

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 689

Short Title: Environmental Justice in North Carolina. (Public)

Sponsors: Representatives Crawford, Alston, Buansi, and T. 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

April 19, 2023

A BILL TO BE ENTITLED
AN ACT RELATING TO ENVIRONMENTAL JUSTICE IN NORTH CAROLINA.
The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds all of the following:

- (1) According to American Journal of Public Health studies published in 2014 and 2018 and affirmed by decades of research, Black, Indigenous, and Persons of Color (BIPOC) and individuals with low income are disproportionately exposed to environmental hazards and unsafe housing, facing higher levels of air and water pollution, mold, lead, and pests.
- (2) The cumulative impacts of environmental harms disproportionately and adversely impact the health of BIPOC and communities with low income, with climate change functioning as a threat multiplier. These disproportionate adverse impacts are exacerbated by lack of access to affordable energy, healthy food, green spaces, and other environmental benefits.
- (3) Since 1994, Executive Order 12898 has required federal agencies to make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and populations with low incomes in the United States.
- (4) State agencies receiving federal funds are subject to the antidiscrimination requirements of Title VI of the Civil Rights Act of 1964.
- (5) In response to the documented inadequacy of state and federal environmental and land use laws to protect vulnerable communities, increasing numbers of states have adopted formal environmental justice laws and policies.
- (6) The 1991 Principles of Environmental Justice adopted by The First National People of Color Environmental Leadership Summit demand the right of all individuals to participate as equal partners at every level of decision making, including needs assessment, planning, implementation, enforcement, and evaluation.
- (7) Section 33 of Article I of the North Carolina Constitution establishes the government as a vehicle for the common benefit, protection, and security of the State's citizens and not for the particular emolument or advantage of any single set of persons who are only a part of that community. This principle, coupled with Section 1 of Article I of the North Carolina Constitution's guarantee of equal rights to enjoying life, liberty, and enjoyment of the fruits



1 of their own labor, and the assurance of timely and equitable justice for all set
2 forth in Article I. Sections 18 and 19 of the North Carolina Constitution
3 encourage political officials to identify how particular communities may be
4 unequally burdened or receive unequal protection under the law due to race,
5 income, or geographic location.

6 (8) Lack of a clear environmental justice policy has resulted in a piecemeal
7 approach to understanding and addressing environmental justice in North
8 Carolina and creates a barrier to establishing clear definitions, metrics, and
9 strategies to ensure meaningful engagement and more equitable distribution
10 of environmental benefits and burdens.

11 (9) It is the State's responsibility to pursue environmental justice for its residents
12 and to ensure that its agencies do not contribute to unfair distribution of
13 environmental benefits to or environmental burdens on low-income,
14 limited-English proficient, and BIPOC communities.

15 **SECTION 2.** Chapter 143 of the General Statutes is amended by adding a new
16 Article to read:

17 "Article 21D.

18 "Environmental Justice.

19 **"§ 143-215.130. Purpose.**

20 The purpose of this Article is to identify, reduce, and eliminate environmental health
21 disparities to improve the health and well-being of all State residents.

22 **"§ 143-215.131. Definitions.**

23 The following definitions apply in this Article:

24 (1) Environmental benefits. – The assets and services that enhance the capability
25 of communities and individuals to function and flourish in society. Examples
26 of environmental benefits include access to a healthy environment and clean
27 natural resources, including air, water, land, green spaces, constructed
28 playgrounds, and other outdoor recreational facilities and venues; affordable
29 clean renewable energy sources; public transportation; fulfilling and dignified
30 green jobs; healthy homes and buildings; health care; nutritious food;
31 indigenous food and cultural resources; environmental enforcement; and
32 training and funding disbursed or administered by governmental agencies.

