

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

1

HOUSE BILL 416

Short Title: Environmental Justice Considerations. (Public)

Sponsors: Representatives Harrison, F. Jackson, and K. Brown (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

March 21, 2023

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CONSIDERATION OF THE CUMULATIVE IMPACT OF A PROPOSED ENVIRONMENTAL PERMITTING DECISION ON MINORITY OR LOW-INCOME COMMUNITIES AND TO PROVIDE ENHANCED PUBLIC PARTICIPATION OPPORTUNITIES FOR PERMITTING DECISIONS IMPACTING OVERBURDENED COMMUNITIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 74-51 reads as rewritten:

"§ 74-51. **Permits – Application, granting, conditions.**

(a) Any operator desiring to engage in mining shall make written application to the Department for a permit. The application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish any other information as may be deemed necessary by the Department in order adequately to enforce this Article. The application shall be accompanied by a reclamation plan that meets the requirements of G.S. 74-53. No permit shall be issued until a reclamation plan has been approved by the Department. The application shall be accompanied by a signed agreement, in a form specified by the Department, that in the event a bond forfeiture is ordered pursuant to G.S. 74-59, the Department and its representatives and contractors shall have the right to make whatever entries on the land and to take whatever actions may be necessary in order to carry out reclamation that the operator has failed to complete.

...

(d) The Department may deny the permit upon finding:

...

(8) The cumulative impact of the proposed action (including the impact on public health), when considered in relation to other similar impacts of actions taken or proposed in the community, would have a disproportionate adverse impact on a low-income community or a minority community protected by Title VI of the federal Civil Rights Act of 1964.

...."

SECTION 1.(b) This section becomes effective July 1, 2023, and applies to any application for a mining permit pending on that date.

SECTION 2.(a) G.S. 130A-294(a)(4)c. reads as rewritten:

"c. The Department shall deny an application for a permit for a solid waste management facility if the Department finds that:

...



9. The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a low-income community or a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964. ~~This subdivision shall apply only to the extent required by federal law.~~"

SECTION 2.(b) This section becomes effective July 1, 2023, and applies to any application for a permit for a solid waste management facility that is pending on that date.

SECTION 3.(a) G.S. 113A-4 reads as rewritten:

"§ 113A-4. Cooperation of agencies; reports; availability of information.

The General Assembly authorizes and directs that, to the fullest extent possible:

...
(2) Every State agency shall include in every recommendation or report on any action involving significant expenditure of public moneys or use of public land for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

...
g. The cumulative impact of the proposed action (including the impact on public health), when considered in relation to other similar impacts of actions taken or proposed in the community, on a low-income community or a minority community protected by Title VI of the federal Civil Rights Act of 1964.

...."

SECTION 3.(b) This section becomes effective July 1, 2023, and applies to any environmental documents for proposed actions submitted on or after that date.

SECTION 4.(a) G.S. 113A-120 reads as rewritten:

"§ 113A-120. Grant or denial of permits.

(a) The responsible official or body shall deny an application for a permit upon finding:

...
(9a) In any case, the proposed development, when considered in relation to other similar impacts of developments located or proposed in the community, would have a disproportionate adverse impact on a low-income community or a minority community protected by Title VI of the federal Civil Rights Act of 1964. For purposes of this subdivision, "adverse impact" includes impacts on public health.

(10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through ~~(9)~~-(9a) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.

...."

SECTION 4.(b) This section becomes effective July 1, 2023, and applies to any application for a permit that is pending on that date.

SECTION 5.(a) G.S. 130A-294(g) reads as rewritten:

"(g) The Commission shall develop and adopt standards for permitting of hazardous waste facilities. Such standards shall be developed with, and provide for, public participation; shall be incorporated into rules; shall be consistent with all applicable federal and State law, including

1 statutes, regulations and rules; shall be developed and revised in light of the best available
2 scientific data; and shall be based on consideration of at least the following factors:

- 3 ...
- 4 (7) Availability and reliability of public utilities; ~~and~~
- 5 (8) Availability of emergency response personnel and ~~equipment.~~ equipment; and
- 6 (9) The cumulative impact of the proposed remediation (including the impact on
- 7 public health), when considered in relation to other similar impacts of actions
- 8 taken or proposed in the community, on a low-income community or a
- 9 minority community protected by Title VI of the federal Civil Rights Act of
- 10 1964."

11 **SECTION 5.(b)** This section becomes effective July 1, 2023, and applies to any
12 application for a permit of a hazardous waste facility that is pending on that date.

