

House Bill 431

By: Representatives Drenner of the 85th, Jackson of the 64th, Kausche of the 50th, Beverly of the 143rd, Burnough of the 77th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 12 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding conservation and natural resources, so as to address issues
3 regarding environmental justice and permitting; to provide for definitions; to provide for a
4 list of overburdened communities; to provide environmental justice requirements for
5 applicants for certain environmental permits; to provide for rules, regulations, and technical
6 guidance; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 1 of Title 12 of the Official Code of Georgia Annotated, relating to general
10 provisions regarding conservation and natural resources, is amended by adding a new Code
11 section to read as follows:

12 "12-1-3.

13 (a) As used in this Code section, the term:

14 (1) 'Environmental or public health stressors' means sources of environmental pollution,
15 including, but not limited to, concentrated areas of air pollution, mobile sources of air
16 pollution, contaminated sites, transfer stations or other solid waste facilities, recycling

17 facilities, scrap yards, and point sources of water pollution including, but not limited to,
18 water pollution from facilities or combined sewer overflows; or conditions that may cause
19 potential public health impacts, including, but not limited to, asthma, cancer, elevated
20 blood lead levels, cardiovascular disease, and developmental problems in the
21 overburdened community.

22 (2) 'Facility' means any:

23 (A) major source of air pollution;

24 (B) resource recovery facility or incinerator;

25 (C) sludge processing facility, combustor, or incinerator;

26 (D) sewage treatment plant with a capacity of more than 50 million gallons per day;

27 (E) transfer station or other solid waste facility or recycling facility intending to receive
28 at least 100 tons of recyclable material per day;

29 (F) scrap metal facility;

30 (G) landfill, including, but not limited to, a landfill that accepts ash, construction or
31 demolition debris, or solid waste; or

32 (H) medical waste incinerator.

33 (3) 'Limited English proficiency' means that a household does not have an adult that
34 speaks the English language 'very well' according to the United States Census Bureau as
35 of July 1, 2021.

36 (4) 'Low-income household' means a household that is at or below twice the poverty
37 threshold as that threshold is determined as of July 1, 2021, by the United States Census
38 Bureau.

39 (5) 'Major source' means a major source of air pollution as defined by the federal Clean
40 Air Act, 42 U.S.C. Section 7401, et seq., in effect on July 1, 2021, or in rules and
41 regulations adopted by the department pursuant to Chapter 9 of this title, or which
42 directly emits, or has the potential to emit, one hundred tons per year or more of any air

43 pollutant, or other applicable criteria set forth in the federal Clean Air Act, 42 U.S.C.
44 Section 7401, et seq., in effect on July 1, 2021.

45 (6) 'Overburdened community' means any census block group, as determined in
46 accordance with the 2020 United States census, in which:

47 (A) at least 35 percent of the households qualify as low-income households;

48 (B) at least 40 percent of the residents identify as minority or as members of a state
49 recognized tribal community; or

50 (C) at least 40 percent of the households have limited English proficiency.

51 (7) 'Permit' means any individual permit, registration, or license issued by the department
52 to a facility establishing the regulatory and management requirements for a regulated
53 activity under this title.

54 (b)(1) Beginning immediately upon the adoption of the rules and regulations pursuant
55 to subsection (d) of this Code section, the department shall not consider complete for
56 review any application for a permit for a new facility or for the expansion of an existing
57 facility, or any application for the renewal of an existing facility's major source permit,
58 if the facility is located, or proposed to be located, in whole or in part, in an overburdened
59 community, unless the permit applicant first:

60 (A) Prepares an environmental justice impact statement that assesses the potential
61 environmental and public health stressors associated with the proposed new or
62 expanded facility, or with the existing major source, as applicable, including any
63 adverse environmental or public health stressors that cannot be avoided if the permit
64 is granted, and the environmental or public health stressors already borne by the
65 overburdened community as a result of existing conditions located in or affecting the
66 overburdened community;

67 (B) Transmits the environmental justice impact statement required to be prepared
68 pursuant to subparagraph (A) of this paragraph, at least 60 days in advance of the public
69 hearing required pursuant to subparagraph (C) of this paragraph, to the department and

70 to the governing body and the clerk of the municipality or county in which the
71 overburdened community is located. Upon receipt, the department shall publish the
72 environmental justice impact statement on its Internet website; and
73 (C)(i) Organizes and conducts a public hearing in the overburdened community. The
74 permit applicant shall publish a notice of the public hearing in at least two newspapers
75 circulating within the overburdened community, including one local non-English
76 language newspaper, if applicable, not less than 60 days prior to the public hearing.
77 The notice of the public hearing shall provide the date, time, and location of the
78 public hearing; a description of the proposed new or expanded facility or existing
79 major source, as applicable; a map indicating the location of the facility; a brief
80 summary of the environmental justice impact statement; information on how an
81 interested person may review a copy of the complete environmental justice impact
82 statement; an address for the submittal of written comments to the permit applicant;
83 and any other information deemed appropriate by the department. At least 60 days
84 prior to the public hearing, the permit applicant shall send a copy of the notice to the
85 department and to the governing body and the clerk of the municipality or county in
86 which the overburdened community is located. The applicant shall invite the
87 municipality or county to participate in the public hearing. At the public hearing, the
88 permit applicant shall provide clear, accurate, and complete information about the
89 proposed new or expanded facility, or existing major source, as applicable, and the
90 potential environmental and public health stressors associated with the facility. The
91 permit applicant shall accept written and oral comments from any interested party and
92 be provided an opportunity for meaningful public participation at the public hearing.
93 The permit applicant shall transcribe the public hearing and, no later than ten days
94 after the public hearing, submit the transcript along with any written comments
95 received to the department. Following the public hearing, the department shall
96 consider the testimony presented and any written comments received, and evaluate

