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Memorandum in Support
ENVIROMENTAL AND ENERGY LAW SECTION

February 23, 2026

BUDGET BILL
S. 9008/ A. 10008, Part R

Effective Date: Immediately

AN ACT to amend the environmental conservation law, in relation to reforming the state Environmental Quality Review Act. (Part R of S9008-A/ A10008-A, Transportation, Economic Development and Environmental Conservation Art. VII Bill)

Last year marked the 50th anniversary of the New York State Environmental Quality Review Act ("SEQRA"). Over the past 50 years, SEQRA has protected New York's environment and has ensured that environmental issues are a key focus of agency permitting decisions. However, lawmakers, local officials, SEQRA practitioners, and members of the public have recognized that the SEQRA review process has at times become an overly time-consuming process that can result in unnecessary project delays. The Environmental & Energy Law Section of the New York State Bar Association (the "Section") generally supports the Governor's effort to modernize SEQRA procedures to reduce unnecessary delay, improve predictability in environmental review, and facilitate the timely development of needed housing and infrastructure. We offer the following suggestions for the Executive and Legislature to consider in their deliberations.

On January 13, 2026, the Governor proposed several amendments to the SEQRA statute as part of her "Let Them Build" agenda, intended to streamline environmental review processes for certain categories of projects, especially for new housing construction.

The Section strongly supports the imposition of a one-year deadline for lead agencies to issue determinations of significance and supports efforts to clarify applicable timeframes for completion of environmental impact statements ("EIS") to promote more efficient and focused reviews. However, the Section recommends targeted clarifications to the proposed statutory language to avoid unintended consequences, including ambiguity regarding the scope of new EIS deadlines, overly broad provisions allowing deadline extensions, and proposed statute of limitations language that may create confusion in the context of multi-agency reviews. With modest refinements, the Section believes the proposed amendments can achieve their stated objectives while preserving SEQRA's core purposes of informed decision-making, public participation, and defensible agency action.

The comments below are arranged in sequential order by section of the proposed amendments.

Definition of "Previously Disturbed Site"

ECL § 8-0105(11)

The Section recommends that the proposed amendments include additional clarifying language to ensure that newly created categorical exemptions do not unintentionally conflict with New York's well-settled historic and cultural resource protection laws. Although Section 6 of the proposed legislation appropriately preserves existing requirements under the National Historic Preservation Act, the New York State Historic Preservation Act, and the Parks, Recreation and Historic Preservation Law ("PRHPL"), the definition of "previously disturbed site" in proposed ECL § 8-0105(11) could be read to encompass sites that contain or are associated with protected historic or cultural resources. To avoid uncertainty and potential litigation, the Section recommends that "previously disturbed site" be expressly defined to exclude properties or resources subject to protection under Article 14 of the PRHPL, including properties listed on or eligible for the State or National Registers of Historic Places, archaeological sites, and other identified cultural heritage resources.

Similarly, for actions involving housing construction in cities with populations of one million or more, the Section recommends clarifying that sites designated or calendared under the New York City Landmarks Preservation Law are not intended to be swept into categorical exemptions or otherwise removed from established historic preservation review processes. Explicit recognition of these protections would help ensure that the proposed SEQRA reforms operate harmoniously with longstanding historic preservation regimes, avoid disruption to settled bodies of law, and provide certainty to agencies, applicants, and the public.

Time Period for Lead Agency to Reach Determination of Significance

ECL § 8-0109(4)

The proposed revision to ECL § 8-0109(4) would require a SEQRA lead agency to reach a determination of significance within one year from establishing itself as lead agency. There is currently no time limit in the existing statute or regulations. The determination of significance is the lead agency's decision to either issue a "positive declaration" (requiring the preparation of an Environmental Impact Statement ("EIS") for the action under review) or a "negative declaration" (concluding that there is no potential for significant adverse environmental impacts related to an action and ending the SEQRA process).

The Section supports setting forth a time limit for lead agencies to issue determinations of significance. It has become common practice for lead agencies and project developers to spend years building a SEQRA administrative record that supports the issuance of a negative

declaration, in the hopes of avoiding what is considered the "long route" of preparing an EIS. In addition, the process of determining significance can be extended by general opposition to a project that may be unrelated to whether or not a project will have a significant adverse impact, such as project details that should fall outside the scope of the SEQRA review. Earlier determinations of significance should also reduce litigation risk by clarifying the applicable level of environmental review at an early stage and discouraging protracted efforts to justify negative declarations in circumstances where a full EIS is ultimately warranted. In combination, EIS tools such as scoping and the newly proposed time limits for the preparation of an EIS should lead to shorter and less burdensome EIS processes while retaining robust opportunities for public participation.

Time Period for Preparation of Environmental Impact Statement

ECL § 8-0109(5)

The proposed amendments revise ECL § 8-0109(5) to state:

> Notwithstanding the specified time periods established by this article, for actions involving applications for a permit or authorization, the agency shall prepare and make available the environmental impact statement within two years after the date a draft environmental impact statement is determined to be required, unless the agency extends the deadline in writing and, in consultation with an applicant and at the discretion of the agency, establishes a new deadline that provides only so much additional time as is necessary to complete the environmental impact statement, considering any changes made by the applicant to the project design after the issuance of the scoping document that result in new significant environmental impacts, or additional actions that could not have been reasonably anticipated during scoping, or the failure of an applicant to provide necessary information despite good faith effort by an agency, or delay in circumstances beyond the control of an agency or an applicant.

