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MODEL STATUTE IDENTIFYING AND MITIGATING CUMULATIVE IMPACTS IN ENVIRONMENTAL JUSTICE AREAS

Bill No. [Number]

Sponsored by [Sponsor]

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

Section 1. Legislative findings.

[Legislature] finds the following:

1. All [State] residents deserve to live, work, and recreate in a clean and healthy environment free from the burdens of environmental pollution and degradation;
2. Historically, [State]'s communities of color, low-income communities, and other marginalized groups have been subject to disproportionate levels of air, water, and soil pollution, while also being disproportionately impacted by other environmental and public health stressors;
3. As a result, residents of [State]'s overburdened communities suffer from increased adverse health effects, including asthma, cancer, elevated blood lead levels, respiratory and cardiovascular disease, and developmental disorders. Because children are particularly vulnerable to the adverse health effects caused by pollution, the cumulative environmental and public health impacts of polluting facilities impede the growth, stability, and long-term well-being of overburdened communities and their residents.
4. These disproportionate burdens are in part the result of many years of policy decisions at all levels of government, which continue to pose a threat to the health, well-being, and success of [State]'s most vulnerable residents;
5. No community should bear a disproportionate share of these adverse environmental or public health impacts;
6. The potential for environmental, climate, and public health threats to compound one another and disproportionately impact vulnerable communities requires increased consideration and engagement of impacted communities in decision-making processes;
7. It is in the public interest to limit the future development or expansion of polluting facilities and infrastructure in overburdened communities;
8. Cumulative impact assessment is a critical tool for preventing increased environmental degradation and disproportionate public health risks in overburdened communities. At its most basic, cumulative impact assessment requires studying the impacts on public health and the environment of chemical and non-chemical stressors in a community. While the effects of a single pollutant from a single source may be less significant when analyzed in isolation, the

cumulative impacts of multiple pollutants from multiple sources in combination with other social vulnerabilities degrade public health and the environment substantially; and

9. Cumulative impact assessment should be incorporated into government decision-making in order to ensure that no community bears a disproportionate share of environmental burdens, lacks access to an equitable share of environmental benefits, or suffers from undue environmental health risks.

Section 2. Definitions.

1. Agency. The term “agency” means the [state environmental protection agency].
2. Community exposure points. The term “community exposure points” means locations where vulnerable members of the public, including children, the elderly, those with underlying health conditions, and those who may lack access to healthcare, are likely to spend time. These locations include but are not limited to schools, day care centers, nursing homes, hospitals, health clinics, detention centers, homeless shelters, places of religious worship, parks, playgrounds, and community centers.
3. Cumulative impacts. The term “cumulative impacts” means the total burden of environmental hazards and other chemical and non-chemical stressors that have the potential to negatively impact human health, well-being, and quality of life.
4. De minimis. The term “de minimis” means that the cumulative release of a single pollutant over the course of 30 days does not exceed:
 - a. The reportable quantity threshold established by the United States Environmental Protection Agency for that pollutant under the Comprehensive Environmental Response, Compensation, and Liability Act; or
 - b. One twelfth of the annual major source threshold established by the United States Environmental Protection Agency for that pollutant under the Clean Air Act. If the source of pollution is located in a non-attainment area, any lower threshold established by the United States Environmental Protection Agency for non-attainment areas shall be used to determine whether the pollution is de minimis.
5. Environmental justice area. The term “environmental justice area” means:
 - a. Any contiguous area made up of one or more census block groups, as determined in accordance with the most recent United States Census or American Community Survey, in which:
 - i. At least 35 percent of the households have an income less than or equal to two times the federal poverty level;
 - ii. At least 40 percent of individuals list their racial status Black or African American; American Indian or Alaska Native; Asian; Native Hawaiian or Other Pacific Islander; or Middle Eastern or North African, or list their ethnicity as Hispanic or Latino;
 - iii. At least 40 percent of the households have limited English proficiency; or
 - iv. At least 35 percent of the people over the age of 25 have not earned a high school diploma;
 - b. Any contiguous area made up of one or more census block groups which fall at or above the 90th percentile for susceptibility to environmental pollution as determined in accordance with the United States Environmental Protection Agency EJSCREEN demographic index or United States Environmental Protection Agency EJSCREEN supplemental demographic index;

