



## **S.1635 (THOMPSON, ET AL.)**

## **A. 9480 (SWEENEY)**

### **Summary**

This bill restores the original legislative intent of the State Environmental Quality Review Act (SEQRA) by allowing groups or individuals to challenge a SEQRA decision if they can demonstrate that they will suffer injury from a proposed projects' environmental impact, without having to show that the harm they will suffer is different than that suffered by the public at large.

### **Explanation**

This bill would open the courthouse doors to those bringing a claim of an injury within the zone of interests of the SEQRA statute, consistent with legislative intent.

Passed in 1975, SEQRA sets out rules for environmental analysis when a government entity undertakes, approves or funds a project that might have a significant impact on the environment. While the statute provides no government enforcement mechanism, it allows for citizens affected by a project to petition the courts to review an agency's compliance with environmental review requirements. As written, SEQRA allows New Yorkers to weigh-in on projects affecting the environment and gives the public a seat at the table for determining New York's future.

However, enforcement of SEQRA has been limited by the narrowing of the standing test imposed by the courts. According to a 1991 Court of Appeals decision, for a petitioner to be granted standing to challenge a SEQRA determination the petitioner must not only show injury, but that the injury is different from that experienced by the community at large. The Court thus established a so-called special harm test for standing that is nearly impossible to meet. It is widely believed by judicial scholars that the Court did not intend to narrow the rules of standing to the extent it has in cases of real environmental injury. Contrary to the Court's explicit wishes, there are now instances in which no one would have standing, even in the face of extreme environmental harm, if those affected would experience the same type of harm

While in October 2009 the NYS Court of Appeals removed some barriers to groups seeking to challenge SEQRA determinations in the landmark decision (*Save the Pine Bush Inc. v Common Council of the City of Albany*), standing is still not automatic. The Court did not abandon the special harm standing test entirely. New Yorkers who suffer from same air pollution problems may be denied access to the courts because their injury is no different that of the public.

This bill would correct this situation by reinstating the original standing test—the injury in fact/zone of interests test— as envisioned by the New York State Legislature when the SEQRA statute was enacted.

**Environmental Advocates of New York strongly supports this bill.**

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