While the Section supports the establishment of a two-year time limit from the issuance of a positive declaration until the release of a Final EIS ("FEIS"), we have a number of concerns related to this proposed provision. First, the amendment requires that "the environmental impact statement" be made available within two years but does not specify whether "environmental impact statement" refers to a Draft EIS ("DEIS") or FEIS. This ambiguity is likely to result in inconsistent interpretations among lead agencies and potential litigation. The statute should expressly state that the two-year time limit applies to issuance of the FEIS.

Second, the proposed amendment allows too much discretion for the lead agency and applicant to agree to extend the two-year deadline by mutual consent, without any real limit on how long they can extend the process. This extension language creates too large a loophole in the two-year time limit. We are also concerned that in practice, an applicant who desires to move the SEQRA review process forward will have no practical choice but to agree to any extension that the lead agency seeks, or else risk an adverse decision from the lead agency. An applicant seeking timely project approval is unlikely to refuse an extension requested by a lead agency, even where such an extension is not strictly necessary. As a result, the proposed extension language risks undermining the certainty and discipline that the two-year deadline is intended to provide.

We would amend the proposed text to include a single six-month extension to the two-year deadline by mutual consent and thereafter limit the possibility of time extensions to: address changes in project design or changes in circumstances after issuance of the DEIS that require additional analysis, delays caused by the applicant despite good faith efforts by the lead agency, or delays outside the control of the lead agency or applicant.

Third, the language of the statute should use the term "lead agency" in place of agency to clarify the distinction between SEQRA lead agencies, involved agencies, and interested agencies.

We propose the following revised language to address the concerns raised above:

> Notwithstanding the specified time periods established by this article, for actions involving applications for a permit or authorization, the lead agency shall prepare and make available the final environmental impact statement within two years after the date a draft environmental impact statement is determined to be required, unless the lead agency extends the deadline in writing and, in consultation with an applicant and at the discretion of the lead agency, establishes a new deadline that provides only so much additional time as is necessary to complete the environmental impact statement, but in no event shall the deadline be extended more than six months, ~~considering any~~ except solely where: (i) there are changes made ~~by the applicant to~~ in the project design or circumstances arise after the issuance of the draft environmental impact statement ~~scoping document~~ that require additional analysis ~~result in new significant environmental impacts, or additional actions that could not have been reasonably anticipated during scoping, or the failure of an~~ ; (ii) the applicant fails to provide necessary information despite good faith effort by ~~an~~ the lead agency~~,~~; or (iii) there is a delay in circumstances beyond the control of ~~an~~ the lead agency or ~~an~~ the applicant.

These refinements would preserve the flexibility necessary for complex projects while ensuring that the two-year deadline results in a meaningful and predictable constraint.

Statute of Limitations

The proposed amendments attempt to clarify the statute of limitations for challenging SEQRA determinations by specifying that "the time to commence a proceeding to review an agency [SEQRA] determination . . . shall begin to accrue when the agency determination to approve or disapprove the action becomes final and binding upon the petitioner or the person whom the petitioner represents in law or in fact."

The proposed language will result in confusion because it does not take into account the fact that there are very often multiple involved agencies in a SEQRA process, each of which has its own approvals to issue and SEQRA obligations to fulfill – an issue not directly addressed by the proposed language, and one that will likely result in confusion about appropriate review and challenge to actions undertaken by these agencies. In practice, it is common that the lead agency is not the first agency to reach "a determination to approve or disapprove the action." For example, a planning board with site plan approval authority may be designated as the SEQRA lead agency, while a zoning board of appeals is considering whether to issue an area variance for the same project. The planning board may issue a negative declaration long before it approves or denies the site plan application, while the zoning board relies on the negative declaration to issue its variance. The project review then returns to the planning board to continue its site plan review.

In this example, there was an "agency determination" by the zoning board to "approve or disapprove the action" which became "final and binding upon the petitioner." However, the lead agency has not yet issued its decision approving or disapproving the site plan and may not end up doing so until after the statute of limitations has passed for challenging the zoning board decision. The amendment should be revisited because as drafted, it is unclear when the statute of limitations would begin to run to challenge the sufficiency of the SEQRA review. The proposed amendment is therefore likely to create additional uncertainty and procedural disputes without meaningfully improving predictability or efficiency.

The Section therefore proposes the following revised language that would clarify that the statute of limitations to challenge the sufficiency of SEQRA review runs from the first final and binding approval of an involved agency:

> The time to commence a proceeding to review an agency determination under the provisions of this article or under the rules or regulations implementing the provisions of this article shall begin to accrue when the first involved agency determination to approve or disapprove the action becomes final and binding upon the petitioner or the person whom the petitioner represents in law or in fact.

In the example provided above, the statute of limitations would run from the zoning board's approval of the variance, since the zoning board was the first involved agency in a coordinated review to issue an approval in reliance on the negative declaration.

Based on the foregoing, the Environmental & Energy Law Section of the New York State Bar Association **SUPPORTS** this legislation and respectfully requests consideration of the Section's recommendations.