

**Governor's Office of Policy Innovation and the Future  
Report on Equity Considerations in Decision Making**

Pursuant to

**An Act To Require Consideration of Climate Impacts by the Public Utilities Commission and To  
Incorporate Equity Considerations in Decision Making by State Agencies**

February 25, 2022

**Executive Summary**

Public Law 2021, Chapter 279, An Act To Require Consideration of Climate Impacts by the Public Utilities Commission and To Incorporate Equity Considerations in Decision Making by State Agencies (Act), required the Governor's Office of Policy Innovation and the Future (GOPIF) to submit a report to the Joint Standing Committee on Environment and Natural Resources and the Joint Standing Committee on Energy, Utilities and Technology (collectively, the Committees) that includes recommendations regarding methods of incorporating equity considerations into actions at the Department of Environmental Protection (Department, or DEP) and the Maine Public Utilities Commission (Commission, or PUC), as well as any suggested legislation.

GOPIF held three virtual public forums to seek input from stakeholders on this bill. The Department and the Commission participated in these forums and related meetings. In addition, GOPIF held a series of consultative conversations with individuals and organizations engaged in environmental justice and related advocacy statewide. GOPIF also convened an interagency working group in parallel to external stakeholder engagement.

In summary, stakeholders provided feedback about the development, implementation, and enforcement of environmental laws, regulations, and policies – a key component of the environmental justice definition proposed below. Stakeholders also reinforced a general understanding of frontline communities as those first and worst impacted by climate change, and as sharing the underlying facets of vulnerability that also help identify communities experiencing environmental justice concerns. For this reason, we propose a general definition of frontline communities below, and believe that our proposal to develop a definition of environmental justice populations will help identify Maine people experiencing marginalization and other sociodemographic burdens which intersect with both climate and environmental burdens. Finally, stakeholder feedback will also inform the development of environmental justice action plans proposed below and informs the staffing needs associated with proposed legislation for the Department.

This report intends to provide support for the legislature to:

1. Adopt definitions of environmental justice and frontline communities;
2. Authorize the Department to define environmental justice populations;

3. Authorize the Department and the Commission to further consider the incorporation of equity considerations in decision making through the adoption of the above definitions; and
4. Advance suggested legislation to achieve these goals.

## **Background**

Public Law 2021, Chapter 279, An Act To Require Consideration of Climate Impacts by the Public Utilities Commission and To Incorporate Equity Considerations in Decision Making by State Agencies (Act), requires the Governor’s Office of Policy Innovation and the Future (GOPIF) to submit a report to the Joint Standing Committee on Environment and Natural Resources and the Joint Standing Committee on Energy, Utilities and Technology (collectively, the Committees) that includes any recommendations regarding methods of incorporating equity considerations including any suggested legislation. Specifically, GOPIF, in consultation with other state offices and agencies, shall advance recommendations which:

1. Develop methods of incorporating equity considerations in decision making at the Department of Environmental Protection, the Public Utilities Commission and other state agencies; and
2. Develop definitions for “environmental justice,” “environmental justice populations,” “frontline communities” and any other terms determined by the office to be necessary for the incorporation of equity considerations in decision making at the department, the commission and other state agencies.

GOPIF held three virtual public forums to seek input from stakeholders on this bill. The Department of Environmental Protection (Department, or DEP) and the Maine Public Utilities Commission (Commission, or PUC) participated in these forums and related meetings. In addition, GOPIF held a series of consultative conversations with individuals and organizations engaged in environmental justice and related advocacy statewide. Finally, GOPIF convened an interagency working group comprised of the Department, the Commission, representatives of the Maine Center for Disease Control and Prevention’s (Maine CDC) Environmental and Occupational Health Program and the Office of Population Health Equity, the Office of the Public Advocate, the Governor’s Energy Office, Efficiency Maine Trust, and other state and quasi state partners with an interest in environmental justice and equity.

The following report provides an overview of relevant context, input received from the stakeholder consultations in relation to the Act, the Department and Commission’s work to date including both immediate actions and proposals for further action and concludes with draft proposed legislation as required by the Act.

## **Maine Context and Definitions**

There is substantial ongoing work statewide and across state government related to equity. As the Committees are likely aware, GOPIF has been supporting the Maine Climate Council’s Equity

Subcommittee (the Subcommittee) since February 2021, whose charge was to develop recommendations for equitable implementation of the strategies contained within Maine Won't Wait, the state's 4-year climate action plan.

The Subcommittee released its [interim draft recommendations](#) in February 2022, and referenced a number of definitions that provided a baseline context for our work on the Act. In addition, GOPIF and the interagency working group looked at how equity and environmental justice are being defined across the nation. In particular, the following definitions provided core context for our work:

The Subcommittee adopted an approach to **equity**<sup>1</sup> that recognizes that equal distribution of resources is insufficient for addressing climate change [and environmental impacts]. Rather, an equitable system seeks to provide increased resources to disadvantaged communities, noting that the risks and effects of climate change [and environmental burdens] disproportionately fall upon these communities. Climate [and environmental] policies and programs should increase wellbeing, and address root causes of inequality, not exacerbate existing burdens.

The Subcommittee recognized multiple types of equity that can be advanced through state actions. These include:

- **Distributive Equity** strategies target climate adaptation and mitigation resources to the most disadvantaged communities and populations first.
- **Procedural Equity** focuses on the local level and ensures that local communities have meaningful opportunities to provide input on policies, programs, and decisions that directly affect them.
- **Contextual Equity** ensures that the development of climate strategies take existing disparities into account.
- **Corrective Equity** ensures that mitigation and adaptation strategies advance climate goals while at the same time seeking to right historical and ongoing social inequity.

