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## States' Environmental Justice Statutes: Colorado



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# A National Agricultural Law Center Research Publication

## States' Environmental Justice Statutes: Colorado

CO ST §§ [24-4-109](#); [25-1-133](#); [25-1-134](#)

*Current through signed legislation effective Jan. 31, 2022 of the Second Regular Session, 73rd General Assembly (2022).*

### **§ 24-4-109. State engagement of disproportionately impacted communities – definitions – repeal.**

(1) Goal. The goal of outreach to and engagement of disproportionately impacted communities is to build trust and transparency, provide meaningful opportunities to influence public policy, and modify proposed state action in response to received public input to decrease environmental burdens or increase environmental benefits for each disproportionately impacted community.

(2) Definitions.

(a)

(I) The environmental justice action task force created in section 25-1-133 will recommend to the general assembly potential modifications to the definitions established in this subsection (2). The definitions established in this subsection (2) apply unless and until the general assembly acts by bill to modify one or more of the definitions.

(II) This subsection (2)(a) is repealed, effective September 1, 2024.

(b) As used in this section and sections 25-1-133, 25-1-134, and 25-7-105(1)(e), unless the context otherwise requires:

(I) “Agency” means the air quality control commission created in section 25-7-104.

(II) “Disproportionately impacted community” means a community that is in a census block group, as determined in accordance with the most recent United States census, where the proportion of households that are low income is greater than forty percent, the proportion of households that identify as minority is greater than forty percent, or the proportion of households that are housing cost-burdened is greater than forty percent; or is any other community as identified or approved by a state agency, if: The community has a history of environmental racism perpetuated through redlining, anti-Indigenous, anti-immigrant, anti-Hispanic, or anti-Black laws; or the community is one where multiple factors, including socioeconomic stressors, disproportionate



environmental burdens, vulnerability to environmental degradation, and lack of public participation, may act cumulatively to affect health and the environment and contribute to persistent disparities. As used in this subsection (2)(b)(II), “cost-burdened” means a household that spends more than thirty percent of its income on housing, and “low income” means the median household income is less than or equal to two hundred percent of the federal poverty guideline.

(III) “Proposed state action” means:

- (A) Rule-making proceedings held pursuant to section 24-4-103;
- (B) Licensing proceedings, including the issuance and renewal of permits, held pursuant to section 24-4-104; and
- (C) Adjudicatory hearings held pursuant to section 24-4-105.

### (3) Engagement.

(a) To promote the goal of state engagement of disproportionately impacted communities, an agency shall strive to create new ways to gather input from communities across the state, using multiple languages and multiple formats and transparently sharing information about adverse environmental effects from its proposed state action.

(b) When conducting outreach to and engagement of disproportionately impacted communities regarding a proposed state action, the agency shall:

(I) Schedule variable times of day and days of the week for opportunities for public input on the proposed state action, including at least one weekend time, one evening time, and one morning time for public input;

(II) Provide notice at least thirty days before any public input opportunity or before the start of any public comment period;

(III) Utilize several different methods of outreach and ways to publicize the proposed state action, including disseminating information through schools, clinics, social media, social and activity clubs, local governments, tribal governments, libraries, religious organizations, civic associations, community-based environmental justice organizations, or other local services;

(IV) Provide several methods for the public to give input, such as in-person meetings, virtual and online meetings, online comment portals or e-mail, and call-in meetings;

(V) Consider using a variety of locations for public input on the proposed state action, including meeting locations in urban centers, in neighborhoods whose populations are predominantly Black, Indigenous, or people of



color and have an average income below the state's average, and in rural locations in various regions of the state; and

(VI) Create outreach materials concerning the proposed state action in layperson's terms, translated into the top two languages spoken in a community, that inform people of opportunities to provide input on the proposed state action, their rights, the possible outcomes, and the upcoming public input process.

(4) The division of parks and wildlife created in section 33-9-104 shall, in conducting public outreach regarding the keep Colorado wild pass pursuant to section 33-12-108(7):

(a) Include outreach to and engagement of disproportionately impacted communities with a goal to build trust and transparency, provide meaningful opportunities to influence public policy, and modify proposed state action in response to public input received to decrease environmental burdens or increase environmental benefits for each disproportionately impacted community; and

(b) Engage disproportionately impacted communities in accordance with the procedures set forth in subsection (3) of this section.

### **§ 25-1-133. Environmental justice action task force – report – repeal**

(1) Creation.

(a) There is hereby created in the department the environmental justice action task force to recommend and promote strategies for incorporating environmental justice and equity into how state agencies discharge their responsibilities.

