

House Proposal of Amendment

S. 148

An act relating to environmental justice in Vermont

The House proposes to the Senate to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds that:

(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) According to the Centers for Disease Control and Prevention, 30 percent of Vermont towns with high town household poverty have limited access to grocery stores. In addition, a study conducted at the University of Vermont showed that in Vermont, BIPOC individuals were twice as likely to have trouble affording fresh food and to go hungry in a month than white individuals.

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

(6) In 2020, the Center for American Progress found 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, 27 percent of white individuals live in these areas.

(7) The U.S. Centers for Disease Control and Prevention states that systemic health and social inequities disproportionately increases the risk of

racial and ethnic minority groups becoming infected by and dying from COVID-19.

(8) 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.

(9) An analysis by University of Vermont researchers found that mobile homes are more likely than permanent structures to be located in a flood hazard area. During Tropical Storm Irene, mobile parks and over 561 mobile homes in Vermont were damaged or destroyed. Mobile homes make up 7.2 percent of all housing units in Vermont and were approximately 40 percent of sites affected by Tropical Storm Irene.

(10) 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.

(11) The U.S. 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.

(12) Vermont State agencies receiving federal funds are subject to the antidiscrimination requirements of Title VI of the Civil Rights Act of 1964.

(13) 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.

(14) At least 17 states have developed mapping tools to identify environmentally overburdened communities and environmental health disparities.

(15) The State of Vermont does not currently have a State-managed mapping tool that clearly identifies environmentally overburdened communities.

(16) 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.

(17) Article VII 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 Article I's

guarantee of equal rights to enjoying life, liberty, and safety, and Article IV'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.

(18) Lack of a clear environmental justice policy has resulted in a piecemeal approach to understanding and addressing environmental justice in Vermont and creates a barrier to establishing clear definitions, metrics, and strategies to ensure meaningful engagement and more equitable distribution of environmental benefits and burdens.

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

Sec. 2. 3 V.S.A. chapter 72 is added to read:

CHAPTER 72. ENVIRONMENTAL JUSTICE

§ 6001. PURPOSE

The purpose of this chapter is to identify, reduce, and eliminate environmental health disparities to improve the health and well-being of all Vermont residents.

§ 6002. DEFINITIONS

As used in this chapter:

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

(2) "Environmental burdens" means any significant impact to clean air, water, and land, including any destruction, damage, or impairment of natural resources resulting from intentional or reasonably foreseeable causes. Examples of environmental burdens include climate change impacts; air and water pollution; improper sewage disposal; improper handling of solid wastes and other noxious substances; excessive noise; activities that limit access to green spaces, nutritious food, Indigenous food or cultural resources, or constructed outdoor playgrounds and other recreational facilities and venues;

inadequate remediation of pollution; reduction of groundwater levels; increased flooding or stormwater flows; home and building health hazards, including lead paint, lead plumbing, asbestos, and mold; and damage to inland waterways and waterbodies, wetlands, forests, green spaces, or constructed playgrounds or other outdoor recreational facilities and venues from private, industrial, commercial, and government operations or other activities that contaminate or alter the quality of the environment and pose a risk to public health.

(3) “Environmental justice” means all individuals are afforded equitable access to and distribution of environmental benefits; equitable distribution of environmental burdens; and fair and equitable treatment and meaningful participation in decision-making processes, including the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice recognizes the particular needs of individuals of every race, color, income, class, ability status, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief, or English language proficiency level. 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 Persons of Color. Environmental justice requires providing a proportional amount of resources for community revitalization, ecological restoration, resilience planning, and a just recovery to communities most affected by environmental burdens and natural disasters.

(4) “Environmental justice focus population” means any census block group in which:

(A) the annual median household income is not more than 80 percent of the State median household income;

(B) Persons of Color and Indigenous Peoples comprise at least six percent or more of the population; or

(C) at least one percent or more of households have limited English proficiency.

(5) “Limited English proficiency” means that a household does not have a member 14 years or older who speaks English “very well” as defined by the U.S. Census Bureau.

(6) “Meaningful participation” means that all individuals have the opportunity to participate in energy, climate change, and environmental decision making. Examples include needs assessments, planning, implementation, permitting, compliance and enforcement, and evaluation. Meaningful participation also integrates diverse knowledge systems, histories, traditions, languages, and cultures of Indigenous communities in decision-

making processes. It requires that communities are enabled and administratively assisted to participate fully through education and training. Meaningful participation requires the State to operate in a transparent manner with regard to opportunities for community input and also encourages the development of environmental, energy, and climate change stewardship.

§ 6003. ENVIRONMENTAL JUSTICE STATE POLICY

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 environmental burdens or be denied an equitable share of environmental benefits. It is further the policy of the State of Vermont to provide the opportunity for the meaningful participation of all individuals, with particular attention to environmental justice focus populations, in the development, implementation, or enforcement of any law, regulation, or policy.

