implement the provisions of this act and may issue technical guidance for compliance with this act, which the agency shall publish on its website. However, the absence of such rules shall not delay the effective date of the requirements of this act, impair the obligations established under this law, or limit the ability of the agency to enforce its provisions.