



# *COMMONWEALTH of VIRGINIA*

*Office of the Governor*

## **Commission to Examine Racial Inequity in the Law**

### **AGENDA**

Thursday, October 22, 2020

1-3pm

*Via Webex*

1. Call to Order & Roll Call
2. Public Comment
3. Administrative Items
  - a. Adopt September 23, 2020 meeting minutes
4. Special Session Update
5. Review of Proposals:
  - a. Housing
  - b. Health
  - c. Environmental Justice
  - d. Agricultural Reform
  - e. Education (continued)
6. Adjournment

Future dates of note:

November 5<sup>th</sup> 1-3pm – Commission Meeting

November 15<sup>th</sup> – Commission Report due to Governor's Office

# MEMORANDUM

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**TO:** The Commission to Examine Racial Inequity in Virginia Law

**FROM:** Andrew Block, Juliet Buesing, Christopher Yarrell, Lukus Freeman, Catherine Ward

**RE:** Environmental Justice, Housing, Health, and Education Policy Recommendations for Commission's Consideration

**DATE:** October 22, 2020

## INTRODUCTION

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This memorandum provides proposals related to racial inequity in housing, health, and environmental justice.<sup>1</sup> Additionally, building on the education proposals submitted during the Commission's September meeting, this memorandum provides specific education proposals related to the COVID-19 pandemic and the school-to-prison pipeline. Alongside the powerpoint presentation, this memorandum is meant to provide necessary data and information to the Commission members who are deciding which proposals to pass along to the governor.

As a reminder, during the May meeting we presented a broader picture of the Commonwealth's racial disparities, including data on poverty, housing, various educational outcomes, and criminal justice. Finding racial disparities across the board, we narrowed the problem areas in each category to which we suggested a number of policy solutions. After the May presentation, the Commission received a number of public comments from concerned organizations, including the New Virginia Majority, the Commonwealth Institute, and the Legislative Black Caucus. These recommendations, where relevant, have been added to the content included here, as well as recommendations from other groups working to mitigate inequities in Virginia, including the Virginia Poverty Law Center (VPLC) and the Council on Environmental Justice (CEJ). Public comments and recommendations have been appended to the memo.

To facilitate the Commission's decisionmaking process, we have listed specific policy proposals to address negative racial disparities related to Virginia housing, health, environmental justice, and education. Each proposal is numbered separately and categorized into a general problem-area. In addition, we have included essential data points in our summaries to assist decisionmaking. In narrowing our recommendations, we have focused on those policies that research and data suggest would be most effective for equitable outcomes, most likely to have the largest impact, and those yet to be effectively addressed during previous General Assembly sessions.

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<sup>1</sup> When describing racial groups implicated, this memorandum alternates between the terms 'Black' and 'African-Americans' based on the group described in the cited data sources.

## HOUSING

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This section provides a more detailed look at the recommendations from the housing portion of the presentation. Stable housing is foundational to many other elements of equity in this paper, including good health and quality education. Virginia needs to invest in making low-income renters more secure and encouraging homeownership for those who have been historically excluded.

First, a brief summary of important changes in Virginia housing laws this year, including an update from the current session.

2020 General Session included the following landmark legislation:

- \$5 million over the biennium for an eviction diversion pilot program
- Prohibition of discrimination by landlords against voucher holders (HB 6)
- A number of bills improving tenants' rights in Virginia, including HB 594 (returning security deposit on time), SB905 (withholding repair costs from rent), HB 1401 (allowing ex parte finding of unlawful ouster), and HB 1420 (limiting late rent fees).

The Special Session has also been busy, primarily addressing the aspects of the housing crisis brought on by the pandemic:

- Increased **funds for rental assistance** to help tenants avoid eviction during COVID-19 (actual number changes regularly so not included here)
- A number of bills have been brought up to **pause or limit evictions during the state of emergency** (HB 5115, HB 5051, HB 5111) and govern **emergency stays in hotels or motels** (HB 5119, HB 5120).
- HB5106: Forbids future landlords from considering **evictions that occurred during the COVID-19 pandemic** against a potential tenant.
- HB5064: Requires landlords to offer a **payment plan** prior to eviction for overdue rent (only through next July)

## AFFORDABLE HOUSING AND ZONING

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**BACKGROUND:** Exclusionary zoning and historical zoning practices enable cities to exclude certain residents, both contributing to the concentration of low-income individuals of color in poor-quality housing and to the affordable housing crisis statewide. The National Low Income Housing Coalition estimates that Virginia currently has a shortage of over 150,000 homes for renters.<sup>2</sup> Homes for those in the lowest income brackets—less than 30% of Area Median Income,

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<sup>2</sup> [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

and less than 50% of Area Median Income—are even more severely lacking.<sup>3</sup> The governor has already made clear that increasing affordable housing stock is a priority.<sup>4</sup>

**Proposal 1: Adopt statewide mandatory inclusionary zoning laws by expanding the ADU program under § 15.2-2304 to all cities.** Currently, only a few Virginia localities are permitted to mandate their own inclusionary zoning rules to encourage affordable dwelling units (ADUs).<sup>5</sup> Other cities across the commonwealth are only included in the “voluntary” program, which experts admit simply hasn’t worked.<sup>6</sup> Changing zoning laws to encourage ADUs generally requires no public funding, and proper inclusionary zoning regulations ensure that new developments contribute to the solution by making homes more equitably available to low-income families. Additionally, addressing zoning to many is a racial justice issue.<sup>7</sup> There is no reason not to allow all Virginia cities more freedom to tackle inclusionary zoning and affordable housing within their own jurisdictions.

