



To: House Committee on Natural Resources Republican Members
From: House Committee on Natural Resources Republican Staff
Date: July 25, 2022
Subject: Hybrid Markup of H.R. 2021

The Natural Resources Committee will hold a hybrid markup on **Wednesday, July 27, 2022, at 10:00 a.m. EDT** in room 1324 Longworth House Office Building and via Cisco WebEx. The bill being considered is an amendment in the nature of a substitute (ANS) to H.R. 2021 (Grijalva).

Republican Members are encouraged to take advantage of the opportunity to participate in person.

Member offices are requested to notify Will Layden (Will.Layden@mail.house.gov) and Baylee Seeman (Baylee.Seeman@mail.house.gov) no later than **4:30 p.m. EDT on Tuesday, July 26, 2022**, if their Member intends to participate in person in the hearing room or remotely via his/her laptop from another location. Members may vote either by electronic device in the hearing room or by voice (while visible) if participating remotely.

Submissions for the hearing record must be submitted through the Committee's electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- The ANS to H.R. 2021, the *Environmental Justice for All Act* (Grijalva), is expected to move by regular order. There will not be a package of bills to move by unanimous consent, as the Majority has severely limited the number of Republican bills allowed to have a hearing this Congress. The Majority is refusing to mark up, either by unanimous consent or regular order, the few Republican bills that have had a hearing.
- H.R. 2021 is an expansive bill that aims to regulate everything from energy and minerals development and air quality to cosmetics and feminine products. It would create new, onerous requirements for federal programs and non-federal projects that would significantly increase permitting timelines and open the door for lawsuits.
- H.R. 2021 is part of the Democrats' agenda to make it harder to permit domestic projects such as oil and gas production, mining, and manufacturing. The bill would

block projects that could lower consumer costs and create economic opportunity all of which would be a direct benefit to the communities that the bill purports to protect.

II. EXPECTED LEGISLATION

[ANS to H.R. 2021 Environmental Justice For All Act](#)

H.R. 2021 would create a broad definition of “environmental justice” and establish government-wide environmental justice requirements. It would establish several advisory bodies and programs – including a new White House Environmental Justice Interagency Council – to purportedly address disproportionate health and environmental impacts on communities of color, low-income communities, and tribal communities.

H.R. 2021 would require federal agencies to prepare “community impact reports” to assess potential impacts of their actions on environmental justice communities. It would prohibit disparate impacts on the basis of race, color, or national origin and open up a new right of action to sue based on supposed disparate impacts.

H.R. 2021 would create a variety of funding programs, including a grant program for recreation and parks in urban areas and a grant program to fund research on chemicals in products associated with chronic adverse health effects. It would create new requirements concerning chemicals and toxic ingredients in products.

Background

According to the U.S. Environmental Protection Agency (EPA), environmental justice (EJ) 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.”¹ The EJ movement largely surfaced as a part of the environmental movement in the 1970s and led to President Bill Clinton’s Executive Order (E.O.) 12898 in 1994.²

E.O. 12898 directed each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.”³ E.O. 12898 also created an interagency working group led by the EPA to help federal agencies develop EJ strategies that ensure enforcement of all health and environmental statutes in areas with high minority populations and low-income populations.⁴ Although the law does not directly mandate the

¹ U.S. Environmental Protection Agency, Environmental Justice, <https://www.epa.gov/environmentaljustice>.

² Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, Wednesday February 16, 1994, <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>.

³ *Id.*

⁴ *Id.*

consideration of EJ across federal programs and activities, E.O.12898 directs executive departments and agencies to integrate EJ into their respective missions to “the greatest extent practicable and permitted by law.”⁵

The Presidential Memorandum accompanying E.O. 12898 called on federal agencies to analyze the environmental impacts of federal actions on minority and low-income communities when conducting analysis under the National Environmental Policy Act of 1969 (NEPA).⁶ NEPA, among other things, directs federal agencies to account for any potentially significant adverse impacts to the “quality of the human environment.”⁷ In response to E.O. 12898, the White House Council on Environmental Quality (CEQ) issued guidance on considering EJ under NEPA in 1997.⁸ This guidance created six principles for EJ analyses to determine if a federal action has a disproportionate and adverse human health or environmental effect on low-income, minority, and tribal populations.⁹

The Biden administration has continued issuing Executive Orders on EJ issues. On January 20, 2021, President Biden signed E.O. 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, which called on agencies to review actions of the previous administration to identify if they are inconsistent with EJ policies.¹⁰ One week later, President Biden signed E.O. 14008, “Tackling the Climate Crisis at Home and Abroad”, which established broad environmental justice goals for the federal government, including a priority of “ensur[ing] that environmental and economic justice are key considerations in how we govern.”¹¹ E.O. 14008 also amended E.O. 12898 by establishing two new councils within the White House responsible for addressing EJ: the White House Environmental Justice Interagency Council and the White House Environmental Justice Advisory Council.¹² The Biden administration is also updating EPA’s EJ screening tool (EJScreen), which assesses socioeconomic, environmental, and health factors to identify communities that may be particularly exposed to pollution.¹³

