H.651


Referred to Committee on

Date:

Subject: Conservation and development; government; environmental justice

Statement of purpose of bill as introduced: This bill proposes to establish an environmental justice policy for the State of Vermont and require the State agencies to incorporate environmental justice into their work. It would establish the Advisory Council on Environmental Justice within the Agency of Natural Resources to advise the State on environmental justice issues. It also would require the creation of an environmental justice mapping tool.

An act relating to environmental justice in Vermont
It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The General Assembly finds:

(1) According to the American Journal of Public Health, Black, Indigenous, and Persons of Color (BIPOC) and low-income individuals are disproportionately exposed to environmental hazards and unsafe housing.

(2) In Executive Order 12898 of 1994, the federal government recognized that BIPOC and low-income communities face disproportionately negative impacts of agency decisions, such as approving permits for facilities like mines and landfills.

(3) Census data shows that water contaminants like lead and perfluoroalkyl substances (PFAS) are disproportionately found in Vermont communities with higher populations of BIPOC and low-income individuals.

(4) The cumulative impacts of environmental harms, including air and water pollution, low-quality housing stock, and greater exposure to extreme weather events, disproportionately and adversely impact the health of BIPOC and low-income communities. These disproportionate adverse impacts are exacerbated by lack of access to affordable energy, adequate transportation, healthy food, and green spaces.
(5) According to the U.S. Department of Agriculture, 24 percent of Vermonters have low access to grocery stores, which factors in distance to and quantity of stores, family and neighborhood income, and vehicle and public transportation availability. A study conducted at the University of Vermont showed that BIPOC individuals were twice as likely to have trouble affording fresh food and to go hungry in a month.

(6) Lack of adequate transportation can be a major barrier to health care for Vermonters. In a University of Vermont study, about nine percent of surveyed patients reported that transportation problems prevent them from accessing health services, like doctor's appointments, and BIPOC individuals were twice as likely to lack access to transportation and to not own a vehicle compared to White individuals in Vermont, and those who did not own a vehicle were twice as likely to not have access to fresh food and a primary care doctor.

(7) Inadequate transportation also impedes job access, narrowing the scope of jobs available to low-income individuals and potentially impacting job performance.

(8) The U.S. Department of Agriculture reports that BIPOC individuals own less than two percent of private woodland, only approximately 0.9 percent of agricultural land, and 0.6 percent of forestland, which is largely made up of Abenaki tribal ownership in Vermont.
(9) The Center for American Progress finds that 76 percent of BIPOC individuals in Vermont live in “nature deprived” census tracts with a higher proportion of natural areas lost to human activities than the Vermont median. In contrast, 20 percent of White individuals live in these areas.

(10) The Centers for Disease Control and Prevention states that systemic health and social inequities disproportionally increases the risk of racial and ethnic minority groups becoming infected by and dying from COVID-19.

(11) According to the Vermont Department of Health, inequities in access to and quality of health care, employment, and housing have contributed to disproportionately high rates of COVID-19 among BIPOC Vermonters. Long-term exposure to particulate matter in the air increases the likelihood of severe COVID-19 outcomes.

(12) Extreme weather events are projected to increase progressively this century. Vermont experienced an uptick in federally declared flood disasters in recent decades, and the State government projects that Vermont will become wetter in the winter and spring. A study by the University of Vermont shows that BIPOC Vermonters were three times more likely to report Lyme disease than White Vermonters.

(13) An analysis by University of Vermont researchers found that mobile homes, whether in a park or on private land, are more likely than permanent structures to be located in a flood hazard area. The State
government reports that during Hurricane Irene, 15 mobile parks and over 561 mobile homes in Vermont were damaged or destroyed, impacting the public health and safety of residents. Mobile homes make up 7.2 percent of all housing units in Vermont and were approximately 40 percent of sites affected by Hurricane Irene.

(14) A University of Vermont study reports that BIPOC individuals were seven times more likely to have gone without heat in the past year, over two times more likely to have trouble affording electricity, and seven times less likely to own a solar panel than White Vermonters.

(15) The Environmental Protection Agency recognized Vermont’s deficiencies in addressing environmental justice concerns related to legacy mining and mobile home park habitability, providing grants for these projects in 1998 and 2005.

(16) Vermont State agencies receiving federal funds are subject to the antidiscrimination requirements of Title VI of the Civil Rights Act of 1964. Historically, however, Vermont has lagged in the development of policies necessary for Title VI compliance, such as meaningful public participation outlets.

(17) Vermont is one of a few remaining states lacking a formal environmental justice policy.
(18) At least 24 states have environmental justice mapping tools. Environmental justice mapping tools can help identify environmentally disadvantaged communities for remediation efforts, including funding allocations and restrictions on permitting in these communities.

(19) The 1991 Principles of Environmental Justice 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. This includes providing meaningful access to the 9,000 individuals in Vermont with limited English proficiency (LEP).

(20) It is the responsibility of the State of Vermont to pursue environmental justice for its residents and to ensure that the policies and practices of its agencies do not unfairly burden low-income and BIPOC communities.