**Proposal 2: Impose state limits on exclusionary zoning in localities.** The state should also make efforts to increase the density of housing, requiring localities to have a certain percentage of affordable housing, lowering lot size requirements, and/or enacting other statutory or regulatory changes that allow lower income people to move into a locality. HB 152 (2020) which did not make it through the House last session, is an example of a policy that could have a strong impact on the share of affordable housing. The bill allowed for “middle housing,” or the building of duplexes, townhouses, cottages, and similar structures on all lots zoned for single family housing.

**Proposal 3: Add provisions to § 58.1-3965 that require locality foreclosure for tax delinquency within a set time frame on vacant or commercial properties and would automatically donate such properties to any local Community Land Bank (15.2-7500–7512) established for affordable housing.** One of the lesser-known problems in our housing crisis is the reluctance of local governments to engage in foreclosure for vacant tax delinquent properties, which would move those properties back onto the market where they can be redeveloped. Note that this policy does not refer to the struggling family that has been unable to pay the bills; this change would only address vacant buildings, sitting off the market, with absentee landlords or complex judgments against them. If the Commonwealth steps in to require that these properties be foreclosed and put back on the market, we increase our statewide housing stock and improve localities’ tax base to continue to invest in affordable housing solutions.

**Proposal 4: Incentivize local solutions with state dollars by (1) creating a state subsidy program for affordable housing development, (2) adding more funds to the Virginia Housing Trust Fund,<sup>8</sup>**

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<sup>3</sup> <https://reports.nlihc.org/gap/2017/va>

<sup>4</sup> “Executive Order Number Twenty-Five: Establishing the Governor’s Affordable Housing Priorities To Address Virginia’s Unmet Housing Needs,” Commonwealth of Virginia Office of the Governor, 2018.

<sup>5</sup> See HB 832 (2020), which added Charlottesville to the list of cities.

<sup>6</sup> See Solution 1-E, PHARVA. <https://pharva.com/framework/solutions/#1578339862797-28a37a1d-c767>

<sup>7</sup> [https://richmond.com/opinion/columnists/ibraheem-s-samirah-column-zoning-for-abundant-housing-is-a-racial-justice-issue/article\\_18a96bf0-9a52-5945-995c-be9dfa0db340.html](https://richmond.com/opinion/columnists/ibraheem-s-samirah-column-zoning-for-abundant-housing-is-a-racial-justice-issue/article_18a96bf0-9a52-5945-995c-be9dfa0db340.html)

<sup>8</sup> <https://www.dhcd.virginia.gov/vhtf>

and/or (3) attaching state development dollars to inclusionary zoning and affordable housing actions by localities. Increasing the affordable rental unit stock and promoting lower-income home ownership can be accomplished through a variety of methods, including subsidized lending, building efforts, and community land trusts.<sup>9</sup> Many Virginia cities know this but have little incentive to solve what has become a collective problem that each town passes on to the next. Virginia should attempt to create statewide incentives for such programs in order to discourage cities from excluding new and low-income residents, creating a so-called “tragedy of the commons.” Virginia could also attach state development and housing funds to certain inclusionary zoning requirements. For other models, see Denver’s Housing fund, which has subsidized rents, renovated vacant hotels, and helped families in crisis.<sup>10</sup>

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## EVICTIONS

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**BACKGROUND:** While a number of efforts have been implemented in the last two years,<sup>11</sup> evictions are the clearest area of disparate impact in Virginia’s housing. Neighborhoods of color in particular have been devastated. Individuals of color are far more likely to be evicted than their white neighbors, even when income and other circumstances are equal.<sup>12</sup> Matthew Desmond, a national housing scholar based at Harvard, found that overwhelmingly, nationwide, the people we are evicting are single Black moms with school-age children—an incredibly vulnerable group. Coronavirus has shed new light on the crisis with ongoing debates about rental relief, an eviction moratorium, and the danger of housing instability during a pandemic.

**Proposal 5: Provide building space and staff grants to Richmond and other high-eviction cities to serve as a physical, community-based space for a face-to face coordinated eviction prevention program.** Recent research suggests that one of the reasons for such high eviction rates in Richmond, for example, is *not at all a lack of resources*, but an inability to connect such resources to the right individuals in a timely fashion.<sup>13</sup> Renters who have been passed from phone call to phone call have repeatedly advocated for a real-life office with friendly faces that they can go to in order to get help and providers agree that the disorganization is rampant and harmful to their ability to help clients. The staff in this space could coordinate with local nonprofits on rental assistance, rental repair funds, pre- and post- eviction support, and legal advocacy.

**Proposal 6: Request a cost-benefit analysis study on models for providing a right to counsel in eviction cases, from JLARC or another trusted research entity.** Research has shown that

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<sup>9</sup> See generally <https://pharva.com/framework/solutions/#1578339862797-28a37a1d-c767>

<sup>10</sup> <https://www.denverpost.com/2018/08/25/denver-affordable-housing-fund-expansion-spending/>

<sup>11</sup> Central Virginia Legal Aid Society, “7 New Laws that are More Fair, Favorable and Friendly to Tenants,” [www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf](http://www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf).

<sup>12</sup> Kathryn Howell, *Eviction and Educational Instability in Richmond, Virginia*, RVA Eviction Lab, [https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL\\_Eviction-and-Educational-Instability-in-Richmond.pdf](https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL_Eviction-and-Educational-Instability-in-Richmond.pdf).

<sup>13</sup> Tayla Lockman-Fine and Olivia Rosenthal, “Evictions in Richmond: Overview, Current Responses, and Program Proposals,” August 2019.

providing counsel to those facing eviction has a host of community benefits, including reduced ultimate eviction rate (by nearly 80%), help applying for rental assistance and securing alternate housing, improvements in credit and other records consequences, and help negotiating payment options with a landlord.<sup>14</sup> Obviously this is an expensive option, but we suggest the commission recommend this topic for further study because of its proven effectiveness in reducing evictions. To start, we suggest a Virginia-based cost-benefit analysis of various models for counsel.