**Maine's Impacted & Vulnerable Communities** - The Subcommittee defines disadvantaged, marginalized, impacted or vulnerable communities as those who have experienced historical and ongoing systemic discrimination, restricted power, and underrepresentation in state policy making, inclusive of communities of color and indigenous communities, low income Mainers, rural and otherwise geographically isolated communities, older adults, LGBTQ+ people, differently abled populations, immigrants, seasonal workers, impacted industries, and other differently impacted

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<sup>1</sup> [https://www.maine.gov/future/sites/maine.gov/future/files/inline-files/MCC\\_EquitySubcommitteeInterimReport\\_Feb2022.pdf](https://www.maine.gov/future/sites/maine.gov/future/files/inline-files/MCC_EquitySubcommitteeInterimReport_Feb2022.pdf)

communities. For consistency throughout this report, we refer to these communities in aggregate as “**disadvantaged**,” and use other more specific identifiers when appropriate.

**Equity**<sup>2</sup> refers to a fair and just, but not necessarily equal, allocation intended to mitigate disparities in benefits and burdens. Equity in a regulatory framework means providing inclusive and equitable service to all customers, so that all customers have equitable opportunities, access, and results, and both benefits and burdens of the provision of energy and telecommunications are fairly distributed across all community groups. Some individuals or communities may need different levels of support to gain equitable service.

**Energy Equity**<sup>3</sup> - the fair distribution of the benefits and burdens of energy production and consumption.

**Energy Justice**<sup>4</sup> refers to the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic and health burdens on marginalized communities.

**Environmental Justice**<sup>5</sup>, as defined by the U.S. Environmental Protection Agency (EPA), is the **fair treatment** and **meaningful involvement** of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

- **Fair treatment** is defined as meaning that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.
- **Meaningful involvement** is defined as meaning that:
  - o People have an opportunity to participate in decisions about activities that may affect their environment or health;
  - o People's participation can influence the regulatory agency's decision;
  - o Community concerns will be considered in environmental decision-making processes; and
  - o Decision makers will seek out and facilitate the involvement of those communities potentially affected by a decision.

Nationally, 24 states have adopted or defer to the EPA’s definition of environmental justice in statewide policy. Eight other states have a unique definition of environmental justice in law; an additional eight states have adopted a unique definition at the state level but no legal definition.

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<sup>2</sup> Minnesota Public Utilities Commission definition from working group on Advancing Equity in Commission Dockets.

<sup>3</sup> Future Electric Utility Regulation Report 12. <https://emp.lbl.gov/projects/feur/>

<sup>4</sup> <https://emp.lbl.gov/projects/feur/>

<sup>5</sup> As defined by the United States Environmental Protection Agency. <https://www.epa.gov/environmentaljustice/ej-2020-glossary>

The remaining 10 states have no definition of environmental justice, though some are currently under development (including VT). While Maine has no statewide or agencywide definition, the Department's [06-096 CMR Chapter 400](#) does contain a definition of environmental justice, applicable to the siting of waste disposal facilities, that was adopted following successful stakeholder petition to the Department's Board of Environmental Protection.

Based on consultation with state officials, the EPA, the US Climate Alliance, and other experts, no state has adopted into law a definition of frontline communities. Many states reference frontline communities in various programs or on departmental websites, and subjurisdictional definitions exist at the city or organizational levels.

Currently in Maine, there are several legislative proposals that have been passed or are currently under consideration this session which intersect with issues of equity and justice, and with environmental, climate, and energy burdens which can disproportionately impact disadvantaged communities and people. And beyond the Department and the Commission, several state and quasi-state agencies are engaged in related and ongoing work. These include but are not limited to the development of a consistent approach to environmental justice and to procedural equity by the Maine Department of Transportation, considerations of income and equity in the development of new and administration of existing programs at the Efficiency Maine Trust, the Maine State Housing Authority's continued consideration of healthy homes, and the environmental health tracking and healthy equity programs at the Maine CDC. In addition, several state agencies and departments have hired diversity, equity, inclusion, and justice staff to focus on equity internally, within state workplaces.

Given this robust body of work, and in consultation with the sponsor of the Act and other stakeholders, GOPIF and state agencies pursued their consideration of equity as directed by the Act *within the context of* environmental justice and frontline communities. The remainder of this report focuses on this interpretation of the Act, and seeks to provide support for the legislature to:

1. Adopt definitions of environmental justice and frontline communities;
2. Authorize the Department to define environmental justice populations;
3. Authorize the Department and the Commission to further consider the incorporation of equity considerations in decision making through the adoption of the above definitions; and
4. Advance suggested legislation to achieve these goals.

### **Federal Context**

In addition to the substantial ongoing work statewide and across state government related to equity, environmental justice, and frontline communities, there is significant and meaningful work happening at the federal level. This work has been proceeding in parallel to GOPIF and state agencies' work and continues to evolve in real time. This work will likely result in robust national definitions for environmental justice (an update to the existing EPA definition),

disadvantaged communities, environmental justice populations, and frontline communities, as well as some consideration of energy justice. These definitions are expected to result in policy, programmatic, and funding guidance flowing from the federal level through state agencies and departments who implement federal programs and spend federal dollars. For this reason, we propose below a moderate pace for the continuation of this work, to allow for the direct incorporation of consistent national standards and guidelines into Maine's own definitions and actions as they are developed.

Three examples of ongoing federal work related to the Act are below:

- **EPA's EJ Screen 2.0:** On February 18<sup>th</sup>, 2022, the federal government released [EPA's EJScreen 2.0](#) ). EJScreen is an environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators. EJScreen users choose a geographic area; the tool then provides demographic and environmental information for that area. While the tool does not identify environmental justice populations, it can be used to look at intersections of demographic indicators and environmental exposure, and to compare populations within and between states to one another.
- **White House Council on Environmental Quality's (CEQ) Draft Climate and Economic Justice Screening Tool:** On February 18<sup>th</sup>, 2022, the federal government released its Draft [Climate and Economic Justice Screening Tool](#). The purpose of the Climate and Economic Justice Screening Tool is help federal agencies identify disadvantaged communities that are marginalized, underserved, and overburdened by pollution. The current version of the tool provides socioeconomic, environmental, health and climate information to inform decisions that may affect these communities. The tool identifies disadvantaged communities through publicly available, nationally consistent datasets. The tool will provide important information for implementation of the evolving federal Justice40 Initiative. The goal of the Justice40 Initiative is to provide 40 percent of the overall benefits of certain federal investments in seven key areas to disadvantaged communities. These seven key areas are: climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, the remediation and reduction of legacy pollution, and the development of critical clean water infrastructure.
- **EPA's Science Advisory Board on Cumulative Impact Analysis:** On March 2<sup>nd</sup>, 2022, the EPA's [Science Advisory Board \(SAB\)](#) will hold a public meeting to consult with EPA regarding how EPA can: (a) use cumulative impact assessment to inform decisions to protect human health and the environment; and (b) conduct research to improve scientific knowledge of cumulative impacts. Cumulative impact assessment is a science-based method of measuring the combined health effects of pollution and social stressors (such as poverty or food insecurity), which can be used to support programs that improve community health and well-being. Cumulative impact assessments will help EPA advance its environmental justice goals by reducing pollution in overburdened communities

