A BILL FOR AN ACT

CONCERNING EFFORTS TO REDRESS THE EFFECTS OF ENVIRONMENTAL INJUSTICE ON DISPROPORTIONATELY IMPACTED COMMUNITIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Section 3 of the bill defines "disproportionately impacted community".

Section 4 requires the air quality control commission to promote outreach to and engage with disproportionately impacted communities by creating new ways to gather input from communities across the state,
using multiple languages and multiple formats, and transparently sharing information about adverse effects resulting from its proposed actions.

Section 5 creates the environmental justice action task force (task force) in the department of public health and environment (department), the goal of which is to propose recommendations to the general assembly regarding practical means of addressing environmental justice inequities. The task force will:

- Hold meetings to solicit public comment concerning the development of a state agency-wide environmental justice strategy and a plan to implement that strategy, including ways to address data gaps and data sharing between state agencies and the engagement of disproportionately impacted communities;
- Evaluate and propose recommended revisions to the definition of "disproportionately impacted community" and the state agencies and their proposed actions that are subject to section 3; and
- File a final report by November 14, 2022, regarding its recommendations.

The department will report on the task force during the department's "SMART Act" presentations.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. The short title of this act is the "Environmental Justice Act".

SECTION 2. Legislative declaration. (1) The general assembly hereby:

(a) Finds that:

(I) All people have the right to breathe clean air, drink clean water, participate freely in decisions that affect their environments, live free of dangerous levels of toxic pollution, experience equal protection provided by environmental policies, and share the benefits of a prosperous and vibrant pollution-free economy;

(II) Certain communities, both in Colorado and internationally, have historically been forced to bear a disproportionate burden of adverse
human health or environmental effects as documented in numerous studies, including the "Toxic Wastes and Race at Twenty, 1987-2007" report by the United Church of Christ Justice & Witness Ministries, federal environmental protection agency annual Environmental Justice Progress Reports, and a 2021 report from the "Mapping for Environmental Justice" project at the Berkeley Public Policy/The Goldman School that shows how the pollution burden is distributed in Colorado, while also facing systemic exclusion from environmental decision-making processes and enjoying fewer environmental benefits;

(III) Specifically, communities with residents who are Black, indigenous, Latino, or people of color have faced centuries of genocide, environmental racism, and predatory extraction practices; and

(IV) At the same time, environmental justice affects and requires the participation of all Coloradans;

(b) Determines that:

(I) Federal action to address environmental justice includes the federal environmental protection agency's office of environmental justice, originally established in 1992, and the assignment of EPA regional liaisons to minority, Tribal, and low-income communities pursuant to 42 U.S.C. sec. 4370i;

(II) States have also addressed environmental justice, with the National Law Review recently noting on October 30, 2020, that "the vast majority of states now address [environmental justice] in some fashion-via legislation, agency policy and guidance, or advisory groups-with fewer than five failing to mention the concept at all";

(III) Environmental justice laws that promote outreach to and facilitate feedback from disproportionately impacted communities and
require that agencies consider that feedback have been upheld by the courts as a legitimate exercise of legislative authority, such as in *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68 (4th Cir. 2020) (vacating the issuance of a permit due to the board's failure to properly consider the permit's environmental justice impacts);

(IV) State action to correct environmental injustice is imperative, and state policy can and should improve public health and the environment and improve the overall well-being of all communities;

(V) Efforts to right past wrongs and move toward environmental justice must focus on disproportionately impacted communities and the voices of their residents;

(VI) Less-burdened communities have benefitted from relationships that impose burdens on other communities, which is a tangible debt that must be repaid through financial reinvestment, and these relatively privileged communities have a responsibility to acknowledge the harms to which they contribute and a duty to find ways to give back what has been taken; and

(VII) Environmental justice is not a zero-sum game: The better we take care of all communities, the more we all grow, and by focusing on communities that are hurting the most, all communities will find opportunities to heal and thrive; and

(c) Declares that:

(I) The state government has a responsibility to achieve environmental justice, health equity, and climate justice for all communities by avoiding and mitigating harm;

(II) It is necessary for disproportionately impacted communities to be meaningfully engaged as partners and stakeholders in government
decision-making;

(III) Potential environmental and climate threats to communities merit a higher level of engagement, review, and consent; and

(IV) This act is necessary to ensure that communities are not forced to bear disproportionate environmental and health impacts.