#### Proposal 7: Revise Virginia's landlord-tenant laws to:

- Increase pay-or-quit period from 5 to 14 days
- Decrease allowed judgment use period from 6 month to 30 days
- Increase number of times a tenant can use the right of redemption
- Extend the appeal bond period in eviction cases to 30 days, allow waivers for indigency like in other civil cases
- Create stricter consequences for informal evictions
- Seal/expunge eviction records after two years, or provide a court process for expungement, similar to Minnesota<sup>15</sup>
- Automatic expungement for eviction cases that are dismissed
- Treat hotel/motel residents as tenants after 30 days of stay
- Limit what screening rules landlords may use to exclude poor tenants
- Clarify that income requirements must be based on tenant's portion of the rent (e.g. for voucher holders)
- Limit tenancy application fees

One of the biggest harms of eviction is its nearly permanent future damage to an individual's chances to get back on their feet. While a landlord may lose a bit of profit from unpaid rent, an evicted person may forever be screened from housing, unable to provide their family and children a safe space to live. Landlords use a variety of screening tools, including background checks, credit checks, and former eviction filings, to find ways to keep the poor out of their homes. The current court process also favors landlords over tenants. If we want people to stay in their homes, and our neighborhoods, schools, and economy to flourish, we should balance the process and help all Virginians be safely and stably housed.

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<sup>14</sup> <https://www.americanprogress.org/issues/poverty/reports/2019/10/02/475263/right-counsel-right-fighting-chance/>

<sup>15</sup> [https://www.mncourts.gov/mncourtsgov/media/assets/documents/0/public/Self\\_Help\\_Center/3981H-27-Expunging-Evictions.pdf](https://www.mncourts.gov/mncourtsgov/media/assets/documents/0/public/Self_Help_Center/3981H-27-Expunging-Evictions.pdf)

## HEALTH

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This section provides a more detailed look at the recommendations from the health portion of the presentation. Minority groups, nationally and across the Commonwealth, report lower self-rated health quality.<sup>16</sup> Governor Northam has made increasing health access a major policy priority during his time in office. Following the racial disparities that emerged during the COVID-19 pandemic, through which Black, Hispanic, and Native American cases and deaths exceeded their share of the population nationally, Virginia has further focused on remedying health inequity.<sup>17</sup> A number of groups are working to increase health equity in the Commonwealth, including the Virginia Department of Health (VDH) Office of Health Equity (OHE),<sup>18</sup> the VDH Commissioner's Advisory Council on Health Disparity and Health Equity,<sup>19</sup> and Virginia's Health Equity Leadership Task Force, which provides leadership to the Unified Command Health Equity Work Group, directed by the COVID-19 equity leadership task force.<sup>20</sup> We offer recommendations building on past and existing efforts to prioritize reduction of health disparities in the Commonwealth.

During the January 2020 session, a number of bills **successfully passed** that will aid in reducing health disparities in Virginia. These include:

- [SB 903](#): Hospitals; protocols and screening related to substance use disorders and mental health services at emergency department
- [SB 818](#): Behavioral health dockets; established.
- [SB 280](#): Health insurance; mental health parity; required report.
- [SB 279](#) / [HB 1549](#): Certificate of public need; criteria for determining need.
- [SB 619](#) / [HB 74](#): Public schools; mental health awareness training required.
- [SB 734](#) / [HB 728](#): Residential psychiatric placement and services; SOE, et al., to establish work group.
- [HB 1332](#): Statewide Telehealth Plan. Telehealth services; definitions, report.
- [SB 172](#) / [HB 1251](#): Health insurance; definitions, payment to out-of-network providers, emergency services (banning balance billing; being implemented January 1, 2021)
- [HB 42](#): Prenatal and postnatal depression, etc.; importance of screening patients.
- [HB 687](#): State-certified doulas; certification, registry.
- [HB 826](#): State plan for medical assistance; payment for services provided by certified doulas.

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<sup>16</sup> <https://www.vdh.virginia.gov/content/uploads/sites/76/2016/06/health-equity-report-summary.pdf>

<sup>17</sup> <https://www.npr.org/sections/health-shots/2020/09/23/914427907/as-pandemic-deaths-add-up-racial-disparities-persist-and-in-some-cases-worsen>

<sup>18</sup> <https://www.vdh.virginia.gov/health-equity/>

<sup>19</sup> <https://www.vdh.virginia.gov/health-equity/division-of-multicultural-health-and-community-engagement/commissioners-advisory-council-on-health-disparity-and-health-equity/>

<sup>20</sup> <https://www.vaemergency.gov/governor-northam-announces-health-equity-pilot-program-with-city-of-richmond/>; <https://www.governor.virginia.gov/diversity/equity-leadership-taskforce/>

- [HB 907](#): Sickle cell anemia; treatment.
- [SB 301](#): Medically underserved areas; transporting patients to 24-hour urgent care facilities.

The Biennial Budget adopted during the regular legislative session included many health initiatives that were “unallotted” in the April veto session, due to revenue concerns related to COVID-19. However, many of those initiatives were included and re-funded in the budget adopted during the legislature’s special session. Adopted items that address racial inequity include the elimination of the 40-quarter work history requirement, which limits legal immigrants’ access to Medicaid; the extension of Medicaid and FAMIS post-partum coverage from 60 days to 12 months to address maternal mortality concerns; and a comprehensive Adult Dental Benefit in Medicaid. This budget still awaits the Governor’s approval.

