

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish, and Wildlife to which was
3 referred Senate Bill No. 148 entitled “An act relating to environmental justice
4 in Vermont” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. FINDINGS

9 The General Assembly finds that:

10 (1) According to American Journal of Public Health studies published in
11 2014 and 2018 and affirmed by decades of research, Black, Indigenous, and
12 Persons of Color (BIPOC) and individuals with low income are
13 disproportionately exposed to environmental hazards and unsafe housing,
14 facing higher levels of air and water pollution, mold, lead, and pests.

15 (2) The cumulative impacts of environmental harms disproportionately
16 and adversely impact the health of BIPOC and communities with low income,
17 with climate change functioning as a threat multiplier. These disproportionate
18 adverse impacts are exacerbated by lack of access to affordable energy, healthy
19 food, green spaces, and other environmental benefits.

20 (3) Since 1994, Executive Order 12898 has required federal agencies to
21 make achieving environmental justice part of their mission by identifying and

1 addressing disproportionately high and adverse human health or environmental
2 effects of its programs, policies, and activities on minority populations and
3 populations with low incomes in the United States.

4 (4) According to the Centers for Disease Control and Prevention,
5 30 percent of Vermont towns with high town household poverty have limited
6 access to grocery stores. In addition, a study conducted at the University of
7 Vermont showed that in Vermont, BIPOC individuals were twice as likely to
8 have trouble affording fresh food and to go hungry in a month than white
9 individuals.

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

13 (6) In 2020, the Center for American Progress found that 76 percent of
14 BIPOC individuals in Vermont live in “nature deprived” census tracts with a
15 higher proportion of natural areas lost to human activities than the Vermont
16 median. In contrast, 27 percent of white individuals live in these areas.

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

1 (8) According to the Vermont Department of Health, inequities in access
2 to and quality of health care, employment, and housing have contributed to
3 disproportionately high rates of COVID-19 among BIPOC Vermonters.

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

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

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

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

1 (13) In response to the documented inadequacy of state and federal
2 environmental and land use laws to protect vulnerable communities, increasing
3 numbers of states have adopted formal environmental justice laws and policies.

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

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

10 (16) The 1991 Principles of Environmental Justice adopted by The First
11 National People of Color Environmental Leadership Summit demand the right
12 of all individuals to participate as equal partners at every level of decision
13 making, including needs assessment, planning, implementation, enforcement,
14 and evaluation.

15 (17) Article VII of the Vermont Constitution establishes the government
16 as a vehicle for the common benefit, protection, and security of Vermonters
17 and not for the particular emolument or advantage of any single set of persons
18 who are only a part of that community. This, coupled with Article I's
19 guarantee of equal rights to enjoying life, liberty, and safety, and Article IV's
20 assurance of timely justice for all, encourages political officials to identify how

1 particular communities may be unequally burdened or receive unequal
2 protection under the law due to race, income, or geographic location.

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

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

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

13 CHAPTER 72. ENVIRONMENTAL JUSTICE

14 § 6001. PURPOSE

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

18 § 6002. DEFINITIONS

19 As used in this chapter:

20 (1) “Environmental benefits” means the assets and services that enhance
21 the capability of communities and individuals to function and flourish in

1 society. Examples of environmental benefits include access to a healthy
2 environment and clean natural resources, including air, water, land, green
3 spaces, constructed playgrounds, and other outdoor recreational facilities and
4 venues; affordable clean renewable energy sources; public transportation;
5 fulfilling and dignified green jobs; healthy homes and buildings; health care;
6 nutritious food; Indigenous food and cultural resources; environmental
7 enforcement; and training and funding disbursed or administered by
8 governmental agencies.

9 (2) “Environmental burdens” means any significant impact to clean air,
10 water, and land, including any destruction, damage, or impairment of natural
11 resources resulting from intentional or reasonably foreseeable causes.