33 (2) Environmental burdens. – Any significant impact to clean air, water, and land,
34 including any destruction, damage, or impairment of natural resources
35 resulting from intentional or reasonably foreseeable causes. Examples of
36 environmental burdens include climate change impacts; air and water
37 pollution; improper sewage disposal; improper handling of solid wastes and
38 other noxious substances; excessive noise; activities that limit access to green
39 spaces, nutritious food, indigenous food or cultural resources, or constructed
40 outdoor playgrounds and other recreational facilities and venues; inadequate
41 remediation of pollution; reduction of groundwater levels; increased flooding
42 or stormwater flows; home and building health hazards, including lead paint,
43 lead plumbing, asbestos, and mold; and damage to inland waterways and
44 waterbodies, wetlands, forests, green spaces, or constructed playgrounds or
45 other outdoor recreational facilities and venues from private, industrial,
46 commercial, and government operations or other activities that contaminate
47 or alter the quality of the environment and pose a risk to public health.

48 (3) Environmental justice. – A system of environmental decision making defined
49 by all of the following characteristics:

50 a. All individuals are afforded equitable access to and distribution of
51 environmental benefits; equitable distribution of environmental

- 1 burdens; and fair and equitable treatment and meaningful participation
 2 in decision-making processes, including the development,
 3 implementation, and enforcement of environmental laws, regulations,
 4 and policies.
- 5 b. The particular needs of individuals of every race, color, income, class,
 6 ability status, gender identity, sexual orientation, national origin,
 7 ethnicity or ancestry, religious belief, or English language proficiency
 8 level are recognized.
- 9 c. Structural and institutional racism, colonialism, and other systems of
 10 oppression that result in the marginalization, degradation,
 11 disinvestment, and neglect of Black, Indigenous, and Persons of Color
 12 are redressed.
- 13 d. A proportional amount of resources for community revitalization,
 14 ecological restoration, resilience planning, and a just recovery is
 15 provided to communities most affected by environmental burdens and
 16 natural disasters.
- 17 (4) Environmental justice focus population. – Any census block group in which:
 18 a. The annual median household income is not more than eighty percent
 19 (80%) of the State median household income;
 20 b. Persons of Color and Indigenous Peoples comprise at least six percent
 21 (6%) or more of the population; or
 22 c. At least one percent (1%) or more of households have limited English
 23 proficiency.
- 24 (5) Limited English proficiency. – A household does not have a member 14 years
 25 or older who speaks English "very well" as defined by the U.S. Census
 26 Bureau.
- 27 (6) Meaningful participation. – All individuals have the opportunity to participate
 28 in energy, climate change, and environmental decision making. Examples
 29 include needs assessments, planning, implementation, permitting, compliance
 30 and enforcement, and evaluation. Meaningful participation also integrates
 31 diverse knowledge systems, histories, traditions, languages, and cultures of
 32 Indigenous communities in decision-making processes. It requires that
 33 communities are enabled and administratively assisted to participate fully
 34 through education and training. Meaningful participation requires the State to
 35 operate in a transparent manner with regard to opportunities for community
 36 input and also encourages the development of environmental, energy, and
 37 climate change stewardship.
- 38 (7) Program. – The Environmental Justice Program of the Department of
 39 Environmental Quality.

40 **"§ 143-215.132. Environmental justice State policy.**

41 It is the policy of the State that no segment of the population of the State should, because of
 42 its racial, cultural, or economic makeup, bear a disproportionate share of environmental burdens
 43 or be denied an equitable share of environmental benefits. It is further the policy of the State to
 44 provide the opportunity for the meaningful participation of all individuals, with particular
 45 attention to environmental justice focus populations, in the development, implementation, or
 46 enforcement of any law, regulation, or policy.

47 **"§ 143-215.133. Implementation of State policy.**

48 (a) As used in this Article, "covered agencies" means the following State agencies: the
 49 Departments of Environmental Quality, Health and Human Services, Transportation, Commerce,
 50 Public Safety, Agriculture and Consumer Services, and Public Instruction and the Utilities
 51 Commission.

1 (b) The covered agencies shall consider cumulative environmental burdens and access to
2 environmental benefits when making decisions about the environment, energy, climate, and
3 public health projects; facilities and infrastructure; and associated funding.

4 (c) Each of the covered agencies shall create and adopt on or before July 1, 2025, a
5 community engagement plan that describes how the agency will engage with environmental
6 justice focus populations as it evaluates new and existing activities and programs. Each plan shall
7 describe how the agency plans to provide meaningful participation in compliance with Title VI
8 of the Civil Rights Act of 1964.