97 the issuance of, or conditions to, the permit, as necessary in order to avoid or reduce
98 the adverse environmental or public health stressors affecting the overburdened
99 community.

100 (ii) The department may require the applicant to consolidate the public hearing held
101 pursuant to this paragraph with any other public hearing held or required by the
102 department regarding the permit application, provided that the public hearing meets
103 the other requirements of this paragraph. The department shall consider a request by
104 a permit applicant to consolidate required public hearings, and, if the request is
105 granted by the department, the consolidation shall not preclude an application from
106 being deemed complete for review pursuant to this paragraph.

107 (2) The department shall not issue a decision on an application for a permit for a new
108 facility or for the expansion of an existing facility, or on an application for the renewal
109 of an existing facility's major source permit, if such facility is located, or proposed to be
110 located, in whole or in part in an overburdened community until at least 45 days after the
111 public hearing held pursuant to subparagraph (C) of paragraph (1) of this subsection.

112 (3) The department shall, after review of the environmental justice impact statement
113 prepared pursuant to subparagraph (A) of paragraph (1) of this subsection and any other
114 relevant information, including testimony and written comments received at the public
115 hearing, deny a permit for a new facility upon a finding that approval of the permit, as
116 proposed, would, together with other environmental or public health stressors affecting
117 the overburdened community, cause or contribute to adverse cumulative environmental
118 or public health stressors in the overburdened community that are higher than those borne
119 by other communities within the state, county, or other geographic unit of analysis as
120 determined by the department pursuant to rule, regulation, or guidance adopted or issued
121 pursuant to subsection (d) of this Code section, except that where the department
122 determines that a new facility will serve a compelling public interest in the community

123 where it is to be located, the department may grant a permit that imposes conditions on
124 the construction and operation of the facility to protect public health.

125 (4) The department may, after review of the environmental justice impact statement
126 prepared pursuant to subparagraph (A) of paragraph (1) of this subsection and any other
127 relevant information, including testimony and written comments received at the public
128 hearing, apply conditions to a permit for the expansion of an existing facility, or the
129 renewal of an existing facility's major source permit, concerning the construction and
130 operation of the facility to protect public health, upon a finding that approval of a permit
131 or permit renewal, as proposed, would, together with other environmental or public health
132 stressors affecting the overburdened community, cause or contribute to adverse
133 cumulative environmental or public health stressors in the overburdened community that
134 are higher than those borne by other communities within the state, county, or other
135 geographic unit of analysis as determined by the department pursuant to rule, regulation,
136 or guidance adopted or issued pursuant to subsection (d) of this Code section.

137 (5) If a permit applicant is applying for more than one permit for a proposed new or
138 expanded facility, the permit applicant shall only be required to comply with the
139 provisions of this Code section once, unless the department, in its discretion, determines
140 that more than one public hearing is necessary due to the complexity of the permit
141 applications necessary for the proposed new or expanded facility. Nothing in this Code
142 section shall be construed to limit the authority of the department to hold or require
143 additional public hearings, as may be required by any other law, rule, or regulation.

144 (6) Nothing in this Code section shall be construed to limit the right of an applicant to
145 continue facility operations during the process of permit renewal to the extent such right
146 is conveyed by applicable law, rule, or regulation, including the application shield
147 provisions of the rules and regulations adopted pursuant to Chapter 9 of this title.

148 (7) In addition to any other fee authorized by law, rule, or regulation, the department
149 shall assess each permit applicant a reasonable fee in order to cover the department's costs

150 associated with the implementation of this Code section, including costs to provide
151 technical assistance to permit applicants and overburdened communities as needed to
152 comply with this Code section.

153 (c) No later than December 30, 2022, the department shall publish and maintain on its
154 Internet website a list of overburdened communities in the state. The department shall
155 update the list of overburdened communities at least once every two years. The department
156 shall notify a municipality or county if any part of the municipality or county has been
157 designated an overburdened community pursuant to this Code section.

158 (d) The department shall promulgate rules and regulations as necessary to implement the
159 provisions of this Code section and may issue technical guidance for compliance with this
160 Code section, which the department shall publish on its Internet website."

161 **SECTION 2.**

162 All laws and parts of laws in conflict with this Act are repealed.