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HOUSE BILL NO. 704

Offered January 8, 2020

Prefiled January 6, 2020

A *BILL to amend the Code of Virginia by adding in Chapter 2 of Title 2.2 an article numbered 12, consisting of sections numbered 2.2-234, 2.2-235, and 2.2-236, and by adding in Chapter 26 of Title 2.2 an article numbered 36, consisting of sections numbered 2.2-2699.8 through 2.2-2699.13, relating to environmental justice.*

Patrons—Keam, Herring and Levine

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 2 of Title 2.2 an article numbered 12, consisting of sections numbered 2.2-234, 2.2-235, and 2.2-236, and by adding in Chapter 26 of Title 2.2 an article numbered 36, consisting of sections numbered 2.2-2699.8 through 2.2-2699.13, as follows:

*Article 12.**Virginia Environmental Justice Act.***§ 2.2-234. Definitions.**

For purposes of this article, unless the context requires a different meaning:

"Community of color" means any geographically distinct area where the population of color is higher than the average population of color in the Commonwealth. However, if a community of color is composed primarily of one of the groups listed in the definition of "population of color," the average population of such group in the Commonwealth shall be used for comparison instead of the average population of color in the Commonwealth.

"Environment" means the natural, cultural, social, economic, and political assets or components of a community.

"Environmental justice" means the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.

"Environmental justice community" means any low-income community or community of color.

"Fair treatment" means the equitable consideration of all people whereby no group of people bears a disproportionate share of any negative environmental consequence resulting from an environmental decision.

"Low income" means having an annual household income equal to or less than the greater of (i) an amount equal to 80 percent of the median income of the area in which the household is located, as reported by the Department of Housing and Urban Development, or (ii) 200 percent of the Federal Poverty Level.

"Low-income community" means any census block group in which 30 percent or more of the population is composed of people with low income.

"Meaningful involvement" means (i) the possession by affected and vulnerable community residents of a realistic opportunity to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) the seeking out and consideration by decision-makers of such participation, and the decision-makers' allowance of such participation to shape and influence the decision.

"Population of color" means a population of individuals who identify as belonging to one or more of the following groups: Black, African American, Asian, Pacific Islander, Native American, other non-white race, mixed race, Hispanic, Latino, or linguistically isolated.

"State agency" means any agency, authority, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch of government.

§ 2.2-235. Policy regarding environmental justice; responsibilities of state agencies.

It is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth. To further this policy, each state agency shall examine any proposed regulation or policy involving state action or funds for its impact on environmental justice prior to adopting such regulation or policy and shall have the authority to amend such regulation or policy for the purpose of reducing or eliminating its potential adverse impacts on any environmental justice community.

§ 2.2-236. Responsibilities of Governor's Secretaries.

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59 No later than January 1, 2021, each of the Governor's Secretaries shall develop a secretariat-specific
60 policy to promote environmental justice. Such policy shall include: (i) the identification of permitting
61 authority or other applicable regulatory authority over any development project, brownfield remediation,
62 industrial operation, or commercial facility that affects environmental justice, and a description of any
63 mechanism adopted to ensure that environmental justice is integrated into the review process; (ii) the
64 identification of economic development opportunity funding, environmental benefit funding, or any other
65 discretionary funding program that considers or appropriately should consider the needs of
66 environmental justice communities in the award process; and (iii) an enhanced public participation plan
67 for residents of environmental justice communities potentially affected by any development project,
68 brownfield remediation, industrial operation, or commercial facility that focuses secretariat resources on
69 outreach activities to enhance public participation, including the adoption of a plan for communicating
70 in multiple languages and scheduling public meetings at locations and times convenient for any
71 potentially affected population. Such secretariat policies shall be reviewed every five years and updated
72 as needed. Each of the Governor's Secretaries is authorized to adopt regulations to effectuate the
73 respective secretariat's environmental justice policy.

74 Article 36.

75 Virginia Council on Environmental Justice.

76 **§ 2.2-2699.8. Definitions.**

77 For purposes of this article, unless the context requires a different meaning:

78 "Council" means the Virginia Council on Environmental Justice established pursuant to this article.

79 "Environmental justice" means the same as that term is defined in § 2.2-234.