SECTION 3. In Colorado Revised Statutes, add 24-4-109 as follows:

24-4-109. State engagement of disproportionately impacted communities - definitions - repeal. (1) Goal. The goal of outreach to and engagement of disproportionately impacted communities is to build trust and transparency, provide meaningful opportunities to influence public policy, and modify proposed state action in response to received public input to decrease environmental burdens or increase environmental benefits for each disproportionately impacted community.

(2) Definitions. (a) (I) The environmental justice action task force created in section 25-1-131 will recommend to the general assembly potential modifications to the definitions established in this subsection (2). The definitions established in this subsection (2) apply unless and until the general assembly acts by bill to modify one or more of the definitions.

(II) This subsection (2)(a) is repealed, effective September 1, 2024.

(b) As used in this section and sections 25-1-131 and 25-7-105 (1)(e), unless the context otherwise requires:

(I) "Agency" means the air quality control commission
CREATED IN SECTION 25-7-104.

(II) "DISPROPORTIONATELY IMPACTED COMMUNITY" MEANS A COMMUNITY THAT IS IN A CENSUS BLOCK GROUP, AS DETERMINED IN ACCORDANCE WITH THE MOST RECENT UNITED STATES CENSUS, WHERE THE PROPORTION OF HOUSEHOLDS THAT ARE LOW INCOME IS GREATER THAN FORTY PERCENT; THE PROPORTION OF HOUSEHOLDS THAT IDENTIFY AS MINORITY IS GREATER THAN FORTY PERCENT; OR THE PROPORTION OF HOUSEHOLDS THAT ARE HOUSING COST-BURDENED IS GREATER THAN FORTY PERCENT; OR IS ANY OTHER COMMUNITY AS IDENTIFIED OR APPROVED BY A STATE AGENCY, IF: THE COMMUNITY HAS A HISTORY OF ENVIRONMENTAL RACISM PERPETUATED THROUGH REDLINING, ANTI-INDIGENOUS, ANTI-IMMIGRANT, ANTI-HISPANIC, OR ANTI-BLACK LAWS; OR THE COMMUNITY IS ONE WHERE MULTIPLE FACTORS, INCLUDING SOCIOECONOMIC STRESSORS, DISPROPORTIONATE ENVIRONMENTAL BURDENS, VULNERABILITY TO ENVIRONMENTAL DEGRADATION, AND LACK OF PUBLIC PARTICIPATION, MAY ACT CUMULATIVELY TO AFFECT HEALTH AND THE ENVIRONMENT AND CONTRIBUTE TO PERSISTENT DISPARITIES. AS USED IN THIS SUBSECTION (2)(b)(II), "COST-BURDENED" MEANS A HOUSEHOLD THAT SPENDS MORE THAN THIRTY PERCENT OF ITS INCOME ON HOUSING, AND "LOW INCOME" MEANS THE MEDIAN HOUSEHOLD INCOME IS LESS THAN OR EQUAL TO TWO HUNDRED PERCENT OF THE FEDERAL POVERTY GUIDELINE.

(III) "PROPOSED STATE ACTION" MEANS:

(A) RULE-MAKING PROCEEDINGS HELD PURSUANT TO SECTION 24-4-103;

(B) LICENSING PROCEEDINGS, INCLUDING THE ISSUANCE AND RENEWAL OF PERMITS, HELD PURSUANT TO SECTION 24-4-104; AND
(C) ADJUDICATORY HEARINGS HELD PURSUANT TO SECTION 24-4-105.

(3) Engagement. (a) To promote the goal of state engagement of disproportionately impacted communities, an agency shall strive to create new ways to gather input from communities across the state, using multiple languages and multiple formats and transparently sharing information about adverse environmental effects from its proposed state action.

