



State Climate Equity Survey

**DOCUMENTING HOW STATE RULES SUPPORT
A JUST AND EQUITABLE ENERGY TRANSITION**

November 2023



State Climate Equity Survey

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Introduction

In states across the country, environmental justice considerations are being implemented in a variety of ways including through bills, executive orders, agency-specific regulations and policies, and state Supreme Court cases. This means that a state with at least one arm of government interested in advancing environmental justice principles has a path forward. In July 2023, Environmental Defense Fund conducted a survey of these state climate equity measures. The goal of this survey was to catalog the major legal steps that states in the U.S. are taking to build environmental justice into laws and regulations.

Summary of Findings

Of the 50 states surveyed, 34 have some climate equity measure already in place. Only 16 lack any sort of mechanism for allowing agencies to incorporate environmental justice principles into their decision-making. This means that more than two thirds of states authorize, or even require, state agencies to consider the environmental justice and equity implications of their decision-making and budget-setting.

Two states (Hawaii and Arizona) have introduced legislation that, if passed, would require environmental agencies to assess the impacts of their decisions on environmental justice communities; the remaining 32 states already have some mechanism in place for considering environmental justice implications.

Note on Methodology

To compile the State Climate Equity survey, we began by reviewing each state's environmental agency, Office of the Governor, and legislative websites to see how those entities consider environmental justice and climate equity in decision making. From this, we created a preliminary spreadsheet listing each state, the relevant state agencies, and the mechanism in place for enforcing environmental justice and climate equity. We then checked our research against two existing compendiums of state environmental justice initiatives (published 2022)^{1,2} and a report on utility equity (published 2021)³ and added any information not already in the spreadsheet. Finally, we consulted two guides published by the National Caucus of Environmental Lawyers — one on proposed environmental impact bills⁴ and one on proposed Constitutional Amendments⁵ — to identify pending state initiatives. The analysis was last updated October 14, 2023.

By the Numbers

Constitutional Amendments

4

states in place

Massachusetts
 Montana
 New York
 Pennsylvania

8

states proposed

Connecticut
 Hawaii
 Maine
 Nevada
 New Mexico
 Tennessee
 Texas
 West Virginia

Other Environmental Justice Bills

13

states in place

Colorado
 Florida
 Illinois
 Maine
 Massachusetts
 New York
 Ohio
 Oregon
 Rhode Island
 Vermont
 Virginia
 Washington
 West Virginia

3

states proposed

Hawaii
 Nevada
 Vermont

Agency-Specific Regulations and Policies

16

states in place

Connecticut
 Kentucky
 Michigan
 Minnesota
 Mississippi
 Nevada
 New Hampshire
 New Mexico
 North Carolina
 Pennsylvania
 South Carolina
 Tennessee
 Texas
 Utah
 West Virginia
 Wisconsin

2

states proposed

Hawaii
 Vermont

Cumulative Impact Bills

8

states in place

California
 Connecticut
 Georgia
 Maryland
 Minnesota
 New Jersey
 New York
 North Carolina

7

states proposed

Arizona
 Maryland
 Minnesota
 New Hampshire
 Oregon
 Pennsylvania
 Rhode Island

Executive Orders

4

states in place

Michigan
 New Mexico
 North Carolina
 Wisconsin

State Supreme Court Ruling

1

state in place

New Mexico

Advocacy Implications

While a majority of states have some mechanism for allowing agencies to incorporate environmental justice principles into decision-making, some state legal provisions currently in place are more effective and enforceable than others. Below is a list of policies divided into three tiers, from the most effective to the least effective. The list includes model legislation and links to complete bills and amendments for further study.

TIER 1 – MOST EFFECTIVE AND ENFORCEABLE

Constitutional Amendments

Some states are adding constitutional amendments to the bill of rights of a state constitution that recognize and protect the rights of all people, including future generations, to pure water, clean air, a stable climate, and a healthy environment.

MODEL AMENDMENT: [Connecticut's Environmental Rights Amendment](#) was introduced and had a public hearing in the 2023 state legislative session. The amendment seeks to guarantee each person “an individual right to clean and healthy air, water, soil and environment, a stable climate and self-sustaining ecosystems for the benefit of public health, safety and the general welfare,” recognizing and protecting environmental rights on par with other civic and political freedoms such as speech and property.

Cumulative Impacts Bills

Cumulative Impacts Bills consider the combined, incremental effects of human activity which may be insignificant alone but accumulate over time. These bills prevent the approval and re-issuing of permits that would increase disproportionate and inequitable pollution on BIPOC, low-income, and limited English proficiency communities.

MODEL LEGISLATION: [New York S8830](#) (2021): requires state agencies making siting/permitting determinations to consider whether the project “may cause or increase a disproportionate or inequitable or both disproportionate and inequitable burden on a disadvantaged community⁶ directly or significantly indirectly affected by the project.”

