

1 S.148

2 Introduced by Senators Ram, Campion, Hardy, Lyons, Pearson, Perchlik and
3 Pollina

4 Referred to Committee on

5 Date:

6 Subject: Conservation and development; government; environmental justice;

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

13 An act relating to environmental justice in Vermont

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. FINDINGS

16 The General Assembly finds that:

17 (1) According to the American Journal of Public Health, Black,
18 Indigenous, and Persons of Color (BIPOC) and low-income individuals are
19 disproportionately exposed to environmental hazards and unsafe housing,
20 facing higher levels of air and water pollution, mold, lead, and pests.

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

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

8 (4) The cumulative impacts of environmental harms, including air and
9 water pollution, low-quality housing stock, and greater exposure to extreme
10 weather events disproportionately and adversely impact the health of BIPOC
11 and low-income communities. These disproportionate adverse impacts are
12 exacerbated by lack of access to affordable energy, adequate transportation,
13 healthy food, and green spaces.

14 (5) According to the U.S. Department of Agriculture, 24 percent of
15 Vermonters have low access to grocery stores, which factors in distance to and
16 quantity of stores, family and neighborhood income, and vehicle and public
17 transportation availability. A study conducted at the University of Vermont
18 showed that BIPOC individuals were twice as likely to have trouble affording
19 fresh food and to go hungry in a month.

20 (6) Lack of adequate transportation can be a major barrier to health care
21 for Vermonters. In a University of Vermont study, about 9 percent of surveyed

1 patients reported that transportation problems prevent them from accessing
2 health services, like doctor’s appointments, and BIPOC individuals were twice
3 as likely to lack access to transportation and to not own a vehicle compared to
4 White individuals in Vermont, and those who did not own a vehicle were twice
5 as likely to not have access to fresh food and a primary care doctor.

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

9 (8) The U.S. Department of Agriculture reports that BIPOC individuals
10 own less than 2 percent of private woodland, only approximately 0.9 percent of
11 agricultural land, and 0.6 percent of forestland, which is largely made up of
12 Abenaki tribal ownership in Vermont.

13 (9) The Center for American Progress finds that 76 percent of BIPOC
14 individuals in Vermont live in “nature deprived” census tracts with a higher
15 proportion of natural areas lost to human activities than the Vermont median.

16 In contrast, 20 percent of White individuals live in these areas.

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

20 (11) According to the Vermont Department of Health, inequities in
21 access to and quality of health care, employment, and housing have contributed

1 to disproportionately high rates of COVID-19 among BIPOC Vermonters.

2 Long-term exposure to particulate matter in the air increases the likelihood of
3 severe COVID-19 outcomes.

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

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

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

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

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

10 (17) Vermont is one of a few remaining states lacking a formal
11 environmental justice policy.

12 (18) At least 24 states have environmental justice mapping tools.
13 Environmental justice mapping tools can help identify environmentally
14 disadvantaged communities for remediation efforts, including funding
15 allocations and restrictions on permitting in these communities.

16 (19) The 1991 Principles of Environmental Justice demand the right of
17 all individuals to participate as equal partners at every level of decision
18 making, including needs assessment, planning, implementation, enforcement,
19 and evaluation. This includes providing meaningful access to the 9,000
20 individuals in Vermont with limited English proficiency (LEP).

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

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

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

14 CHAPTER 70. ENVIRONMENTAL JUSTICE

15 § 6001. DEFINITIONS

16 As used in this chapter:

17 (1) "Environmental benefits" means the benefits that enhance the
18 capability of communities and individuals to function and flourish in society,
19 such as access to a healthy environment and clean natural resources, including
20 air, water resources, open green spaces, constructed playgrounds and other
21 outdoor recreational facilities and venues, affordable renewable energy

1 sources, public transportation, fulfilling and dignified green jobs, healthy
2 homes, health care, environmental enforcement, and training and funding
3 disbursed or administered by governmental agencies.

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

17 (3) “Environmental justice” means all individuals are afforded the right
18 to equitable access to environmental benefits; proportionate distribution of
19 environmental burdens; fair and equitable treatment and meaningful
20 participation in decision-making processes and the development,
21 implementation, and enforcement of environmental laws, regulations, and

1 policies; and recognition of the unique needs of individuals of all race, color,
2 income, class, ability status, gender identity, sexual orientation, national origin,
3 ethnicity or ancestry, religious belief, or English language proficiency.

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

7 Environmental justice requires prioritizing resources for community
8 revitalization, ecological restoration, resilience planning, and a just recovery to
9 communities most impacted by environmental injustices and natural disasters.

