



**Testimony before the
Joint Standing Committee on Environment and Natural Resources
April 24, 2023**

LD 1621 An Act Regarding Environmental Justice

Senator Brenner, Representative Gramlich and members of the Environment and Natural Resource Committee, my name is Sean Mahoney and I am the Vice-President of the Conservation Law Foundation. I appreciate this opportunity to testify in support of LD 1621, “An Act Regarding Environmental Justice.”

CLF, founded in 1966, is a public interest advocacy group that works to solve the environmental challenges that threaten the people, natural resources and communities in Maine and across New England. In Maine for almost four decades, CLF is a member-supported organization that has worked to ensure that laws and policies are developed, implemented and enforced that protect and restore our natural resources, are good for Maine’s economy and environment, and address the climate crisis in a manner that recognizes the fierce urgency of that crisis, as well as the need to do so in a just and inclusive way.

As you well know, last year the Committee considered and voted ought to pass on a bill, LD 2018 that proposed in sections 3 and 4 almost identical language as is before you today in LD 1621. That bill, which also included a provision for intervenor funding for those interested but financially unable to participate in proceedings before the Maine Public Utilities Commission, was enacted by the 130th but the provisions concerning funding before you today were removed by the Appropriations Committee in an amendment and ultimately, LD 2041, the last-day errors bill, removed those two sections altogether.

We are enormously grateful then that Speaker Talbot-Ross, along with members of this Committee including the chairs, Representatives Doudera (the sponsor of LD 2018 last year), *Hobbs*, Bell and Bridgeo and Senator Carney, and other legislators have taken up this important legislation in the 131st Legislature. As we did last year, we strongly urge its adoption and ultimately its full and complete funding.

Maine’s decision-making agencies must ensure the fair treatment and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, rules, regulations and policies. The Legislature expressly recognized the need to incorporate equity considerations into decision making by state agencies in 2021 when it enacted Public Law 2021, Chapter 279, requiring the Governor’s Office of Policy Innovation and the Future (GOPIF) to develop and submit a report to this Committee and the Committee on Energy, Utilities and Technology including recommendations on methods of incorporating equity

considerations into actions at the DEP, PUC, and other state agencies. That report was submitted on February 25, 2022¹ and led to last year's LD 2018.

The bill before you today will provide the same beginnings of a framework for a more meaningful engagement of environmental justice populations in the procedural aspects of permitting and decision making before the Department of Environmental Protection. It puts Maine on a similar path as a few other states, including Vermont and Massachusetts², as well as the federal government³, who have all recognized the importance of procedural and substantive reforms to address longstanding inequities faced by environmental justice populations. CLF wholeheartedly supports LD 1621.

As with most bills, CLF also believes that LD 1621 could be strengthened, and we have attached a version of the bill with suggested language to do so. In short, the additional language would do the following:

1. Add to the definitions section of the bill definitions for “environmental benefits”, “environmental burdens” and “environmental justice ~~populations~~”; *Principles*
2. Requires the Department to create and adopt an Environmental Justice Community Engagement Plan that sets forth how the Department will provide meaningful involvement in the Department's decision making process;
3. Requires the Department to take into account the cumulative impacts on environmental justice populations in its decision making process;
4. Establishes an Environmental Justice Advisory Council; and
5. Provides dates certain for developing the rules called for by the legislation.

As noted above, we are enormously grateful to Speaker Talbot Ross and the other sponsors of LD 1621. This bill is a good and necessary step forward and we are committed to continuing to work with this and future Legislatures and the Department in continuing to move Maine forward in terms of providing environmental justice and equity for all Mainers.

¹ Governor's Office of Policy Innovation and the Future, “Report on Equity Considerations in Decision Making,” February 25, 2022, <https://www.maine.gov/tools/whatsnew/attach.php?id=6869935&an=1>.

² See <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT154/ACT154%20As%20Enacted.pdf> and <https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter8>.

³ The Federal Government's Justice 40 Initiative has made it a goal that 40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution. <https://www.whitehouse.gov/environmentaljustice/justice40/>.



131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1621

H.P. 1046

House of Representatives, April 12, 2023

An Act Regarding Environmental Justice

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Speaker TALBOT ROSS of Portland.
Cosponsored by Senator BENNETT of Oxford and
Representatives: BELL of Yarmouth, BRIDGEO of Augusta, DOUDERA of Camden, FAY of
Raymond, GRAMLICH of Old Orchard Beach, HOBBS of Wells, Senators: BRENNER of
Cumberland, CARNEY of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §349-C** is enacted to read:

3 **§349-C. Environmental justice**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Environmental justice" means the fair treatment and meaningful involvement of
7 all people regardless of race, color, national origin or income with respect to the
8 development, implementation and enforcement of environmental laws, rules,
9 regulations and policies. *Environmental justice seeks to ensure the equitable distribution*
of environmental benefits and environmental burdens.

