

MODEL STATUTE ESTABLISHING AN ENVIRONMENTAL ADVISORY BOARD

Bill No. [Number]

Sponsored by [Sponsor]

AN ACT OF THE [LEGISLATIVE BODY] OF [STATE]

Section 1. Legislative findings.

[Legislature] finds the following:

1. All [State] residents deserve to live, work, and recreate in a clean and healthy environment free from the burdens of environmental pollution and degradation;
2. Historically, [State]'s communities of color, low-income communities, and other marginalized groups have been subject to disproportionate levels of air, water, and soil pollution, while also being disproportionately impacted by other environmental and public health stressors;
3. As a result, residents of [State]'s overburdened communities suffer from increased adverse health effects, including asthma, cancer, elevated blood lead levels, respiratory and cardiovascular disease, and developmental disorders. Because children are particularly vulnerable to the adverse health effects caused by pollution, the cumulative environmental and public health impacts of polluting facilities impede the growth, stability, and long-term well-being of overburdened communities and their residents;
4. These disproportionate burdens are in part the result of many years of policy decisions at all levels of government, which continue to pose a threat to the health, well-being, and success of [State]'s most vulnerable residents;
5. The potential for environmental, climate, and public health threats to compound one another and disproportionately impact vulnerable communities requires increased consideration and engagement of impacted communities in decision-making processes; and
6. The establishment of an Environmental Advisory Board is necessary to:
 - a. Ensure that [State] maintains a proactive approach to identifying and addressing environmental justice concerns within [State];
 - b. Identify and rectify existing environmental disparities and their public health effects in [State];
 - c. Engage and empower impacted communities to participate in [State] decision-making processes and environmental benefit programs;
 - d. Provide the expertise and advice necessary for agencies to incorporate environmental justice concerns into their policies and decisions; and
 - e. Determine how [State's] current decision-making processes can better address environmental justice issues.

Section 2. Definitions.

1. Environmental benefit. The term “environmental benefit” shall include, but not be limited to, access to grants, subsidies, loans and other financial assistance relating to energy efficiency or environmental projects; access to green infrastructure and clean natural resources, including air, water resources, open space, and recreational areas and facilities; and the implementation of environmental initiatives, including climate resilience measures and environmental enforcement.
2. Environmental justice. The term “environmental justice” means the fair treatment and meaningful involvement of all people regardless of race, color, faith, national origin, or income, in the development, implementation, and enforcement of laws, regulations, and policies affecting the environment.
3. Environmental justice area. The term “environmental justice area” means:
 - a. Any contiguous area made up of one or more census block groups, as determined in accordance with the most recent United States Census or American Community Survey, in which:
 - i. At least 35 percent of the households have an income less than or equal to two times the federal poverty level;
 - ii. At least 40 percent of individuals list their racial status Black or African American; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; or Middle Eastern or North African, or list their ethnicity as Hispanic or Latino;
 - iii. At least 40 percent of the households have limited English proficiency; or
 - iv. At least 35 percent of the people over the age of 25 have not earned a high school diploma;
 - b. Any contiguous area made up of one or more census block groups which fall at or above the 90th percentile for susceptibility to environmental pollution as determined in accordance with the United States Environmental Protection Agency EJSCREEN demographic index or United States Environmental Protection Agency EJSCREEN supplemental demographic index;
 - c. Any area within the lands of a federally recognized Tribe; and
 - d. Any other area identified or approved by [State environmental protection agency] as having a history of environmental disparities, vulnerability to environmental degradation, disproportionate health impacts, or lack of public participation.
4. Fair treatment. The term “fair treatment” means the equitable consideration of all people such that no group of people bears a disproportionate share of the negative environmental consequences of industrial, governmental, or commercial operations, programs, or policies or suffers an inequitable allocation of public resources for environmental protection, remediation, or stewardship.
5. Lands of a federally recognized Tribe. The term “lands of a federally recognized Tribe” means any land area designated as an American Indian land area under the United States Bureau of Indian Affairs Land Area Representation.
6. Meaningful involvement. The term “meaningful involvement” means the provision of access and opportunities for members of the public, particularly those who may be impacted by a proposed activity, to participate in the decision-making process and have their views and perspectives shape and influence the decision.

Section 3. The Environmental Advisory Board.