MODEL LEGISLATION: [New Jersey S232](#) (2020): requires that new or expanded facilities seeking a permit for a project located in an “overburdened community”⁷ prepare an environmental justice impact statement highlighting unavoidable public health stressors (air pollution; impaired water quality) associated with the build-out; if the Department finds that the plan would “cause or contribute to adverse cumulative environmental or public health stressors in the overburdened community,” the Department must deny the permit.

TIER 1 – MOST EFFECTIVE AND ENFORCEABLE (CONT)

Redistributive Bills

Redistributive Bills require state agencies, authorities, and entities to reinvest resources accumulated through the bill into low-income and BIPOC communities.

MODEL LEGISLATION: [New York Climate Leadership and Community Protection Act](#) (2019) requires state agencies, authorities, and entities to invest or direct resources such that 40% of the bill's overall benefits are funneled into “disadvantaged communities.”

Utility Justice Bills

Utility Justice Bills require public utilities commissions to complete a study and submit a report assessing low-income discount rates for electricity and natural gas.

MODEL LEGISLATION: [Illinois Climate and Equitable Jobs Act](#) (2021) requires the Illinois Commerce Commission to conduct a comprehensive study and submit a report to the General Assembly assessing low-income discount rates for electric and natural gas; after completing the study, the commission may permit OR require utilities to file a tariff establishing low-income discount rates.

Environmental Justice Task Force Bills

Environmental Justice Task Force Bills create an Environmental Justice Task Force made up of members who represent minority communities, low-income communities, environmental interests, and industry groups to advise on environmental justice issues in the state.

MODEL LEGISLATION: [Oregon HB 4077](#) (2022) creates the Environmental Justice Task Force, made up of members who “represent minority communities, low-income communities, environmental interests, industry groups and geographically diverse areas of the state,” to advise the Governor on Environmental Justice issues; identify “minority and low-income communities that may be affected by environmental decisions made by the agencies”; meet “with environmental justice communities and make recommendations to the Governor regarding concerns raised by these communities”; and define Environmental Justice issues in the state.

TIER 2 – LESS PROGRESSIVE

General Equity Considerations

MODEL LEGISLATION: [Massachusetts Bill S.9](#) (2021) requires all agencies under the control of the Secretary of Energy and Environmental Affairs to consider “environmental justice principles”⁸ in making any policy, determination, or regulation.

Permitting Bills

MODEL LEGISLATION: [Colorado’s Environmental Justice Act](#) (2021) increases engagement with “disproportionately impacted communities” but only requires a permit processing fee accompanying a permit application for a new/expanded facility in one of those communities; does not explicitly require consideration of the cumulative impacts on those communities in the permitting process.

TIER 3 – PROGRESSIVE EXECUTIVE ONLY

Executive Orders Requiring Agency Consideration of Environmental Justice

MODEL ORDERS:

[North Carolina, Executive Order No. 246](#) (2022): requires all cabinet agencies and encourages all other “North Carolina entities” (including private businesses) to “incorporate environmental justice and equity considerations”; to designate an environmental justice and equity lead tasked with increasing awareness among agency leadership “of the history and current impacts of environmental, economic, and racial injustice”; and to seek public input on additional executive action to “advance environmental justice, equity, and affordability priorities of North Carolinians that live in, work in, or represent low- and moderate income communities, indigenous communities, and communities of color.”

[Wisconsin, Executive Order No. 161](#) (2022): creates the Office of Environmental Justice to consult with the Governor and state agencies on environmental justice issues, including meaningful public participation despite “linguistic, cultural, institutional, geographic, and other barriers”; to work with local governments and Tribal Nations on resiliency efforts “aimed particularly at helping the most vulnerable communities”; to ensure that “the transition to clean energy includes the communities most impacted by climate change”; to facilitate “meaningful and timely engagement” between the state and Tribal Nations on environmental justice issues; to analyze the impact of state laws, regulations, and policy on “the equitable treatment and protection of communities threatened by environmental harms”; and to consider the public health impacts of “cumulative exposures in affected populations to human health or environmental hazards, and historical patterns of exposure” using the [Wisconsin Environmental Equity Tool](#).

Agency-Specific Regulations and Policies Incorporating Environmental Justice

MORE PROGRESSIVE MODEL REGULATIONS AND POLICIES:

[Connecticut, Docket No. 17-12-03RE03](#) (2021): prioritizes delivering increased energy grid resilience to low-to-moderate income customers, customers in environmental justice or economically distressed communities, customers experiencing medical hardship, and public housing authorities.

[New Mexico Environmental Department Environmental Crimes Task Force](#) (2022): advances “civil rights and environmental justice through timely and effective remedies for systemic environmental violations in underserved communities that have been historically marginalized and overburdened, including low-income communities and communities of color.”