9 (d) The covered agencies shall submit an annual summary beginning on January 15,
10 2024, and annually thereafter, to the Environmental Justice Advisory Council, detailing all
11 complaints alleging environmental justice issues or Title VI violations and any agency action
12 taken to resolve the complaints. The Advisory Council shall provide any recommendations
13 concerning those reports within 60 days after receipt of the complaint summaries. Agencies shall
14 consider the recommendations of the Advisory Council pursuant to sub-subdivision (c)(1)e. of
15 G.S. 143-215.135 and substantively respond in writing if an agency chooses not to implement
16 any of the recommendations within 90 days after receipt of the recommendations.

17 (e) The Program, in consultation with the Environmental Justice Advisory Council and
18 the Interagency Environmental Justice Committee, shall review the definitions contained in
19 G.S. 143-215.131 at least every five years and recommend revisions to the General Assembly to
20 ensure the definition achieves the environmental justice State policy.

21 (f) The Program, in consultation with the Interagency Environmental Justice Committee
22 and the Environmental Justice Advisory Council, shall issue guidance on how the covered
23 agencies shall determine which investments provide environmental benefits to environmental
24 justice focus populations on or before September 15, 2023. A draft version of the guidance shall
25 be released for a 40-day public comment period before being finalized.

26 (g) Covered Agency Baseline Spending Reports. –

27 (1) On or before February 15, 2024, the covered agencies shall, in accordance
28 with the guidance document developed by the Program pursuant to subsection
29 (f) of this section, review the past three years and generate baseline spending
30 reports that include:

- 31 a. Where investments were made, if any, and which geographic areas, at
32 the municipal level and census block group, where practicable,
33 received environmental benefits from those investments; and
34 b. A description and quantification of the environmental benefits as an
35 outcome of the investment.

36 (2) The covered agencies shall publicly post the baseline spending reports on their
37 respective websites.

38 (h) On or before July 1, 2024, it shall be the goal of the covered agencies to direct
39 investments proportionately in environmental justice focus populations.

40 (1) Beginning on January 15, 2026, and annually thereafter, the covered agencies
41 shall either integrate the following information into existing annual spending
42 reports or issue annual spending reports that include:

- 43 a. Where investments were made and which geographic areas, at the
44 municipal level and census block group, where practicable, received
45 environmental benefits from those investments; and
46 b. The percentage of overall environmental benefits from those
47 investments provided to environmental justice focus populations.

48 (2) The covered agencies shall publicly post the annual spending reports on their
49 respective websites.

1 (i) Beginning on January 15, 2025, the covered agencies shall each issue and publicly
2 post an annual report summarizing all actions taken to incorporate environmental justice into its
3 policies or determinations, rulemaking, permit proceedings, or project review.

4 **"§ 143-215.134. Rulemaking.**

5 (a) On or before July 1, 2025, the Department of Environmental Quality, in consultation
6 with the Environmental Justice Advisory Council and the Interagency Environmental Justice
7 Committee, shall adopt rules to:

8 (1) Define cumulative environmental burdens;

9 (2) Implement consideration of cumulative environmental burdens within the
10 Program; and

11 (3) Inform how the public and the covered agencies implement the consideration
12 of cumulative environmental burdens and use the environmental justice
13 mapping tool developed by the Program.

14 (b) On or before July 1, 2026, and as appropriate thereafter, the covered agencies, in
15 consultation with the Environmental Justice Advisory Council, shall adopt or amend policies and
16 procedures, plans, guidance, and rules, where applicable, to implement this Article.

17 (c) The following requirements apply to rulemaking by covered agencies:

18 (1) Prior to drafting new rules required by this Article, agencies shall consult with
19 the Environmental Justice Advisory Council to discuss the scope and
20 proposed content of rules to be developed. Agencies shall also submit draft
21 rulemaking concepts to the Advisory Council for review and comment. Any
22 proposed rule shall be provided to the Advisory Council not less than 45 days
23 prior to submitting the proposed rule or rules to the Rules Review Commission
24 (RRC).