(b) The task force consists of twenty-seven members appointed pursuant to subsection (1)(c) of this section.

(c) The membership of the task force and appointing authorities are as follows:

(I) The governor shall appoint the following nine members:

(A) Three representatives from the department of public health and environment, one with expertise in air quality, one with expertise in water quality, and one with expertise in health equity;

(B) One representative of the department of natural resources;

(C) One representative of the department of transportation;

(D) One representative of the Colorado energy office;

(E) One representative of the public utilities commission;



(F) One representative of the department of agriculture; and

(G) One representative of the governor's office;

(II) Two members, one appointed by the chair of the Southern Ute Indian Tribe tribal council and one appointed by the chair of the Ute Mountain Ute Tribe tribal council;

(III) Sixteen members appointed by the president of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives, with one member appointed by each appointing authority from subsection (1)(c)(III)(A) of this section and three members each from subsection (1)(c)(III)(B) of this section:

(A) Four members who represent disproportionately impacted communities located, to the extent practicable, in different congressional districts of the state; and

(B) The following number of members of different organizations that: Carry out initiatives relating to environmental justice, three members; represent worker interests in disproportionately impacted communities, one member; represent the interest of people of color, four members; represent the renewable energy industry, one member; represent the nonrenewable energy industry, one member; represent local government in disproportionately impacted communities, one member; and work to support public health, one member, who must be an environmental toxicologist.

(d) The appointing authorities shall fill a vacancy as soon as possible. In making appointments to the task force, the appointing authorities shall ensure that the membership of the task force reflects the racial, ethnic, cultural, and gender diversity of the state, including representation of all areas of the state.

(2) Mission of the task force. The mission of the task force is to propose recommendations to the general assembly regarding practical means of addressing environmental justice inequities by:

(a) Promoting environmental justice across state agencies and improving collaboration among state agencies in identifying and addressing the human health and environmental effects of programs, policies, practices, and activities on disproportionately impacted communities;

(b) Improving cooperation on environmental justice initiatives between the state government, tribal governments, and local governments;

(c) Ensuring meaningful involvement and due process in the development, implementation, and enforcement of environmental laws and policies; and



(d) Addressing environmental health, pollution, and public health burdens in disproportionately impacted communities and building healthy, sustainable, and resilient communities.

(3) Duties of the task force. The task force shall consider proposing recommendations concerning the following:

(a) Developing a state agency-wide environmental justice strategy and a plan to implement that strategy, which could include:

(I) Recommendations for creating and implementing equity analysis into all significant planning, rule-making, adjudications, orders, programmatic and policy decision making, and investments;

(II) A potential requirement that agencies prepare an environmental equity analysis for any state action that has the potential to cause negative environmental or public health impacts to a disproportionately impacted community, which analysis could include a process for identifying and describing cumulative impacts to the health and environment of disproportionately impacted communities;

(III) A potential requirement that for any state action that may cause adverse environmental or public health impacts to a disproportionately impacted community, the adverse environmental or public health impacts must be avoided, and if the effects cannot be avoided, they must be minimized and mitigated;

(IV) A potential requirement that permits must be issued and renewed only after an environmental equity analysis determines that the terms and conditions of the permit or renewal are sufficient to ensure, to a reasonable certainty, that any harm to the health and environment of disproportionately impacted communities is either:

(A) Avoided; or

(B) Minimized to the extent practicable and, to the extent any harm remains, is mitigated;

(V) A potential requirement that all environmental projects developed as part of a settlement relating to violations in a disproportionately impacted community are developed in consultation with and through meaningful participation of individuals in the disproportionately impacted community and result in improvement to the health and environment of the affected disproportionately impacted community; and

(VI) Recommendations for establishing measurable goals for reducing environmental health disparities for disproportionately impacted communities;



(b) Adoption of a plan that addresses the lack of data and lack of data sharing between state agencies about potential exposure to environmental hazards and improves research and data collection efforts related to the health and environment of disproportionately impacted communities, climate change, and the inequitable distribution of burdens and benefits of the management and use of natural resources;

(c) The provisions of section 24-4-109 regarding engagement of disproportionately impacted communities, taking into account barriers to participation that may arise due to race, color, ethnicity, religion, income, or education level; and

(d) Evaluating and proposing recommendations or revisions to the following definitions:

(I) “Disproportionately impacted community” as defined in section 24-4-109(2)(b)(II);

(II) “Proposed state action” as defined in section 24-4-109(2)(b)(III); and

(III) “Agency” as defined in section 24-4-109(2)(b)(I). In formulating its recommendation, the task force shall consider including within the definition at least the state entities specified in subsection (1)(c)(I) of this section.