The Biden administration is also trying to require states to use funding from the recently enacted Infrastructure Investment and Jobs Act (IIJA)¹⁴ on EJ objectives. The same day the President signed IIJA into law, he also issued E.O. 14052,¹⁵ which claims that IIJA will help “advance

⁵ *Id.*

⁶ The White House, Memorandum for the Heads of all Departments and Agencies: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, https://www.epa.gov/sites/default/files/2015-02/documents/clinton_memo_12898.pdf.

⁷ 42 U.S.C. §4332(2)(C).

⁸ Council on Environmental Quality, Environmental Justice: Guidance Under the National Environmental Policy Act, December 10, 1997, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

⁹ *Id.*

¹⁰ E.O. 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” 86 Federal Register 7037, January 25, 2021.

¹¹ E.O. 14008, “Tackling the Climate Crisis at Home and Abroad,” 86 Federal Register 7619, February 1, 2021.

¹² *Id.*

¹³ EnergyWire, Miranda Willson, *Delaware offers litmus test for Biden’s EJ plan*, 2/3/21.

¹⁴ Public Law 117-58.

¹⁵ The White House, Executive Order on Implementation of the Infrastructure Investment and Jobs Act, November 15, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/15/executive-order-on-implementation-of-the-infrastructure-investment-and-jobs-act/>

environmental justice; and invest in communities that have too often been left behind.”¹⁶ In January, Mitch Landrieu, the Biden administration’s Infrastructure Implementation Coordinator, sent a letter to governors proposing IJIA goals, including “supporting disadvantaged and underserved communities, advancing climate resilience and sustainability.”¹⁷ Two weeks later, sixteen Republican governors responded with a letter to the President demanding flexibility for states not only on formula funding but also on competitive grant programs, specifically stating that “[e]xcessive consideration of equity, union memberships, or climate as lenses to view suitable projects would be counterproductive” and that the Biden administration “should not attempt to push a social agenda through hard infrastructure investments and instead should consider economically sound principles that align with state priorities.”¹⁸ At the end of June 2022, the Biden administration released a list of 200 programs at four agencies that will be covered under the White House’s Justice40 Initiative, which aims to ensure that EJ communities receive 40 percent of the overall benefits of federal investments, including IJIA funding.¹⁹

Bill Analysis

Section 4 of the bill would amend Subchapter V of the Civil Rights Act of 1964²⁰ by creating a new test to determine if a program, policy, practice, or activity is discriminatory based on disparate impact on the basis of race, color, or national origin. Subchapter V currently prohibits discrimination in federally assisted programs on the grounds of race, color, or national origin.²¹ H.R. 2021 would take this a step further by prohibiting discrimination in regard to any program, policy, practice, or activity based on disparate impacts. The language states that an entity must demonstrate that the activity is necessary to achieve the non-discriminatory goal of the program and show that there is not a less discriminatory alternative. If enacted, this language will likely result in increased litigation and could significantly impact the ability of federal agencies, state agencies, universities, or private organizations to carry out programs and actions.

Section 5 would amend Section 602 of the Civil Rights Act of 1964²² to provide “aggrieved” individuals the ability to file suit in any district court regardless of their citizenship status.

Section 6 would amend the Civil Rights Act of 1964²³ to allow aggrieved individuals to recover equitable legal relief and attorney’s fees.

¹⁶ *Id.*

¹⁷ Mitch Landrieu Letter to Governors, January 4, 2022, <https://www.ibtta.org/sites/default/files/documents/Advocacy/GA053-Mitch%20Landrieu%20Letter%20to%20Governors%202022-0104.pdf>

¹⁸ Joint Letter to President Biden Requesting IJIA State Flexibility, January 19, 2022, <https://www.scribd.com/document/553828187/Joint-Letter-to-President-Biden-Requesting-IJIA-State-Flexibility-1-19-22#download>.

¹⁹ The Whitehouse, Justice40: A Whole of Government Initiative, <https://www.whitehouse.gov/environmentaljustice/justice40/>

²⁰ 42 U.S.C. 2000d.

²¹ *Id.*

²² 42 U.S.C. 2000d-1.