- c. Any area within the lands of a federally recognized Tribe; and
 - d. Any other area identified or approved by the agency as having a history of environmental disparities, vulnerability to environmental degradation, disproportionate health impacts, or lack of public participation.
6. Lands of a federally recognized Tribe. The term “lands of a federally recognized Tribe” means any land area designated as an American Indian land area under the United States Bureau of Indian Affairs Land Area Representation.
 7. Regulated air pollutants. The term “regulated air pollutants” means any pollutant subject to the United States Environmental Protection Agency’s National Ambient Air Quality Standards, any pollutant designated as a hazardous air pollutant under Section 112 of the Clean Air Act, and any air pollutants regulated by [State].

Section 3. Identifying Environmental Justice Areas.

1. No later than 180 days after the effective date of this section, the agency shall publish and maintain on its website a list of environmental justice areas in [State]. The agency shall update the list of environmental justice areas at least once every four years based on available data.
 - a. If any part of a municipality or tribal reservation is designated as an environmental justice area, the agency shall notify the municipality or tribal government of the designation.
 - b. The agency shall accept written comments on the list electronically and by mail, and shall make all comments available on its website. The input shared through this process shall be considered by the agency and the agency shall amend the list to include additional environmental justice areas identified under [subsection 2.5(d)].
2. No later than two years after the effective date of this section, the agency shall publish and maintain on its website an interactive cumulative impact map that can be used to (i) view the location and boundaries of environmental justice areas; (ii) view the location of facilities and infrastructure identified pursuant to [subsection 4.1], except where identifying the location of such facilities and infrastructure would pose a security risk; (iii) search for such facilities and infrastructure by address, zip code, council district, community district and type of environmental concern; and (iv) view the location of community exposure points.
 - a. If an existing interactive map can be used to view substantially all of the information required under this section, rather than creating its own map, the agency may publish a copy of the existing map on its website after securing permission from the map’s creator, if necessary.
 - b. For a period of 120 days beginning with the publication of the cumulative impact map on its website, the agency shall solicit public comments on the map. During the public comment period, the agency shall accept written comments electronically and by mail, and shall make all comments available on its website. The input shared through this process shall be considered by the agency and addressed in an updated version of the map, which must be published within 180 days of the close of the public comment period.
3. The agency shall update the cumulative impact map any time the list of environmental justice areas is updated pursuant to [subsection 3.1].

Section 4. Cumulative Impact Report.

- 1) No later than three years after the effective date of this section, the agency shall publish on its website a cumulative impact report identifying existing cumulative impacts in each environmental justice area identified pursuant to [subsection 3.1]. At a minimum, the report shall identify:
 - a) the following actual or potential sources of pollution affecting the environmental justice area, including those located outside the geographical boundaries of the environmental justice area:
 - i) solid waste management or transfer facilities;
 - ii) recycling facilities receiving more than 5 tons per day of recyclable materials based on a weekly average, excluding take back sites at a retailer or wholesaler collecting recyclables similar to those sold or distributed by the retailer or wholesaler;
 - iii) waste-to-energy or incineration facilities, including medical waste incinerators;
 - iv) sludge processing facilities, combustors, or incinerators;
 - v) landfills for disposal of waste, including but not limited to landfills that accept ash, solid waste, sewage sludge, or debris from construction or demolition;
 - vi) facilities for the underground injection of waste;
 - vii) facilities handling, transferring, storing, managing, or disposing of radioactive waste;
 - viii) wastewater treatment plants;
 - ix) other waste processing facilities;
 - x) wells for the extraction of oil or natural gas;
 - xi) mines for the extraction of minerals, including but not limited to coal, sand, gravel, and hard rock minerals;
 - xii) petroleum or chemical manufacturing, treatment, or disposal facilities and petroleum or chemical storage facilities operating pursuant to a state or federal storage permit;
 - xiii) facilities operating pursuant to a permit under Title V of the Clean Air Act;
 - xiv) facilities operating pursuant to a National Pollutant Discharge Elimination System permit;
 - xv) hazardous waste facilities operating pursuant to a Resource Conservation and Recovery Act permit;
 - xvi) large quantity generators of hazardous waste that are subject to the reporting requirements under 40 C.F.R. § 262.41;
 - xvii) facilities subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act;
 - xviii) sites included on the National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act or the [State Superfund list]; and
 - xix) any other potential source of significant air, water, soil, or other pollution that the agency identifies as affecting the area;
 - b) potential routes of human exposure to pollution for the sources identified under [subsection 4.1(a)];
 - c) exposure or potential exposure to lead through the air, water, or soil;
 - d) exposure or potential exposure to contaminated drinking water supplies;
 - e) any source of pollution covered by [subsections 4.1(a)-(d)] that no longer exists but that has left residual pollution that has spread beyond its site; and
 - f) the potential or documented public health effects of the foregoing pollution sources.
 - g) To the extent such information is readily available, the cumulative impact report shall also include the ambient concentration of regulated air pollutants, traffic volume, and noise and odor levels for the environmental justice areas.