25 (2) The Advisory Council shall vote and record individual members' support or
26 objection to any proposed rule before it is submitted to RRC and make
27 documentation of that proceeding as part of the rulemaking record submitted
28 to RRC.

29 **"§ 143-215.135. Environmental Justice Advisory Council and Interagency Environmental**
30 **Justice Committee.**

31 (a) Advisory Council and Interagency Committee. –

32 (1) There is created:

33 a. The Environmental Justice Advisory Council (Advisory Council) to
34 provide independent advice and recommendations to State agencies
35 and the General Assembly on matters relating to environmental
36 justice, including the integration of environmental justice principles
37 into State programs, policies, regulations, legislation, and activities;
38 and

39 b. The Interagency Environmental Justice Committee (Interagency
40 Committee) to guide and coordinate State agency implementation of
41 the Environmental Justice State Policy and provide recommendations
42 to the General Assembly for amending the definitions and protections
43 set forth in this Article.

44 (2) Appointments to the groups created in this subsection shall be made on or
45 before December 15, 2023.

46 (3) Both the Advisory Council and the Interagency Committee shall consider and
47 incorporate the Equitable Access & Just Transition to Clean Energy
48 provisions of the North Carolina Clean Energy Plan in their work.

49 (b) Meetings. – The Advisory Council and the Interagency Committee shall each meet
50 not more than eight times per year, with at least four meetings occurring jointly. Meetings may

1 be held in person, remotely, or in a hybrid format to facilitate maximum participation and shall
2 be recorded and publicly posted on the Secretary's website.

3 (c) Duties. –

4 (1) The Advisory Council shall have the following duties:

- 5 a. To advise State agencies on environmental justice issues and on how
6 to incorporate environmental justice into agency procedures and
7 decision making and evaluate the potential for environmental burdens
8 or disproportionate impacts on environmental justice focus
9 populations as a result of State actions and the potential for
10 environmental benefits to environmental justice focus populations.
11 b. To advise State agencies in the development of community
12 engagement plans.
13 c. To advise State agencies on the use of the environmental justice
14 mapping tool established by the Program and on the enhancement of
15 meaningful participation, reduction of environmental burdens, and
16 equitable distribution of environmental benefits.
17 d. To review and provide feedback to the relevant State agency, pursuant
18 to G.S. 143-215.134(c), on any proposed rules for implementing this
19 Article.
20 e. To receive and review annual State agency summaries of complaints
21 alleging environmental justice issues, including Title VI complaints,
22 and suggest options or alternatives to State agencies for the resolution
23 of systemic issues raised in or by the complaints.

24 (2) The Interagency Committee shall have the following duties:

- 25 a. To consult with the Program in the development of the guidance
26 document required by G.S. 143-215.133(f) on how to determine which
27 investments provide environmental benefits to environmental justice
28 focus populations; and
29 b. On or before July 1, 2023, to develop, in consultation with the Program
30 and the Environmental Justice Advisory Council, a set of core
31 principles to guide and coordinate the development of the State agency
32 community engagement plans required under G.S 143-215.133(c).

33 (3) The Advisory Council and the Interagency Committee shall jointly:

- 34 a. Consider and recommend to the General Assembly, on or before
35 December 1, 2024, amendments to the terminology, thresholds, and
36 criteria of the definition of environmental justice focus populations,
37 including whether to include populations more likely to be at higher
38 risk for poor health outcomes in response to environmental burdens;
39 and
40 b. Examine existing data and studies on environmental justice and
41 consult with State, federal, and local agencies and affected
42 communities regarding the impact of current statutes, regulations, and
43 policies on the achievement of environmental justice.

44 (d) Membership. –

- 45 (1) Advisory Council. – Each member of the Advisory Council shall be well
46 informed regarding environmental justice principles and committed to
47 achieving environmental justice in North Carolina and working
48 collaboratively with other members of the Advisory Council. To the greatest
49 extent practicable, Advisory Council members shall represent diversity in
50 race, ethnicity, age, gender, urban and rural areas, and different regions of
51 the State. The Advisory Council shall consist of the following 11 members,

1 with a goal to have more than fifty percent (50%) residing in environmental
2 justice focus populations:

3 a. The head of the Program or designee.