(b) When conducting outreach to and engagement of disproportionately impacted communities regarding a proposed state action, the agency shall:

(I) Schedule variable times of day and days of the week for opportunities for public input on the proposed state action, including at least one weekend time, one evening time, and one morning time for public input;

(II) Provide notice at least thirty days before any public input opportunity or before the start of any public comment period;

(III) Utilize several different methods of outreach and ways to publicize the proposed state action, including disseminating information through schools, clinics, social media, social and activity clubs, local governments, tribal governments, libraries, religious organizations, civic associations, community-based environmental justice organizations, or other local services;

(IV) Provide several methods for the public to give input, such as in-person meetings, virtual and online meetings, online
COMMENT PORTALS OR E-MAIL, AND CALL-IN MEETINGS;

(V) CONSIDER USING A VARIETY OF LOCATIONS FOR PUBLIC INPUT ON THE PROPOSED STATE ACTION, INCLUDING MEETING LOCATIONS IN URBAN CENTERS, IN NEIGHBORHOODS WHOSE POPULATIONS ARE PREDOMINANTLY BLACK, INDIGENOUS, OR PEOPLE OF COLOR AND HAVE AN AVERAGE INCOME BELOW THE STATE'S AVERAGE, AND IN RURAL LOCATIONS IN VARIOUS REGIONS OF THE STATE; AND

(VI) CREATE OUTREACH MATERIALS CONCERNING THE PROPOSED STATE ACTION IN LAYPERSON'S TERMS, TRANSLATED INTO THE TOP TWO LANGUAGES SPOKEN IN A COMMUNITY, THAT INFORM PEOPLE OF OPPORTUNITIES TO PROVIDE INPUT ON THE PROPOSED STATE ACTION, THEIR RIGHTS, THE POSSIBLE OUTCOMES, AND THE UPCOMING PUBLIC INPUT PROCESS.

SECTION 4. In Colorado Revised Statutes, add 25-1-131 as follows:

25-1-131. Environmental justice action task force - report - repeal. (1) Creation. (a) THERE IS HEREBY CREATED IN THE DEPARTMENT THE ENVIRONMENTAL JUSTICE ACTION TASK FORCE TO RECOMMEND AND PROMOTE STRATEGIES FOR INCORPORATING ENVIRONMENTAL JUSTICE AND EQUITY INTO HOW STATE AGENCIES DISCHARGE THEIR RESPONSIBILITIES.

(b) THE TASK FORCE CONSISTS OF TWENTY-THREE MEMBERS APPOINTED PURSUANT TO SUBSECTION (1)(c) OF THIS SECTION.

(c) THE MEMBERSHIP OF THE TASK FORCE AND APPOINTING AUTHORITIES ARE AS FOLLOWS:

(I) THE GOVERNOR SHALL APPOINT THE FOLLOWING NINE MEMBERS:
(A) Three representatives from the Department of Public Health and Environment, one with expertise in air quality, one with expertise in water quality, and one with expertise in health equity;

(B) One representative of the Department of Natural Resources;

(C) One representative of the Department of Transportation;

(D) One representative of the Colorado energy office;

(E) One representative of the Public Utilities Commission;

(F) One representative of the Department of Agriculture;

and

(G) One representative of the Governor's office;

(II) Two members, one appointed by the Chair of the Southern Ute Indian Tribe tribal council and one appointed by the Chair of the Ute Mountain Ute Tribe tribal council;

(III) Twelve members appointed by the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives, with one member appointed by each appointing authority from subsection (1)(c)(III)(A) of this section and two members each from subsection (1)(c)(III)(B) of this section:

(A) Four members who represent disproportionately impacted communities located, to the extent practicable, in different congressional districts of the State; and

(B) The following number of members of different
ORGANIZATIONS THAT CARRY OUT INITIATIVES RELATING TO ENVIRONMENTAL JUSTICE, THREE MEMBERS; REPRESENT WORKER INTERESTS IN DISPROPORTIONATELY IMPACTED COMMUNITIES, ONE MEMBER; REPRESENT THE INTEREST OF PEOPLE OF COLOR, FOUR MEMBERS; REPRESENT THE RENEWABLE ENERGY INDUSTRY, ONE MEMBER; REPRESENT THE NONRENEWABLE ENERGY INDUSTRY, ONE MEMBER; REPRESENT LOCAL GOVERNMENT IN DISPROPORTIONATELY IMPACTED COMMUNITIES, ONE MEMBER; AND WORK TO SUPPORT PUBLIC HEALTH, ONE MEMBER, WHO MUST BE AN ENVIRONMENTAL TOXICOLOGIST.