80 "Fair treatment" means the same as that term is defined in § 2.2-234.

81 "Meaningful involvement" means the same as that term is defined in § 2.2-234.

82 "Resilience" means, as it pertains to climate change, the ability to anticipate, prepare for, and adapt
83 to changing conditions and to withstand, respond to, and recover rapidly from disruptions through
84 adaptable planning and climate solutions.

85 **§ 2.2-2699.9. Virginia Council on Environmental Justice.**

86 The Virginia Council on Environmental Justice is established as an advisory council, within the
87 meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is to
88 advise the Governor and provide recommendations that maintain a foundation of environmental justice
89 principles intended to protect vulnerable communities from disproportionate impacts of pollution.

90 **§ 2.2-2699.10. Membership; terms; quorum; meetings.**

91 A. The Council shall have a total membership of 24 members that shall consist of 18 nonlegislative
92 citizen members and six ex officio members. Nonlegislative citizen members shall be appointed by the
93 Governor. The Secretaries of Natural Resources, Commerce and Trade, Agriculture and Forestry,
94 Health and Human Resources, Education, and Transportation or their designees, including their agency
95 representatives, shall serve ex officio with nonvoting privileges. Nonlegislative citizen members of the
96 Council shall be citizens of the Commonwealth.

97 Ex officio members of the Council shall serve terms coincident with their terms of office.
98 Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms.
99 Vacancies shall be filled in the same manner as the original appointments. Nonlegislative citizen
100 members shall be appointed for a term of three years.

101 B. The Governor shall designate a chairman and vice-chairman from among the membership of the
102 Council. A majority of the members shall constitute a quorum. The meetings of the Council shall be
103 held at the call of the chairman or whenever the majority of the members so request.

104 C. The Council shall meet quarterly and shall establish a meeting schedule on an annual basis.
105 When possible, the location of the meetings shall rotate among different geographic regions. When
106 possible, meetings shall be broadcast on the Internet or via teleconference. Each meeting shall include
107 an in-person public comment component.

108 The Council may provide for the creation of subcommittees. Any subcommittee meetings shall be
109 scheduled with notification to the full Council.

110 **§ 2.2-2699.11. Compensation; expenses; staffing.**

111 Members of the Council shall receive no compensation for their services but shall be reimbursed for
112 all reasonable and necessary expenses incurred in the performance of their duties as provided in
113 §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided by the
114 Secretary of Natural Resources. The Office of the Governor and the Secretary of Natural Resources
115 shall provide staff support to the Council. All agencies of the Commonwealth shall provide assistance to
116 the Council, upon request.

117 **§ 2.2-2699.12. Powers and duties of the Council.**

118 The Council shall have the following powers and duties:

119 1. Advise and provide recommendations to the Governor regarding the development of policies and
120 procedures, focusing on equality and equity, to ensure that environmental justice issues are heard and

addressed as the Commonwealth evolves, as impacts of climate change increase, and as new environmental justice issues emerge. The Council shall provide advice and recommendations to the Governor and his cabinet on:

a. Integrating environmental justice considerations throughout the Commonwealth's programs, regulations, policies, and procedures;

b. Strengthening partnerships on environmental justice among governmental agencies, including federal, tribal, and local governments;

c. Incorporating potential solutions to environmental justice issues related to stakeholder communication, local governments, climate change and resilience, transportation, clean energy, outdoor access, and cultural preservation;

d. Enhancing research and assessment approaches related to environmental justice and identifying potential risks or disproportionate public health impacts related to environmental pollution, particularly those that threaten or could threaten low-income and historically underserved communities;

e. Receiving comments, concerns, and recommendations from individuals throughout the Commonwealth; and

f. Recommending statutory, regulatory, or executive action, or relevant improvements or additions, for consideration to better address environmental justice issues.

2. Submit an annual report to the Governor and the General Assembly for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Council no later than the first day of each regular session of the General Assembly starting in 2021. The executive summary shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

3. Apply for, accept, and expend gifts, grants, or donations from public, quasi-public, or private sources, including any matching funds designated in an appropriation act, to enable it to better carry out its objectives.

§ 2.2-2699.13. Sunset.

This chapter shall expire on July 1, 2023.