

1 TO THE HONORABLE SENATE:

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

7 Sec. 1. FINDINGS

8 The General Assembly finds that:

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

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

19 (3) Since 1994, Executive Order 12898 has required federal agencies to
20 make achieving environmental justice part of their mission by identifying and
21 addressing disproportionately high and adverse human health or environmental

1 effects of its programs, policies, and activities on minority populations and
2 populations with low incomes in the United States.

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

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

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

16 (7) The U.S. Centers for Disease Control and Prevention states that
17 systemic health and social inequities disproportionately increases the risk of
18 racial and ethnic minority groups becoming infected by and dying from
19 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) On January 27, 2021, President Biden signed Executive Order
4 14008, “Tackling the Climate Crisis at Home and Abroad,” that created a
5 government-wide “Justice40 Initiative” that aims to deliver 40 percent of the
6 overall benefits of federal investments related to climate, natural disasters,
7 environment, clean energy, clean transportation, housing, water and
8 wastewater infrastructure, and legacy pollution reduction to “disadvantaged
9 communities” that have been historically marginalized and overburdened by
10 pollution and underinvestment.

11 (19) According to American Community Survey data from 2016–2019,
12 at least 51 percent of census block groups in Vermont (or 52 percent of
13 Vermont’s population) meet the Justice40 Initiative federal guidelines of a
14 disadvantaged community.

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

20 (21) It is the State of Vermont’s responsibility to pursue environmental
21 justice for its residents and to ensure that its agencies do not contribute to

1 unfair distribution of environmental benefits to or environmental burdens on
2 low-income, limited-English proficient, and BIPOC communities.

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

4 CHAPTER 72. ENVIRONMENTAL JUSTICE

5 § 6001. DEFINITIONS

6 As used in this chapter:

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

16 (2) “Environmental burdens” means any significant impact to the clean
17 air, water, and land, including any destruction, damage, or impairment of
18 natural resources resulting from intentional or reasonably foreseeable causes.
19 Examples of environmental burdens include climate change; air and water
20 pollution; improper sewage disposal; improper handling of solid wastes and
21 other noxious substances; excessive noise; activities that limit access to green

1 spaces, nutritious food, Indigenous food or cultural resources, or constructed
2 outdoor playgrounds and other recreational facilities and venues; inadequate
3 remediation of pollution; reduction of groundwater levels; increased flooding
4 or stormwater flows; home and building health hazards, including lead paint,
5 lead plumbing, asbestos, and mold; and damage to inland waterways and
6 waterbodies, wetlands, forests, green spaces, or constructed playgrounds or
7 other outdoor recreational facilities and venues from private, industrial,
8 commercial, and government operations or other activity that contaminates or
9 alters the quality of the environment and poses a risk to public health.

10 (3) “Environmental justice” means all individuals are afforded equitable
11 access to and distribution of environmental benefits; equitable distribution of
12 environmental burdens; fair and equitable treatment and meaningful
13 participation in decision-making processes; and the development,
14 implementation, and enforcement of environmental laws, regulations, and
15 policies. Environmental justice recognizes of the unique needs of individuals
16 of every race, color, income, class, ability status, gender identity, sexual
17 orientation, national origin, ethnicity or ancestry, religious belief, or English
18 language proficiency level. Environmental justice redresses structural and
19 institutional racism, colonialism, and other systems of oppression that result in
20 the marginalization, degradation, disinvestment, and neglect of Black,
21 Indigenous, and Persons of Color. Environmental justice requires prioritizing

1 resources for community revitalization, ecological restoration, resilience
2 planning, and a just recovery to communities most impacted by environmental
3 burdens and natural disasters.

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

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

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

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

12 (5) “Limited English proficiency” means that a household does not have
13 an adult who speaks English “very well” as defined by the U.S. Census
14 Bureau.