(d) The appointing authorities shall fill a vacancy as soon as possible. In making appointments to the task force, the appointing authorities shall ensure that the membership of the task force reflects the racial, ethnic, cultural, and gender diversity of the state, including representation of all areas of the state.

(2) Mission of the task force. The mission of the task force is to propose recommendations to the general assembly regarding practical means of addressing environmental justice inequities by:

(a) Promoting environmental justice across state agencies and improving collaboration among state agencies in identifying and addressing the human health and environmental effects of programs, policies, practices, and activities on disproportionately impacted communities;

(b) Improving cooperation on environmental justice initiatives between the state government, tribal governments, and local governments;
(c) Ensuring meaningful involvement and due process in the development, implementation, and enforcement of environmental laws and policies; and

(d) Addressing environmental health, pollution, and public health burdens in disproportionately impacted communities and building healthy, sustainable, and resilient communities.

(3) Duties of the task force. The task force shall consider proposing recommendations concerning the following:

(a) Developing a state agency-wide environmental justice strategy and a plan to implement that strategy, which could include:

(I) Recommendations for creating and implementing equity analysis into all significant planning, rule-making, adjudications, orders, programmatic and policy decision-making, and investments;

(II) A potential requirement that agencies prepare an environmental equity analysis for any state action that has the potential to cause negative environmental or public health impacts to a disproportionately impacted community, which analysis could include a process for identifying and describing cumulative impacts to the health and environment of disproportionately impacted communities;

(III) A potential requirement that for any state action that may cause adverse environmental or public health impacts to a disproportionately impacted community, the adverse environmental or public health must be avoided, and if the
EFFECTS CANNOT BE AVOIDED, THEY MUST BE MINIMIZED AND MITIGATED;

(IV) A POTENTIAL REQUIREMENT THAT PERMITS MUST BE ISSUED AND RENEWED ONLY AFTER AN ENVIRONMENTAL EQUITY ANALYSIS DETERMINES THAT THE TERMS AND CONDITIONS OF THE PERMIT OR RENEWAL ARE SUFFICIENT TO ENSURE, TO A REASONABLE CERTAINTY, THAT ANY HARM TO THE HEALTH AND ENVIRONMENT OF DISPROPORTIONATELY IMPACTED COMMUNITIES IS EITHER:

(A) AVOIDED; OR

(B) MINIMIZED TO THE EXTENT PRACTICABLE AND, TO THE EXTENT ANY HARM REMAINS, IS MITIGATED;

(V) A POTENTIAL REQUIREMENT THAT ALL ENVIRONMENTAL PROJECTS DEVELOPED AS PART OF A SETTLEMENT RELATING TO VIOLATIONS IN A DISPROPORTIONATELY IMPACTED COMMUNITY ARE DEVELOPED IN CONSULTATION WITH AND THROUGH MEANINGFUL PARTICIPATION OF INDIVIDUALS IN THE DISPROPORTIONATELY IMPACTED COMMUNITY AND RESULT IN IMPROVEMENT TO THE HEALTH AND ENVIRONMENT OF THE AFFECTED DISPROPORTIONATELY IMPACTED COMMUNITY; AND

(VI) RECOMMENDATIONS FOR ESTABLISHING MEASURABLE GOALS FOR REDUCING ENVIRONMENTAL HEALTH DISPARITIES FOR DISPROPORTIONATELY IMPACTED COMMUNITIES;

(b) ADOPTION OF A PLAN THAT ADDRESSES THE LACK OF DATA AND LACK OF DATA SHARING BETWEEN STATE AGENCIES ABOUT POTENTIAL EXPOSURE TO ENVIRONMENTAL HAZARDS AND IMPROVES RESEARCH AND DATA COLLECTION EFFORTS RELATED TO THE HEALTH AND ENVIRONMENT OF DISPROPORTIONATELY IMPACTED COMMUNITIES, CLIMATE CHANGE, AND THE INEQUITABLE DISTRIBUTION OF BURDENS AND BENEFITS OF THE
MANAGEMENT AND USE OF NATURAL RESOURCES;