§ 6004. IMPLEMENTATION OF STATE POLICY

(a) As used in this chapter, “covered agencies” means the following State agencies, departments, and bodies: the Agencies of Natural Resources, of Transportation, of Commerce and Community Development, of Agriculture, Food and Markets, and of Education; the Public Utility Commission; the Natural Resources Board; and the Departments of Health, of Public Safety, and of Public Service.

(b) The covered agencies shall consider cumulative environmental burdens, as defined by rule pursuant to subsection 6005(a) of this title, and access to environmental benefits when making decisions about the environment, energy, climate, and public health projects; facilities and infrastructure; and associated funding.

(c) Each of the covered agencies shall create and adopt on or before July 1, 2025 a community engagement plan that describes how the agency will engage with environmental justice focus populations as it evaluates new and existing activities and programs. Community engagement plans shall align with the core principles developed by the Interagency Environmental Justice Committee pursuant to subdivision 6006(c)(2)(B) of this title and take into consideration the recommendations of the Environmental Justice Advisory Council pursuant to subdivision 6006(c)(1)(B) of this title. Each plan shall describe how the agency plans to provide meaningful participation in compliance with Title VI of the Civil Rights Act of 1964.

(d) The covered agencies shall submit an annual summary beginning on January 15, 2024 and annually thereafter to the Environmental Justice Advisory Council, detailing all complaints alleging environmental justice issues or Title VI violations and any agency action taken to resolve the

complaints. The Advisory Council shall provide any recommendations concerning those reports within 60 days after receipt of the complaint summaries. Agencies shall consider the recommendations of the Advisory Council pursuant to subdivision 6006(c)(1)(E) of this title and substantively respond in writing if an agency chooses not to implement any of the recommendations, within 90 days after receipt of the recommendations.

(e) The Agency of Natural Resources, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall review the definitions contained in section 6002 of this title at least every five years and recommend revisions to the General Assembly to ensure the definition achieves the Environmental Justice State Policy.

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

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

(A) where investments were made, if any, and which geographic areas, at the municipal level and census block group, where practicable, received environmental benefits from those investments; and

(B) a description and quantification of the environmental benefits as an outcome of the investment.

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

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

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

(A) where investments were made and which geographic areas, at the municipal level and census block group, where practicable, received environmental benefits from those investments; and

(B) the percentage of overall environmental benefits from those investments provided to environmental justice focus populations.

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

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

§ 6005. RULEMAKING

(a) On or before July 1, 2025, the Agency of Natural Resources, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall adopt rules to:

(1) define cumulative environmental burdens;

(2) implement consideration of cumulative environmental burdens within the Agency of Natural Resources; and

(3) inform how the public and the covered agencies implement the consideration of cumulative environmental burdens and use the environmental justice mapping tool.

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

(c)(1) Prior to drafting new rules required by this chapter, agencies shall consult with the Environmental Justice Advisory Council to discuss the scope and proposed content of rules to be developed. Agencies shall also submit draft rulemaking concepts to the Advisory Council for review and comment. Any proposed rule and draft Administrative Procedure Act filing forms shall be provided to the Advisory Council not less than 45 days prior to submitting the proposed rule or rules to the Interagency Committee on Administrative Rules (ICAR).

(2) The Advisory Council shall vote and record individual members' support or objection to any proposed rule before it is submitted to ICAR. The Advisory Council shall submit the results of their vote to both ICAR and the Legislative Committee on Administrative Rules (LCAR).

§ 6006. ENVIRONMENTAL JUSTICE ADVISORY COUNCIL AND INTERAGENCY ENVIRONMENTAL JUSTICE COMMITTEE

(a) Advisory Council and Interagency Committee.

(1) There is created:

(A) the Environmental Justice Advisory Council (Advisory Council) to provide independent advice and recommendations to State agencies and the General Assembly on matters relating to environmental justice, including the integration of environmental justice principles into State programs, policies, regulations, legislation, and activities; and

(B) the Interagency Environmental Justice Committee (Interagency Committee) to guide and coordinate State agency implementation of the Environmental Justice State Policy and provide recommendations to the General Assembly for amending the definitions and protections set forth in this chapter.

(2) Appointments to the groups created in this subsection shall be made on or before December 15, 2022.

(3) Both the Advisory Council and the Interagency Committee shall consider and incorporate the Guiding Principles for a Just Transition developed by the Just Transitions Subcommittee of the Vermont Climate Council in their work.

(b) Meetings. The Advisory Council and Interagency Committee shall each meet not more than eight times per year, with at least four meetings occurring jointly. Meetings may be held in person, remotely, or in a hybrid format to facilitate maximum participation and shall be recorded and publicly posted on the Secretary's website

(c) Duties.