throughout the United States. The SAB will give EPA advice on how to use cumulative impact assessments in short-term decision-making processes, and will review a draft of EPA's report entitled "[Cumulative Impacts: Research Context and Recommendations](#)". This report will inform EPA's future research on cumulative impacts. Following the consultation and public comment period, the draft will be revised and finalized.

## **Stakeholder Consultations**

GOPIF held three virtual public forums to seek input from stakeholders on this bill. The Department and the Commission participated in these forums and related meetings. Over 100 people registered for each meeting, with registrants from throughout Maine. Many participants attended multiple meetings in this series. People attending represented environmental justice, climate action, public health, and other organizations; tribal nations, members of low-income communities, younger and older Mainers; and representatives from state and quasi-state agencies. Meetings were jointly facilitated by professional facilitators Gwendolyn Forrest and Samaa Abdurraqib.

In addition, GOPIF held a series of consultative conversations with individuals and organizations engaged in environmental justice and related advocacy statewide. These individuals and organizations include:

- The Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations (Permanent Commission)
- Sergio Cahueque and Sarah Woodbury, [Defend our Health](#)
- Barbara Alexander, consultant representing Maine AARP at relevant Maine Public Utilities Commission proceedings
- Ambassador Maulian Dana, Penobscot Nation and co-chair of the Maine Climate Council Equity Subcommittee
- Darren Ranco, Professor at the University of Maine and member of the Penobscot Nation
- Lisa Sockabasin, Co-CEO, Wabanaki Public Health and Wellness and citizen of the Passamaquoddy Tribe at Motahkomikuk
- Hillary Lister, Maine Matters LLC, environmental justice advocate
- Chris Johnson, Sipayik Environmental Department

GOPIF would like to express its gratitude to all people who participated in these conversations and consultations.

Below is a summary of the feedback received from these meetings and consultations. The recommendations presented within do not express the views of GOPIF, the Department, or the Commission, but are rather indicative of the viewpoints shared by participants in each meeting.

### **Public Meeting 1: December 7, 2021 (environmental justice)**

Participants invited to the first public meeting discussed how the Commission, the Department, and other state agencies can advance equity for environmental justice and frontline communities in Maine. Participants were invited to reflect on environmental justice issues that they believe disproportionately affect Mainers of color and low-income Mainers, which included water quality and energy affordability. Participants included organizations, activists, impacted communities, and experts from across the state who work at the intersection of social justice, climate change, and the environment.

Key questions addressed by participants at this meeting included:

**What does environmental justice mean to your communities and organization?**

Participants identified environmental justice concerns and environmental burdens that they believe disproportionately impact disadvantaged Maine people, including access to clean water and water testing, siting of industrial facilities and landfills, lack of access to traditional foods for indigenous populations, increased energy burden, exposure to toxins in housing, land, and schools, high natural disaster exposure, and increase environmentally mediated health burdens. They also identified lack of representation and power in decision making as a critical focus of environmental justice.

**Which communities in Maine experience higher environmental burdens than others?**

Participants identified people whom they believe experience disproportionate environmental burdens. These include Black, Indigenous, and People of Color (BIPOC) communities, new Mainers, rural communities, people in industrial towns, low income and working-class people and other people who live paycheck to paycheck, and occupants of substandard housing, including in older-model mobile homes, who may experience both environmental and energy burdens. Participants also identified consideration of youth and future generations as critical to environmental justice; and they identified coastal and fishing communities as vulnerable to climate change.

**What actions could state agencies take to address disproportionate environmental burden and climate risk?**

Participants identified actions that they believe state agencies could take to advance environmental justice. These recommendations included:

- Increased access to water and food testing in disadvantaged communities, especially for PFAS and especially in populations that rely on private wells or on wild/harvested/hunted foods
- Providing environmental program materials in languages other than English and in plain language
- Use of community social media to notify members of the public about upcoming meetings and environmental emergencies



- Further recognizing tribal sovereignty with respect to resource management and other decisions
- Mapping environmental exposure pathways of different disadvantaged peoples
- Inclusion of environmental justice communities in landfill and other siting decisions (as noted above, see 06-096 CMR Chapter 400)
- The state should consider whether landfills and incinerators in environmental justice communities should receive renewable energy credits, as participants believed that alteration of financial incentives would change perceived patterns of landfill siting in disadvantaged communities
- Holding water as a commons, which participants believe would lead to greater water availability and ecosystem vitality in disadvantaged communities
- Paying disadvantaged Maine people to participate in state processes, when participation would otherwise be precluded by conflicts with employment or other responsibilities
- Adopting “polluters pay” principles for environmental clean-up
- Providing quality climate science education statewide
- Facilitating ownership of clean energy generation in disadvantaged communities, where such development is of interest to those communities
- Interagency data sharing agreements to identify and monitor environmental/climate driven health issues

Participants emphasized the importance of meaningful involvement in this meeting. Participants identified lack of meaningful involvement as a barrier to justice, and opportunities for increased engagement as an area of action. Because of the importance placed on this topic, our third conversation in this series focused on exploring procedural equity and meaningful involvement.

In summary, participants at our first meeting provided feedback about the development, implementation, and enforcement of environmental laws, regulations, and policies – a key component of the environmental justice definition proposed below. Individuals shared stories about access to clean air, food, and water; to safe housing and schooling; to healthy and healthful environments; and actions such as holding polluters accountable, changing incentives for landfill operations, and increasing access to environmental testing.