12 Examples of environmental burdens include climate change impacts; air and
13 water pollution; improper sewage disposal; improper handling of solid wastes
14 and other noxious substances; excessive noise; activities that limit access to
15 green spaces, nutritious food, Indigenous food or cultural resources, or
16 constructed outdoor playgrounds and other recreational facilities and venues;
17 inadequate remediation of pollution; reduction of groundwater levels;
18 increased flooding or stormwater flows; home and building health hazards,
19 including lead paint, lead plumbing, asbestos, and mold; and damage to inland
20 waterways and waterbodies, wetlands, forests, green spaces, or constructed
21 playgrounds or other outdoor recreational facilities and venues from private,

1 industrial, commercial, and government operations or other activities that
2 contaminate or alter the quality of the environment and pose a risk to public
3 health.

4 (3) “Environmental justice” means all individuals are afforded equitable
5 access to and distribution of environmental benefits; equitable distribution of
6 environmental burdens; and fair and equitable treatment and meaningful
7 participation in decision-making processes, including the development,
8 implementation, and enforcement of environmental laws, regulations, and
9 policies. Environmental justice recognizes the particular needs of individuals
10 of every race, color, income, class, ability status, gender identity, sexual
11 orientation, national origin, ethnicity or ancestry, religious belief, or English
12 language proficiency level. Environmental justice redresses structural and
13 institutional racism, colonialism, and other systems of oppression that result in
14 the marginalization, degradation, disinvestment, and neglect of Black,
15 Indigenous, and Persons of Color. Environmental justice requires providing a
16 proportional amount of resources for community revitalization, ecological
17 restoration, resilience planning, and a just recovery to communities most
18 affected by environmental burdens and natural disasters.

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

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

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

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

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

10 (6) “Meaningful participation” means that all individuals have the
11 opportunity to participate in energy, climate change, and environmental
12 decision making. Examples include needs assessments, planning,
13 implementation, permitting, compliance and enforcement, and evaluation.
14 Meaningful participation also integrates diverse knowledge systems, histories,
15 traditions, languages, and cultures of Indigenous communities in decision-
16 making processes. It requires that communities are enabled and
17 administratively assisted to participate fully through education and training.
18 Meaningful participation requires the State to operate in a transparent manner
19 with regard to opportunities for community input and also encourages the
20 development of environmental, energy, and climate change stewardship.

1 § 6003. ENVIRONMENTAL JUSTICE STATE POLICY

2 It is the policy of the State of Vermont that no segment of the population of
3 the State should, because of its racial, cultural, or economic makeup, bear a
4 disproportionate share of environmental burdens or be denied an equitable
5 share of environmental benefits. It is further the policy of the State of Vermont
6 to provide the opportunity for the meaningful participation of all individuals,
7 with particular attention to environmental justice focus populations, in the
8 development, implementation, or enforcement of any law, regulation, or
9 policy.

10 § 6004. IMPLEMENTATION OF STATE POLICY

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

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

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

11 (d) The covered agencies shall submit an annual summary beginning on
12 January 15, 2024 and annually thereafter to the Environmental Justice
13 Advisory Council, detailing all complaints alleging environmental justice
14 issues or Title VI violations and any agency action taken to resolve the
15 complaints. The Advisory Council shall provide any recommendations
16 concerning those reports within 60 days after receipt of the complaint
17 summaries. Agencies shall consider the recommendations of the Advisory
18 Council pursuant to subdivision 6006(c)(1)(E) of this title and substantively
19 respond in writing if an agency chooses not to implement any of the
20 recommendations, within 90 days after receipt of the recommendations.

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

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

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

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

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

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

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

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

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

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

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

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

1 § 6005. RULEMAKING

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

5 (1) define cumulative environmental burdens;

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

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

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

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

1 the proposed rule or rules to the Interagency Committee on Administrative
2 Rules (ICAR).

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

7 § 6006. ENVIRONMENTAL JUSTICE ADVISORY COUNCIL AND

8 INTERAGENCY ENVIRONMENTAL JUSTICE COMMITTEE

9 (a) Advisory Council and Interagency Committee.

10 (1) There is created:

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

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

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

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

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

12 (c) Duties.

13 (1) The Advisory Council shall:

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

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

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

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

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

14 (2) The Interagency Committee shall:

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

19 (B) on or before July 1, 2023, develop, in consultation with the
20 Agency of Natural Resources and the Environmental Justice Advisory Council,
21 a set of core principles to guide and coordinate the development of the State

1 agency community engagement plans required under subsection 6004(d) of
2 this title.