1. There is hereby established an Environmental Advisory Board.
 - a. By no later than six months after the effective date of this section, all members of the Environmental Advisory Board shall be appointed according to [subsection 3.2].
2. The Board shall consist of the following 19 members who, to the extent practicable, must represent the racial, ethnic, cultural, gender, and geographic diversity of the state:
 - a. Four members appointed by the governor who represent environmental justice areas located, to the extent practicable, in different congressional districts of the state;
 - b. Four members who represent advocacy organizations or community groups that carry out initiatives relating to environmental justice, including one member appointed by the [majority leader of the state senate], one member appointed by the [minority leader of the state senate], one member appointed by the [majority leader of the state assembly], and one member appointed by the [minority leader of the state assembly];
 - c. Three members who represent organizations that hold at least one permit issued by the [State environmental protection agency], including one member appointed by the [minority leader of the state senate], one member appointed by the [majority leader of the state assembly], and one member appointed by the [minority leader of the state assembly];
 - d. One member who represents a statewide chamber of commerce, appointed by the [majority leader of the state senate];
 - e. Three members appointed by the governor who are academics, including one with expertise in air quality, one with expertise in water quality, and one with expertise in public health;
 - f. Two members appointed by the governor who represent environmental conservation offices of local government;
 - g. Two members appointed by the governor who represent the government of federally recognized or state recognized Tribes.
3. Except as provided in this subsection, each member of the Environmental Advisory Board shall serve for a term of four years or until a successor is appointed.
 - a. In order to ensure staggered terms in office, the initial term of nine members appointed pursuant to [subsection 3.1] shall be two years.
4. Any vacancies on the Environmental Advisory Board, including vacancies for the remainder of an unexpired term, must be filled within six months of the vacancy arising. A member appointed to the remainder of an unexpired term shall serve the remainder of the term. The replacement of any member shall be in accordance with the provisions contained in [subsection 3.2] for appointment of members.
5. The Environmental Advisory Board shall elect a chair and vice-chair from among its members each year.
6. The Environmental Advisory Board shall hold at least one meeting per quarter. The chair shall determine whether additional meetings are necessary and may schedule such meetings as needed for the Environmental Advisory Board to fulfill its duties.
7. Members of the Environmental Advisory Board may be reimbursed for actual and necessary expenses incurred in the performance of their duties.

8. The Environmental Advisory Board may accept financial contributions from federal and state agencies, grant-making foundations, members of the public, and other funding sources to assist in carrying out its functions. The Environmental Advisory Board shall annually publish on its website a list of non-state funding sources it has received. The Environmental Advisory Board may also use funds of the [State environmental protection agency] to support its activities.
9. The [State environmental protection agency] shall provide administrative support for the Environmental Advisory Board as needed.
10. The [State environmental protection agency] may adopt rules and regulations to implement the provisions of this act and may issue technical guidance for compliance with this act, which the department shall publish on its website. However, the absence of such rules shall not delay the effective date of the requirements of this act, impair the obligations established under this law, or limit the ability of the agency to enforce its provisions.

Section 4. Powers and Duties of the Environmental Advisory Board.

The Environmental Advisory Board shall:

1. Identify opportunities for promoting environmental justice, including but not limited to instances of cumulative environmental burdens, disparities in public health outcomes tied to environmental quality, and inequitable distribution of environmental benefits;
2. Provide non-binding guidance to address environmental justice issues referred by the governor, legislature, or the head of any [State] agency;
3. Provide comments on proposed rules, regulations, permitting decisions, and policies of state, local, and federal agencies related to environmental justice;
4. Host public meetings, as it deems appropriate, to gather public perspective on environmental justice issues; and
5. At its discretion, propose:
 - a. Specific legislation, regulation, or other policy initiatives to reduce or eliminate environmental justice concerns or otherwise promote environmental justice;
 - b. Improvements to agency program delivery and enforcement that can better address environmental justice concerns;
 - c. Capital projects that address environmental justice concerns or provide environmental improvements in environmental justice areas; and
 - d. Changes to agency decision-making processes to better address environmental justice concerns, including methods of improving engagement and participation of impacted groups in decision-making processes.
6. The Environmental Advisory Board must comply with the obligations of this act regardless of any vacancies on the Board.