²³ *Id.*

Section 7 of the bill would amend the Federal Water Pollution Control Act²⁴ to create a new standard for renewal of discharge permits under the National Pollutant Discharge Elimination System (NPDES). The new standard would require the Administrator of the EPA to consider the “cumulative impacts” of the discharge, which would likely result in increased litigation and a prolonged analysis period. Section 7 would also amend the Clean Air Act²⁵ to create a similar cumulative impact standard for emissions, discharges, and releases and for permits for major sources. Additionally, the permitting authority would have to determine with “reasonable certainty” that no harm will come to the health of the general population. The Section would create new reporting requirements for major sources, stipulating that they create a cumulative impact analysis for census block groups or Tribal census block groups located adjacent to the major source.

Section 8 would codify the White House Environmental Justice Interagency Council created by E.O. 14008 and lays out the purposes for it. This would require the Council to develop guidance to define key terms for all federal agencies to use. This guidance would be subject to a public comment period. Additionally, the Section aims to create a one-size-fits-all EJ strategy across the federal government by requiring the Council to develop an Interagency Federal EJ Strategy every three years for federal agencies to follow.

Section 9 would force agencies to ensure that all their programs or actions do not create a disparate impact on the basis of race, color, national origin, or income level. This requirement would further tie the hands of our federal agencies by requiring never-ending studies and would likely result in never-ending litigation.

Section 9 would also require that agencies develop new EJ strategies within 2 years and stipulates what must be included in those strategies. Agencies would be forced to conduct environmental and public health research and analyses for all programs that have the potential to discriminate based on race, national origin, or income. The Administrator of the EPA would be required to develop an EJ mapping tool, such as the EJScreen mapping tool currently maintained by the EPA, to track demographic and environmental data. Lastly, the Section would allow any person to commence a civil action against an agency using the section.

Section 10 would create an EJ Ombuds position at the EPA that would report to the Administrator and review complaints and assist individuals with complaints. The EJ Ombuds could hire regional staff and would be tasked with recommending changes to the Administrator based on complaints.

Section 11 would direct the Secretary of the Interior to create an outdoor recreation legacy partnership grant program to award grants to states, local governments and tribes to acquire land, renovate existing facilities, and provide opportunities for outdoor education. Priority would be given to areas that lack access to such activities. Section 11 would also amend Section 105(a)(2) of the Gulf of Mexico Energy Security Act of 2006²⁶ by taking 5 percent of the funding for the Land and Water Conservation Fund to fund this new grant program.

²⁴ 33 U.S.C. 1342.

²⁵ 42 U.S.C. 7661.

²⁶ 43 U.S.C. 1331.

Section 12 would direct the Secretary of Transportation to create a Transit to Trails Grant Program to fund state, local, and tribal projects that develop transportation systems to connect critically underserved communities and increase access to public lands. Grants made under this program could range from \$25,000 to \$500,000 and would require a 100 percent funding match. The program would be authorized for \$10 million each fiscal year.

Section 13 would repeal the sunset of the Every Kid Outdoors Program.²⁷

Section 14 would create “additional protections” for EJ communities relating to federal actions. It would require “community impact reports” for all federal actions requiring preparation of a NEPA document. These community impact reports would consider the impacts of an action on environmental communities as well as public health data and would be prepared in addition to any contents of a NEPA document. This would further delay projects which are already subject to NEPA, an already a prolonged process. The legislation would also provide more opportunities for lawsuits, which could be utilized by activist litigants to block major projects. The Section would add additional requirements (public comment periods, public meetings and hearings) for any action under NEPA that may impact an EJ community. The Section would also authorize tribes to hold the status of a cooperating agency for any proposed action that could impact a tribe, as determined by the tribe, including impacts on off-reservation lands and sacred sites. This could occur as early as the scoping process under NEPA, requiring the preparation of an EIS should the tribe request cooperating agency status.

Section 15 would provide training to federal agencies to ensure EJ is incorporated into the daily activities of employees.

Section 16 would create an EJ Grant Program at the EPA to provide grants to nonprofit, community-based organizations to improve building capacity to address issues related to EJ, create partnerships, educate the EJ community, or implement projects that address public health concerns. This program would be authorized at \$25 million per year from 2022 to 2026. The section would also create a State Grant Program, a Tribal Grant Program, and a Community-Based Participatory Research Grant Program for similar purposes authorized at \$15 million, \$25 million, and \$10 million respectively.

Section 17 would direct the Administrator of the EPA to create a basic training program to increase the capacity of residents of EJ communities to identify disproportionate environmental effects. This program would be carried out via grants to accredited institutions who partner with community-based organizations or state or Tribal governments. The Section would authorize \$10 million for this program from 2022-2026.

Section 18 would make permanent the National EJ Advisory Council created by E.O. 14008 and stipulate the membership makeup and responsibilities of the Council.