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## HEALTH CARE ACCESS

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**BACKGROUND:** In Virginia and nationally, minorities tend to have less health insurance coverage, higher cost barriers to health care access, and lower self-rated health.<sup>21</sup> Uninsured Americans have lower cancer survival rates, lower rates of receiving important screening tests, are more likely to have preventable hospitalizations, and are more likely to be diagnosed with diseases at later stages.<sup>22</sup> Infants born to African American women are 1.5 to 3 times more likely to die than infants born to women of other races/ethnicities nationally<sup>23</sup> and twice as likely to die in Virginia.<sup>24</sup> Black women in Virginia are three times more likely to die from pregnancy complications than white women.<sup>25</sup>

Based on 2018 US Census data, prior to Virginia’s Medicaid expansion, which went into effect on January 1, 2019, 10.2% of Virginians under age 65 were without medical insurance, the vast majority of which (64.2%) were part of families with at least one full-time worker.<sup>26</sup> Since then, Governor Northam has expanded Virginia’s Medicaid program, promoting historic health care disparity reductions.<sup>27</sup> Following the January 2019 Medicaid expansion, more than 450,000

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<sup>21</sup> <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>

<sup>22</sup> <https://www.vhcf.org/data/profile-of-virginias-uninsured/>

<sup>23</sup> <https://www.americanprogress.org/issues/early-childhood/reports/2018/02/01/445576/exploring-african-americans-high-maternal-infant-death-rates/>

<sup>24</sup> <https://www.vdh.virginia.gov/content/uploads/sites/18/2018/05/Infant-Mortality-Trends-in-Virginia-2014-2016.pdf>

<sup>25</sup> <https://vpm.org/news/articles/11186/lawmakers-act-to-correct-racial-disparity-in-maternal-mortality-rates/>; Maternal health recommendations were the focus of the ACHDHE’s most recent meeting, in January 2020.<sup>25</sup> As the ACHDHE has already put forward recommendations for community engagement strategies and programming strategies, the following recommendations address needs not currently covered by those recommendations. These recommendations have been appended to the memorandum.

(<https://www.vdh.virginia.gov/content/uploads/sites/76/2020/01/October-2019-ACHDHE-Recommendations-SK-1.pdf>)

<sup>26</sup> <https://www.vhcf.org/data/profile-of-virginias-uninsured/>

<sup>27</sup> <https://www.governor.virginia.gov/newsroom/all-releases/2019/july/headline-841926-en.html>



additional individuals were enrolled in Medicaid by August 2020.<sup>28</sup> Even with this progress, however, immigrants may receive emergency-only Medicaid services. Their access to comprehensive Medicaid coverage is limited and complex, and negative health disparities persist.

**Proposal 1: Remove discriminatory barriers to healthcare (depending on whether the Governor signs the proposed budget):** Enact the health initiatives contained in the budget approved by the legislature during the Special Session, in particular the elimination of the 40-quarter work history requirement which limits legal immigrants' access to Medicaid; the extension of Medicaid and FAMIS post-partum coverage from 60 days to 12 months to address maternal mortality concerns; and a comprehensive Adult Dental Benefit in Medicaid.

**Proposal 2: Close the gap in healthcare access for immigrants.** The following are **additional** steps that could be taken to close this gap:

1. Adopt the CHIP Option to provide prenatal care to all children regardless of the expectant mother's immigration status.
  - For over a decade, this CHIP option has been available to provide prenatal care to pregnant immigrants who can't otherwise get Medicaid, including undocumented immigrants who are not legally residing in the U.S. According to Kaiser Family Foundation, 17 states have taken this option.<sup>29</sup> In all other states (including Virginia), while the pregnant woman can't get Medicaid during her pregnancy, if she's a state resident and income eligible for Medicaid, the state is required to provide her emergency Medicaid services at the time of her labor and delivery. Of course, the newborn will be a U.S. Citizen and typically deemed eligible for Medicaid for one year. The option enables states to provide the pregnant woman comprehensive prenatal care before the baby is born – a very cost effective approach to protect the health of the mother and the baby.
2. Increase the age that "legally residing" immigrant children can qualify for Medicaid and FAMIS.
  - "Legally residing" is a broad term that includes any documented immigrant status, including valid visas. Currently, "legally residing" immigrant children in Virginia qualify for coverage up to their 19<sup>th</sup> birthdays. Federal law allows this optional coverage to continue up to age 21. Raising the age threshold would protect continuity of care for these young people.
3. Expand emergency Medicaid coverage to include COVID-19 testing and treatment.
  - Immigrants qualify for emergency Medicaid coverage if they are eligible by income but do not meet the Medicaid non-citizen requirements. Emergency

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<sup>28</sup> <https://www.healthinsurance.org/virginia-medicaid/>

<sup>29</sup> <http://files.kff.org/attachment/Report-Medicaid-and-CHIP-Eligibility,-Enrollment-and-Cost-Sharing-Policies-as-of-January-2020.pdf>

Medicaid coverage is only for life-threatening or severe medical needs. Several states have included COVID-19 testing and treatment under emergency Medicaid coverage, and Virginia should follow this example.<sup>30</sup>

**Proposal 3: Exercise the option to 12-month continuous coverage to Medicaid and CHIP for children.** Low-income individuals may experience financial ups and downs throughout the year. One month they may be eligible for Medicaid, and the next month they may be slightly over the income line for Medicaid. States have the option to provide children with 12 months of continuous coverage through Medicaid and CHIP, even if their family's income changes during the year.<sup>31</sup> This allows for consistent access to health care for children.<sup>32</sup> Twenty-three states have exercised this option for Medicaid, and twenty-five have adopted it for CHIP.<sup>33</sup> Virginia should follow suit.

