

“Environmental Justice” proposal included in Substitute Ohio House Bill 1
(http://www.legislature.state.oh.us/BillText128/128_HB_1_PHC_N.html)

Ohio Revised Code Section 3745.50. As used in sections 3745.50 to 3745.58 of the Revised Code:

(A) "State agency" means the department of administrative services, the department of agriculture, the department of commerce, the department of development, the department of education, the environmental protection agency, the department of health, the industrial commission, the department of insurance, the department of natural resources, the department of rehabilitation and correction, and the department of transportation.

(B) "Environmental justice" means the fair treatment of all people regardless of race, color, national origin, educational level, or income with respect to the development, implementation, and enforcement of laws related to human health or the environment, and rules and policies adopted under those laws, and with respect to compliance with those laws, rules, and policies by state agencies.

(C) "Fair treatment" means policies and practices that ensure that no group of people, including racial, ethnic, or socio-economic groups, bears disproportionately high and adverse human health or environmental effects resulting from the implementation of laws related to human health or the environment and rules and policies adopted under those laws.

Ohio Revised Code Section 3745.51. (A) The head of a state agency shall appoint an employee of the state agency to serve as the environmental justice coordinator for the state agency. An environmental justice coordinator shall be a part of the senior management of the state agency. An environmental justice coordinator shall be appointed for a period of three years. A vacancy in the position of environmental justice coordinator shall be filled in the same manner as the original appointment. An environmental justice coordinator may be reappointed.

(B) A state agency environmental justice coordinator shall do all of the following:

(1) Promote compliance with or implementation and enforcement of applicable laws related to human health or the environment and rules and policies adopted under those laws to ensure, to the extent possible, the fair treatment of all people;

(2) Promote public participation with regard to the state agency's compliance with or implementation and enforcement of applicable laws related to human health or the environment and rules and policies adopted under those laws, in particular, public participation by racial and ethnic minority populations and low-income populations;

(3) Implement recommendations of the environmental justice task force created in section 3745.53 of the Revised Code and the environmental justice advisory commission created in section 3745.54 of the Revised Code;

(4) Oversee the programs, policies, and activities of the state agency to ensure that those programs, policies, and activities that substantially affect human health or the environment are conducted in a manner that results in the fair treatment of all people;

(5) Coordinate the implementation of and provide for agency environmental justice strategies;

(6) Consult with and review information received from the environmental justice task force for the purpose of assisting the environmental justice coordinator in meeting the requirements of division (B) of this section.

Ohio Revised Code Section 3745.52. A state agency, under the direction of its environmental justice coordinator, shall do all of the following:

(A) Conduct any programs or activities and implement any policies that substantially affect human health or the environment in a manner that ensures the fair treatment of all people;

(B) Promote the enforcement of and compliance with any applicable laws related to human health or the environment and rules or policies adopted under those laws in a manner that ensures the fair treatment of all people;

(C) Ensure public participation with regard to the state agency's compliance with or implementation and enforcement of applicable laws related to human health or the environment and rules and policies adopted under those laws, in particular, public participation by racial and ethnic minority populations and low-income populations;

(D) Improve research and data collection regarding the agency's compliance with or implementation and enforcement of applicable laws related to human health or the environment and any rules and policies adopted under those laws;

(E) For the purpose of providing assistance and resources to economically and environmentally distressed communities, coordinate environmental justice-related activities with the United States environmental protection agency's working group on environmental justice.

Sec. 3745.53. There is hereby created the environmental justice task force consisting of all of the environmental justice coordinators from state agencies. The task force shall convene its first meeting not later than ninety days after the effective date of this section. At that meeting, the task force shall elect a chairperson and a vice-chairperson who each shall serve a term of two years. The chairperson or vice-chairperson may be reelected. After the first meeting, the task force shall hold meetings at least once every three months. The task force shall do all of the following:

(A) Develop strategies for identifying and addressing gaps in existing state programs, policies, or activities that may impede the achievement of environmental justice;

(B) Recommend procedures and provide guidance to state agency environmental justice coordinators for the implementation and coordination of environmental justice strategies;

(C) Recommend procedures to state agency environmental justice coordinators for collecting, maintaining, analyzing, and coordinating information relating to environmental justice strategies;

(D) Recommend procedures to state agency environmental justice coordinators to ensure that public documents and notices related to human health or the environment are concise, understandable, and readily accessible to the public. The recommendations shall include guidance for determining when it is appropriate for a state agency to translate crucial public documents and notices related to human health or the environment into languages other than English or conduct public hearings in languages other than English.