4 b. The following members appointed by the Governor:

5 1. One representative of municipal government.

6 2. One representative of a social justice organization.

7 3. One representative of mobile home park residents.

8 4. One representative of a statewide environmental organization.

9 5. One person representing an organization working on food
10 security issues.

11 c. One person who resides in a census block group that is designated as
12 an environmental justice focus population appointed by the House of
13 Representatives upon the recommendation of the Speaker of the
14 House.

15 d. One person who is a representative of immigrant communities in
16 North Carolina appointed by the Senate upon the recommendation of
17 the President Pro Tempore of the Senate.

18 e. One representative of a State-recognized Native American Indian
19 tribe, recommended and appointed by the North Carolina Indian
20 Affairs Commission.

21 f. The Executive Director of the North Carolina Housing Finance
22 Agency or designee.

23 g. The Executive Director of the North Carolina Land and Water Fund
24 or designee.

25 (2) Interagency Committee. – The Interagency Committee shall consist of the
26 following nine members:

27 a. The Superintendent of Public Instruction or designee.

28 b. The Secretary of the Department of Environmental Quality or
29 designee.

30 c. The Secretary of Transportation or designee.

31 d. The Director of the North Carolina Housing Finance Agency or
32 designee.

33 e. The Commissioner of the Department of Agriculture and Consumer
34 Services or designee.

35 f. The Secretary of the Department of Health and Human Services or
36 designee.

37 g. The Director of the Division of Emergency Management of the
38 Department of Public Safety or designee.

39 h. The Secretary of the Department of Natural and Cultural Resources or
40 designee.

41 i. The Chair of the Utilities Commission or designee.

42 (3) The Advisory Council and the Interagency Committee may each elect two
43 cochairs.

44 (4) After initial appointments, all appointed members of the Advisory Council
45 shall serve six-year terms and serve until a successor is appointed. The initial
46 terms shall be staggered so that one-third of the appointed members shall serve
47 a two-year term, another third of the appointed members shall serve a
48 four-year term, and the remaining members shall be appointed to a six-year
49 term.

50 (5) Vacancies of the Advisory Council shall be appointed in the same manner as
51 original appointments.

1 (6) The Advisory Council shall have the administrative, technical, and legal
2 assistance of the Program."

3 **SECTION 3.** Reports. – On or before December 15, 2025, the Program shall submit
4 a report to the General Assembly describing whether the baseline spending reports completed
5 pursuant to G.S. 143-215.133(g), as enacted by Section 2 of this act, indicate if any municipalities
6 or portions of municipalities are routinely underserved with respect to environmental benefits,
7 taking into consideration whether those areas receive, averaged across three years, a significantly
8 lower percentage of environmental benefits from State investments as compared to other
9 municipalities or portions of municipalities in the State. This report shall include a
10 recommendation as to whether a statutory definition of "underserved community" and any other
11 revisions to Article 21D of Chapter 143 of the General Statutes, as enacted by Section 1 of this
12 act, are necessary to best carry out the policies described in this act.

13 **SECTION 4.** Appropriations. – The sum of five hundred thousand dollars
14 (\$500,000) in nonrecurring funds and the sum of two hundred fifty thousand dollars (\$250,000)
15 in recurring funds for the 2023-2024 fiscal year are appropriated from the General Fund to the
16 Department of Environmental Quality to be allocated for the following purposes:

- 17 (1) \$500,000 nonrecurring for the cost of conducting community outreach
18 associated with the work of the Environmental Justice Advisory Council.
- 19 (2) \$250,000 recurring to establish the following positions:
- 20 a. One full-time Civil Rights Compliance Director.
- 21 b. Two new full-time positions to assist in the implementation of the
22 Environmental Justice State Policy and support the Environmental
23 Justice Advisory Council, one to be hired after July 1, 2023, and one
24 to be hired after December 31, 2023.

25 **SECTION 5.** Section 4 of this act becomes effective July 1, 2023. The remainder of
26 this act is effective when it becomes law.