13 **SECTION 6.(a)** G.S. 130A-310.69 reads as rewritten:

14 "**§ 130A-310.69. Remedial investigation report; remedial action plans.**

- 15 ...
- 16 (c) A remedial action plan shall also include an analysis of each of the following factors:
- 17 ...
- 18 (5) The cumulative impact of the proposed remediation (including the impact on
- 19 public health), when considered in relation to other similar impacts of actions
- 20 taken or proposed in the community, on a low-income community or a
- 21 minority community protected by Title VI of the federal Civil Rights Act of
- 22 1964.

23"

24 **SECTION 6.(b)** This section becomes effective July 1, 2023, and applies to remedial
25 action plans submitted to the Department of Environmental Quality on or after that date.

26 **SECTION 7.(a)** G.S. 143-215.10C is amended by adding a new subsection to read:

27 "(d1) The Commission shall deny any application for a permit, a permit renewal, or a
28 certificate of coverage or renewal of a certificate of coverage under a general permit if it finds
29 that the cumulative impact of the proposed permit or certificate, when considered in relation to
30 other similar impacts of actions taken or proposed in the community, would have a
31 disproportionate adverse impact on a low-income community or a minority community protected
32 by Title VI of the federal Civil Rights Act of 1964. For purposes of this subsection, "adverse
33 impact" includes impacts on public health."

34 **SECTION 7.(b)** This section becomes effective July 1, 2023, and applies to any
35 application for a permit or permit renewal that is pending on that date.

36 **SECTION 8.(a)** G.S. 143-215.108(c) reads as rewritten:

- 37 "(c) The Commission shall have the power:
- 38 ...
- 39 (9) With respect to permits required by Title V, to deny a permit application or
- 40 require suitable mitigation if it finds that the cumulative impact of the
- 41 proposed air contaminant source, when considered in relation to other similar
- 42 impacts of air contaminant sources permitted or proposed in the community,
- 43 would have a disproportionate adverse impact on a low-income community or
- 44 a minority community protected by Title VI of the federal Civil Rights Act of
- 45 1964. For purposes of this subdivision, "adverse impact" includes impacts on
- 46 public health."

47 **SECTION 8.(b)** This section becomes effective July 1, 2023, and applies to any
48 application for a permit or permit renewal that is pending on that date.

49 **SECTION 9.(a)** G.S. 143-215.1(b)(4) reads as rewritten:

- 50 "(4) The Commission shall have the power:
- 51 ...

- 1 g. To deny a permit or the renewal of a permit when the Commission
2 finds that the cumulative impact of the proposed action, when
3 considered in relation to other similar impacts of actions taken or
4 proposed in the community, would have a disproportionate adverse
5 impact on a low-income community or a minority community
6 protected by Title VI of the federal Civil Rights Act of 1964. For
7 purposes of this sub-subdivision, "adverse impact" includes impacts
8 on public health."

9 **SECTION 9.(b)** This section becomes effective July 1, 2023, and applies to any
10 application for a permit that is pending on that date.

11 **SECTION 10.** Article 7 of Chapter 143B of the General Statutes is amended by
12 adding a new section to read:

13 **"§ 143B-279.18. Enhanced public participation for overburdened communities.**

14 (a) When the Department of Environmental Quality or any Commission with permitting
15 authority created by this Article considers an application for a permit or approval for a new or
16 expanded facility, source, or project in an overburdened community, the Department or
17 Commission must hold at least one public hearing in the overburdened community, provide 60
18 days' advance notice of the hearing, and include in the hearing officer's report a response to
19 community input received at the hearing or in response to the notice. The hearing required by
20 this section shall be in addition to any other public participation required by applicable law.

21 (b) The following definitions apply in this section:

22 (1) Community of color. – A distinct geographic area in which the share of the
23 population of any of the following categories of individuals is higher than that
24 category's share of the State population as a whole:

25 a. African American.

26 b. Asian and Pacific Islander.

27 c. Hispanic.

28 d. Latino.

29 e. Member of a federally recognized Native American tribe or a Native
30 American tribe recognized under Chapter 71A of the General Statutes.

31 f. Other non-white race.

32 g. Linguistically isolated.

33 (2) Linguistically isolated. – Households in which all members age 14 years and
34 older speak a language other than English and also have limited proficiency
35 in English.

36 (3) Low-income household. – Households with a household income equal to or
37 less than the greater of (i) eighty percent (80%) of the median income of the
38 area in which the household is located and (ii) two hundred percent (200%) of
39 the federal poverty level.

40 (4) Overburdened community. – A census block, as designated by the most recent
41 census of the U.S. Census Bureau, in which at least thirty percent (30%) of
42 the households qualify as low-income households, or a geographically distinct
43 area that is a community of color."

44 **SECTION 11.** Except as otherwise specified, this act is effective when it becomes
45 law.