(4) The task force shall:

(a) Hold at least six meetings, which may be online or in person, to seek input from, present its work plan and proposals to, and receive feedback from communities throughout the state;

(b) Submit a final report of its findings and recommendations to the governor, the department, the house of representatives agriculture, livestock, and water; energy and environment; and health and insurance committees, and the senate agriculture and natural resources; health and human services; and transportation and energy committees, or their successor committees, by November 14, 2022; and

(c) Post summaries of its meetings, draft recommendations, and the final report, which must be available as a public record on the home page of the department's website.

(5) The department shall include updates regarding the task force's activities, including its final report, in its departmental presentation to legislative committees of reference pursuant to section 2-7-203.

(6) This section is repealed, effective September 1, 2024.

**§ 25-1-134. Environmental justice – ombudsperson – advisory board – grant program – definitions – repeal.**

(1) Environmental justice ombudsperson.



(a) There is hereby created in the department the position of an environmental justice ombudsperson. The ombudsperson reports to the executive director of the department. The department shall provide administrative support for the ombudsperson. The ombudsperson otherwise functions independently in exercising its powers.

(b) The governor shall appoint the ombudsperson as soon as practicable but no later than February 1, 2022, and as necessary thereafter to fill a vacancy. Prior to an appointment, the governor or the governor's designee shall consult with, and may receive recommendations from, the advisory board, the general assembly, representatives of disproportionately impacted communities, and other relevant stakeholders regarding the selection of the ombudsperson.

(c) The ombudsperson must be qualified by training or experience in environmental justice, and should have been a resident of one or more disproportionately impacted communities or have worked to advance environmental justice within disproportionately impacted communities.

(d) The ombudsperson shall:

(I) Collaborate with the advisory board for the purpose of promoting environmental justice for the people of Colorado;

(II) Serve as an advocate for disproportionately impacted communities and as a liaison between disproportionately impacted communities and the department, including with respect to communications regarding the grant program to fund environmental mitigation projects;

(III) Work to improve the relationships and interactions between disproportionately impacted communities and the department;

(IV) Increase the flow of information between the department and disproportionately impacted communities concerning the environment and departmental programs using methods of outreach that include, at a minimum:

(A) Disseminating information through local schools, social media, local social and activity clubs, libraries, or other local services; and

(B) Prioritizing in-person meetings in communities with populations that are predominantly Black, Indigenous, Latino, or Asian Americans that have a median income below the state's average, or that are in rural locations;

(V) Identify ways to enable meaningful participation by disproportionately impacted communities in the decision-making processes of the department;

(VI) Coordinate with the office of health equity, created in section 25-4-2204;





(VII) Maintain a telephone number, website, e-mail address, and mailing address for the receipt of complaints and inquiries for matters pertaining to environmental justice;

(VIII) Establish procedures to address complaints pertaining to environmental justice to the extent practicable;

(IX) Consult with the division of administration in reporting to the air quality control commission, created in section 25-7-104, on equitable progress toward the state's greenhouse gas reduction goals; and

(X) Serve in an advisory capacity, as requested, to other state agencies conducting outreach to and engagement of disproportionately impacted communities in light of a proposed agency action.

(2) Environmental justice advisory board.

(a) There is hereby created in the department the environmental justice advisory board.

(b) Except as otherwise provided in this subsection (2), the members of the advisory board are appointed by the governor. The governor shall make the initial appointments as soon as practicable, but no later than four months after July 2, 2021. An appointing authority may remove a member of the advisory board for malfeasance in office, failure to regularly attend meetings, or any cause that renders the member unable or unfit to discharge the member's duties.

(c) The advisory board consists of the following twelve members who, to the extent practicable, must reside in different geographic areas of the state, reflect the racial and ethnic diversity of the state, and have experience with a range of environmental issues, including air pollution, water contamination, and public health impacts:

(I) Four voting members appointed by the governor, who must be or have been residents of a disproportionately impacted community;

(II) Three voting members appointed by the governor, one of whom must be from a nongovernmental organization that represents statewide interests to advance racial justice, one of whom must be from a nongovernmental organization that represents statewide interests to advance environmental justice, and one of whom must represent worker interests in disproportionately impacted communities;

(III) The executive director of the department, or the executive director's designee, as a nonvoting member; and

(IV) Four voting members appointed by the executive director of the department.

(d)



(I) Except as provided in subsection (2)(d)(II) of this section, each member's term of appointment is four years. Voting members may serve no more than two terms. The governor shall fill any vacancies on the advisory board, including for the remainder of any unexpired term. A member appointed to fill a vacancy may serve the remainder of the unexpired term of the member whose vacancy is being filled, and this remainder counts as one term for that appointee.

