TO THE HONORABLE SENATE:

The Committee on Natural Resources and Energy to which was referred Senate Bill No. 148 entitled “An act relating to environmental justice in Vermont” respectfully reports that it has considered the same and recommends that the bill be amended by striking out 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) On January 27, 2021, President Biden signed Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad,” that created a government-wide “Justice40 Initiative” that aims to deliver 40 percent of the overall benefits of federal investments related to climate, natural disasters, environment, clean energy, clean transportation, housing, water and wastewater infrastructure, and legacy pollution reduction to “disadvantaged communities” that have been historically marginalized and overburdened by pollution and underinvestment.

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

(20) 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.

(21) 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. 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, such as 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, including access to
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 the 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; 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 activity that contaminates or alters the quality of the environment and poses 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; fair and equitable treatment and meaningful participation in decision-making processes; and the development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice recognizes of the unique 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 prioritizing
resources for community revitalization, ecological restoration, resilience planning, and a just recovery to communities most impacted by environmental burdens and natural disasters.

(4) “Environmental justice 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 an adult 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, including 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 regards to opportunities for community input and also encourages the development of environmental, energy, and climate change stewardship.

§ 6002. ENVIRONMENTAL JUSTICE STATE POLICY

(a) 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 populations, in the development, implementation, or enforcement of any law, regulation, or policy.

(b) The following Vermont State agencies, departments, and bodies shall consider cumulative environmental burdens, as defined by rule pursuant to subsection 6003(a) of this title, and access to environmental benefits when making decisions about environment, energy, climate, and public health projects, facilities and infrastructure, and associated funding: 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.

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

(d) Every Vermont State agency shall submit annual summaries to the Environmental Justice Advisory Council on Environmental Justice established pursuant to subdivision 6004(a)(1)(A) of this title, detailing all complaints alleging environmental justice issues or Title VI violations and any agency action taken to resolve such complaints. Agencies shall consider the recommendations of the Advisory Council pursuant to subdivision 6004(c)(2)(D) of this title and substantively respond in writing if an agency
chooses not to implement any such recommendations for changes to policies or procedures, 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 definition of “environmental justice population” every five years and recommend revisions to the General Assembly to ensure the definition achieves the Environmental Justice State Policy.

(ef) On or before July 1December 15, 2023, the Agencies of Natural Resources, in consultation with the Interagency Environmental Justice Committee and the Environmental Justice Advisory Council, shall issue guidance on how agencies, all Agencies and departments Departments listed in subsection (b) of this section must determine which investments provide environmental benefits to environmental justice populations. A draft version of the guidance must be released for a 60-day public comment period before being finalized.

(fg)(1) On or before July 1January 15, 2024, all Agencies and Departments listed in subsection (b) of this section shall, in accordance with the Agency of Natural Resources’s guidance document developed pursuant to subsection (ef) of this section, review the past three years and generate baseline spending reports that include:
(A) where investments were made and which geographic areas, at the municipal level and census block group, where practicable, incurred received environmental benefits from those investments; and

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

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

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

(hi)(1) On or before July 1, 2025, and annually thereafter, all Agencies and Departments listed in subsection (b) of this section shall 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, incurred received environmental benefits from those investments; and

(B) the percentage of overall environmental benefits from those investments that resulted in environmental benefits in went to environmental justice populations.
(2) Agencies and Departments shall publicly post the annual spending reports on their respective websites.

(j) 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 subsection (f) of this section indicate any municipalities or portions of municipalities that are routinely underserved with respect to environmental benefits, as determined by a finding that 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 title are necessary to best carry out the Environmental Justice State Policy.

§ 6003. RULEMAKING

(a)(1) On or before July 1, 2024, the Agency of Natural Resources, in consultation with the Advisory Council on Environmental Justice Advisory Council and the Interagency Environmental Justice Committee, shall adopt rules to: define cumulative environmental burdens; and implement consideration of cumulative environmental burdens within the Agency of Natural Resources, and inform including how the public and the State
agencies, departments, and bodies specified in subsection 6002(b) of this title implement consideration of cumulative environmental burdens and shall use the environmental justice mapping tool as required by subsection 6002(ba) and section 6005 of this title.

(2) The Agency of Natural Resources shall also incorporate the principles of the Environmental Justice State Policy into its policies and procedures, plans, guidance, and rules where applicable.

(b) Not later than one year following the adoption of the rules pursuant to subdivision (a)(1) of this section and as appropriate thereafter, the Agencies 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, in consultation with the Interagency Environmental Justice Advisory Council and consistent with the rules adopted pursuant to subdivision (a)(1) of this section, shall adopt or amend policies and procedures, plans, guidance, and rules, where applicable, to implement this chapter.

(c) The Agency of Natural Resources, in consultation with the Advisory Council on Environmental Justice and the Interagency Environmental Justice Committee, shall review the definitions of “environmental justice population” and “overburdened and underserved community” every five years and
recommend revisions to the General Assembly to ensure the definition achieves the Environmental Justice State Policy.

(d) Prior to drafting the new rules pursuant to this section, agencies shall consult with the Environmental Justice Advisory Council to discuss the scope and proposed content of rules to be developed. The agency 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).

§ 6004. 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 October 1-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 at least nine times per year, with at least four meetings occurring
jointly.

(c) Duties.

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

(A) within one year of the effective date of this act, consider and
recommend to the General Assembly amendments to thresholds and criteria of
the definition of environmental justice populations 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.

(2) 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 subsections 6002(b) and (d) of this title and evaluate
the potential for environmental burdens or disproportionate impacts on
environmental justice populations as a result of State actions and the potential
for environmental benefits to environmental justice 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 6005 of this title, in 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 6003(dc) of this title, on any proposed rules
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.

(3) The Interagency Committee shall:

(A) consult with the Agency of Natural Resources in the
development of the guidance document on how to determine which
investments provide environmental benefits to environmental justice
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 6002(c) of this
title.

(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 17 members, with more than 50 percent residing in
environmental justice populations:
(A) the Director of Racial Equity or designee;

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

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

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

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

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

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

(H) two representatives of immigrant communities in Vermont, one appointed by the Committee on Committees and one appointed by the Speaker of the House;
(I) one representative of a statewide environmental organization, appointed by the Speaker of the House;

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

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

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

(A) the Secretary of Administration 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 Secretary of Education or designee;

(G) the Commissioner of Health or designee;

(H) the Director of Emergency Management or designee;

(I) the Commissioner of Public Service or designee;

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

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

(L) the Director of Racial Equity or designee.
(3) The Advisory Council and the Interagency Committee may each elect two co-chairs and may hold public hearings.

(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 a 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.

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

§ 6005. ENVIRONMENTAL JUSTICE MAPPING TOOL

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

(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 the federal environmental justice mapping tool, EJSCREEN, as well as existing State mapping tools such as the Vermont Social Vulnerability Index.

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

Sec. 3. ANNUAL REPORT

Beginning on July 1, 2024, the Vermont state agencies, departments, and bodies listed in 3 V.S.A. § 6002(b) shall issue and publicly post an annual report summarizing all actions taken to incorporate environmental justice into the Agency’s or Department’s policies or determinations, rulemaking, permit proceeding, or project review.

Sec. 4. FUNDING

[Placeholder: funding language to be inserted here].

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.
(Committee vote: __________)

_______________________

Senator _________________

FOR THE COMMITTEE