(E) Develop a comprehensive inventory, by county, of all facilities requiring environmental permits and an inventory of all closed or abandoned solid waste landfills, construction and demolition debris facilities, hazardous waste disposal locations,

brownfield sites, and property that is subject to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," 94 Stat. 2779, 42 U.S.C. 9601, as amended, and regulations adopted under it;

(F) Review state laws related to human health or the environment and rules and policies adopted under those laws to determine if they adequately identify, evaluate, and prevent the inequitable distribution of adverse human health and environmental impacts;

(G) Make recommendations to the environmental justice advisory commission created in section 3745.54 of the Revised Code regarding statutory or regulatory changes that would enhance the state's policies regarding environmental justice.

Sec. 3745.54. (A) There is hereby created the environmental justice advisory commission consisting of the following members:

(1) The director of environmental protection or the director's designee;

(2) Six members appointed by the governor as follows:

(a) Two representatives of local or regional land use planning agencies;

(b) Two members representing local air pollution control authorities, county sewer districts, or regional water and sewer districts;

(c) Two members representing statewide environmental advocacy organizations.

(3) Six members appointed by the president of the senate as follows:

(a) Two members representing the business community;

(b) Two members representing local health, social service, or public interest organizations;

(c) Two members from institutions of higher education with expertise in environmental justice issues.

(4) Ten members appointed by the speaker of the house of representatives as follows:

(a) Six members representing groups from communities that are particularly impacted by environmental contamination, including representatives of low-income communities and communities consisting of racial and ethnic minority populations. Members appointed under division (A)(4)(a) of this section may be from nonprofit advocacy groups concerned with health and the environment in low-income communities and communities consisting of racial and ethnic minority populations.

(b) Two members representing civil rights organizations;

(c) One member representing the religious community;

(d) One member representing labor organizations.

(B) Each member appointed to the advisory commission under division (A) of this section shall be appointed for a two-year term, except that each member appointed under division (A)(4)(a) of this section shall be appointed for a four-year term. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed.

Members may be reappointed. Members shall not be appointed for a period longer than two successive terms. Terms shall be considered successive unless separated by a period of four or more years for a member appointed under division (A)(4)(a) of this section or a period of two or more years for all other appointed members. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member was appointed shall serve for the remainder of that term. A member shall continue to serve subsequent to the expiration date of the member's term until the member's successor takes office or

until a period of sixty days has elapsed, whichever occurs first. A member of the advisory commission may be removed by the member's appointing authority for inefficiency, malfeasance, misfeasance, or nonfeasance.

Members of the advisory commission shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in the course of the performance of their duties as members of the advisory commission, including lost wages and mileage. Serving as a member of the commission does not constitute holding a public office or position of employment under the laws of this state and does not constitute grounds for removal of public officers or employees from their offices or positions of employment. The environmental protection agency shall provide office space and technical and administrative assistance to the advisory commission.

(C) The advisory commission shall elect, by majority vote, one of its members to serve as chairperson. The chairperson shall facilitate and preside over meetings. The advisory commission also shall elect, by majority vote, one of its members as a liaison to the governor and one of its members as a liaison to the environmental justice task force. The advisory commission may form subcommittees to address specific environmental justice program areas.

(D) The advisory commission shall do all of the following:

- (1) Coordinate with, provide guidance to, and serve as an information clearinghouse for state agency environmental justice coordinators, the environmental justice task force created in section 3745.53 of the Revised Code, and the environmental justice ombudsperson created in section 3745.57 of the Revised Code regarding environmental justice issues;
- (2) Assist state agencies and the environmental justice task force in the development of environmental justice strategies that will help to ensure that state government programs, activities, and policies are administered, interpreted, and enforced consistently, effectively, and fairly;
- (3) Appoint subcommittees for the purpose of holding public meetings throughout each area of the state to receive comments and recommendations from citizens on the development of issue and community specific environmental justice strategies. The subcommittees shall hold not fewer than ten meetings throughout the state.
- (4) Recommend statutory or regulatory changes to the governor or the general assembly, as applicable, that would enhance the state's environmental justice policies;
- (5) Make recommendations to the governor and the environmental justice task force regarding the implementation of environmental justice strategies;
- (6) Develop environmental justice guidance documents for use by state agencies in developing and implementing environmental justice strategies;
- (7) Conduct public meetings to receive and respond to public comments regarding any recommendations that are required to be made under division (D) of this section. The advisory commission shall provide appropriate public notice of each public meeting not later than sixty days prior to the meeting.
- (8) Submit a report of the activities and findings of the advisory commission at least semiannually to the governor, general assembly, and the environmental justice task force;
- (9) Create and oversee the office of the advocate for environmental justice and assign duties and tasks to the office consistent with the duties established in section 3745.55 of the Revised Code;