### **Public Meeting 2: January 20, 2022 (frontline communities)**

Participants were invited to our second meeting to discuss frontline communities. While sometimes used interchangeably with “environmental justice populations”, frontline communities are commonly defined as those who are first and worst impacted by climate change. Frontline communities include those communities impacted by climate change who may have less ability to respond to climate hazards including flooding, heat, sea level rise, changes in land, and other hazards. Frontline communities can also incorporate those disadvantaged people impacted by the energy system, or those who are made economically vulnerable by changing access to employment or other resources driven by climate change.

Participants reflected on climate hazards, including sea level rise, increasing frequency and duration of extreme weather, changing temperature patterns leading to increased numbers of both high heat and colder days, flooding, and health impacts driven by climate change.

Key questions addressed by participants at this meeting included:

**Who is most at risk from climate change in your communities?**

Participants identified people in Maine whom they believe are most vulnerable to climate change. They include low-income Mainers, BIPOC, older and younger people, and people dependent on grown or harvested foods. In general, these were the same communities that participants identified as being vulnerable to environmental justice concerns in the first meeting. While the Act directs GOPIF to look at environmental and climate burdens impacting Maine communities, stakeholders put those burdens within a broader context of intersecting vulnerabilities.

**How will they be impacted by different hazards? What types of impacts or displacement will they experience?**

Participants identified some of the climate challenges that they believe disadvantaged people in Maine will face. These included direct physical hazards such as sea level rise, particularly for island communities and other geographically isolated communities. They also included economic challenges, such as inability to pay home energy expenses, and shifting job opportunities driven by climate changes. Finally, participants identified health impacts and emergencies, especially driven by heat and cold exposure, and lack of access to grown and harvested foods for folks who depend on these food sources.

**What actions can the state support to help the most at risk be more resilient to climate change?**

Participants shared opportunities for state action that they believe will lead to increase community resilience. They identified opportunities for distributive equity, which would help ensure that resources for climate action are distributed to those communities in greatest need. They shared opportunities to recognize and address historic and ongoing burdens through climate programs that address contextual and corrective equity. And they identified actions that advance procedural equity, such as seeking to build relationships with local organizations to increase opportunities and avenues for climate action.

In summary, participant feedback reinforced a general understanding of frontline communities as those first and worst impacted by climate change, and as sharing the underlying facets of vulnerability that also help identify communities experiencing environmental justice concerns. For this reason, we propose a general definition of frontline communities below. In addition, we believe that our proposal to develop a definition of environmental justice populations will help

identify Maine people experiencing marginalization and other sociodemographic burdens which intersect with both climate and environmental burdens.

### **Public Meeting 3: February 22, 2022 (procedural equity)**

Our third public meeting focused on procedural equity – or meaningful involvement – as a thread that had run through both previous conversations. The Department, the Commission, and the Office of the Public Advocate presented at this meeting about current opportunities for public engagement, challenges to engaging disadvantaged or overburdened populations, and asked participants to help identify the first or most important steps the state could take to increase opportunities for meaningful involvement in decision making.

Participants identified opportunities that they believe would increase public engagement in state decision-making processes by disadvantaged individuals, many of which were also included in the Maine Climate Council Equity Subcommittee’s interim report. Participants were then asked to prioritize these recommendations. The ideas generated by participants, as well as the top five (5) actions selected by participants (which have been bolded) are listed below.

- Direct consultation with tribal nations on environmental and climate decision making
- Providing materials/invitations in languages other than English
- **Providing materials/invitations in plain language**
- Use of community social media and trusted community partners for notification and engagement
- Paying disadvantaged community members to participate in state processes
- Offering public meetings in evenings and/or on weekends
- **Every meeting should have a virtual and in person participation component. Virtual components should include the opportunity to participate via phone conference, for those with limited technical capacities or bandwidth**
- Public meetings should include opportunities for transportation and childcare
- Providing quality climate science education statewide and in communities
- **Including representative participants of impacted groups on decision making boards and in program design processes**
- State agencies should have public social media pages
- **Help disadvantaged community members/partner organizations to get funding to participate in processes**
- Additional diversity, equity, and inclusion training should be provided for state officials engaging with members of impacted communities
- State agencies should avoid the attitude that we know better than you (the public) do
- **Invest more in outreach/hire more outreach and communications staff at state agencies**
- Public Advocate model for agencies other than the Commission
- The state should provide tech trainings to better improve virtual access to meetings
- Public meetings should have the option for scheduled speaking times - not everyone can spend time waiting for their turn

- Meetings should be held at times and in places where people already gather (churches, schools, libraries, etc)
- Extend the comment period for DEP rulemaking proceedings and licensing decisions in disadvantaged communities, or when disadvantaged members of communities impacted by a decision are unable to participate in the given timeframe due to technical or other access challenges

Overall, participant feedback from this meeting will be considered through the development of environmental justice action plans by the Department and the Commission and through adoption and implementation of the legislation proposed below. Feedback from this meeting also informs the staffing needs associated with proposed legislation for the Department.

### **Individual Consultations**

As noted, GOPIF held a series of consultations with individuals and organizations engaged in environmental justice and related advocacy statewide, focusing on a series of questions below. The below information reflects collective feedback across all conversations and should not be attributed to a particular individual or organization. It is also reflective of unique feedback not otherwise shared in the public meetings summarized above. Finally, the feedback below does not express the views of GOPIF, the Department, or the Commission, but is rather indicative of the viewpoints shared by participants in each meeting

#### **What are the important components of a definition of environmental justice in Maine?**

Participants in consultations believe that a definition must demand equity, not just equality, for all peoples with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. As a reminder, equity recognizes that equal distribution of resources is insufficient for addressing climate change and environmental impacts. Rather, an equitable system seeks to provide increased resources to disadvantaged communities, noting that the risks and effects of climate change and environmental burdens disproportionately fall upon these communities. Participants emphasized that a definition requires the leadership and equal decision-making power of frontline communities, in the development, implementation, and enforcement of environmental laws, regulations, and policies. A definition must also recognize the need for providing adequate resources and infrastructure to frontline communities as a prerequisite for meaningful engagement. And finally, as environmental justice populations are defined in future process, a definition should make use of higher resolution local data where possible, as census data is likely not sufficiently descriptive of rural/low population communities.

