

2021 SPECIAL SESSION I

HOUSE SUBSTITUTE

21103839D

HOUSE BILL NO. 2074

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 27, 2021)

(Patron Prior to Substitute—Delegate Simonds)

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 a section numbered 15.2-2223.5, relating to environmental justice; interagency working group.

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 a section numbered 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.

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

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

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60 "Working Group" means the Interagency Environmental Justice Working Group established in
61 § 2.2-237.

62 **§ 2.2-236. State agency responsibilities.**

63 A. Each agency listed in subsection D shall, by the date specified, adopt an agency-specific
64 environmental justice policy that requires the agency to evaluate the environmental justice consequences
65 of any covered agency action that involves any portion of the environment of the Commonwealth. Such
66 policy shall (i) require the agency to meaningfully consider environmental justice and any cumulative
67 impacts in its administration of the agency's basic law or regulations; (ii) consistently identify
68 environmental justice communities and fenceline communities; (iii) identify the ways in which such
69 communities are affected by covered agency actions, including the actions of other agencies; and (iv)
70 contain public participation plans for residents of environmental justice communities and fenceline
71 communities that are potentially affected by a covered agency action of the agency. Such public
72 participation plan shall focus agency resources on outreach activities intended to enhance public
73 participation by each affected environmental justice community or fenceline community, including by
74 communicating in the languages of each potentially affected community and by scheduling public
75 meetings with sufficient written notice and at times and locations that are convenient in each potentially
76 affected community. Each state agency shall review and update its environmental justice policy at least
77 once every four years and may update it more frequently as needed.

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

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

82 D. Each agency under the Secretary of Agriculture and Forestry, the Secretary of Commerce and
83 Trade, the Secretary of Health and Human Resources, the Secretary of Natural Resources, and the
84 Secretary of Transportation shall comply with the provisions of this section by October 1, 2021. Each
85 agency under the Secretary of Education shall comply with the provisions of this section by October 1,
86 2022. Each agency under any other Secretariat shall comply with the provisions of this section by
87 October 1, 2023.

88 **§ 2.2-237. Interagency Environmental Justice Working Group; purpose; membership.**

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

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

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

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

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

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

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

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

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

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

121 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.

§ 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, and 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, consider identifying:

1. Each environmental justice community and fenceline community within the locality.
2. 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. Objectives and policies to promote public involvement of residents of each environmental justice community or fenceline community in the public decision-making process.

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