- h) The agency may exclude any actual or potential pollution source under [subsection 4.1(a)] upon determining that the pollution generated by the source is de minimis.
- 2) For a period of four months beginning at least one year prior to the publication of the initial cumulative impact report pursuant to this section, and beginning at least one year prior to the publication of each updated cumulative impact report pursuant to [subsection 4.5], the agency shall solicit public comments on cumulative impacts in [State]'s environmental justice areas. During each public comment period, the agency shall accept written comments electronically and by mail, and shall make all comments available on its website.
 - a) During each comment period, the agency shall also host at least two public meetings, at which members of the public may comment on the report in-person and through electronic or telephonic means. At least 30 days prior to each public meeting, the agency shall provide [notice] to the public of the upcoming meeting on its website, through social media, and in at least one newspaper of general statewide circulation. All notices must be provided in English as well as the two most commonly spoken languages other than English in [State], and must include instructions for requesting interpretation or disability accommodation at the public meeting. Live interpretation services shall be made available at each public meeting in the two languages most commonly spoken in [State] other than English, as well as any other languages requested pursuant to the notice. Within 14 days of each public meeting, the agency shall post a transcript of the meeting on its website.
 - b) The input shared through this process shall be considered by the agency and addressed in the next update of the report.
 - c) [Optional for states with an Environmental Justice Advisory Board or other similar body] The agency shall consult with the [Environmental Justice Advisory Board] in drafting the cumulative impact report and all updated cumulative impact reports pursuant to [subsection 4.5].
- 3) No later than one year after the publication of the initial cumulative impact report pursuant to [subsection 4.1], the agency shall publish a supplemental report containing recommendations to mitigate or eliminate any cumulative impacts identified in the initial report, including but not limited to improvements in pollution control technology; reduction of waste streams; diversion or reduction of vehicle traffic; or relocation or closure of polluting facilities. Thereafter, these recommendations shall be updated each time the cumulative impact report is updated pursuant to [subsection 4.5].
- 4) The cumulative impact report shall also include a list of steps the agency intends to take to implement the recommendations made pursuant to [subsection 4.3], which shall be updated each time the report is updated pursuant to [subsection 4.5].
- 5) The agency shall publish an updated cumulative impact report at least once every four years. In each updated report, the agency shall include an explanation of each action that has been taken to implement the recommendations made in the previous cumulative impact report. The agency must also provide an explanation of why it failed to act on any recommendation from the previous cumulative impact report that was not implemented.

Section 5. Use and Enforcement of Cumulative Impacts Resources

- 1) If the agency has not fully complied with the requirements of this act within the required timeframes, the agency may not approve or renew any permit authorizing the operation of or establishing the regulatory requirements for any facility covered by [subsection 4.1] unless it publishes and maintains an explanation for any delay in compliance on its website. Any person

may file suit in [State trial court] against the agency for equitable relief to enforce this requirement without first exhausting any alternative administrative remedies that may exist. This right of action shall not limit any other remedy available under local, state, or federal law.

- 2) The agency shall consider the most recent cumulative impact report and the interactive cumulative impact map in its decision-making.
- 3) The cumulative impact reports and interactive cumulative impact map can be entered into evidence in any proceeding related to the siting or permitting of any facility located in an environmental justice area.
- 4) The agency shall adopt rules and regulations to implement the provisions of this act and may issue technical guidance for compliance with this act, which the department shall publish on its website. However, the absence of such rules shall not delay the effective date of the requirements of this act, impair the obligations established under this law, or limit the ability of the agency to enforce its provisions.