#### **What are the important components of a definition of frontline communities in Maine?**

Participants in consultations believe that a definition must center the critical role of resource and infrastructure access in creating conditions of vulnerability or resilience to negative climate impacts. They emphasized that a definition should also reference the systematic way in which communities may have been denied access to adequate resources and

infrastructure that provide a necessary bulwark against negative climate impacts. And they note that a definition must acknowledge intersectionality, and how communities of color experience stacking and compounding oppressions that exacerbate the degree to which they lack adequate resources and infrastructure.

### **What are the major climate and environmental impacts that disadvantaged communities in Maine face?**

Participants in consultations identified limited access to power, a lack of meaningful engagement, low wages, high housing costs, and poor educational opportunities as some of the historical and ongoing causes of disproportionate environmental and climate burden being experienced by disadvantaged communities. In addition, they recognized that some disadvantaged Maine communities do not identify with climate change or justice narratives; but that this does not mean that these communities do not experience environmental or climate burdens. Language and practices must be inclusive of communities experiencing intersecting vulnerabilities.

They also identified specific burdens being faced by their communities. Participants expressed a concern that the warming Gulf of Maine, extreme weather events, and other climate events will push foodways towards collapse. This includes local indigenous foodways impacted by the toxification of waterways and damming of rivers, as well as international supply chains rendered vulnerable by environmental changes.

### **How can state decision making processes be more inclusive/accessible?**

Participants centered the idea of intersectionality in their feedback, which requires the consideration of multiple forms of oppression in the work of examining environmental justice. They recognized that oppressions compound in ways that increase people's exposure to deleterious environmental impacts, and that people experiencing intersectional oppressions must be represented during solution development.

Environmental justice policies must be developed through meaningful engagement with impacted communities that goes beyond consultation and includes funding for solutions. Participants believe that there is currently underrepresentation of frontline community members in positions of power and influence over environmental decision making.

Participants believe that access to state processes and programs would additionally be improved if utilities and state agencies were required to provide consumers access an instantaneous translator when you call their call center. Related, in many states, all official state material must be written in the language in which a certain percentage of the community is fluent.

### **Are there specific actions at DEP or PUC that should consider environmental justice?**

Participants believe that private corporations enjoy positions of power and influence and are overrepresented in decision-making spaces related to the environment. People with political power may have conflicts of interest, which participants believe should preclude them from holding certain decision-making positions.

Consultations also identified the following list of actions, many of which will be considered through the development of environmental justice action plans by the Department and the Commission and through adoption and implementation of the legislation proposed below.

- The state should develop a method to account for community benefits of a particular decision
- The state should develop a method to account for cumulative impact analysis in individual siting decisions
- Funding for environmental remediation should prioritize historically disadvantaged communities
- Concern about net energy billing impacts on consumer energy prices should be further considered by the Commission
- The Commission should reform its intervenor funding to provide up-front funding to intervenors from disadvantaged communities
- The Department should hire environmental justice, community engagement, and tribal liaison staff

### **Proposed Agency Actions**

In parallel to the public engagement described above, GOPIF worked with the Department and the Commission to understand their work to date on environmental justice and equity and to propose further consideration of actions which incorporate equity considerations in decision making through the adoption of the definitions proposed in this Act. GOPIF additionally engaged the Maine CDC as a partner in the development of a definition for environmental justice populations.

This section explains the Department and Commission's plans for current and future environmental justice actions. It also describes partnering with the Maine CDC to support this work moving forward.

### **Department of Environmental Protection**

The Department is committed to incorporating environmental justice across all the Department's programs.

#### **1. Legislation to Define Environmental Justice and Ensure Procedural Equity**

To advance equity in the Department's decision making, the Department recommends the Legislature adopt a new Environmental Justice section in Maine Revised Statute Title 38,

section 349-C (below), which would apply to all Department rules (including licensing), license appeals, and Board of Environmental Protection decisions. The proposed new Maine Revised Statute Title 38, section 349-C would establish specific public engagement requirements for the Department and would involve increased outreach and education efforts including public meetings, presentations, regulatory training, web development, and mapping.

Next steps would include:

1. Legislation and funding effective Fall 2022
2. Hire new staff for Community Engagement Team in Fall 2022, including tribal liaison
3. Start stakeholder engagement and draft rule changes
4. Coordinate with Maine CDC to develop statewide maps of characteristics of Maine's population
5. Public rulemaking hearing Fall 2023

In 2022, the Department will develop a plan for implementation of the proposed legislation, including how to identify persons in environmental justice populations and frontline communities, and to provide those persons specifically with enhanced access to and influence in Department decision making. That plan will be the basis for revisions to Department rules to be presented to the Board of Environmental Protection in 2023.

To successfully increase opportunities for meaningful engagement for members of environmental justice populations and frontline communities, the Department recommends establishing a Community Engagement Team of at least 4 staff within the Department. The Department cannot meet this need with existing resources. Several other state environmental agencies have established similar teams, with staff trained specifically in public engagement and equity, to coordinate with environmental program staff and stakeholders.

Duties of the team members would include:

- Establishing and maintaining relationships with representatives of disadvantaged communities and community advocacy organizations
- Collaborating with Maine tribes
- Coordinating and leading public community engagement meetings for draft licenses and rules
- Creating and presenting plain language guides to environmental laws, rules and processes
- Generating geographic information about environmental impacts to EJ populations and frontline communities

- Supporting community engagement in individual licensing actions and rule proposals by providing information, public records and guidance to impacted community members

Stakeholders have clearly expressed that meaningful engagement with the Department in development of draft rules, policies, and licenses entails meeting with them in person, in their communities, and providing online hybrid participation options for all meetings. For 10 rule proposals per year, the Department estimates that would involve at least 20 in-person meetings at locations around the state, prior to presenting rule proposals to the Board of Environmental Protection. If the Department holds a public meeting for only 1 percent of license applications, that would involve at least 40 meetings at locations around the state per year. In some cases, an outside facilitator may also be needed, at an estimated cost of \$1,500 per meeting. Additional costs associated with holding public meetings will include the provision of technology, room rentals, and overnight lodging and associated travel costs for staff. Sufficient funding will be necessary to provide the services that disadvantaged community members are seeking from the Department.