(1) The Advisory Council shall:

(A) advise State agencies on environmental justice issues and on how to incorporate environmental justice into agency procedures and decision making as required under subsection 6004(b) of this title and evaluate the potential for environmental burdens or disproportionate impacts on environmental justice focus populations as a result of State actions and the potential for environmental benefits to environmental justice focus populations;

(B) advise State agencies in the development of community engagement plans;

(C) advise State agencies on the use of the environmental justice mapping tool established pursuant to section 6008 of this title and on the enhancement of meaningful participation, reduction of environmental burdens, and equitable distribution of environmental benefits;

(D) review and provide feedback to the relevant State agency, pursuant to subsection 6005(c) of this title, on any proposed rules for implementing this chapter; and

(E) receive and review annual State agency summaries of complaints alleging environmental justice issues, including Title VI complaints, and suggest options or alternatives to State agencies for the resolution of systemic issues raised in or by the complaints.

(2) The Interagency Committee shall:

(A) consult with the Agency of Natural Resources in the development of the guidance document required by subsection 6004(g) of this title on how to determine which investments provide environmental benefits to environmental justice focus populations; and

(B) on or before July 1, 2023, develop, in consultation with the Agency of Natural Resources and the Environmental Justice Advisory Council, a set of core principles to guide and coordinate the development of the State agency community engagement plans required under subsection 6004(d) of this title.

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

(A) consider and recommend to the General Assembly, on or before December 1, 2023, amendments to the terminology, thresholds, and criteria of the definition of environmental justice focus populations, including whether to include populations more likely to be at higher risk for poor health outcomes in response to environmental burdens; and

(B) 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.

(d) Membership.

(1) Advisory Council. Each member of the Advisory Council shall be well informed regarding environmental justice principles and committed to achieving environmental justice in Vermont and working collaboratively with other members of the Council. To the greatest extent practicable, Advisory Council members shall represent diversity in race, ethnicity, age, gender, urban and rural areas, and different regions of the State. The Advisory Council shall consist of the following 11 members, with a goal to have more than 50 percent residing in environmental justice focus populations:

(A) the Director of Racial Equity or designee;

(B) the following members appointed by the Committee on Committees:

- (i) one representative of municipal government;
- (ii) one representative of a social justice organization;
- (iii) one representative of mobile home park residents;

(C) the following members appointed by the Speaker of the House:

(i) one representative who resides in a census block group that is designated as an environmental justice focus population;

(ii) one representative of an organization working on food security issues;

(iii) one representative of immigrant communities in Vermont;

(iv) one representative of a statewide environmental organization;

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

(E) the Executive Director of the Vermont Housing and Conservation Board or designee; and

(F) the Chair of the Natural Resources Conservation Council or designee.

(2) Interagency Committee. The Interagency Committee shall consist of the following 11 members:

(A) the Secretary of Education or designee;

(B) the Secretary of Natural Resources or designee;

(C) the Secretary of Transportation or designee;

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

(E) the Secretary of Agriculture, Food and Markets or designee;

(F) the Commissioner of Health or designee;

(G) the Director of Emergency Management or designee;

(H) the Commissioner of Public Service or designee;

(I) the Director of Racial Equity or designee;

(J) the Chair of the Natural Resources Board or designee; and

(K) the Chair of the Public Utility Commission or designee.

(3) The Advisory Council and the Interagency Committee may each elect two co-chairs.

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

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

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

§ 6007. ENVIRONMENTAL JUSTICE MAPPING TOOL

(a) The Agency of Natural Resources shall create and maintain the State environmental justice mapping tool. The Agency, in consultation with the Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall determine indices and criteria to be included in the State mapping tool to depict environmental justice focus populations and measure environmental burdens at the smallest geographic level practicable.

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

(c) On or before January 1, 2025, the mapping tool shall be available for use by the public as well as by the State government.

Sec. 3. SPENDING REPORT

On or before December 15, 2025, the Agency of Natural Resources shall submit a report to the General Assembly describing whether the baseline spending reports completed pursuant to 3 V.S.A. § 6004(g) of this section indicate if any municipalities or portions of municipalities are routinely underserved with respect to environmental benefits, taking into consideration whether those areas receive, averaged across three years, a significantly lower percentage of environmental benefits from State investments as compared to other municipalities or portions of municipalities in the State. This report shall include a recommendation as to whether a statutory definition of “underserved community” and any other revisions to this chapter are necessary to best carry out the Environmental Justice State Policy.

Sec. 4. APPROPRIATIONS

(a) There is appropriated the sum of \$500,000.00 in fiscal year 2023 from the General Fund to the Agency of Natural Resources for the cost of

developing the mapping tool required in 3 V.S.A. § 6007 and for conducting community outreach associated with the work of the Environmental Justice Advisory Council.

(b) There is appropriated the sum of \$250,000.00 in fiscal year 2023 from the General Fund to the Agency of Natural Resources for the following positions:

(1) one full-time Civil Rights Compliance Director; and

(2) two new full-time positions to assist in the implementation of the Environmental Justice State Policy and support the Environmental Justice Advisory Council, one to be hired after July 1, 2022 and one to be hired after December 31, 2022.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.