

2021 SPECIAL SESSION I

INTRODUCED

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HOUSE BILL NO. 2074

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 and by adding sections numbered 10.1-1186.7 and 15.2-2223.5, relating to environmental justice; interagency working group.*

Patrons—Simonds, Keam, Murphy, Aird, Carr, Kory, Lopez and Subramanyam

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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 and by adding sections numbered 10.1-1186.7 and 15.2-2223.5 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.

INTRODUCED

HB2074

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

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

63 "Working Group" means the Interagency Environmental Justice Working Group established in
64 § 2.2-237.

65 **§ 2.2-236. State agency responsibilities.**

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

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

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

87 **§ 2.2-237. Interagency Environmental Justice Working Group; purpose; membership.**

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

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

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

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

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

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

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

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

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

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

120 5. 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. Prior to submitting the annual report to the Governor and the General Assembly, the chairman shall transmit a final draft of the report to the Council and request that the Council provide written comments. The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Working Group, including a summary of any comments received from the public or the Council and a response to such comments, no later than the first day of each regular session of the General Assembly. 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.

G. Notwithstanding the provisions of § 30-19.1:9, this section shall expire on July 1, 2031.

§ 10.1-1186.7. Community involvement in permitting process; consideration of cumulative impacts and environmental justice.

A. As used in this section:

"Applicant" means an applicant for any permit issued by a permitting authority for a covered activity.

"Covered activity" means the construction, expansion, or operation of a facility that comprises a (i) fossil fuel-fired electric generating facility with a capacity of more than 25 megawatts; (ii) sludge or solid waste incinerator or combustor; (iii) sewage treatment plant with a capacity of more than 50 million gallons per day; (iv) recycling facility serving multiple localities, intermediate processing center, or volume reduction facility with a combined monthly volume in excess of 25 tons; (v) sanitary landfill, including a sanitary landfill that contains ash, construction or demolition debris, or solid waste; (vi) medical waste incinerator; (vii) major source of air pollution, as defined by the federal Clean Air Act, including a renewal of an existing facility's major source permit; (viii) fossil fuel-fired compressor station facility used to transport natural gas; (ix) underground or surface coal mine or mineral mine, including a renewal of an existing facility's permit; or (x) methane capture facility.

"Cumulative impact" means the same as that term is defined in § 2.2-234.

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

"Environmental stressor" means any source of environmental pollution, including a source of air pollution, mobile source of air pollution, contaminated site, transfer station or other solid waste facility, recycling facility, scrap yard, or point source of water pollution, including a combined sewer overflow outfall.

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

"Methane capture facility" means any system used to collect methane gas produced as a byproduct of the operation of a public or privately owned facility used in commerce for use as an energy source for such facility or any other facility used in commerce. "Methane capture facility" includes any pipeline used to transport the collected methane gas.

"Permitting authority" means the Director, the State Air Pollution Control Board, or the State Water Control Board.

"Public health stressor" means any environmental condition that could adversely affect public health in a community, including a condition that causes asthma, cancer, elevated blood lead levels, cardiovascular disease, or developmental problems.

"Public involvement plan" means a written plan that sets forth the outreach activities that the applicant intends to provide for the purpose of enabling members of the public who are potentially affected by the proposed covered activity to have meaningful involvement throughout the permitting process, including by communicating in the languages of each potentially affected community and by scheduling public meetings with sufficient written notice and at times and locations that are convenient in each potentially affected community.

B. Notwithstanding any other provision of law and to the extent consistent with federal requirements, no permit for any covered activity shall be issued by a permitting authority until both the applicant and permitting authority have complied with the requirements of this section.

C. Prior to applying for a permit for a covered activity, the applicant shall obtain approval for its public involvement plan from the permitting authority. The permitting authority shall publish the applicant's proposed public involvement plan on its website along with a notice of a 45-day written public comment period and the date, time, and location of a public hearing on the proposed plan. The permitting authority shall conduct a hearing in each locality in which the applicant proposes to undertake the covered activity prior to issuing any decision on the public involvement plan proposed by the applicant.

D. The permitting authority shall not consider complete for review any application for a permit for a covered activity until the applicant:

1. Submits a cumulative impact statement that identifies all cumulative impacts to which the proposed covered activity could contribute;

2. If the proposed covered activity occurs in or could affect an environmental justice community, submits an environmental justice impact statement that assesses the potential environmental stressors and public health stressors associated with the proposed covered activity, including any environmental stressor or public health stressor that cannot be avoided if the permit is granted and any environmental stressor or public health stressor already borne by the environmental justice community as a result of existing conditions located in or affecting such environmental justice community; and

3. Submits a proposed public notice of the hearing that the permitting authority shall conduct pursuant to subsection E that includes (i) a description of the covered activity; (ii) a map indicating the location of the facility; (iii) a brief summary of the cumulative impact statement and any environmental justice impact statement; (iv) information on how an interested person may review a copy of the complete cumulative impact statement or any environmental justice impact statement; (v) an address for the submission of written comments on the covered activity; (vi) a proposed date, time, and location of the hearing; and (vii) any other information the permitting authority deems appropriate.

