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SENATE BILL NO. 1318

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact § 2.2-234 of the Code of Virginia and to amend the Code of Virginia by adding in Article 12 of Chapter 2 of Title 2.2 sections numbered 2.2-236 and 2.2-237, relating to environmental justice; interagency working group.

Patrons—Hashmi, Boysko and McClellan; Delegates: Aird and Simonds

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-234 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 12 of Chapter 2 of Title 2.2 sections numbered 2.2-236 and 2.2-237 as follows:

§ 2.2-234. Definitions.

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

"Agency" means the same as that term is defined in § 2.2-4001.

"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.

"Covered agency action" means any (i) agency action as defined in § 2.2-4001, (ii) issuance of a guidance document as defined in § 2.2-4101, or (iii) expenditure of agency funds in excess of \$500,000 for a particular environmental, economic development, infrastructure, or transportation project.

"Cumulative impact" means the impact on human health or the environment that results from the incremental impact of a covered agency action when added to the effects of other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. "Cumulative impact" can result from individually minor but collectively significant actions taking place over a period of time.

"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

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59 instrumentality of state government in the executive branch of government.

60 "Virginia Council on Environmental Justice" or "Council" means the Virginia Council on
61 Environmental Justice established pursuant to § 2.2-2699.9.

62 "Working Group" means the Interagency Environmental Justice Working Group established in
63 § 2.2-237.

64 **§ 2.2-236. State agency responsibilities.**

65 A. No later than October 1, 2021, each agency shall adopt an agency-specific environmental justice
66 policy that requires the agency to evaluate the environmental justice consequences of any covered
67 agency action that involves any portion of the environment of the Commonwealth. Such policy shall (i)
68 require the agency to meaningfully consider environmental justice and any cumulative impacts in its
69 administration of the agency's basic law or regulations; (ii) consistently identify environmental justice
70 communities and fenceline communities; (iii) identify the ways in which such communities are affected
71 by covered agency actions, including the actions of other agencies; (iv) consider the economic
72 development and infrastructure needs of environmental justice communities and fenceline communities in
73 agency decision-making processes; and (v) contain robust public participation plans for residents of
74 environmental justice communities and fenceline communities that are potentially affected by a covered
75 agency action of the agency. Such public participation plan shall focus agency resources on outreach
76 activities intended to enhance public participation by each affected environmental justice community or
77 fenceline community, including by communicating in the languages of each potentially affected
78 community and by scheduling public meetings with sufficient written notice and at times and locations
79 that are convenient in each potentially affected community. Each state agency shall review and update
80 its environmental justice policy at least once every four years and may update it more frequently as
81 needed.

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

84 C. Each of the Governor's Secretaries shall designate at least one and no more than three
85 environmental justice coordinators to represent the secretariat as a member of the Working Group.

86 **§ 2.2-237. Interagency Environmental Justice Working Group; purpose; membership.**

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

90 B. The Working Group shall have a total membership of at least 13 members that shall consist of 12
91 nonlegislative citizen members and one ex officio member. Nonlegislative citizen members shall be
92 appointed as follows: two of the nonlegislative citizen members of the Virginia Council on
93 Environmental Justice to be appointed by the Governor upon consideration of the recommendation of
94 the Council and at least one environmental justice coordinator designated pursuant to subsection C of §
95 2.2-236 or his designee from each of the Governor's Secretaries to be appointed by each Secretary. The
96 Director of Diversity, Equity, and Inclusion established by § 2.2-435.12 or his designee shall serve ex
97 officio with voting privileges. Nonlegislative citizen members of the Working Group shall be residents of
98 the Commonwealth.

99 C. The ex officio member shall serve a term coincident with his term of office. The secretarial
100 appointees shall serve at the pleasure of the appointing Secretary. Vacancies shall be filled in the same
101 manner as the original appointments. All members may be reappointed.

102 D. The Director of Diversity, Equity, and Inclusion shall serve as chairman of the Working Group,
103 and one of the nonlegislative citizen members shall serve as vice-chairman. A majority of the members
104 shall constitute a quorum. The Working Group shall meet at least quarterly. The Secretary of Natural
105 Resources shall provide staff support to the Working Group, and all agencies of the Commonwealth
106 shall provide assistance to the Working Group, upon request.

107 E. Members shall receive such compensation for the performance of their duties as provided in §
108 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the
109 performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

110 F. The Working Group shall have the following powers and duties:

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

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

114 3. Solicit and review comments from the public on the implementation of this article irrespective of
115 whether written comments were submitted to the Working Group in advance of any Working Group
116 meeting where public comment is taken.

117 4. At each meeting receive a report from environmental justice coordinators who serve on the
118 Working Group on actions taken by each secretariat to implement the provisions of this article.

119 5. Submit an annual report to the Governor and the General Assembly for publication as a report
120 document as provided in the procedures of the Division of Legislative Automated Systems for the

121 processing of legislative documents and reports. Prior to submitting the annual report to the Governor
122 and the General Assembly, the chairman shall transmit a final draft of the report to the Council and
123 request that the Council provide written comments. The chairman shall submit to the Governor and the
124 General Assembly an annual executive summary of the interim activity and work of the Working Group,
125 including a summary of any comments received from the public or the Council and a response to such
126 comments, no later than the first day of each regular session of the General Assembly. The executive
127 summary shall be submitted as a report document as provided in the procedures of the Division of
128 Legislative Automated Systems for the processing of legislative documents and reports.
129 G. Notwithstanding the provisions of § 30-19.1:9, this section shall expire on July 1, 2031.