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

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

9 (B) examine existing data and studies on environmental justice and
10 consult with State, federal, and local agencies and affected communities
11 regarding the impact of current statutes, regulations, and policies on the
12 achievement of environmental justice.

13 (d) Membership.

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

1 (A) the Director of Racial Equity or designee;

2 (B) the following members appointed by the Committee on

3 Committees:

4 (i) one representative of municipal government;

5 (ii) one representative of a social justice organization;

6 (iii) one representative of mobile home park residents;

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

8 (i) one representative who resides in a census block group that is

9 designated as an environmental justice focus population;

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

11 issues;

12 (iii) one representative of immigrant communities in Vermont;

13 (iv) one representative of a statewide environmental organization;

14 (D) one representative of a State-recognized Native American Indian

15 tribe, recommended and appointed by the Vermont Commission on Native

16 American Affairs;

17 (E) the Executive Director of the Vermont Housing and Conservation

18 Board or designee; and

19 (F) the Chair of the Natural Resources Conservation Council or

20 designee.

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

3 (A) the Secretary of Education or designee;

4 (B) the Secretary of Natural Resources or designee;

5 (C) the Secretary of Transportation or designee;

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

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

9 (F) the Commissioner of Health or designee;

10 (G) the Director of Emergency Management or designee;

11 (H) the Commissioner of Public Service or designee;

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

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

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

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

17 (4) After initial appointments, all appointed members of the Advisory
18 Council shall serve six-year terms and serve until a successor is appointed.

19 The initial terms shall be staggered so that one third of the appointed members
20 shall serve a two-year term, another third of the appointed members shall serve

1 a four-year term, and the remaining members shall be appointed to a six-year
2 term.

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

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

7 (7) Members of the Advisory Council who are neither State nor
8 municipal employees and who are not otherwise compensated by their
9 employer shall be entitled to per diem compensation and reimbursement of
10 expenses as permitted under 32 V.S.A. § 1010. Members of the Advisory
11 Council may also receive additional compensation up to \$150.00 per meeting
12 as available in the Environmental Justice Advisory Council Special Fund
13 established in section 6007 of this title.

14 § 6007. ENVIRONMENTAL JUSTICE ADVISORY COUNCIL SPECIAL
15 FUND

16 (a) There is established the Environmental Justice Advisory Council
17 Special Fund that shall be managed in accordance with 32 V.S.A. chapter 7,
18 subchapter 5.

19 (b) The Fund shall be administered by the Agency of Natural Resources
20 and shall consist of:

21 (1) any monies appropriated to it; and

1 (2) any gifts, donations, and grants to it by the federal government, a
2 political subdivision of the State, or a 501(c)(3) charitable organization.

3 (c) The funds shall be used to increase per diem amounts to eligible
4 members the Environmental Justice Advisory Council, so that members may
5 receive up to \$150.00 of additional compensation per meeting. Disbursements
6 shall be made by the Secretary of Natural Resources.

7 § 6008. ENVIRONMENTAL JUSTICE MAPPING TOOL

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

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

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

1 Sec. 3. SPENDING REPORT

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

13 Sec. 4. APPROPRIATIONS

14 (a) There is appropriated the sum of \$500,000.00 in fiscal year 2023 from
15 the General Fund to the Agency of Natural Resources for the cost of
16 developing the mapping tool required in 3 V.S.A. § 6008 including any
17 necessary community outreach associated with calibrating and improving the
18 mapping tool.

19 (b) There is appropriated the sum of \$200,000.00 in fiscal year 2023
20 from the General Fund to the Agency of Natural Resources to:

- 1 (1) convert one 0.5 position to one full-time Civil Rights and
2 Nondiscrimination Compliance Officer; and
3 (2) fund two positions to assist in the implementation of the
4 environmental justice policy and support the Environmental Justice Advisory
5 Council. This shall fund an existing position in the Agency and a second
6 position which the Agency is authorized to repurpose from an existing vacant
7 position.

8 Sec. 5. EFFECTIVE DATE

9 This act shall take effect on passage.

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13 (Committee vote: _____)

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Representative _____

16

FOR THE COMMITTEE