

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 797

Short Title: Protect Burdened Communities/Adverse Impacts. (Public)

Sponsors: Representatives Crawford, T. Brown, Harrison, and G. 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 TO REQUIRE CONSIDERATION OF THE CUMULATIVE IMPACT OF CERTAIN FACILITIES PROPOSED TO BE LOCATED IN LOW-INCOME COMMUNITIES, PRIOR TO ISSUANCE OF PERMITS OR CERTIFICATIONS FOR SUCH FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-279.18. Consideration of cumulative impacts required for permitting of facilities proposed to be located in burdened communities.

(a) Notwithstanding any other provision of law, neither the Department of Environmental Quality, nor the Environmental Management Commission, shall issue a permit for a new facility, or for the expansion of an existing facility, located in whole or in part in a burdened community, except in compliance with the requirements of this section.

(b) An applicant for a permit for a new facility, or for the expansion of an existing facility, located in whole or in part in a burdened community, shall do all of the following:

(1) Prepare a report assessing the environmental impact of the proposed new facility, or expansion of an existing facility, including any cumulative impacts on the burdened community, any adverse environmental effects that cannot be avoided should the permit be granted, and the public health impact on the burdened community of the proposed new facility or expansion of an existing facility.

(2) Transmit the report required to be prepared pursuant to subdivision (1) of this subsection at least 30 days in advance of the public hearing required pursuant to subdivision (3) of this subsection to the Department, the governing body for the unit of local government in which the burdened community is located, and the designated representative of the burdened community. The report shall be made available to the public at least 30 days prior to the public hearing required pursuant to subdivision (3) of this subsection.

(3) Organize and conduct a public hearing at a location convenient to the burdened community. The applicant shall publish public notices of the hearing in at least two newspapers circulating within the burdened community not less than 21 days prior to the hearing. At least 14 days prior to the date set for such hearing, a copy of the public notice shall be sent to the Department, the governing body for the unit of local government in which the burdened



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1 community is located, and the designated representative of the burdened
2 community. At the public hearing, the permit applicant shall provide clear,
3 accurate, and complete information about the proposed new facility, or
4 expansion of an existing facility, and the potential environmental and health
5 impacts of the new or expanded facility. The hearing shall provide an
6 opportunity for meaningful public participation by residents of the burdened
7 community. Following the public hearing, the Department or Commission, as
8 applicable, shall consider the testimony presented and evaluate any revisions
9 or conditions to the permit that may be necessary to reduce the adverse impact
10 to the public health or to the environment in the burdened community.

11 (c) The Department or Commission, as applicable, shall not issue a decision on the permit
12 application until at least 60 days after the public hearing held pursuant to subsection (b) this
13 section. Notwithstanding any other provision of law to the contrary, the Department or
14 Commission, as applicable, may deny a permit application for a new or expanded facility to be
15 located in a burdened community upon a finding that approval of the permit would, together with
16 the cumulative impacts posed by the existing conditions, including conditions resulting from
17 other permitted activities, in the burdened community, constitute an unreasonable risk to the
18 health of the residents of the burdened community and to the environment in the burdened
19 community.

20 (d) The Department or Commission, as applicable, when evaluating an application for a
21 permit pursuant to this section, shall assess the community support for the proposed new facility
22 or expansion of an existing facility, as demonstrated through the public hearing conducted
23 pursuant to this section, any public comment received, and any ordinance or resolution adopted
24 by the governing body of the unit of local government in which the burdened community is
25 located. The Department or Commission, as applicable, shall consider community support, or the
26 lack thereof, in its decision to grant or deny a permit.

27 (e) If a permit applicant is applying for more than one permit for a proposed new facility
28 or expansion of an existing facility, the permit applicant shall only be required to comply with
29 the provisions of this section once, unless the Department or Commission, as applicable, in its
30 discretion, determines that more than one public hearing is necessary due to the complexity of
31 the proposed new or expanded facility. Nothing in this section shall be construed to limit the
32 authority of the Department or Commission, as applicable, to hold or require additional public
33 hearings, as may be required by other law.