(10) Determine and locate office space for the environmental justice ombudsperson.
Sec. 3745.55. The office of the advocate for environmental justice created under division (D)(9) of section 3745.54 of the Revised Code shall do all of the following:

- (A) Perform all duties and tasks assigned to it by the environmental justice advisory commission created in section 3745.54 of the Revised Code;
- (B) Take actions necessary to provide education and training regarding environmental justice to elected officials, employees of state agencies, and members of the public;
- (C) Coordinate and conduct meetings with members of local communities and state agencies and elected officials regarding environmental justice issues;
- (D) Establish a web site that provides all of the following:
 - (1) An explanation of the duties of the office of the advocate for environmental justice;
 - (2) A listing of notices of violations issued by the environmental protection agency and other state agencies under laws related to human health or the environment;
 - (3) A listing of permit applications that are submitted to the environmental protection agency and other state agencies under laws related to human health or the environment;
 - (4) Any other information that the office of the advocate for environmental justice determines to be appropriate for inclusion on its web site.
- (E) Gather background information regarding permit applicants as provided in section 3745.56 of the Revised Code;
- (F) Establish partnerships with universities, colleges, nonprofit organizations, libraries, and professional organizations.

Sec. 3745.56. (A) At the same time that an application for a permit for a facility or a proposed facility is submitted under Chapter 3704. or 6111. of the Revised Code to the director of environmental protection, the owner or operator of the facility or proposed facility shall submit the following to the office of the advocate for environmental justice created under division (D)(9) of section 3745.54 of the Revised Code:

- (1) A listing of all facilities permitted under Chapter 3704. or 6111. of the Revised Code that the owner or operator or a key employee of the owner or operator has operated or is operating in this state;
- (2) A listing of facilities that the owner or operator or a key employee of the owner or operator has operated or is operating elsewhere in the United States for which a permit or permits have been issued that are equivalent in nature to permits issued under Chapter 3704. or 6111. of the Revised Code together with a listing of such facilities that the owner or operator or a key employee of the owner or operator has operated or is operating outside the United States;
- (3) A listing of all administrative enforcement orders issued to the owner or operator or a key employee of the owner or operator, all civil actions in which the owner or operator or a key employee of the owner or operator was determined by the trier of fact to be liable in damages or was the subject of injunctive relief or another type of civil relief, and all criminal actions in which the owner or operator or a key employee of the owner or operator pleaded guilty or was convicted, during the ten years immediately preceding the submission of the application, in connection with any violation by the owner or operator or a key employee of the owner or operator of an applicable state or federal law pertaining to environmental protection or the environmental laws of another country;
- (4) A listing of all administrative enforcement orders, civil actions, or criminal actions pending at the time of the submission of the application for a permit under Chapter 3704.

or 6111. of the Revised Code in connection with a violation of any applicable state or federal law or law of another country pertaining to environmental protection that was alleged to have been committed by the owner or operator or a key employee of the owner or operator.

The lists of facilities operated by the owner or operator or a key employee of the owner or operator within or outside this state or outside the United States shall include all such facilities operated by the owner or operator or a key employee of the owner or operator during the ten-year period immediately preceding the submission of the application.

(B) After the submission of information under division (A) of this section, the office of the advocate for environmental justice shall forward copies of the information to the director of environmental protection. The office of the advocate for environmental justice may make recommendations to the director regarding the approval or disapproval of an application for a permit under Chapter 3704. or 6111. of the Revised Code based on information received by the office under this section.

(C) If an applicant for a permit under Chapter 3704. or 6111. of the Revised Code has been involved in any prior activity involving the operation of a facility for which permits have been issued under Chapter 3704. or 6111. of the Revised Code or an equivalent permit under the jurisdiction of another state, the United States, or another country, the director of environmental protection may deny the application if the director finds from the application, the information submitted under division (A) of this section, pertinent information submitted to the director, information included with recommendations made by the office of the advocate for environmental justice, and other pertinent information obtained by the director at the director's discretion that the applicant or any other person listed on the application, in the operation of facilities in this state, another state, or another country, has a history of substantial noncompliance with state and federal laws pertaining to environmental protection or the environmental laws of another country that indicates that the applicant lacks sufficient reliability, expertise, and competence to operate the facility or proposed facility in substantial compliance with Chapter 3704. or 6111. of the Revised Code and rules adopted under either chapter, as applicable.