LESS PROGRESSIVE MODEL REGULATIONS/POLICIES:

[Minnesota Pollution Control Agency Environmental Justice Framework](#) (2022): authorizes the Pollution Control Agency to coordinate with federal, state, local, and tribal governments on actions and projects in areas of concern for environmental justice.

[Mississippi Department of Environmental Quality Internal Policy](#) (2023): MDEQ Office of Community Engagement is meant to further environmental justice by developing transparent and accessible decision-making processes to enable meaningful community stakeholder participation, being “responsive” to stakeholder concerns, and running a toll-free hotline for people with any environmental justice concerns, comments, questions, or reports.

[New Hampshire Environmental Justice Statement](#) (2022): in the absence of state laws requiring consideration of environmental justice, New Hampshire Department of Environmental Services will follow expanding federal environmental justice requirements and guidance and will “encourage inclusion of environmental justice principles in agency practices.”

Conclusion

While the number of states taking steps toward consideration of environmental justice is hopeful, simply authorizing the consideration of environmental justice implications does not necessarily lead to just outcomes. Several states' environmental justice initiatives appear quite weak, conferring only slim authority on state agencies to implement environmental justice principles.⁹ More research is needed, and should include information on which state legal mechanisms have led to significant and substantive outcomes, and which are more likely to end up serving as greenwash.

We also recommend that further research include a survey of legal challenges to state climate equity measures, as court cases,¹⁰ repeal campaigns,¹¹ and other initiatives have been launched to undermine these mechanisms' effectiveness.¹² This data could inform future advocacy efforts and raise awareness of potential risks associated with each policy and how to achieve environmental justice measures that are durable.

Endnotes

- 1 Environmental Justice Clinic, Vermont Law School, Environmental Justice State by State Directory (2022), <https://ejstatebystate.org/directory>.
- 2 Integral Consulting Inc., Compendium of State Regulatory Activities on Environmental Justice (2022), https://www.integral-corp.com/wp-content/uploads/2022/09/Integral_EJ_Compendium_0922.pdf.
- 3 Lawrence Berkeley National Laboratory, Future Electric Utility Regulation Report No. 12, Advancing Equity in Utility Regulation (2022), https://www.nclc.org/wp-content/uploads/2022/08/Rpt_adv_equity_util_reg.pdf.
- 4 National Caucus of Environmental Lawyers, U.S. States Begin 2023 by Introducing Bills to Address Cumulative Impacts of Pollution (2023), <https://www.ncelenviro.org/articles/u-s-states-begin-2023-by-introducing-bills-to-address-cumulative-impacts-of-pollution/>.
- 5 National Caucus of Environmental Lawyers, Green Amendments in 2023: States Continue Efforts to Make a Healthy Environment a Legal Right (2023), <https://www.ncelenviro.org/issue/green-amendment/#map>
- 6 Defines “disadvantaged community” as communities that “bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households.”
- 7 Defines “overburdened community” based on three parameters: (1) at least 35% of households are low-income; (2) at least 40% are members of the tribal community; OR (3) at least 40% of households have limited English proficiency.
- 8 Defines “environmental justice principles” as “principles that support protection from environmental pollution and the ability to live in and enjoy a clean and healthy environment, regardless of race, color, income, class, handicap, gender identity, sexual orientation, national origin, ethnicity or ancestry, religious belief or English language proficiency, which includes: (i) the meaningful involvement of all people with respect to the development, implementation and enforcement of environmental laws, regulations and policies, including climate change policies; and (ii) the equitable distribution of energy and environmental benefits and environmental burdens.”
- 9 E.g., the Texas Commission on Environmental Quality’s 2021 Public Participation Plan purports to “address environmental concerns for all Texans, including low-income and minority communities across the state, so that all Texans can fully participate in decision-making processes and enjoy the benefits of our environmental programs.” But criticism abounds about TCEQ’s flimsy invocation of environmental justice without any action backing it up. In 2022, TCEQ announced the creation of an Environmental Justice Initiative, but they never followed through: <https://www.texasstandard.org/stories/what-does-environmental-justice-look-like-in-texas-so-far-not-much/>
- 10 E.g., two cases brought against New Jersey’s cumulative impacts bill: <https://subscriber.politicopro.com/article/2023/06/new-jerseys-environmental-justice-rule-faces-legal-challenge-00101569>
- 11 E.g., efforts to abolish West Virginia’s Office of the Environmental Advocate: https://www.wvlegislature.gov/bill_status/bills_history.cfm?year=2021&sessiontype=RS&input=616
- 12 E.g., Montana’s bill banning the consideration of greenhouse gas emissions in agency decision-making: https://leg.mt.gov/bills/2023/HB0999/HB0971_1.pdf