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Testimony re: S.148 – Response to ANR’s Phase-in Approach to the Bill

Dear Madam Chair Sheldon and Committee Members of the House Natural Resources, Fish, and Wildlife Committee,

My name is Elena Mihaly, I am Director of CLF Vermont. Thank you for opportunity to testify in support of S.148, An Act Relating to Environmental Justice in Vermont. As you may recall, I came into this Committee about a month ago when you first took this bill up to give you an overview of the core components of the bill. I return to you this morning to provide some additional reflections on the testimony you heard just yesterday from ANR’s Deputy Secretary Maggie Gendron with regard to a phased-in approach to the bill.

In short, I can confidently speak for CLF and for many of the organizations I’ve been working with to support this bill in saying that if ANR’s proposal were adopted whole cloth it would amount to a gutting of this bill. I’ve communicated this to Chair Sheldon, but I requested the opportunity to speak before you all this morning to detail why we are urging you to keep the policy of the bill intact.

There are ways to use extended timelines in the bill to accomplish the goals of enacting a comprehensive environmental justice law, but also recognizing the need to move at the speed of trust and at the rate for which there is adequate funding.

Specifically, I plan to speak to:

- The importance of all the bill’s current definitions
- The timeframe for completion of the EJ mapping tool
- One entity or two – Task Force vs. Committee and Council
- Who serves on the Interagency Committee?

- Legislative report back concept/cumulative impact assessment
- Funding for Advisory Council

Definitions

- ANR proposes to remove three key definitions from the bill – “Environmental benefits,” “Environmental burdens” and “Environmental Justice Population.”
- I strongly urge this Committee to retain these vital definitions for four reasons:
 - First, the terms “environmental benefits” and “environmental burdens” are terms that have already been workshopped and developed through community engagement with environmental justice stakeholders during the REJOICE community interview process over the last few years. Likewise, the “EJ population” definition has gone through an initial workshopping process with stakeholders in the EJ community. Maps were distributed showing the census block groups encompassed by this definition of EJ focus population in order to ground truth the definition with lived experience and confirm that this is a workable starting definition.
 - Second, these terms are used throughout the bill (e.g., in the EJ State Policy) and we need a starting place to make sure we are on the same page embarking on this process together.
 - Third, these definitions are modeled off other state EJ legislation (so not new ideas).
 - Last, there are two provisions in the bill that prompt review of the “EJ focus population” definition:
 - (1) 6002(f): ANR reviews definition of “environmental justice focus population” at least every five years and recommend revisions to the General Assembly to ensure the definition achieves the Environmental Justice State Policy.
 - (2) 6004(c)(1)(A): Interagency Council and Advisory Council shall 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.
- In summary, we urge the Committee to keep these definitions. We are starting from a place of making sure that lower income and more diverse communities in Vermont are getting extra attention during environmental decisionmaking processes and that they have more equitable access to climate and clean energy investments that the state is

making. And there is ample opportunity for adjustment to the EJ focus population definition written into the bill.

EJ Mapping Tool

- ANR’s proposal would have your Committee change this bill to push out the deadline for completing the EJ Mapping Tool until December 15, 2025 --to be clear, that’s a 2-year increase on the timeline. The various organizations supporting this bill understand that it takes time to create a mapping tool, but 3+ years is excessive, especially considering that several states have already developed these types of maps, and that many of the data layers that would comprise this tool already exist in other VT state-maintained maps like the Social Vulnerability Index and the ANR Natural Resources Atlas.
- What’s more, I’d like to remind this Committee that ANR just submitted a timeline to your Committee on March 16, 2022 (a little more than a month ago) that indicated it would adopt a VT-specific EJ Mapping Tool for public use by 2024. That timeline was submitted by then DEC Commissioner Peter Walke and is on your Committee webpage [here](#).
- The January 1, 2024 deadline for the mapping tool that exists in the bill in its current form has been included in the EJ bill draft since version 1.1 was introduced on the Senate side on January 25th. ANR testified every week for a period of weeks and never requested that this deadline for the mapping tool be extended. The advocacy community compromised on almost every other deadline in the bill, agreeing to push back dates wherever ANR requested it. But it’s just this week that we’re hearing that the Agency won’t be able to complete the mapping tool before December 2025. That’s a big leap from they have been saying.
- I am willing to concede that the Agency has learned more about what would be involved in creating such a tool and needs more time than originally envisioned. Giving them until January 1, 2025 (rather than Dec. 15, 2025) to produce the tool should be adequate additional time. That is still 2.5 years from now.
- In summary, we cannot support pushing the timeline out for the EJ mapping tool by ANR’s requested 3+ years. At most, this Committee should move the deadline out to Jan 1, 2025.

One entity or two – Interagency Committee & Advisory Council

- We strongly urge this Committee to retain the two separate entities for the following reasons:
 - There are different tasks which each body must work on individually – the bill separates their duties accordingly to be most efficient with each entities’ time.