(21) Chapter I, Article 7 of the Vermont Constitution establishes the government as a vehicle for the common benefit, protection, and security of Vermonters and not for the particular emolument or advantage of any single set of persons who are only a part of that community. This, coupled with Chapter I, Article 1’s guarantee of equal rights to enjoying life, liberty, and safety, and Chapter I, Article 4’s assurance of timely justice for all, encourages political officials to identify how particular communities may be unequally
burdened or receive unequal protection under the law due to race, income, or
geographic location.

Sec. 2. 3 V.S.A. chapter 70 is added to read:

CHAPTER 70. ENVIRONMENTAL JUSTICE

§ 6001. DEFINITIONS

As used in this chapter:

(1) “Environmental benefits” means the benefits that enhance the
capability of communities and individuals to function and flourish in society,
such as access to a healthy environment and clean natural resources, including
air, water resources, open green spaces, constructed playgrounds and other
outdoor recreational facilities and venues, affordable renewable energy
sources, public transportation, fulfilling and dignified green jobs, healthy
homes, health care, environmental enforcement, and training and funding
disbursed or administered by governmental agencies.

(2) “Environmental burdens” means any threat to the fundamental right
to clean air, land, and water, including any destruction, damage, or impairment
of natural resources that is not insignificant, resulting from intentional or
reasonably foreseeable causes, including climate change; air pollution; water
pollution; improper sewage disposal; dumping of solid wastes and other
noxious substances; excessive noise; activities that limit access to natural
resources and constructed outdoor recreational facilities and venues;
inadequate remediation of pollution; reduction of ground water levels;
impairment of water quality; increased flooding or stormwater flows; and
damage to inland waterways and waterbodies, wetlands, marine shores and
waters, forests, open spaces, and playgrounds from private industrial,
commercial, or government operations or other activity that contaminates or
alters the quality of the environment and poses a risk to public health.

(3) “Environmental justice” means all individuals are afforded the right
to equitable access to environmental benefits; proportionate distribution of
environmental burdens; fair and equitable treatment and meaningful
participation in decision-making processes and the development,
implementation, and enforcement of environmental laws, regulations, and
policies; and recognition of the unique needs of individuals of all race, color,
income, class, ability status, gender identity, sexual orientation, national origin,
ethnicity or ancestry, religious belief, or English language proficiency.

Environmental justice redresses structural and institutional racism, colonialism,
and other systems of oppression that result in the marginalization, degradation,
disinvestment, and neglect of Black, Indigenous, and Communities of Color.

Environmental justice requires prioritizing resources for community
revitalization, ecological restoration, resilience planning, and a just recovery to
communities most impacted by environmental injustices and natural disasters.
(4) “Meaningful participation” means that all individuals have the right and opportunity to participate in energy, climate change, and environmental decision making, including needs assessments, planning, implementation, compliance and enforcement, and evaluation. “Meaningful participation” also means that indigenous communities and diverse knowledge systems, histories, traditions, languages, and cultures are integrated in decision-making processes; and communities are enabled and administratively assisted to participate fully through education and training and are given transparency by the State government with regards to community input and encouraged to develop environmental, energy, and climate change stewardship.

§ 6002. ENVIRONMENTAL JUSTICE STATE POLICY

(a) It is the policy of the State of Vermont that no segment of the population of the State should, because of its racial, cultural, or economic makeup, bear a disproportionate share of the environmental benefits or burdens. This policy requires the meaningful participation of all individuals in the development, implementation, or enforcement of any environmental law, regulation, or policy.

(b) On or before July 1, 2024, the Agencies of Natural Resources, of Transportation, of Commerce and Community Development, and of Education and the Departments of Health, of Public Safety, and of Public Service shall report to the General Assembly all actions taken to incorporate environmental
justice into the agencies’ policies or determinations, rulemaking, permit

proceeding, or project review, including incorporation of Title VI of the Civil

Rights Act of 1964.

(c) State agencies shall submit annual summaries to the Advisory Council

on Environmental Justice established pursuant to section 6003 of this title,

detailing all complaints alleging environmental justice issues or Title VI

violations and any agency action taken to resolve such complaints. Agencies

shall consider the recommendations of the Advisory Council pursuant to

subdivision 6003(b)(7) of this title and substantively respond in writing if an

agency chooses not to implement any such recommendations, within 90 days

of receipt of recommendations.

§ 6003. ADVISORY COUNCIL ON ENVIRONMENTAL JUSTICE

(a) Advisory Council. There is created the Advisory Council on

Environmental Justice within the Agency of Natural Resources to provide

independent advice and recommendations to the Agency of Natural Resources

and the State on matters relating to environmental justice, including the

integration of environmental justice principles into State programs, policies,

regulations, legislation, and activities.

(b) Duties. The Council shall:

(1) Examine existing data and studies on environmental justice and

consult with State, federal, and local agencies and affected communities
regarding the impact of current statutes, regulations, and policies on the
achievement of environmental justice.