For reference, the Board of Environmental Protection conducts 10-15 meetings per year to engage interested persons in their decision-making process. Annual costs for the Board include 2 staff and an average of \$30,000 All Other. In comparison, public meetings on complex or controversial licenses, such as those for new industrial facilities, have cost \$10,000 and more for a single project.

To support substantive engagement with environmental justice populations and frontline communities on the complex technical and legal matters involved in Department rulemaking and licensing, public meetings will need to include a coordinator, program staff, and a program manager. For example, a public meeting about a proposed gravel pit would require active participation by the land licensing staff reviewing a permit application to address technical questions, in addition to a staff person focused on scheduling, logistical arrangements, effective dissemination of meeting announcements, and logistical arrangements for each meeting. All comments and information provided regarding a permit application must be maintained as part of the record of the Department's review; additional public input will require drafting of official Department responses to inquiries, necessitating additional staff to meet the Department's obligations under the Clean Air Act, Clean Water Act, and Maine's Freedom of Access Act for record development and management.

As discussed in the Department's [report to the Legislature](#) in response to Public Law 2021, chapter 62, *Resolve, To Direct the Department of Environmental Protection To Determine Staffing Needs To More Efficiently and Effectively Issue Decisions on New, Amendment and Minor Revision Applications*, the Department already has insufficient staffing to complete reviews of license applications by established deadlines. Developing information for and reviewing information from additional meaningful public meetings engagement in disadvantaged and environmental justice communities will put additional demands on



already insufficient staff resources and will likely extend permitting review timelines. At the same time, stakeholders were clear about the critical importance of additional opportunities for meaningful engagement of disadvantaged communities and communities with environmental justice concerns, and they prioritized the hiring of additional staff to conduct this work at the Department and at other state agencies. The Department commits to advertising these positions with the community organizations who have participated in this process to date. This will help ensure that a diverse and representative pool of applicants is aware of these positions. Representation in state government as well as partnership with community organizations to increase awareness of decisions and opportunities were both recommendations generated by stakeholders through the public engagement process above.

## 2. Implement EPA Performance Partnership Agreement

The Department committed in the 2021-2024 Performance Partnership Agreement with EPA to ensure that environmental justice is an integral consideration in the development and implementation of all of its programs. Key project areas included in the agreement with EPA are:

- a. **Environmental Justice 2020:** Work with EPA Region I and the entire Agency to help EPA and Department incorporate environmental justice into everything they do, cultivate strong partnerships to improve on-the-ground results, and chart a path forward for achieving better environmental outcomes and reducing disparities in the nation's most overburdened communities.
- b. **EJSCREEN:** Where appropriate, use EPA's new environmental justice mapping and screening tool called EJSCREEN to help to identify target communities and issues.
- c. **Environmental Justice Policy:** Work with the community to develop an environmental justice policy for Department that will ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- d. **Clean Air:** Continue to make sure that vulnerable populations are made aware of the risks associated with elevated ground-level ozone concentrations, moderate levels of particle pollution and any other air contamination. Ensure consistent implementation and enforcement of air toxics standards. Work to comply with state and federal climate policies so as to achieve strong but achievable standards to cut the carbon pollution that is driving climate change and to prepare communities for the impacts of climate change. Work with stakeholders to provide the necessary outreach to make members of the environmental justice community aware of its policies and opportunities to become more resilient.
- e. **Resiliency Programming:** In our current work focused on extreme weather, we are working with partner organizations to assess minority and low-income communities' vulnerability to extremely hazardous substance facilities (CAA 112r), traffic and hazardous waste proximity.

- f. **Title VI and Limited English Proficiency:** Continue to ensure that Department, as well as its subrecipients, comply with Title VI of the Civil Rights Act of 1964 as well as Executive Order 13166's Limited English Proficiency Requirements. (See LEP.gov and EPA's civil rights webpage for additional information).
- g. **Solid and Hazardous Waste:** Continue to work to ensure fairness in siting, monitoring, and/or cleanup of facilities and the regulation of activities that represent environmental hazards.
- h. **Title V/Major New Source Review Permitting Programs:** Work with Prevention of Significant Deterioration (PSD) permit applicants to address potentially disproportionately high and adverse impacts to low income or minority communities during the permit process as part of an environmental justice analysis. Also, continue to promote public involvement, particularly for major permitted activities that may significantly impact overburdened communities.
- i. **Clean Water:** Work with EPA to support public water systems and the most vulnerable communities with updating aging water treatment infrastructure, and with reducing stormwater runoff and ocean dumping off of the coast. Continue to take the appropriate steps to reduce exposure to contaminants. Convene public information meetings, share sampling results, and support the distribution of potable water to communities affected by emerging contaminants.

### 3. DEP Online Licensing and Compliance Portal

2021 P.L. ch. 483 (LD 1733) appropriated funding to the Department to develop an online licensing and compliance portal, for use by the regulated community and members of the public. The department will select an application developer through a request for proposals in 2022, and complete development by December 2024. The online system will provide a searchable website containing all public information for facilities regulated by the Department, including license application documents, compliance reports from facilities, and opportunities to provide comments or participate in hearings.

### 4. Support DEP services in Northern Maine region

The Northern Maine region has the highest asthma rates in the state, the highest measured concentrations of air toxics that exceed ambient air guidelines, and many streams impaired by nonpoint pollution with no restoration plans. Conversely, the region has the fewest air quality monitoring stations, fewest local code enforcement officers and the fewest Department staff to ensure environmental protection standards are met. The region also receives the least project funding from the Maine Natural Resources Conservation Program, Brownfields Program, and Clean Water State Revolving Fund. The Northern Maine region also encompasses much of the Maine tribes' sustenance fishing waters. While the population of the region is lower than other parts of the state, the value and geographic scope of the natural resources is not.