E. After receipt of the materials required by subsection D, the permitting authority shall publish the materials on its website and indicate the date by which any written comments shall be submitted and the date, time, and location of the hearing in the public notice supplied by the applicant, which shall occur in each locality in which the applicant proposes the covered activity no sooner than 60 days after receipt of a complete permit application by the permitting authority. The applicant shall publish a notice of the public hearing at least 45 days before the date of the hearing in at least two newspapers of general circulation in the locality, including one local non-English-language newspaper, if applicable.

F. The permitting authority shall consider the cumulative impact statement, any environmental justice impact statement, any noncompliance by the applicant with the approved public involvement plan, and all testimony or comments received on the proposed covered activity and shall not render a decision on the permit sought by the applicant until at least 45 days after the hearing conducted pursuant to subsection E. The permitting authority shall:

1. Deny the application upon a finding that the proposed covered activity would cause or contribute to an adverse cumulative impact, environmental stressor, or public health stressor in any area affected by the activity and that such impact or stressor is higher than that borne by other communities in the Commonwealth, locality, or other geographic unit of analysis as determined by the permitting authority pursuant to regulation or guidance adopted or issued pursuant to subsection H;

2. Notwithstanding a finding made pursuant to subdivision 1, approve the application with conditions on the construction and operation of the covered activity to minimize any adverse cumulative impact, environmental stressor, or public health stressor to the greatest extent possible, so long as the permitting authority also finds that the covered activity will serve a compelling public interest in the locality; or

3. Absent a finding made pursuant to subdivision 1, approve or deny the application in accordance with applicable law.

G. The applicant shall comply with the provisions of an approved public involvement plan.

H. The permitting authority shall adopt regulations to implement the provisions of this section and may issue a guidance document for compliance with this section.

§ 15.2-2223.5. Comprehensive plan shall include environmental justice strategy.

A. For purposes of this section:

"Environmental justice community" means the same as that term is defined in § 2.2-234. An "environmental justice community" shall be identified on the basis of the most current available demographic information compiled for any census tract, census block, or discrete geographic area smaller than a census tract or census block within the locality.

"Fenceline community" means the same as that term is defined in § 2.2-234.

B. Beginning July 1, 2021, each locality shall, during each review of its comprehensive plan, adopt an environmental justice strategy. Such environmental justice strategy shall:

1. Identify each environmental justice community and fenceline community within the locality.

2. Identify objectives and policies to reduce the unique or compounded health risks in each environmental justice community or fenceline community by means that include the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, broadband Internet access, safe and sanitary dwellings, and physical activity.

3. Identify objectives and policies to promote public involvement by residents of each environmental justice community or fenceline community in the public decision-making process.

4. Identify objectives and policies that prioritize improvements and programs that address the needs of environmental justice communities and fenceline communities.

2. That the Interagency Environmental Justice Working Group (the Working Group) established pursuant to § 2.2-237 of the Code of Virginia, as created by this act, shall focus its work during its first year on (i) assessing current air quality monitoring practices in Virginia, including by assessing which pollutants are monitored, where monitoring takes place, and what monitoring

244 technologies are used; (ii) comparing current practices in the Commonwealth with the U.S.
245 Environmental Protection Agency (EPA) recommendations for (a) monitoring criteria pollutants as
246 defined in 40 C.F.R. § 93.152, (b) selecting the most cost-effective monitoring technologies, and (c)
247 implementing best management practices in air quality monitoring; (iii) comparing current
248 practices in the Commonwealth with the standard of environmental justice set by § 2.2-234 of the
249 Code of Virginia; and (iv) making recommendations to improve air quality monitoring in the
250 Commonwealth in order to protect the health and safety of Virginians by (a) providing better data
251 collection and (b) making such monitoring more environmentally just. During its first year, the
252 Working Group shall consider the following questions and any other questions it considers
253 relevant: (1) whether air quality monitoring should be required as part of the permitting process
254 for major development projects, (2) whether preference should be given to the monitoring of air
255 pollution "hot spots" where such high-concentration areas coincide with low-income residential
256 areas, and (3) whether the process of notifying the public of an elevated Air Quality Index day
257 should be improved or a voluntary counterpart to the EPA Air Pollution Action Day should be
258 implemented.