

20107107D

SENATE BILL NO. 406**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on General Laws and Technology
on January 29, 2020)

(Patron Prior to Substitute—Senator Hashmi)

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 through 2.2-237, relating to environmental justice; agency regulations; working group.*

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 through 2.2-237, 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, expressed as a percentage of the total population of such area, is higher than the population of color in the Commonwealth expressed as a percentage of the total population of 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 percentage population of such group in the Commonwealth shall be used instead of the percentage 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 industrial, governmental, or commercial operation, program, or policy.

"Fenceline community" means an area that contains all or part of a low-income community or community of color and that presents an increased health risk to its residents due to its proximity to a major source of pollution.

"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, and (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 the requirements that (i) affected and vulnerable community residents have access and opportunities to participate in the full cycle of the decision-making process about a proposed activity that will affect their environment or health and (ii) decision makers will seek out and consider such participation, allowing the views and perspectives of community residents 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.

"Working Group" means the Interagency Environmental Justice Working Group created pursuant to § 2.2-237.

§ 2.2-235. Policy regarding environmental justice.

It is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth.

§ 2.2-236. Responsibilities of state agencies.

A. Prior to taking any action, including the adoption of any regulation, guidance document, or policy, and prior to making any decision as to the use of any funding, a state agency shall determine whether such action or decision is likely to affect any environmental justice community or fenceline community. If such community is likely to be affected, the state agency shall amend the action to reduce

60 or eliminate any potential adverse impacts on such affected community.

61 B. No later than January 1, 2021, each state agency shall develop an agency-specific environmental
62 justice policy. Such policy shall ensure that environmental justice is meaningfully considered as a
63 prerequisite to taking any agency action, including the development of any guidance document, and
64 shall include (i) the identification of the steps necessary for the agency to take to ensure that it
65 meaningfully considers environmental justice in administering its basic law and regulations; (ii) the
66 identification of the agency's permitting authority and regulatory authority as they affect environmental
67 justice, and, for each authority identified, the implementation of procedures and standards to ensure that
68 environmental justice is meaningfully considered before any agency action is taken; (iii) the
69 identification of economic development opportunities, infrastructure development opportunities, and any
70 other funding opportunities in order to allow the needs of environmental justice communities and
71 fenceline communities to be meaningfully considered; and (iv) the creation of an enhanced public
72 participation plan for residents of any environmental justice community or fenceline community
73 potentially affected by an agency action. Such public participation plan shall focus agency resources on
74 outreach activities intended to enhance public participation by each affected environmental justice
75 community or fenceline community, including by communicating in the languages of each potentially
76 affected community and by scheduling public meetings at times that are convenient for and at locations
77 in each potentially affected community. Each state agency shall review its environmental justice policy
78 shall every five years and update it as needed.

79 C. Each state agency authorized by its basic law, as defined in § 2.2-4001, to adopt regulations shall
80 adopt regulations to effectuate the agency's environmental justice policy.

81 D. Each of the Governor's Secretaries shall designate at least one environmental justice coordinator
82 to represent the secretariat as a member of the Working Group.

83 **§ 2.2-237. Interagency Environmental Justice Working Group.**

84 A. The Interagency Environmental Justice Working Group is established as an advisory council,
85 within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the
86 Working Group is to further environmental justice in the Commonwealth.

87 B. The Working Group shall have a total membership of at least 10 members that shall consist of the
88 Environmental Justice Coordinators designated pursuant to § 2.2-236. The Secretary of Natural
89 Resources shall designate a chairman and vice-chairman from among the membership of the Working
90 Group. A majority of the members shall constitute a quorum. Each member shall serve at the pleasure
91 of the appointing Governor's Secretary.

92 C. The Working Group shall meet at least once before September 15, 2020, and shall establish a
93 meeting schedule on an annual basis. The Working Group shall meet at least two times per year. The
94 Secretary of Natural Resources shall provide staff support to the Working Group. All agencies of the
95 Commonwealth shall provide assistance to the Working Group, upon request.

96 D. The Working Group shall have the following powers and duties:

97 1. Maximize state resources, research, and technical assistance to carry out the purposes of this
98 article and to further environmental justice in the Commonwealth.

99 2. Coordinate with any other governmental body that is working on similar policy issues.

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