(II) In order to ensure staggered terms of office, the initial term of two members appointed by the governor pursuant to subsection (2)(c)(I) of this section, as specified by the governor, and two members appointed pursuant to subsection (2)(c)(IV) of this section, as specified by the executive director of the department, is two years.

(e)

(I) Each voting member of the advisory board appointed pursuant to subsection (2)(c) of this section is entitled to receive a per diem of two hundred dollars for attendance at regularly scheduled meetings of the board during the 2021--22 state fiscal year. For each state fiscal year thereafter, the per diem amount shall be annually adjusted for inflation based on the percentage change in the United States department of labor's bureau of labor statistics consumer price index for Denver-Aurora-Lakewood for all items paid by all urban consumers, or its applicable successor index. Voting members of the board are also entitled to receive reimbursement for actual and necessary expenses incurred while performing official duties.

(II) The nonvoting member of the advisory board may not receive a per diem, but may be reimbursed for actual and necessary expenses incurred while performing official duties.

(f) The advisory board shall elect a chair from among its members every year. The advisory board shall meet at least once every quarter. The chair may schedule all such additional meetings as are necessary for the advisory board to complete its duties.

(g) The advisory board shall:

(I) Serve in an advisory capacity to the ombudsperson in the performance of the duties of the ombudsperson;

(II) Hold a portion of advisory board meetings for the ombudsperson to jointly receive stakeholder input into the activities and priorities of the ombudsperson;

(III) Develop a public complaint process related to the performance of the ombudsperson;

(IV) Develop recommendations to address any other matters relating to adverse environmental effects on disproportionately impacted



communities as referred to the advisory board by the governor or the executive director of the department;

(V) Develop policies as are necessary for the conduct of its affairs and its meetings, and post all policies on its website, including a conflict of interest policy for its members, which must require the disclosure of any potential financial interest of any member or relative of any member in a proposed environmental mitigation project. A board member who has a personal or financial interest in an environmental mitigation project under consideration shall recuse the board member from any vote on that project.

(VI) Advise the department on matters to enable the department to interact with disproportionately impacted communities in the best manner possible;

(VII) Support the implementation of a grant program to fund environmental mitigation projects from the community impact cash fund created in section 25-7-129 in accordance with this subsection (2)(g)(VII) by performing the following duties:

(A) The advisory board shall develop guidelines for a grant program to fund environmental mitigation projects, with input from the department. The guidelines must include: Procedures for applicants to submit applications to the board, and for selection of environmental mitigation projects to fund; provisions to ensure that the applications are concise, straightforward, objective, inclusive, and accessible to all interested parties; a requirement that the applicant disclose any conflict of interest, such as a personal or financial relationship with any member of the advisory board; and identification of any information necessary to be included in an application to ensure the advisory board can prepare the report required by subsection (2)(g)(VII)(C) of this section.

(B) The advisory board shall review each application that it receives and may award grants, subject to appropriations and available funding, to applicants to fund environmental mitigation projects in disproportionately impacted communities.

(C) The advisory board shall compile an annual report that details information about the environmental mitigation projects that are awarded grants, including: Details about the disproportionately impacted community in which the project will take place, including information about pollution levels, health disparities, and demographics; the relationship between the community, the project, and any violations that gave rise to penalties paid into the community impact cash fund created in section 25-7-129; the status of the project, the engagement between the project and the community, and the reaction of the disproportionately impacted community to the project; and other details as the advisory board



deems appropriate. The annual report shall be made publicly accessible, including on the advisory board's website.

(h) This subsection (2) is repealed, effective September 1, 2027. Before the repeal, the advisory board and its functions are scheduled for review in accordance with section 2-3-1203.

(3) Records and meetings. The advisory board and the ombudsperson are subject to all the applicable requirements of the “Colorado Open Records Act”, part 2 of article 72 of title 24, and the open meetings law contained in part 4 of article 6 of title 24.

(4) Definitions. As used in this section, unless the context otherwise requires:

(a) “Advisory board” means the environmental justice advisory board created in subsection (2) of this section.

(b) “Environmental mitigation project” means any project that avoids, minimizes, measures, or mitigates adverse environmental impacts in a disproportionately impacted community, including, without limitation, health effects, health disparities, and other environmental impacts or that promotes equitable participation in a rule-making proceeding that may affect a disproportionately impacted community.

(c) “Ombudsperson” means the environmental justice ombudsperson appointed pursuant to subsection (1) of this section.