(c) THE PROVISIONS OF SECTION 24-4-109 REGARDING ENGAGEMENT OF DISPROPORTIONATELY IMPACTED COMMUNITIES, TAKING INTO ACCOUNT BARRIERS TO PARTICIPATION THAT MAY ARISE DUE TO RACE, COLOR, ETHNICITY, RELIGION, INCOME, OR EDUCATION LEVEL; AND

(d) EVALUATING AND PROPOSING RECOMMENDATIONS OR REVISIONS TO THE FOLLOWING DEFINITIONS:

(I) "DISPROPORTIONATELY IMPACTED COMMUNITY" AS DEFINED IN SECTION 24-4-109 (2)(b)(II);

(II) "PROPOSED STATE ACTION" AS DEFINED IN SECTION 24-4-109 (2)(b)(III); AND

(III) "AGENCY" AS DEFINED IN SECTION 24-4-109 (2)(b)(I). IN FORMULATING ITS RECOMMENDATION, THE TASK FORCE SHALL CONSIDER INCLUDING WITHIN THE DEFINITION AT LEAST THE STATE ENTITIES SPECIFIED IN SUBSECTION (1)(c)(I) OF THIS SECTION.

(4) THE TASK FORCE SHALL:

(a) HOLD AT LEAST SIX MEETINGS, WHICH MAY BE ONLINE OR IN PERSON, TO SEEK INPUT FROM, PRESENT ITS WORK PLAN AND PROPOSALS TO, AND RECEIVE FEEDBACK FROM COMMUNITIES THROUGHOUT THE STATE;

(b) SUBMIT A FINAL REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE GOVERNOR, THE DEPARTMENT, THE HOUSE OF REPRESENTATIVES AGRICULTURE, LIVESTOCK, AND WATER, ENERGY AND ENVIRONMENT, AND HEALTH AND INSURANCE COMMITTEES, AND THE SENATE AGRICULTURE AND NATURAL RESOURCES, HEALTH AND HUMAN SERVICES, AND TRANSPORTATION AND ENERGY COMMITTEES, OR THEIR SUCCESSOR COMMITTEES, BY NOVEMBER 14, 2022; AND
(c) Post summaries of its meetings, draft recommendations, and the final report, which must be available as a public record on the home page of the department’s website.

(5) The department shall include updates regarding the task force’s activities, including its final report, in its departmental presentation to legislative committees of reference pursuant to section 2-7-203.

(6) This section is repealed, effective September 1, 2024.

SECTION 5. In Colorado Revised Statutes, 25-7-105, amend (1)(e)(III) as follows:

25-7-105. Duties of commission - rules - legislative declaration - definitions. (1) Except as provided in sections 25-7-130 and 25-7-131, the commission shall promulgate such rules and regulations as are consistent with the legislative declaration set forth in section 25-7-102 and necessary for the proper implementation and administration of this article 7, including, but not limited to:

(e) (III) The commission will identify and engage with disproportionately impacted communities. In identifying these communities, the commission will consider: Minority, low-income, tribal, or indigenous populations in the state that potentially experience disproportionate environmental harms and risks. This disproportionality can be a result of increased vulnerability to environmental degradation, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations. "Disproportionately impacted communities" describes situations where multiple factors, including both environmental and
socioeconomic stressors, may act cumulatively to affect health and the
environment and contribute to persistent environmental health disparities
AS SPECIFIED IN SECTION 24-4-109.

SECTION 6. Appropriation. (1) For the 2021-22 state fiscal
year, $456,090 is appropriated to the department of public health and
environment. This appropriation is from the general fund. To implement
this act, the department may use this appropriation as follows:

(a) $196,032 for use by the air pollution control division for
personal services related to stationary sources, which amount is based on
an assumption that the division will require an additional 2.7 FTE;

(b) $153,718 for use by the air pollution control division for
operating costs related to stationary sources; and

(c) $106,340 for the purchase of legal services.

(2) For the 2021-22 state fiscal year, $106,340 is appropriated to
the department of law. This appropriation is from reappropriated funds
received from the department of public health and environment under
subsection (1)(c) of this section and is based on an assumption that the
department of law will require an additional 0.5 FTE. To implement this
act, the department of law may use this appropriation to provide legal
services for the department of public health and environment.

SECTION 7. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, or safety.