(D) A person to whom a permit issued under Chapter 3704. or 6111. of the Revised Code is proposed to be transferred shall submit to the office of the advocate for environmental justice the information that is required to be submitted under division (A) of this section by an applicant for a permit under those chapters not later than one hundred twenty days prior to the proposed acquisition of the facility by the transferee. The office of the advocate for environmental justice shall transfer a copy of the information to the director. The director may deny the transfer of the permit if the information regarding the transferee indicates any of the reasons specified in division (C) of this section for the denial of an application for a permit.

(E) When the owner or operator of a facility permitted under Chapter 3704. or 6111. of the Revised Code employs a new key employee, the owner or operator shall submit or shall require the new key employee to submit to the office of the advocate for environmental justice information regarding the new key employee that is required to be submitted under division (A) of this section by an applicant for a permit issued under Chapter 3704. or 6111. of the Revised Code. The office of the advocate for environmental justice shall transfer a copy of the information to the director. The director may revoke any applicable permits for the facility issued under Chapter 3704. or 6111. of

the Revised Code if the information regarding the new key employee indicates any of the reasons specified in division (C) of this section for the denial of an application for a permit.

(F) As used in this section, "key employee" means an individual employed by the owner or operator of a facility or a proposed facility who has submitted an application for a permit for the facility under Chapter 3704. or 6111. of the Revised Code, or by the proposed transferee of such a permit, in a supervisory capacity or who is empowered to make discretionary management decisions with respect to the operations of the applicant or transferee.

Sec. 3745.57. (A) There is created the environmental justice ombudsperson who shall be appointed by the governor with the advice and consent of the senate. The environmental justice ombudsperson shall serve during the term of the appointing governor and is subject to removal at the pleasure of the governor.

(B) The environmental justice ombudsperson shall do all of the following:

- (1) Act as a liaison between the citizens of this state and a state agency regarding environmental justice issues;
- (2) Furnish information and assistance to persons concerning state laws and rules that are relevant to environmental justice. In conjunction with those duties, the ombudsperson shall keep a record of all state agency rules that are relevant to environmental justice and may testify before the joint committee on agency rule review concerning any proposed rule that is relevant to environmental justice.
- (3) Receive complaints from citizens of this state concerning state agency activity, compile and analyze those complaints, and periodically make recommendations to the governor and the general assembly on changes in state laws or agency rules that are needed to promote environmental justice;
- (4) Receive complaints or questions from citizens of this state concerning environmental justice and direct those citizens to the appropriate state agency. If, within a reasonable period of time, a complaint is not satisfactorily resolved or a question is not satisfactorily answered, the ombudsperson shall make every effort to secure a satisfactory result on behalf of the citizen. For that purpose, the ombudsperson may consult with any state agency and may make any suggestion or request that is appropriate.
- (5) Represent a citizen's concerns regarding environmental justice before a state agency;
- (6) Utilize, to the maximum extent possible, the printed and electronic media to disseminate information regarding environmental justice of current concern and interest to the citizens of this state and to make known to the citizens the services that are available through the ombudsperson;
- (7) Maintain and publicize a toll-free telephone number that the citizens of this state may call to reach the ombudsperson.

(C) The ombudsperson, upon the request of a state agency, shall assist the agency with the preparation of any rule that substantially will affect human health or the environment to ensure the fair treatment of all people.

(D) The ombudsperson shall be located in office space that is selected by the environmental justice advisory commission under division (D)(10) of section 3745.54 of the Revised Code.

Sec. 3745.58. (A) There is hereby created in the state treasury the environmental justice fund consisting of money appropriated to the fund, money transferred to the fund from

the general revenue fund, and money transferred to the fund in accordance with division (B) of this section.

(B) The director of environmental protection shall annually determine the funding needs of the environmental justice advisory commission created in section 3745.54 of the Revised Code, the office of the advocate for environmental justice created under division (D)(9) of that section, and the environmental justice ombudsperson created in section 3745.58 of the Revised Code. Upon making the determination, the director shall request the director of budget and management to transfer the amount of money that the director has determined is needed from funds administered by the environmental protection agency to the environmental justice fund. Notwithstanding any provision of the Revised Code to the contrary, the director of budget and management shall comply with the request.

(C) Money in the environmental justice fund shall be used to fund the operations of the environmental justice advisory commission, the office of the advocate for environmental justice, and the environmental justice ombudsperson.