10 B. "Fair treatment" means that no group of people bears a disproportionate share of
11 the negative environmental consequences resulting from industrial, governmental or
12 commercial operations or policies.

13 C. "Frontline communities" means those people and communities that experience the
14 consequences of climate change first and to a greater degree than other people and
15 communities.

16 D. "Meaningful involvement" means, with respect to the department's decision-making
17 process, that:

18 (1) People and communities have an opportunity to participate in the
19 decision-making process regarding activities that have the potential to affect the
20 environment or public health;

21 (2) The department seeks out and facilitates the involvement in the
22 decision-making process of potentially affected people and communities;

23 (3) The contributions of people and communities to the decision-making process
24 can influence the department's decision making; and

25 (4) The department considers in its decision making the concerns and
26 contributions of people and communities provided as part of the decision-making
process, as well as any cumulative impacts on those people and communities.

E. "Environmental benefits" means the access to clean natural resources,
including air, water, open space, and outdoor recreational facilities and venues;
healthy homes and buildings; and environmental enforcement.

F. "Environmental burdens" means any destruction, damage or impairment of
natural resources that is not insignificant, resulting from intentional or
reasonably foreseeable causes, including but not limited to, climate change, air
pollution, water pollution, improper sewage disposal, dumping of solid wastes
and other noxious substances, excessive noise, activities that limit access to
environmental benefits and natural resources, inadequate remediation of
pollution, reduction of ground water levels, impairment of water quality,
increased flooding or storm water flows, and damage to inland waterways and
waterbodies, wetlands, marine shores and waters, forests, and open spaces from
industrial, commercial or government operations or other activity that
contaminates or alters the quality of the environment and poses a risk to public
health.

G. "Environmental justice principles" means 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, national origin, or English language proficiency, which includes: (i) the meaningful involvement of environmental justice populations with respect to the development, implementation and enforcement of environmental laws, regulations and policies; and (ii) the equitable distribution of environmental benefits and environmental burdens.

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28 **2. Consideration of environmental justice populations and frontline communities.**

29 The department shall ensure that persons in environmental justice populations and frontline
30 communities are provided with fair and equitable access to the department's
31 decision-making processes under section 341-H. When the department makes decisions that
have the potential to impact environmental justice populations concerning the development,
implementation and enforcement of environmental laws, regulations and policies, it shall
implement its community engagement plan at the beginning of any related process and it
shall conduct and consider in its final decision a cumulative environmental benefits and
32 environmental burdens analysis. The department shall adopt rules
establishing procedures to implement this subsection no later than July 31, 2024.

33 A. Rules adopted by the department pursuant to this subsection must define
34 "environmental justice populations," taking into consideration, at a minimum, median
35 household income, race, ethnicity and English language proficiency.

36 B. Rules adopted by the department pursuant to this subsection are routine technical
37 rules as defined in Title 5, chapter 375, subchapter 2-A, except that the board shall hold
38 a hearing in accordance with Title 5, section 8052 prior to the adoption of any rule
39 proposed pursuant to this subsection.

3. Environmental Justice Advisory Council.

By December 1, 2023, the department shall establish an Environmental Justice Advisory
Council. The department shall consult with the Environmental Justice Advisory Council,
which shall provide recommendations to the department in developing the rules to implement
this section and its environmental justice community engagement plan. The Environmental
Justice Advisory Council shall be comprised of at least 7 and no more than 9 members, with
three appointed by the commissioner, four by the Speaker of the House, and the remainder by
the Governor. Members of the Environmental Justice Advisory Council shall be well-
informed regarding environmental justice principles and shall serve until the adoption of
final rules and an environmental justice community engagement plan.

4. Environmental Justice Community Engagement Plan.

By July 31, 2024, the department shall create and adopt an environmental justice community
engagement plan that describes how it will engage with environmental justice populations as
it undertakes its decision making. The plan shall take into consideration the
recommendations of the Environmental Justice Advisory Council. The plan shall describe
how the department will provide meaningful involvement in the department's decision-
making process.

40 **Sec. 2. Appropriations and allocations.** The following appropriations and
41 allocations are made.

