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MODEL STATUTE REQUIRING INDIRECT SOURCE PERMITS FOR NEW OR EXPANDED FACILITIES GENERATING SIGNIFICANT VEHICULAR TRAFFIC

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 overburdened 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 and vehicle emissions 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 pollution sources in overburdened communities;
8. The development or expansion of pollution sources in overburdened communities should not be permitted without careful review taking into consideration the potential harms of the development for the immediate community and vulnerable populations;
9. New construction and development have the potential to contribute to increased vehicle traffic

and related air pollution in the area, contributing to the negative health effects described above;
and

10. The potential impacts of these indirect sources of pollution must be carefully assessed before development is permitted to proceed in areas that are already overburdened by pollution.

Section 2. Definitions

1. Agency. The term “agency” means the [state environmental protection agency].
2. Community exposure points. The term “community exposure points” means locations where vulnerable members of the public, including children, the elderly, and those with underlying health conditions, are likely to spend time. These locations include but are not limited to schools, day care centers, nursing homes, hospitals, health clinics, detention centers, homeless shelters, places of religious worship, parks, playgrounds, and community centers.
3. 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 [state environmental protection agency] as having a history of environmental disparities, vulnerability to environmental degradation, disproportionate health impacts, or lack of public participation.
4. Heavy-duty vehicle. The term “heavy-duty vehicle” means a vehicle with a gross vehicle weight rating of more than 8,500 pounds.
5. Indirect source. The term “indirect source” means:
 - a. Any new road or roadway segment of at least one mile in length with a traffic-carrying capacity of 15,000 vehicles per day;
 - b. Any warehouse or distribution facility of more than 50,000 square feet;
 - c. In a city, town, or village having a population of 150,000 persons or less, any facility with parking for more than 500 light-duty vehicles or more than 15 heavy-duty vehicles; or
 - d. In a city, town, or village having a population of more than 150,000 persons, any facility with parking for more than 1,000 light-duty vehicles or more than 30 heavy-duty vehicles.

6. 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.
7. Light-duty vehicle. The term “light-duty vehicle” means a vehicle with a gross vehicle weight rating of 8,500 pounds or less.
8. Major expansion. The term “major expansion” means:
 - a. Any increase of 25% or more in the floor space as measured in square feet of an existing facility, building, structure, development, or construction that either already qualifies as an indirect source or would qualify as an indirect source under [subsection 2.5] based on the proposed expansion, or
 - b. Any modification to an existing road or roadway segment that increases the traffic-carrying capacity of the roadway by 5,000 vehicles per day or more.
9. Mobile source. The term “mobile source” means any self-propelled on-road vehicle powered by an internal combustion engine, including but not limited to automobiles, trucks, and motorcycles.
10. Mobile source activity. The term “mobile source activity” means any process, operation, or action of a mobile source or combination of mobile sources that emits a pollutant regulated by [State] or the United States.
11. Warehouse or distribution facility. The term “warehouse or distribution facility” means any building or facility with the primary purpose of storing, sorting, or distributing cargo, goods, or products for commerce.

Section 3. Indirect source permits and applications.

1. The construction or major expansion of any indirect source located in an environmental justice area shall not commence unless the agency has issued an indirect source permit for the construction or expansion.
2. Any applicant seeking to commence construction or expansion of an indirect source requiring a permit under [subsection 3.1] must submit an indirect source permit application to the agency no less than 180 days before the anticipated start of the construction or expansion.
3. An application for an indirect source permit under this act shall not be considered complete unless it includes:
 - a. A description of the current and proposed use of the site, including but not limited to the site address, site plans, a proposed project schedule, the area of any proposed facilities measured in square feet, and the estimated number of employees working at the finished site each day;
 - b. A description of current and expected mobile source activity at and within [XX mile/miles] of the site;
 - c. Identification of the points of vehicle ingress and egress from the site, the current and expected number of off-street parking spaces at the site, and a description of existing mass transit options within [XX mile/miles] of the site;
 - d. An air impact assessment quantifying the emissions of any air pollutants that are or may reasonably be expected to be produced by mobile source activity associated with the indirect source, including but not limited to fine particulate matter, nitrogen oxides, carbon dioxide, carbon monoxide, and methane. All emissions estimates included in the

air impact assessment shall be calculated using a [state environmental protection agency]-approved model, if available.

- e. A list and map of community exposure points located within [XX mile/miles] of the proposed site;
 - f. An estimate of additional development that may be concurrent with or result from the proposed development, including commercial, residential, infrastructure, or industrial developments;
 - g. A description of any measures the applicant or others are actively taking or planning to take to reduce the facility's environmental impact; and
 - h. Additional information as required by the agency to determine the impact of the proposed development on air quality in the surrounding area.
4. In addition to any other fee authorized by law, the agency shall set a fee schedule and shall assess each permit applicant a reasonable fee to cover the agency's costs associated with the implementation of this act, including costs to conduct any required analysis and provide technical assistance to permit applicants and impacted communities as needed to comply with this act.
 5. After the filing of an application for an indirect source permit and upon request of the agency or any resident of the municipality in which the indirect source is to be located, the applicant shall meet with the agency to discuss pathways to reduce or eliminate emissions and mitigate the environmental impact of the indirect source.

Section 4. Indirect source permit application and issuance

1. Before issuing a permit under this act, the agency shall solicit public comments on the permit application for a period of no less than 90 days. During the public comment period, the agency shall accept written comments by mail and electronically on its website and by email, and shall make all comments available on its website.
 - a. During each comment period, the agency shall also host at least two public meetings, at which members of the public may comment on the permit application in-person and through electronic or telephonic or video means. Throughout the notice period under [subsection 4.1], the agency shall accept requests to provide live interpretation services and disability accommodation by phone, mail, and online form, and shall provide these services upon request. Within 14 days of each public meeting, the agency shall post a transcript of the meeting on its website.
 - b. At least 30 days prior to each public meeting, the agency shall provide [notice] to the public of the upcoming meeting on its website and through social media, in at least one newspaper of general circulation, and by posting a sign at the site of the proposed indirect source. All notices must be provided in English as well as any language other than English that is spoken by more than five percent of the residents in the zip code where the proposed indirect source is to be located, and must include instructions for requesting interpretation or disability accommodation at the public meeting. The agency shall also provide notice of the upcoming meeting in at least one additional newspaper written in the language other than English that is most commonly spoken in the zip code where the indirect source is to be located, unless no such newspaper is distributed in the county where the indirect source is to be located.