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## MEDICAL PROFESSIONALS

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**BACKGROUND:** Research indicates that people have a higher comfort level and are willing to share more information with a physician who looks like them.<sup>34</sup> Further, physicians' implicit biases can be dangerous for people of color. For example, research has shown that half of white medical trainees believe myths purporting that Black people feel less pain because they have thicker skin or less sensitive nerve endings than white people, prompting inadequate treatment of Black patients' pain.<sup>35</sup> Unfortunately, in 2019, of the approximately 45,000 people with a Virginia medical license, only around 8% identified as African American.<sup>36</sup> In 2018, the Virginia Department of Health Professions (VDHP) conducted a "Physician Workforce Survey" where over 33,000 physicians responded, and only 1,700 respondents identified as Black or African American, whereas the state's African American population exceeds 1.6 million. The Black doctor to Black patient ratio is approximately 1 doctor for every 1,000 patients, while the white doctor to white patient ratio is approximately 1:400.

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<sup>30</sup> <https://www.kff.org/coronavirus-covid-19/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/>

<sup>31</sup> <https://www.medicaid.gov/medicaid/enrollment-strategies/continuous-eligibility-medicaid-and-chip-coverage/index.html>

<sup>32</sup> *Id.*

<sup>33</sup> <https://www.kff.org/health-reform/state-indicator/state-adoption-of-12-month-continuous-eligibility-for-childrens-medicaid-and-chip/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>; <https://www.cbpp.org/research/health/continuous-coverage-protections-in-families-first-act-prevent-coverage-gaps-by>

<sup>34</sup> <https://www.usnews.com/news/healthiest-communities/articles/2018-08-31/why-america-needs-more-black-doctors>

<sup>35</sup> <https://www.aamc.org/news-insights/how-we-fail-black-patients-pain> (discussing 2012 and 2016 studies)

<sup>36</sup> <https://www.wvtf.org/post/improving-doctor-patient-ratio-african-american-community#stream/0>

**Proposal 4: Create a pipeline program to close the gap between the Black doctor to Black patient ratio and white doctor to white patient ratio.** Research should be conducted to create a pipeline program supporting Black college students' preparation for medical school, particularly at Virginia's HBCUs. This would also work to combat health provider shortage areas (HPSAs) in Virginia.<sup>37</sup> Similar pipelines have been used for recruiting Black teachers,<sup>38</sup> and specifically STEM educators,<sup>39</sup> in Virginia.

**Proposal 5: Require Virginia continuing medical training to include implicit bias training.** California passed a bill with such a requirement in 2019,<sup>40</sup> and Virginia should do the same.

## MENTAL HEALTH

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**BACKGROUND:** In general, African Americans appear to have the same or lower incidence of diagnosed mental disorders compared to other racial/ethnic groups, but this may reflect lower access to mental health services, less frequent recognition of mental health needs among African Americans by physicians, and relative exclusion of vulnerable populations from national epidemiological surveys.<sup>41</sup> There is also concern that Black Virginians are exposed to a high level of trauma in their communities.<sup>42</sup> Trauma can affect children's health, development, and functioning later in life, but risk and protective factors play a valuable role in children's long-term outcomes.<sup>43</sup> Black and Hispanic children are more likely to have adverse childhood experiences (ACEs) than their white and Asian peers, which can lead to toxic stress.<sup>44</sup> ACEs have long-term effects, which increase in risk with each additional ACE. Effects include smoking, alcohol, and drug abuse; mental and physical health problems; relationship troubles; suicide; criminal activity; and even early death.<sup>45</sup> However, social support and protective conditions can prevent these repercussions for children with ACEs.<sup>46</sup>

As of 2013, Virginia had 50 Mental Health Professional Shortage Areas.<sup>47</sup> Since then, legislation has sought to reduce socioeconomic and racial mental health disparities. However, nationally, in 2018, 8.7 percent of African American adults received mental health services compared with 18.6 percent of non-Hispanic white adults; 8.8 percent of Hispanic adults received mental health services compared with 18.6 percent of non-Hispanic white adults.<sup>48</sup> This indicates a need for greater attention on mental health inequities.

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<sup>37</sup> <https://www.vdh.virginia.gov/health-equity/shortage-designations-and-maps/>

<sup>38</sup> [https://news.vcu.edu/article/VCU\\_School\\_of\\_Education\\_joins\\_national\\_effort\\_to\\_recruit\\_prepare;](https://news.vcu.edu/article/VCU_School_of_Education_joins_national_effort_to_recruit_prepare;)  
<https://www.education.virginia.gov/media/governorvirginiagov/secretary-of-education/pdf/final-tdvep-report.pdf>

<sup>39</sup> <https://www.governor.virginia.gov/newsroom/all-releases/2020/february/headline-851715-en.html>

<sup>40</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB241](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB241)

<sup>41</sup> <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>

<sup>42</sup> <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>

<sup>43</sup> <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>

<sup>44</sup> <https://ifstudies.org/blog/nearly-half-of-us-children-have-suffered-at-least-one-adverse-childhood-experience>

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> <https://www.kff.org/medicaid/fact-sheet/the-virginia-health-care-landscape/>

<sup>48</sup> <https://www.americanprogress.org/issues/race/reports/2020/05/07/484742/health-disparities-race-ethnicity/>