15 (6) “Meaningful participation” means that all individuals have the
16 opportunity to participate in energy, climate change, and environmental
17 decision making, including needs assessments, planning, implementation,
18 permitting, compliance and enforcement, and evaluation. Meaningful
19 participation **also integrates** diverse knowledge systems, histories, traditions,
20 languages, and cultures of Indigenous communities in decision-making
21 processes. It requires that communities are enabled and administratively

1 assisted to participate fully through education and training. **Meaningful**
2 **participation requires the State to operate in a transparent manner with regards**
3 **to opportunities for community input and also encourages the** develop of
4 environmental, energy, and climate change stewardship.

5 § 6002. ENVIRONMENTAL JUSTICE STATE POLICY

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

14 (b) The following State agencies shall consider cumulative environmental
15 burdens, as defined by rule pursuant to subsection 6003(a) of this title, and
16 access to environmental benefits when making decisions about environment,
17 energy, climate, and public health projects, facilities and infrastructure, and
18 associated funding: Agencies of Transportation, of Commerce and
19 Community Development, of Agriculture, Food and Markets, and of
20 Education; the Public Utility Commission; the Natural Resources Board; and
21 the Departments of Health, of Public Safety, and of Public Service.

1 (c) On or before July 1, 2025, every Vermont State agency shall create and
2 adopt a community engagement plan that describes how the agency will
3 engage with environmental justice 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 6004(c)(3)(B) of this title and take into
7 consideration the recommendations of the Advisory Council on Environmental
8 Justice pursuant to subdivision 6004(c)(2)(B) of this title. This plan shall
9 describe how the agency plans to facilitate equitable participation and support
10 meaningful and direct involvement of environmental justice populations in
11 compliance with Title VI of the Civil Rights Act of 1964.

12 (d) Every State agency shall submit annual summaries to the Advisory
13 Council on Environmental Justice established pursuant to section 6004 of this
14 title, detailing all complaints alleging environmental justice issues or Title VI
15 violations and any agency action taken to resolve such complaints. Agencies
16 shall consider the recommendations of the Advisory Council pursuant to
17 subdivision 6004(c)(2)(D) of this title and substantively respond in writing if
18 an agency chooses not to implement any such recommendations for changes to
19 policies or procedures, within 90 days after receipt of the recommendations.

20 (e) On or before December 15, 2022, the Agencies of Natural Resources, in
21 consultation with the Interagency Environmental Justice Committee and the

1 Environmental Justice Advisory Council, shall issue guidance on how agencies
2 and departments must determine which investments provide environmental
3 benefits to environmental justice populations. A draft version of the guidance
4 must be released for a 60-day public comment period before being finalized.

5 (f)(1) On or before July 1, 2023, all Agencies and Departments listed in
6 subsection (b) of this section shall, in accordance with the Agency of Natural
7 Resource’s guidance document developed pursuant to subsection (e) of this
8 section, review the past three years and generate baseline spending reports that
9 include:

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

13 (B) the percentage of overall benefits from those investments that
14 resulted in environmental benefits in environmental justice populations.

15 (2) Agencies and Departments shall publicly post the baseline spending
16 reports on their respective websites.

17 (g) On or before July 1, 2024, the Agencies and Departments covered
18 under subsection (b) of this section shall direct investments to environmental
19 justice populations with a goal that at least 55 percent of the overall benefits
20 from those investments go to environmental justice populations.

1 (h)(1) On or before July 1, 2025, and annually thereafter, all Agencies and
2 Departments listed in subsection (b) of this section shall issue annual spending
3 reports that include:

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

7 (B) the percentage of overall benefits from those investments that
8 resulted in environmental benefits in environmental justice populations.

9 (2) Agencies and Departments shall publicly post the annual spending
10 reports on their respective websites.

11 (i) On or before December 15, 2025, the Agency of Natural Resources shall
12 submit a report to the General Assembly describing whether the baseline
13 spending reports in subsection (f) of this section indicate any municipalities or
14 portions of municipalities that are routinely underserved, as determined by a
15 finding that those areas receive, averaged across three years, a significantly
16 lower percentage of environmental benefits from State investments as
17 compared to other municipalities or portions of municipalities in the State.
18 This report shall include a recommendation as to whether a statutory definition
19 of “underserved community” and any other revisions to this title are necessary
20 to best carry out the Environmental Justice State Policy.