Additional staff resources in the Northern Maine region would support a more equitable provision of environmental protection benefits to Northern Maine citizens. Additional staff resources should be committed to shoreland zoning and municipal coordination; land use, solid waste, wastewater, agricultural water withdrawal licensing and compliance; air quality monitoring; and sampling and remediation.

## The Maine Public Utilities Commission

The Commission proposes two immediate actions to begin to implement equity and environmental justice as defined by the EPA.

1. **Intervenor Funding:** The Commission is transparent in its proceedings, streams all hearings live, seeks public comment in all cases as well as holds live public hearings in major cases. Parties or organizations who want to actively intervene and participate in an adjudicatory case may seek funding from the Commission. Funding is currently provided to intervenors when they show 1) their views are not represented by the Office of the Public Advocate, 2) they contribute substantially to the proceeding and 3) their involvement would constitute a significant financial hardship to their organization. This funding is provided at the end of a proceeding and there have been no requests for funding in many years. See current statutory language at the following link: <https://legislature.maine.gov/statutes/35-A/title35-Asec1310.html>

The Commission is proposing legislation (below) to change this section of law such that funding is more readily available for groups to participate in Commission proceedings. Assuming enactment of this legislation, the Commission will draft rules to implement the legislation and will actively seek input on these rules from the public and all stakeholders in the GOPIF working groups. The Commission will integrate equity and environmental justice into these rules consistent with Department definitions.

2. **Low Income Funding:** P.L. 1997, Ch. 316, Section 3214 directed the Commission to oversee the implementation of a statewide financial assistance program for qualified low-income electricity customers. The Commission's Low-Income Assistance Program (LIAP) and related rule establishes the standard design, administration and funding criteria for LIAP. The rule creates a central fund to finance the program and apportions the fund to T&D utilities based on the percentage of Low-Income Home Energy Assistance Program (LIHEAP) eligible persons residing in their respective service territories. The Maine State Housing Authority (MSHA) administers the program. On January 11, 2022, the Commission initiated a rulemaking that proposes to increase the funding for this program from \$7.8 million to \$11.8 million.

The Commission is seeking public comments on this proposed increase in funding by February 22, 2022. Upon review of all comments, the Commission will make a final determination on LIAP funding. The Commission will evaluate the LIAP program going forward with respect to equity and environmental justice.

In addition to the immediate actions being taken by the Commission as detailed above, the following is a preliminary list of areas the Commission regulates that will be looked at to evaluate how we will consider equity and environmental justice. In 2022, the Commission will develop a plan which further investigates opportunities for implementation of the below areas, as well as identifies additional regulatory areas for consideration.

1. **Electric Transmission Infrastructure:** With respect to new transmission lines, utilities are required by law to file for a Certificate of Public Convenience and Necessity (CPCN).<sup>6</sup> The Commission does consider certain environmental aspects as required by law in our review of these projects, but the primary environmental impact evaluation and review is conducted by the DEP. In order for the Commission to incorporate consideration of such impacts on low income/disadvantaged populations or geographic areas as well as environmental justice communities, statutory changes may be needed giving the Commission the authority to engage in these additional considerations.
2. **Utility Rate Cases:** The Commission looks carefully at utilities costs to ensure that any proposed rate increase is based on prudent costs such that rates remain reasonable for all customers. The Commission also reviews and evaluates rate design impacts related to both residential and business customers to ensure rate structures are cost based and that costs are fairly allocated among customer classes. Specific, equity and environmental justice considerations could be considered in rate design and the Commission will consider the best approach in its ongoing evaluation. In addition, the Commission received a grant from the Department of Energy and is working with the Lawrence Berkley Lab on this topic as well. In order for the Commission to incorporate consideration of impacts on low income/ disadvantaged populations or geographic areas as well as environmental justice communities, statutory changes may be needed giving the Commission the authority to engage in these additional considerations.
3. **Water Utility Infrastructure:** The Commission has been encouraging water utilities to replace their outdated infrastructure. Currently Maine has over \$1 Billion in outdated infrastructure needing replacement. Infrastructure improvements and maintenance is challenging as some communities do not want to pay for the costs involved. Access to affordable drinking water is critical and has been mentioned specifically in the GOPIF public stakeholder meetings. Maintaining adequate infrastructure is one of the most effective ways to ensuring this access.
4. **Renewable Energy Solicitations:** The Commission conducts a variety of energy procurements at the direction of the Legislature. The most recent renewable energy solicitations conducted in 2020 and 2021 resulted in solar and wind projects that are estimated to reduce GHG emissions totaling 760,000 tons annually<sup>7</sup>. These two

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<sup>6</sup> <https://legislature.maine.gov/statutes/35-A/title35-Asec3132.html>

<sup>7</sup> <https://www.maine.gov/mpuc/regulated-utilities/electricity/rfp-awarded-contracts/class1a2021>

procurements include metrics/scoring criteria required by law to be considered during the proposal evaluation process. The recently eliminated DG Procurement program ([P.L. 2019, Ch. 478](#)) had included criteria related to agriculture and farmland. If the Legislature decides to direct additional procurements, it may want to consider including criteria for equity and environmental justice metrics.

There is no current legislation requiring the Commission to conduct additional procurements at this time. It is important to note that the Commission is not involved in the siting of energy projects including community solar and other private projects. The DEP has oversight of the siting of these projects.

## **Maine CDC**

While not directly implicated in the Act, the Maine CDC has unique capacities and grant funding that will allow them to support the Department in the development of a definition of environmental justice populations as proposed in the below legislation. This scope of work fits within their current Environmental Public Health Tracking grant funding; given their success in competitive renewal requests for this funding since 2005, they don't anticipate needing any additional resources to complete this work. However, if they aren't successful in obtaining continued funding at their current level, they may need additional resources in the next fiscal year to continue providing this support.

The Maine CDC is ready to assist the environmental justice populations definition work in two primary areas. The first area of support would encompass obtaining relevant data and measures related to environmental justice from sources to which the state already has access – primarily the US Census Bureau data repository and the National Environmental Public Health Tracking Program's data portal – and the second area of support would encompass the development of map displays that allow for the identification of specific communities in Maine that meet environmental justice population definitions which are proposed for development.

