Riverkeeper 2020 Legislative Memorandum

Support - A.7971/S.7548 (O'Donnell/Kavanagh) - Support

Riverkeeper strongly supports the passage of A.7971/S.7548, removing the "special harm" standing requirement imposed by the New York Court of Appeals requiring plaintiffs filing an action under the State Environmental Quality Review Act (SEQRA) to allege a potential injury greater than that to the public at large.

SEQRA is modeled after its federal counterpart the National Environmental Protection Act (NEPA). The statute requires that all state and local government agencies consider environmental impacts equally with social and economic factors during discretionary decisionmaking. Additionally, SEQRA requires agencies to determine whether an action will have a significant adverse environmental impact on the environment, and if so, complete an "Environmental Impact Statement" (EIS). EISs examine ways to avoid or reduce the environmental impacts of a proposed action.

Currently, SEQRA contains no provision regarding judicial review. Therefore, citizens challenging SEQRA decisions fall under Article 78 of the New York Civil Practice Laws and Rules. In the absence of a SEQRA provision addressing judicial review, the New York Court of Appeals has imposed overly restrictive standing requirements. The court's decision in *Society of Plastics* has made the ability to challenge SEQRA claims exceedingly difficult.[1] The decision requires that plaintiffs prove (1) that they suffer a direct harm from a proposed action and (2) that the injury is in some way different from that of the public at large.

The "special harm" requirements have made for problematic and restrictive decisions where plaintiffs within 500 feet of a challenged action are presumed close enough in proximity to be directly harmed[2] but plaintiffs outside of that 500 foot zone do not receive that same presumption.[3]

The court's justification for these standing requirements was a concern of frivolous litigation that would cause "interminable delay and crucial interference with governmental projects."[4] A number of states have similar comprehensive environmental review statutes modeled after NEPA without overly restrictive standing requirements like New York. These states have not seen an increase in frivolous litigation.

Passing A.1971/S.7548 would remove these overly restrictive standing requirements and restore SEQRA standing to the traditional rule in which plaintiffs have standing if they can show they suffer a reasonable environmental injury caused by a proposed action.

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[1] *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 774 (1991).
[2] *McCrath v. Town Bd. of N. Greenbush*, 678 N.Y.S.2d 834, 836 (3d Dep't App. Div. 1998).
[3] *See, e.g., Matter of Buerger v. Town of Grafton,*652 N.Y.S.2d 880, 881-82 (3d Dep't App. Div1997), *lv. denied* 89 N.Y.2d 816 (1997).
[4] *Society of Plastics*, 77 N.Y.2d at 774.