10 (4) “Meaningful participation” means that all individuals have the right
11 and opportunity to participate in energy, climate change, and environmental
12 decision making, including needs assessments, planning, implementation,
13 compliance and enforcement, and evaluation. “Meaningful participation” also
14 means that indigenous communities and diverse knowledge systems, histories,
15 traditions, languages, and cultures are integrated in decision-making processes;
16 and communities are enabled and administratively assisted to participate fully
17 through education and training and are given transparency by the State
18 government with regards to community input and encouraged to develop
19 environmental, energy, and climate change stewardship.

1 § 6002. ENVIRONMENTAL JUSTICE STATE POLICY

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

8 (b) On or before July 1, 2024, the Agencies of Natural Resources, of
9 Transportation, of Commerce and Community Development, and of Education
10 and the Departments of Health, of Public Safety, and of Public Service shall
11 report to the General Assembly all actions taken to incorporate environmental
12 justice into the agencies' policies or determinations, rulemaking, permit
13 proceeding, or project review, including incorporation of Title VI of the Civil
14 Rights Act of 1964.

15 (c) State agencies shall submit annual summaries to the Advisory Council
16 on Environmental Justice established pursuant to section 6003 of this title,
17 detailing all complaints alleging environmental justice issues or Title VI
18 violations and any agency action taken to resolve such complaints. Agencies
19 shall consider the recommendations of the Advisory Council pursuant to
20 subdivision 6003(b)(7) of this title and substantively respond in writing if an

1 agency chooses not to implement any such recommendations, within 90 days
2 of receipt of recommendations.

3 § 6003. ADVISORY COUNCIL ON ENVIRONMENTAL JUSTICE

4 (a) Advisory Council. There is created the Advisory Council on
5 Environmental Justice within the Agency of Natural Resources to provide
6 independent advice and recommendations to the Agency of Natural Resources
7 and the State on matters relating to environmental justice, including the
8 integration of environmental justice principles into State programs, policies,
9 regulations, legislation, and activities.

10 (b) Duties. The Council shall:

11 (1) Examine existing data and studies on environmental justice and
12 consult with State, federal, and local agencies and affected communities
13 regarding the impact of current statutes, regulations, and policies on the
14 achievement of environmental justice.

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

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

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

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

17 (4) Identify objectives, statutes, regulations, and policies that prioritize
18 improvements and programs that address the needs of environmentally
19 distressed communities, especially those that reduce the unique or
20 compounded health risks in environmentally stressed communities by means

1 that include the reduction of pollution exposure and the promotion of
2 environmental benefits.

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

9 (6) Advise the Agency of Natural Resources, the Agency of
10 Administration, and other State agencies on environmental justice issues and
11 on how to incorporate environmental justice into agency procedures as
12 required under subsection 6002(b) of this title and evaluate the potential for
13 disproportionate impacts on environmentally distressed communities as a
14 result of State actions.

15 (7) Receive and review agency summaries of complaints alleging
16 environmental justice issues, including Title VI complaints.

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

20 (c) Membership.

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

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

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

5 (C) the Secretary of Administration or designee;

6 (D) the Secretary of Natural Resources or designee;

7 (E) the Commissioner of Health or designee;

8 (F) the Secretary of Transportation or designee;

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

11 (H) the Director of Emergency Management or designee;

12 (I) the Director of Racial Equity or designee;

13 (J) one representative of municipal government, appointed by the
14 Committee on Committees;

15 (K) one representative from a statewide environmental organization,
16 appointed by the Speaker of the House;

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

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

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

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

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

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

10 (3) After initial appointments, all appointed members of the Council
11 shall serve three-year terms and serve until a successor is appointed. The
12 initial terms shall be staggered so that three of the appointed members shall
13 serve a one-year term, three of the appointed members shall serve a two-year
14 term, and the remaining three members shall be appointed to a three-year term.

15 (4) Vacancies shall be appointed in the same manner as original
16 appointments.

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

19 (6)(A) For attendance at meetings during adjournment of the General
20 Assembly, a legislative member of the Advisory Council serving in his or her

1 capacity as a legislator shall be entitled to per diem compensation and
2 reimbursement of expenses pursuant to 2 V.S.A. § 406.

3 (B) Other members of the Advisory Council shall be entitled to per
4 diem compensation and reimbursement of expenses as permitted under
5 32 V.S.A. § 1010.

6 § 6004. ENVIRONMENTAL JUSTICE MAPPING

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

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

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

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

1 Sec. 3. INTERIM REPORT

2 On or before July 1, 2023, the Agencies of Natural Resources, of
3 Transportation, of Commerce and Community Development, and of Education
4 and the Departments of Health, of Public Safety, and of Public Service shall
5 report to the General Assembly and the Advisory Council On Environmental
6 Justice all actions taken toward completing the work required under 3 V.S.A.
7 § 6002(b).

8 Sec. 4. EFFECTIVE DATE

9 This act shall take effect on July 1, 2022.