- There will be coordination since the bill requires at least 4 out of 9 meetings to be joint meetings.
- For the Advisory Council members to truly serve in an advisory capacity, they should have their own venue to review and discuss material that is not as affected by the power dynamics at play when mixed in with state officials. Separate bodies also create a quasi “affinity space” where each group (agency officials and citizen advisory members) can engage in shared-learning and hash out issues amongst a smaller group of people.

Who serves on Interagency Committee?

- We do not support limiting the Interagency Committee to just be comprised of ANR, VDH, AAFM, and AOT. The reason that this Interagency Committee grew to the size it did was in part because governmental entities *requested* to be included.
- I’m concerned that Deputy Secretary Maggie Gendron did not accurately reflect in her testimony yesterday the full suite of agency/department reps that were invited and spoke before the Senate Natural Resources Committee. The Senate Committee heard from every single entity included on the Interagency Committee except the Natural Resources Board, which was one of the bodies that specifically asked to be included in the Committee:
 - Agency of Administration/Office of Racial Equity: Xusana Davis
 - Agency of Natural Resources: Peter Walke, Kaitlyn Ellerman
 - Agency of Transportation: Michelle Boomhower, Lori Valburn
 - Dept of Housing and Community Development (ACCD): John Hanford
 - Agency of Agriculture: Anson Tebbits, Abbey Willard
 - Agency of Education: Dan French
 - Department of Health: Heidi Klein
 - Public Safety/VT Emergency Management: Erica Bornemann, Michael Schirling
 - Public Service Dept: Claire Mcvennie and TJ Poor
 - Public Utility Commission: Gregg Faber
- I listened to all of this testimony and I can’t remember a single person saying that their agency or department shouldn’t be involved in this environmental justice bill.
- While true that some of these agencies are newer to thinking about EJ, if they aren’t going to learn by participating in this Interagency Committee, then how and when will they be integrated and learn? What do we gain by leaving them out in these early stages?
- In summary, we urge this Committee to keep the Interagency Committee inclusive of more agencies than just the four suggested in ANR’s testimony yesterday.

Legislative Report-back/Cumulative Environmental Harms assessment

- We do not support chopping off any of the critical components in this bill (*chiefly, the cumulative impacts assessment (section 6002(b) and 6003) and the equitable distribution of climate and clean energy investments (section 6002 (f-i)*) -- and relegating them to a legislative report back three plus years from now, as ANR's phased approach suggests.
- Deputy Secretary Gendron's testimony was clear that the only reason ANR is proposing this phased approach is because of inadequate funding. So, this Committee – this Legislature – has a choice:
 - Gut this bill in the name of inadequate funding;
 - Or acknowledge that this work takes time and resources, and dedicate adequate base funding to the cause. It is an entirely modest amount that ANR is requesting for base funding in FY23, and we are amenable to pushing out timeframes to give them more time to achieve duties in the bill. Moreover, the amount we are asking to support the Advisory Council is an extremely low number (several hundred thousand dollars) in the grand scheme of the \$8 billion budget.
- In summary, your Committee can phase in this important work over time via extended timelines within the bill, as opposed to deleting entire sections and delaying consideration of those concepts until future legislative sessions.

Funding for Advisory Council

- Finally, I must reiterate to this Committee the refrain you repeatedly heard from witnesses from a few weeks ago regarding the need for adequate funding for the Advisory Council members.
- \$50 stipends will entrench the disrespect and harms perpetuated on BIPOC and Vermonters living with low income that occurred during the Climate Council process, and we will not be able to recruit people to serve on this Council in good conscience.
- We strongly support the inclusion of a \$200 per diem in this bill. Given that this Committee has downsized the number of folks serving on the Advisory Council – and included an exemption on the per diem for those who are getting paid by their employer – we're really talking about a very small number of people getting this per diem.
- To be clear, this enhanced per diem is the bare minimum of the funding we are asking to be allocated to this process. We requested on the Senate side an additional several hundred thousand dollars to support facilitation of the Advisory Council, training for the members, and funds for members to engage in community outreach. If we are serious about doing community engagement in a respectful and effective way, these additional



funds are critical. We plan to bring up these additional appropriations in the House Appropriations committee when appropriate.

In summary, S.148 contains the same core components as many other environmental justice bills across the country. This is not a novel or particularly ambitious bill; it catches Vermont up with the rest of the country by creating a framework for us to *begin* addressing environmental injustices in Vermont through shared definitions, an EJ policy, mapping, and a requirement to consider environmental justice impacts in government decisions.

Your Committee can phase this important work in over time through extended implementation timelines *within* the bill, as opposed to deleting entire sections and delaying consideration of those concepts until future legislative sessions.

Thank you for your time and consideration and I'm happy to address questions.

Sincerely,

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