1 § 6003. RULEMAKING

2 (a)(1) On or before July 1, 2024, the Agency of Natural Resources, in
3 consultation with the Advisory Council on Environmental Justice and the
4 Interagency Environmental Justice Committee, shall adopt rules to define and
5 implement consideration of cumulative environmental burdens, including how
6 the public and State agencies shall use the environmental justice mapping tool
7 as required by subsection 6002(a) and section 6005 of this title.

8 (2) The Agency of Natural Resources shall also incorporate the
9 principles of the Environmental Justice State Policy into rules and guidance
10 where applicable.

11 (b) The Agencies of Transportation, of Commerce and Community
12 Development, of Agriculture, Food and Markets, and of Education; the Public
13 Utility Commission; the Natural Resources Board; and the Departments of
14 Health, of Public Safety, and of Public Service, in consultation with the
15 Advisory Council on Environmental Justice, shall adopt or amend policies and
16 procedures, plans, guidance, and rules, where applicable, to implement this
17 chapter.

18 (c) The Agency of Natural Resources, in consultation with the Advisory
19 Council on Environmental Justice and the Interagency Environmental Justice
20 Committee, shall review the definitions of “environmental justice population”
21 and “overburdened and underserved community” every five years and

1 recommend revisions to the General Assembly to ensure the definition
2 achieves the Environmental Justice State Policy.

3 (d) Prior to drafting the new rules, agencies shall consult with the
4 Environmental Justice Advisory Council to discuss the scope and proposed
5 content of rules to be developed. The agency shall also submit draft
6 rulemaking concepts to the Advisory Council for review and comment. Any
7 proposed rule and draft Administrative Procedure Act filing forms shall be
8 provided to the Advisory Council not less than 45 days prior to submitting the
9 proposed rule or rules to the Interagency Committee on Administrative Rules
10 (ICAR).

11 § 6004. ENVIRONMENTAL JUSTICE ADVISORY COUNCIL AND

12 INTERAGENCY ENVIRONMENTAL JUSTICE COMMITTEE

13 (a) Advisory Council and Interagency Committee.

14 (1) **There** is created:

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

20 (B) the Interagency Environmental Justice Committee (Interagency
21 Committee) to guide and coordinate State agency implementation of the

1 Environmental Justice State Policy and provide recommendations to the
2 General Assembly for amending the definitions and protections set forth in this
3 chapter.

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

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

10 (b) Meetings. The Advisory Council and Interagency Committee shall
11 each meet at least nine times per year, with at least four meetings occurring
12 jointly.

13 (c) Duties.

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

15 (A) within one year of the effective date of this act, consider and
16 recommend to the General Assembly amendments to thresholds and criteria of
17 the definition of environmental justice populations to include populations more
18 likely to be at higher risk for poor health outcomes in response to
19 environmental burdens; and

20 (B) examine existing data and studies on environmental justice and
21 consult with State, federal, and local agencies and affected communities

1 regarding the impact of current statutes, regulations, and policies on the
2 achievement of environmental justice.

3 (2) The Advisory Council shall:

4 (A) advise State agencies on environmental justice issues and on how
5 to incorporate environmental justice into agency procedures and decision
6 making as required under subsections 6002(b) and (d) of this title and evaluate
7 the potential for environmental burdens or disproportionate impacts on
8 environmental justice populations as a result of State actions and the potential
9 for environmental benefits to environmental justice populations;

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

12 (C) advise State agencies on the use of the environmental justice
13 mapping tool established pursuant to section 6005 of this title, in the
14 enhancement of meaningful participation, reduction of environmental burdens,
15 and equitable distribution of environmental benefits;

16 (D) review and provide feedback to the relevant State agency,
17 pursuant to subsection 6003(d) of this title, on any proposed rules
18 implementing this chapter; and

19 (E) receive and review annual State agency summaries of complaints
20 alleging environmental justice issues, including Title VI complaints, and

1 suggest options or alternatives to State agencies for the resolution of systemic
2 issues raised in or by the complaints.