34 (f) The following definitions apply in this section:

35 (1) Burdened community. – A census tract, as designated by the most recent
36 census of the U.S. Census Bureau, that is ranked in the bottom thirty-three
37 percent (33%) of census tracts in the State for median annual household
38 income.

39 (2) Cumulative impacts. – An exposure, public health or environmental risk, or
40 other effect occurring in a specific geographical area, including from any
41 environmental pollution emitted or released routinely, accidentally, or
42 otherwise, from any source, and assessed based on the combined past, present,
43 and reasonably foreseeable emissions and discharges affecting the
44 geographical area. "Cumulative impacts" shall be evaluated based on any rules
45 adopted by the Department.

46 (3) Facility. – Any of the following facilities required to be permitted pursuant to
47 Article 9 of Chapter 130A of the General Statutes or Article 21 or 21B of
48 Chapter 143 of the General Statutes: (i) a resource recovery facility or
49 incinerator, (ii) a transfer station, recycling center, or other solid waste facility
50 with a combined monthly volume in excess of 25 tons, (iii) a landfill,
51 including, but not limited to, a landfill that accepts ash, construction or

1 demolition debris, or solid waste, (iv) a medical waste incinerator, (v) a sludge
2 combustor or incinerator, (vi) a sewage treatment plant with a capacity of
3 more than 50 million gallons per day, or (vii) a major source of air pollution,
4 as defined by the federal Clean Air Act, 42 U.S.C. § 7401, et seq.

- 5 (4) Permit. – Any permit issued by the Department of Environmental Quality or
6 Commission, as applicable, establishing the regulatory and management
7 requirements for an ongoing regulated activity for facilities described in
8 subdivision (3) of this subsection as authorized or required by federal law or
9 State law."

10 **SECTION 1.(b)** No later than 180 days after the effective date of this act, the
11 Department of Environmental Quality shall adopt rules to implement the requirements of
12 G.S. 143B-279.18, as enacted by Section 1 of this act, and specifically:

- 13 (1) Identify each burdened community in the State, as that term is defined under
14 G.S. 143B-279.18, as enacted by Section 1 of this act. The Department shall
15 amend the rule identifying burdened communities periodically as new data on
16 median annual household income becomes available and upon promulgation
17 by the federal government of a new federal decennial census.
18 (2) Require each unit of local government within which a burdened community
19 is located, within 60 days of identification of such communities by rules
20 adopted by the Department, to designate a representative of the burdened
21 community after consultation with appropriate groups in the burdened
22 community.

23 **SECTION 2.** G.S. 62-110.1 is amended by adding a new subsection to read:

24 "(d1) In acting upon any petition for the construction of any facility for the generation of
25 electricity with a capacity over 10 megawatts, or expansion thereof, proposed to be located in a
26 burdened community, the Commission, in coordination with the Department of Environmental
27 Quality, shall evaluate and consider the cumulative impacts posed by the proposed facility, or
28 expansion thereof, on the burdened community. If the Commission, in coordination with the
29 Department, determines the cumulative impacts constitute an unreasonable risk to the health of
30 the residents of the burdened community and to the environment in the burdened community, the
31 Commission shall deny the certificate. For purposes of this subsection, the following definitions
32 apply:

- 33 (1) Burdened community. – A census tract, as designated by the most recent
34 census of the U.S. Census Bureau, that is ranked in the bottom thirty-three
35 percent (33%) of census tracts in the State for median annual household
36 income and identified as such in rules adopted by the Department of
37 Environmental Quality.
38 (2) Cumulative impacts. – An exposure, public health or environmental risk, or
39 other effect occurring in a specific geographical area, including from any
40 environmental pollution emitted or released routinely, accidentally, or
41 otherwise, from any source, and assessed based on the combined past, present,
42 and reasonably foreseeable emissions and discharges affecting the
43 geographical area."

44 **SECTION 3.** This act is effective when it becomes law, except that
45 G.S. 143B-279.18, as enacted by Section 1 of this act, and G.S. 62-110.1(d1), as enacted by
46 Section 2 of this act, become effective January 1, 2024, and apply to applications for permits or
47 certificates submitted on or after that date.