## **Proposed Legislation**

Given the public feedback received at our public meetings and in our consultations with stakeholders, we propose below the adoption of the EPA's national environmental justice definition. There are several reasons for Maine to consider adopting a nationally consistent environmental justice definition. First, doing so will ensure that Maine's citizens and agencies can qualify for any future federal environmental justice grant opportunities and other programs without needing additional documentation around language differences, and how those differences are interpreted. This allows federal and state pass-through benefits to reach environmental justice populations in Maine most quickly. Adopting the national definition also aligns with the state's approach to implementation of other programs. It allows for shared

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<https://www.maine.gov/mpuc/regulated-utilities/electricity/rfp-awarded-contracts/class1a2020>

terminology and language across other federal environmental programs that the state interacts with. Incorporation of the national definition also enables us to evolve with federal changes, which is important because of the national process underway, led by the National Environmental Justice Council, to update the EPA’s definition. And finally, this definition is inclusive of the majority of the feedback shared during our public process.

Similarly, we propose below a simple and straightforward definition of frontline communities, as explored in our second public meeting. In addition, we believe that our proposal to develop a definition of environmental justice populations will help identify Maine people experiencing marginalization and other sociodemographic burdens which intersect with both climate and environmental burdens.

As referenced above, the proposed new Maine Revised Statute Title 38, section 349-C would apply to all Department rules (which include licensing), license appeals, and Board of Environmental Protection decisions, and would establish specific public engagement requirements for the Department, and would involve increased outreach and education efforts including public meetings, presentations, regulatory training, web development, and mapping.

This proposed legislation also implements the two actions that the Commission proposed above, as well as provides a mechanism for its consideration of environmental justice and environmental justice populations.

### **Potential ENR Committee bill LD 1682 report recommendations**

**Title:** An Act To Implement Recommendations Regarding the Incorporation of Equity Considerations In Regulatory Decision-making Included in the Report Required by Public Law 2021, Chapter 279

### **New 38 MRS 349-C 349-C. Environmental Justice**

#### **1. Definitions**

- a. **Environmental justice.** “Environmental justice” means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
- b. **Fair treatment.** “Fair treatment” means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies..
- c. **Meaningful involvement.** “Meaningful involvement” means:
  - i. People have an opportunity to participate in decisions about activities that may affect their environment and/or health;

- ii. The public's contribution can influence the department's decision;
  - iii. Community concerns will be considered in the decision making process; and
  - iv. The department will seek out and facilitate the involvement of those potentially affected.
- d. **Frontline communities.** "Frontline communities" means those people and communities that experience the consequences of climate change first and to a greater degree than other communities.

## **2. Department consideration of environmental justice and frontline communities.**

The department shall define "environmental justice populations", and shall adopt procedures by routine technical rulemaking in accordance with section 341-H and Title 5, Section 375 to ensure that persons in environmental justice populations and frontline communities have fair and equitable access to department decision-making processes under section 341-D and 341-H. The department shall consider, at a minimum, median household income, race and ethnicity, English language proficiency. The Board shall hold a public hearing prior to adoption of a rule under this section.

**Sec. 1. 35-A MRSA § 1310** is repealed and replaced with the following:

### **§1310. Funding of intervenors.**

**1. Intervenor funding.** Intervenor funding may be provided in a commission proceeding whenever the commission finds that:

- A. The position of the intervenor is not adequately represented by the Office of the Public Advocate or commission staff;
- B. The intervenor is likely to substantially contribute to the proceeding and to assist in the resolution of the issues raised in the proceeding; and
- C. Participation in the proceeding by the intervenor would impose a significant financial hardship on the intervenor.

**2. Funding sources.** The commission may:

- A. Order a utility to compensate an intervenor qualified for funding under this section. Compensation provided by a utility under this paragraph may be recovered in rates; or
- B. Provide compensation to an intervenor qualified for funding under this section from the commission's regulatory fund and filing fees subject to the commission's determination of the availability of the funds.

**3. Additional considerations.** In addition to the requirements of subsections 1 and 2, when developing rules pursuant to subsection 4, the commission shall:

- A. Evaluate how the commission will determine an intervenor qualifies for funding pursuant to this section;

- B. Determine to which expenses incurred by an intervenor funding can be applied;
- C. Determine for which types of proceedings funding will be available;
- D. Determine at which point in a proceeding funding will be provided to a qualified intervenor.
- E. Evaluate how the commission will determine that funding is used properly;
- F. Evaluate how to recover funding provided if not utilized in its entirety by a qualified intervenor;
- G. Determine if there will be a cap on the funding provided to a qualified intervenor in a commission proceeding;
- H. Determine the best method to notify the public about the availability of this funding;
- I. Determine whether the commission will give priority to intervenors representing environmental justice populations; and
- J. Consider any other issues the commission determines is necessary.

**4. Rules.** The commission shall adopt rules to implement this section. The commission, in consultation with the Department of Environmental Protection, shall define “environmental justice populations” in rule. The definition must be consistent with the definition adopted by the Department of Environmental Protection. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

## SUMMARY

This bill implements recommendations regarding methods of incorporating equity considerations in decision making at the Department of Environmental Protection, Public Utilities Commission and other state agencies made pursuant to the report required by Public Law 2021, chapter 279, section 3.

The bill amends intervenor funding provisions applicable to Public Utilities Commission proceedings to clarify the eligibility requirements for intervenor funding, the sources of the funding and other related requirements and provisions to be adopted by rule, which may include, at the commission’s discretion, establishment of a process by which the commission will give priority under this section to qualified intervenors representing environmental justice populations.

The bill also requires the Department of Environmental Protection to adopt rules establishing procedures to ensure that persons in environmental justice populations and frontline communities are provided with fair and equitable access to the department’s decision-making processes under the Maine Revised Statutes, Title 38, sections 341-D and 341-H. The bill establishes definitions for “environmental justice,” “frontline communities” and related terminology.