Section 19 would direct the Administrator of the EPA to create an internet-based EJ clearinghouse composed of “culturally appropriate” materials related to EJ.

²⁷ 16 U.S.C. 6804.

Section 20 would require the Administrator of the EPA to hold public meetings on EJ issues in each EPA Region.

Section 21 would require that the Administrator of the EPA to ensure that all projects stemming from EJ settlements are carried out in consultation with those same EJ communities.

Section 22 would amend the Coastal Zone Management Act of 1972 (CZMA)²⁸ by creating a grant program to further achievement of Tribal coastal zone objectives. The Committee has twice considered versions of this language this Congress, once as a standalone bill (H.R. 1415, the Tribal Coastal Resiliency Act) and as a provision of the “Blue New Deal” (H.R.3764, the Ocean-Based Climate Solutions Act).

Language included in H.R. 2021 is a combination of these two previous versions. It would authorize a new \$5 million five-year grant program indefinitely under CZMA for Indian tribes. It also includes language from the introduced version of H.R. 1415, which would require grantees to consult with the affected coastal state regarding grant objectives. H.R. 2021, however, continues to include language that the National Oceanic and Atmospheric Administration (NOAA) had previously expressed concerns over. Specifically, that the language would focus funding on objectives NOAA finds “capital-intensive and, in some cases, adversely affect nearby beaches, dunes, and other coastal resources.”²⁹

Section 23 would amend the Federal Food, Drug, and Cosmetic Act³⁰ to ensure that cosmetic products sold by professionals include a list of ingredients and warnings.

Section 24 would force the Director of Health and Human Services (HHS) to award grants to support research of safer cosmetic ingredients and provide educational materials. There is no authorized funding limit in the bill.

Section 25 would direct the Director of HHS to award grants to support research on safer alternatives to chemicals currently used in consumer toy, cleaning, and baby products. This section also does not provide an authorized funding limit.

Section 26 would require certain menstrual products to list the name of each ingredient or component of the product and if it fails to provide such a list, it is considered to be misbranded, which can result in criminal penalties and jail time.

Section 27 would amend the Public Health Service Act³¹ to require the director of the National Institute of Environmental Health Sciences to investigate the chemicals linked to adverse health effects marketed to women of color. The Section does not limit authorized funding.

²⁸ 16 U.S.C. 1456b.

²⁹ Written Testimony by RDML Tim Gallaudet, Deputy NOAA Administrator, Hearing July 25, 2019, <https://docs.house.gov/meetings/II/II13/20190725/109853/HHRG-116-II13-Wstate-GallaudetT-20190725.pdf>

³⁰ 21 U.S.C. 361.

³¹ 42 U.S.C. 2851.

Section 28 would amend the Mineral Leasing Act³² to increase the royalty rate for coal and oil and gas produced on federal lands from 12.5 percent to 18.75 percent and would make lease sales optional for BLM. The Section would also change the royalty rate for reinstated leases from 16 2/3 percent to 25 percent and adds a new \$4 per acre per year fee on producing federal offshore and onshore leases and a \$6 per acre per year fee on non-producing leases. The funds from these new fees would go to a new Federal Energy Transition Economic Development Assistance Fund (Fund) and the “increased” revenues from royalties would be split between the new Fund and states. These new fees would ultimately be passed onto consumers. Further, the increased cost of operation would likely have a devastating impact on oil and gas production on federal lands and waters and thus would result in decreased royalties paid and significant job loss. It is likely that, if required to comply with this provision, the Office of Natural Resources Revenue (ONRR) would simply take 6.25 percent of the royalty (the difference between 12.5 percent and 18.75 percent) calling that the “increase” and splitting it between the Fund and the states.

The bill attempts to account for the downturn in oil and gas production and the jobs it creates by distributing money from the Fund to impacted states directly and through a competitive grant program. Among other things, the money provided to states could be used for remediation, fostering economic growth, wage support, or severance payments. The competitive grant program would be used for new projects to create jobs and so-called clean energy programs at colleges or universities. The Section would also create a “Just Transition Advisory Committee” that would be composed of federal agencies and nonprofit environmental organizations to manage the grant program.

Section 30 would require the Comptroller General of the United States to submit a report to Congress evaluating the effectiveness of activities carried out under the bill.

H.R. 2021 has a primary referral to the House Committee on Energy and Commerce and a secondary referral to five other committees, including the Natural Resources Committee. It has 99 Democrat cosponsors. Hearing information on H.R. 2021 can be found [here](#). ***The Ranking Member strongly opposes the bill, and it is expected to move by regular order.***

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III. CBO SCORES

None available.

IV. EFFECT ON CURRENT LAW (RAMSEYER)

[H.R. 2021](#)

³² 30 U.S.C. 226.