**Proposal 6: Increase mental health support in schools.** Differences in use of school-based behavioral health services by racial and ethnic groups suggest the need for culturally appropriate support and tailoring of services to increase resource utilization.<sup>49</sup> Reallocating funds previously used for school resource officers (SROs) to hire more school counselors is one way to increase mental health support in schools. School counselors provide direct and indirect mental health services for students and build alliances in school communities.<sup>50</sup> This goes beyond just teaching about mental health and encourages a climate of wellness. However, teaching about mental health could also increase utilization of mental health services.<sup>51</sup> In 2018, legislation passed requiring a review and update of the health Standards of Learning for students in grades 9 and 10 to include mental health. Recognizing the negative effects of trauma in childhood, the health Standards of Learning for younger students should also be reviewed and updated to include mental health. [SB 1440](#) and [HB 2593](#) would have done so in 2019, but these bills were left in the Appropriations Committee.<sup>52</sup> Additionally, the feasibility of Mental Health First Aid training for relevant school personnel could be considered.<sup>53</sup>

**Proposal 7: Direct the Commission Studying Mental Health Services in the 21<sup>st</sup> Century to specifically address racial disparities in their work.** The Commission has considered a variety of topics, including telemental health, mental health services in jails, and housing for the serious mental ill.<sup>54</sup> This Commission should consider racial disparities in mental health services in one of their upcoming meetings.

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<sup>49</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5142755/>

<sup>50</sup> <https://www.wusa9.com/article/news/education/school-resource-officers-reallocating-funds-for-mental-health/65-d4d9bc7b-282e-469b-9e87-cea7e249da07>;

<https://www.schoolcounselor.org/asca/media/asca/ASCAU/Mental-Health-Specialist/Kaffenberger.pdf>

<sup>51</sup> <https://www.educationdive.com/news/more-states-requiring-mental-health-education/561250/>

<sup>52</sup> <https://vakids.org/our-news/blog/childrens-mental-health-proposed-legislation-2019-legislative-session>

<sup>53</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+SB1472&191+sum+SB1472>

<sup>54</sup> See, e.g., <https://studies.virginiageneralassembly.gov/studies/341>

## ENVIRONMENTAL JUSTICE

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This section provides more detail on the data and recommendations from the environmental justice portion of the presentation. Under the [Virginia Environmental Justice Act](#), “[i]t is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities.”<sup>55</sup> The Act defines an “environmental justice community” as “any low-income community or community of color” and a “fenceline community” as “an area that contains all or part of a low-income community or community of color and that presents an increased health risk to its residents due to its proximity to a major source of pollution.”<sup>56</sup> Environmental justice has been a priority for both the Northam Administration and the General Assembly.

The following provides a summary of bills passed by the General Assembly in the 2020 regular session:

- [SB 406/HB 704](#): Environmental Justice; definitions, agency regulations, Virginia Environmental Justice Act, policy.
- [HB 1042](#): Environmental Justice, Virginia Council on; established.
- [HB 1162](#): Environmental Quality, Department of; definition of environmental justice.
- [HB 1164](#): Environmental Quality, Department of; policy statement.
- [HB 1605](#): Partition of property; in partition actions the court shall order an appraisal of property.
- [SB 1075](#): Environmental Quality, Department of; public comment.
- [HB 572/SB 710](#): Distributed solar & other renewable energy; sales of electricity under third-party agreements.
- [HB 528](#): Electric generation facilities; SCC shall determine retirement of facilities.
- [HB 981/SB 1027](#): Clean Energy and Flood Preparedness Act; definitions, funds, report.
- [HB 1526/SB 851](#): Electric Utility Regulation; environmental goals.
- [HB 394](#): Diversity, Equity, and Inclusion, Director of; position created.

Previously existing via [Executive Order 29](#), [SB 1042](#) made the Virginia Council on Environmental Justice (“CEJ”) a permanent advisory committee. The CEJ’s 2020 annual report provides a useful list of findings and broad initial recommendations for executive and legislative action, and some of the following proposals seek to turn those recommendations into specific changes to the code or regulations. The remainder of this section summarizes the issues and provides proposals to address environmental justice issues relating to public involvement in decisions affecting environmental quality, access to outdoor recreational areas, access to renewable energy, and Tribal consultation.

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<sup>55</sup> Virginia Environmental Justice Act, Va. Code § 2.2-235, <https://law.lis.virginia.gov/vacode/title2.2/chapter2/section2.2-235/>.

<sup>56</sup> *Id.* at § 2.2-234, <https://law.lis.virginia.gov/vacode/title2.2/chapter2/section2.2-235/>.

## PUBLIC INVOLVEMENT

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Meaningful public involvement in decisions that will affect a community's environmental quality is a central tenet to the concept of environmental justice. For a multitude of reasons, the siting of locally undesirable land uses historically has occurred near low-income communities and communities of color.<sup>57</sup> Because these communities have historically been politically disenfranchised, there is also concern that they are seen as the path of least resistance in government approval processes.<sup>58</sup>

The consequences of this pattern are reflected in public health data. A number of studies have shown an association between air pollution exposure and Asthma.<sup>59</sup> The distribution of Asthma cases in Virginia varies according to race, income, and education. While 16.5% of African American residents have Asthma, only 13.5% of white residents do.<sup>60</sup> Adults in the lowest income bracket (\$15,000 - 24,000) had the highest Asthma prevalence, and those who did not graduate high school are almost 3% more likely to have Asthma as those who have graduated.<sup>61</sup> Moreover, at the national level, more than half of the people who live within 1.86 miles of toxic waste facilities are people of color,<sup>62</sup> and people of color are more than twice as likely to live within close proximity to an industrial facility.<sup>63</sup>

### **Proposal 1: Require the Department of Environmental Quality (DEQ) to develop measures designed to ensure meaningful public involvement from environmental justice communities.**

Last session, the General Assembly passed [SB 1075](#), which modified the duties of the Air Pollution Control Board, forcing it to meet additional procedural requirements when granting a variance to a regulation or issuing a permit to certain facilities that will “particularly affect” one locality. Something similar could be accomplished at a broader level by adding another section to the DEQ’s general powers in Code § 10.1-1186, which would read “Develop procedures to solicit

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<sup>57</sup> Some factors that go into siting decisions include the cost of land, access to the site, the availability of water, and the impact on air quality and adherence to EPA requirements. Because low-income rural communities often meet these criteria, they are disproportionately affected by these siting decisions.

