



Three steps forward for environmental justice in Virginia

THREE LEGISLATIVE ACTIONS taken by the 2020 General Assembly will shape the environmental justice landscape in Virginia for years to come. These include passing the Virginia Environmental Justice Act, adding environmental justice considerations to the Department of Environmental Quality's mission, and establishing the Virginia Council on Environmental Justice.

Let's take a closer look at each.

STEP 1: Meet the Virginia Environmental Justice Act

Thanks to the Environmental Justice Act, it is now the policy of the Commonwealth that the aims of environmental justice focus on populations whose health, quality of life, and communities may be at greater risk if certain infrastructure or other developments are sited near them.

When it comes to planning and considering major infrastructure or other developments, the law requires affected citizens from low-income, fenceline, and population of color communities to be assured of "meaningful involvement" in public hearings and other official decision-making processes, such as for local zoning and local and state regulatory permitting. (See sidebar on next page for key definitions).

STEP 2: Environmental justice is now part of DEQ's mission

The Department of Environmental Quality (DEQ) is the state's lead environmental regulatory agency, with jurisdiction over air, wa-

ter, and waste matters. Its mission is to protect Virginia's environment so that, in turn, Virginians' health and well-being are protected. DEQ carries out its mission through policy and guidance, regulatory permitting, and enforcement of environmental laws.

During the 2020 General Assembly Session, Del. Alfonso Lopez of Arlington County introduced legislation to make environmental justice part of DEQ's mission. As passed, the legislation requires DEQ to "further environmental justice" through its public participation and permitting processes. To the extent that the DEQ's permitting processes intersect with local governments' processes – especially on public participation requirements – localities that are planning infrastructure projects and other developments may find it necessary to increase their regulatory engagement with DEQ and to factor environmental justice considerations into their projects.

STEP 3: Enter the Virginia Council on Environmental Justice

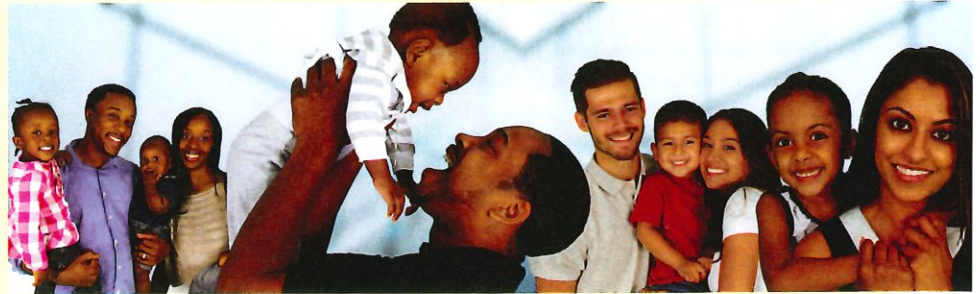
Legislation creating the Virginia Council on Environmental Justice was introduced by Sen. Mamie Locke of Hampton. As established by the 2020 General Assembly, the Virginia Council on Environmental Justice is a 27-member panel comprised of 21 citizens, and six cabinet secretaries. The council's role is advisory, not regulatory.

The council will advise the governor and make recommendations focusing on equality and equity, integration of environmental justice considerations across state policies and regulations, and strengthening partnerships with local governments and other stakeholders to carry out environmental justice aims in transportation, energy, climate change and resilience, and other areas.

Key definitions specific to the Virginia Environmental Justice Act

THE VIRGINIA ENVIRONMENTAL Justice Act was introduced by Del. Mark Keam of Fairfax County and Sen. Ghazala Hashmi of Henrico County. As passed, the legislation provides numerous definitions of terms to ensure greater participation of disadvantaged citizens.

Note – all the definitions in the Act can be found in **Virginia Code §2.2-234**.



- **Environmental justice**...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.
- **Low income**...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**...any census block group in which 30 percent or more of the population is composed of people with low income.
- **Environmental justice community**...any low-income community or community of color.

- **Fenceline community**...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.
- **Population of color**...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.
- **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.

A head start on 2021: Department of Environmental Quality releases environmental justice study

Even as the 2020 General Assembly was taking up the environmental justice legislation outlined above, the Virginia Department of Environmental Quality was in the midst of a year-long study conducted by outside consultants assessing the agency's ability to incorporate environmental justice goals into its planning, operations, and programs.

DEQ commissioned the study, conducted principally by Skeo Solutions, to assess the agency's statutory authority, governance, staff capacity, regulatory guidance and tools, public communications, community engagement, and more.

The results of the study, which were released in a 43-page report in October, includes nearly 50 recommendations.


Of interest to localities, the study recommends:

- **The Department of Environmental Quality** invest in local government coordination and education to promote and implement environmental justice policies. Specifically, the study calls for DEQ to coordinate with local governments on environmental justice policies in localities' comprehensive planning, land use, and infrastructure siting processes; develop easy-to-understand environmental justice materials; and offer "pre-screening" services before infrastructure siting decisions in order to meet environmental justice goals.
- **The General Assembly** pass legislation "requiring Virginia municipalities to consider environmental justice in their

comprehensive plans and zoning ordinances" and perhaps to require localities to identify disadvantaged communities in comprehensive plans. This language is similar to an existing California law.

- **Local and state governments** enhance community outreach efforts, especially to low-income or vulnerable communities who may be inordinately impacted by proposed infrastructure or other developments, to better ensure their participation in public hearings and regulatory permitting processes.
- **The state** develop guidance, handbooks, and technical tools to assist local governments in incorporating environmental justice considerations into land-use planning, zoning decisions, infrastructure siting, and permitting.

In many cases, the study acknowledges that its recommendations may require additional funding, whether for DEQ as it ramps up to implement its new environmental justice responsibilities or for localities who may be subject to mandates.

It is anticipated that legislation and budget proposals will be introduced in the 2021 General Assembly session to enact and fund a number of the study's recommendations. 

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