3 (3) The Interagency Committee shall:

4 (A) consult with the Agency of Natural Resources in the
5 development of the guidance document on how to determine which
6 investments provide environmental benefits to environmental justice
7 populations; and

8 (B) on or before July 1, 2023, develop, in consultation with the
9 Agency of Natural Resources and the Environmental Justice Advisory Council,
10 a set of core principles to guide and coordinate the development of the State
11 agency community engagement plans required under subsection 6002(c) of this
12 title.

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 17 members, with more than 50 percent residing in
21 environmental justice populations:

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

2 (B) one representative of municipal government, appointed by the
3 Committee on Committees;

4 (C) two representatives who reside in a census block group that is
5 designated as an environmental justice population, one appointed by the
6 Committee on Committees and one appointed by the Speaker of the House;

7 (D) two representatives of social justice organizations, one appointed
8 by the Committee on Committees and one appointed by the Speaker of the
9 House;

10 (E) two representatives of organizations working on food security
11 issues, one appointed by the Committee on Committees and one appointed by
12 the Speaker of the House;

13 (F) two representatives of mobile home park issues, one appointed by
14 the Committee on Committees and one appointed by the Speaker of the House;

15 (G) two representatives of a State-recognized Native American
16 Indian tribe, recommended and appointed by the Vermont Commission on
17 Native American Affairs;

18 (H) two representatives of immigrant communities in Vermont, one
19 appointed by the Committee on Committees and one appointed by the Speaker
20 of the House;

1 (I) one representative of a statewide environmental organization,
2 appointed by the Speaker of the House;

3 (J) the Executive Director of the Vermont Housing and Conservation
4 Board or designee; and

5 (K) the Chair of the Natural Resources Conservation Council or
6 designee.

7 (2) Interagency Committee. The Interagency Committee shall consist of
8 the following 12 members:

9 (A) the Secretary of Administration or designee;

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

11 (C) the Secretary of Transportation or designee;

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

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

15 (F) the Secretary of Education or designee;

16 (G) the Commissioner of Health or designee;

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

18 (I) the Commissioner of Public Service or designee;

19 (J) the Chair of Public Utility Commission or designee;

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

21 (L) the Director of Racial Equity or designee.

1 (3) The Advisory Council and the Interagency Committee may each
2 elect two co-chairs and may hold public hearings.

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

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

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

13 (7) Members of the Advisory Council who are neither State nor
14 municipal employees shall be entitled to per diem compensation and
15 reimbursement of expenses as permitted under 32 V.S.A. § 1010.

16 § 6005. ENVIRONMENTAL JUSTICE MAPPING TOOL

17 (a) In consultation with the Advisory Council on Environmental Justice and
18 the Interagency Environmental Justice Committee, the Agency of Natural
19 Resources shall determine indices and criteria to be included in a State
20 mapping tool to depict environmental justice populations and measure

1 environmental burdens at the smallest geographic level practicable. The
2 Agency of Natural Resources shall maintain the mapping tool.

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

8 (c) On or before January 1, 2024, the mapping tool shall be available for
9 use by the public as well as by the State government.

10 Sec. 3. ANNUAL REPORT

11 Beginning on July 1, 2023, the Agencies and Departments listed in 3 V.S.A.
12 § 6002(b) shall issue and publicly post an annual report summarizing all
13 actions taken to incorporate environmental justice into the Agency's or
14 Department's policies or determinations, rulemaking, permit proceeding, or
15 project review.

16 Sec. 4. FUNDING

17 [Placeholder: funding language to be inserted here].

18 Sec. 5. EFFECTIVE DATE

19 This act shall take effect on passage.

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3 (Committee vote: _____)

4

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Senator _____

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FOR THE COMMITTEE