<sup>58</sup> Tamara Deitrich, Pipeline projects draw criticism for “environmental racism,” *Bay Journal*, June 8, 2020, [https://www.bayjournal.com/news/energy/pipeline-projects-draw-criticism-for-environmental-racism/article\\_99af061e-a98e-11ea-bcdf-33bf50122f39.html](https://www.bayjournal.com/news/energy/pipeline-projects-draw-criticism-for-environmental-racism/article_99af061e-a98e-11ea-bcdf-33bf50122f39.html)

<sup>59</sup>Centers for Disease Control and Prevention, Asthma and the Environment, <https://ephtracking.cdc.gov/showAsthmaAndEnv#:~:text=Important%20asthma%20triggers%20are%3A%201%20en%20viro%20nmental%20to%20bacco%20smoke%2C%20high%20humidity%2C%20or%20freezing%20temperatures%3B%20More%20items...%20>

<sup>60</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 24, [https://www.naturalresources.virginia.gov/media/governorviriniagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final\\_July-2020.pdf](https://www.naturalresources.virginia.gov/media/governorviriniagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final_July-2020.pdf) (data reported to CDC).

<sup>61</sup> *Id.*

<sup>62</sup> Toxic Wastes and Race at Twenty, 1987-2007, A Report Prepared for the United Church of Christ Justice & Witness Ministries, <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf>.

<sup>63</sup> Center for Effective Government, Living in the Shadow of Danger, Poverty, Race, and Unequal Chemical Facility Hazards, <https://www.foreffectivegov.org/shadow-of-danger/>.

meaningful involvement from environmental justice communities, particularly when the Boards make determinations affecting such communities.”<sup>64</sup>

Examples in other states include Oregon’s requirement that its agencies hold hearings at times and in locations that are convenient for people in affected communities.<sup>65</sup> Tennessee offers an online interactive map that shows public participation opportunities throughout the state.<sup>66</sup> Lastly, the West Virginia Department of Environmental Protection has an Office of Environmental Advocate that responds to citizen requests, guides citizens through Department processes, and helps implement informational workshops and public education forums.<sup>67</sup> DEQ could also alter the general focus of its notice requirements during a proceeding by focusing on input received instead of notice given. For example, DEQ could require a party to show that it received public input from a certain number of interested individuals or contacted a certain number of people instead of the mere showing of something like publication of notice in a newspaper.

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## ACCESS TO OUTDOOR RECREATIONAL AREAS

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**BACKGROUND:** The COVID-19 pandemic has highlighted the importance of convenient access to outdoor recreational space. Unfortunately, on a national level, people of color are 51% more likely than white people to live in an area that is nature deprived.<sup>68</sup> Historically, the United States has systematically segregated and excluded people of color from public lands and other natural places. The legacies of this exclusion persist in many forms, including the continued underrepresentation of people of color in hiring at natural resource agencies, as well as in the histories of different groups underrepresented by national parks and public lands.

State parks provide opportunities for families to be outdoors and engage with nature in ways that would otherwise not be available to many. Unfortunately, there are several concerns over parking fees at state parks and that the placement of new parks may not occur where they are needed most, both of which may ultimately limit access for environmental justice communities.<sup>69</sup>

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<sup>64</sup> The term “Boards” is defined by § 10.1-1186(B)(9) as the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.

<sup>65</sup> Or. Rev. Stat. § 182.545, <https://www.oregonlaws.org/ors/182.545>.

<sup>66</sup> Tennessee Dep’t of Environment & Conservation, Public Participation Opportunities Map, <https://www.tn.gov/environment/ppo-public-participation.html>.

<sup>67</sup> W.Va. Dep’t of Environmental Protection, Office of Environmental Advocate, <https://dep.wv.gov/Pages/agencydetail.aspx?CustomID=16>; see also Environmental Justice Study for the Virginia Department of Environmental Quality at 37, <https://www.deq.virginia.gov/Portals/0/DEQ/ConnectwithDEQ/EJ/Environmental%20Justice%20Study%20Report%20to%20DEQ.pdf?ver=2020-10-16-102023-147>.

<sup>68</sup> Jenny Rowland-Shea, Sahir Doshi, Shanna Edberg, and Robert Fanger, The Nature Gap, CENTER FOR AMERICAN PROGRESS, <https://www.americanprogress.org/issues/green/reports/2020/07/21/487787/the-nature-gap/>.

<sup>69</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 19.

**Proposal 2: Direct the Department of Conservation and Recreation to adopt a Statewide Park Equity Mapper to include demographic and health data necessary to inform equitable decision making.** The current Recreation Access Model does not provide adequate data to reflect the needs of certain communities. The Department should use the Equity Mapper to make planning decisions related to state and local land acquisitions, grant funding opportunities and development of conservation and open space lands for recreation access in communities where those amenities do not exist. The Equity Mapper should include the following data points:

- Census tract data for Race, Age, Education, localities without a local Parks and Recreation Agency, percent of population below the poverty line, percent of population considered obese, percent of population with diabetes, percent of population with heart disease, percent of population within a ten minute walk of a local park/trail, percent of population within a thirty minute drive of a regional park/trail, percent of population within an hour drive of a state park/trail, Native lands, and urban heat island data.
- All local and state-held lands, trails, and water access points that are open to the public.