(2) Identify and define “environmentally distressed communities,”
informing the use of the environmental justice mapping tool established
pursuant to section 6004 of this title. These communities shall be identified
based on geographic, socioeconomic, demographic, public health, and
environmental hazard criteria and may include:

(A) areas disproportionately affected by environmental pollution and
other hazards that can lead to negative public health effects, exposure, or
environmental degradation; and

(B) areas with concentrated populations of Black, Indigenous, and
Persons of Color, individuals who are of low income, high unemployment, low
levels of homeownership, limited English proficiency, high rent or energy
burden, low transportation, sensitive populations, or low levels of educational
attainment.

(3) Identify objectives and policies to promote meaningful participation
in the public decision-making process and recommend procedures to ensure
that public documents, notices, and public hearings relating to human health or
the environment are concise, understandable, and readily accessible to the
public. The recommendations shall include guidance for determining when it
is appropriate for State agencies to translate crucial public documents, notices,
and hearings relating to human health or the environment for limited English proficient populations.

(4) Identify objectives, statutes, regulations, and policies that prioritize improvements and programs that address the needs of environmentally distressed communities, especially those that reduce the unique or compounded health risks in environmentally stressed communities by means that include the reduction of pollution exposure and the promotion of environmental benefits.

(5) Create policy recommendations for the evaluation of environmental and social determinants of health and environmentally distressed communities, including recommendations for use of the environmental justice mapping tool established pursuant to section 6004 of this title, in enhancing meaningful participation, reduction of environmental burdens, and equitable distribution of environmental benefits.

(6) Advise the Agency of Natural Resources, the Agency of Administration, and other State agencies on environmental justice issues and on how to incorporate environmental justice into agency procedures as required under subsection 6002(b) of this title and evaluate the potential for disproportionate impacts on environmentally distressed communities as a result of State actions.
(7) Receive and review agency summaries of complaints alleging environmental justice issues, including Title VI complaints.

(8) Recommend options to agencies for the resolution of complaints or issues identified by or presented to the Council under subdivisions (1)–(7) of this subsection (b).

(c) Membership.

(1) The Council shall consist of the following members:

(A) one member of the House of Representatives, appointed by the Speaker of the House;

(B) one member of the Senate, appointed by the Committee on Committees;

(C) the Secretary of Administration or designee;

(D) the Secretary of Natural Resources or designee;

(E) the Commissioner of Health or designee;

(F) the Secretary of Transportation or designee;

(G) the Commissioner of Housing and Community Development or designee;

(H) the Director of Emergency Management or designee;

(I) the Director of Racial Equity or designee;

(J) one representative of municipal government, appointed by the Committee on Committees;
(K) one representative from a statewide environmental organization, appointed by the Speaker of the House;

(L) two representatives from a social justice organization, one appointed by the Committee on Committees and one appointed by the Speaker of the House;

(M) two members representing mobile home parks, one appointed by the Committee on Committees and one appointed by the Speaker of the House;

(N) one member of a community affected by environmental justice issues, appointed by the Speaker of the House;

(O) one member of a State-recognized Native American Indian tribe, recommended by the Vermont Commission on Native American Affairs; and

(P) two members representing the immigrant community in Vermont, one appointed by the Committee on Committees and one appointed by the Speaker of the House.

(2) The Council may elect a chair and a vice chair and may hold public hearings.

(3) After initial appointments, all appointed members of the Council shall serve three-year terms and serve until a successor is appointed. The initial terms shall be staggered so that three of the appointed members shall serve a one-year term, three of the appointed members shall serve a two-year term, and the remaining three members shall be appointed to a three-year term.
(4) Vacancies shall be appointed in the same manner as original appointments.

(5) The Advisory Council shall have the administrative, technical, and legal assistance of the Agency of Natural Resources.

(6)(A) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Advisory Council serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(B) Other members of the Advisory Council shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010.

§ 6004. ENVIRONMENTAL JUSTICE MAPPING

(a) In consultation with the Advisory Council on Environmental Justice, the Department of Health, and the Agency of Natural Resources, the Agency of Digital Services shall determine indices and criteria to be included in a State mapping tool to measure environmental justice impacts at the local level. The Agency of Digital Services shall maintain the mapping tool.

(b) The Agency of Digital Services may cooperate and contract with other states or private organizations when developing the mapping tool. The mapping tool may incorporate the federal environmental justice mapping tool.
EJSCREEN, as well as existing State mapping tools such as the Vermont Social Vulnerability Index.

(c) On or before July 1, 2023, the mapping tool shall be available for use by the public as well as by the State government.

(d) The Advisory Council on Environmental Justice shall recommend uses for the environmental mapping tool in distribution of environmental burdens and benefits.

Sec. 3. INTERIM REPORT

On or before July 1, 2023, the Agencies of Natural Resources, of Transportation, of Commerce and Community Development, and of Education and the Departments of Health, of Public Safety, and of Public Service shall report to the General Assembly and the Advisory Council On Environmental Justice all actions taken toward completing the work required under 3 V.S.A. § 6002(b).

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2022.