**Proposal 3: Amend Code § 10.1-200.1 to include access for environmental justice communities as a required consideration in state park master planning.** Code § 10.1-200.1 requires the Department of Conservation and Recreation (DCR) to undertake the master planning process (i) for all existing state parks, (ii) following the substantial acquisition of land for a new state park, and (iii) prior to undertaking substantial improvements to state parks.<sup>70</sup> “A master plan shall be considered a guide for the development, utilization and management of a park and its natural, cultural and historic resources and shall be adhered to closely.”<sup>71</sup> This section of the Code should be amended to require DCR to consider access for environmental justice communities, as defined in the Environmental Justice Act, in the state park master planning process.

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## CLEAN ENERGY ACCESS

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**Background:** On average, Virginians experience an electricity burden of 3.1%, which is higher than the 2.7% national average. Electricity burden is defined as “the percentage amount of your household income that is spent on electricity costs.”<sup>72</sup> It is estimated that low-income households in Virginia have an electricity burden of approximately 8.8%.<sup>73</sup> About 60% of Virginians have to choose between paying energy bills or buying food at least once per year.<sup>74</sup> It is estimated that a typical set of residential solar panels would meet more than half of an average low-income household’s electricity needs.<sup>75</sup> Last session, the General Assembly passed the Solar Freedom Bill ([HB 572/SB 710](#)), which is designed to cut red tape that prevented

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<sup>70</sup> Va. Code § 10.1-200.1, <https://law.lis.virginia.gov/vacode/title10.1/chapter2/section10.1-200.1/#:~:text=1-200.1.%20State%20park%20master%20planning.%20A.%20The%20Department,prior%20to%20undertaking%20substantial%20improvements%20to%20state%20parks.>

<sup>71</sup> *Id.*

<sup>72</sup> Virginia Poverty Law Center, Affordable Clean Energy Project, <https://vplc.org/affordable-clean-energy-project/>.

<sup>73</sup> *Id.*

<sup>74</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 31.

<sup>75</sup> *Id.* at 33.



Virginians from embracing solar energy. However, much of the growth in residential solar energy in recent decades has benefited middle-class families.<sup>76</sup>

**Proposal 4: Develop strategies to target residential solar energy development toward environmental justice communities.** Virginia currently has several programs in place to incentivize residential solar development. These include net metering,<sup>77</sup> the VirginiaSAVES Green Community Program,<sup>78</sup> the Energy Efficient Buildings Tax Exemption,<sup>79</sup> and others.<sup>80</sup> Additionally, the Clean Energy and Community Flood Preparedness Act ([HB 981/SB 1027](#)) will provide funding to reduce the energy burden on low-income customers through efficiency goals and increased clean energy access.<sup>81</sup> Either within the current programs or through a new program, agencies should develop strategies to make solar energy available to those in environmental justice communities.

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## TRIBAL CONSULTATION

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**Background:** The Council on Environmental Justice has considered Tribal recommendations. Virginia currently has eleven state and federally recognized tribes, each with their own organizational structure, tribal membership, government, staff, landholding, and economic development plans. The Virginia Council on Indians, active from 1988-2012, pursued a mission of education, research, economic development, and tribal recognition. However, in 2011 Governor McDonnell's Commission on Government Reform and Restructuring recommended the elimination of the Virginia Council on Indians, and it was abolished during the subsequent regular session. In 2016, the General Assembly passed a bill allowing the Secretary of the Commonwealth to establish a Virginia Indian Advisory Board, but its activities are limited to matters relating to tribal recognition. Because the eleven tribes have varying organizational structures and administrative capacities, requests for consultation made by state agencies often go unanswered. There is concern among the tribes that agencies interpret this lack of capacity as lack of interest, and their perspectives often go unheard in situations in which they are entitled to be heard.<sup>82</sup>

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<sup>76</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 33.

<sup>77</sup> See Va. Code § 56-594; see also Va. Dep't of Environmental Quality, Net Metering, <https://www.deq.virginia.gov/Programs/PollutionPrevention/VirginiaInformationSourceforEnergy/DistributedGeneration/NetMetering.aspx>.

<sup>78</sup> VirginiaSAVES, Sustainable Energy Solutions, <http://www.vasavesgcp.com/>.

<sup>79</sup> See Va. Code § 58.1-3221.2, <https://law.lis.virginia.gov/vacode/title58.1/chapter32/section58.1-3221.2/#:~:text=1-3221.2.%20Classification%20of%20certain%20energy-efficient%20buildings%20for%20tax,taxation%20separate%20from%20other%20classifications%20of%20real%20property>.

<sup>80</sup> Va. Dep't of Environmental Quality, Incentives for Virginians, <https://www.deq.virginia.gov/Programs/PollutionPrevention/VirginiaInformationSourceForEnergy/FinancialIncentives.aspx>

<sup>81</sup> Office of Governor Ralph S. Northam, Governor Northam Signs Clean Energy Legislation, <https://www.governor.virginia.gov/newsroom/all-releases/2020/april/headline-856056-en.html>.

<sup>82</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 52.

**Proposal 5: Establish a Tribal Liaison within DEQ.** To ensure the meaningful involvement of recognized tribes in decisions affecting environmental quality, the DEQ should establish a Tribal Liaison to commit the Department to effective communication with tribal leaders. The Liaison should consult with leaders from tribal communities to determine the best means of establishing meaningful communicating in Department processes. Pursuant to these initial consultations, the Liaison should ensure that the tribes have adequate information to understand the government action at issue and ensure that the Department receives meaningful input from the effected tribal communities.

## AGRICULTURAL EQUITY

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Over the last century, African American farmers and landowners have been systematically dispossessed of their property. In 1910, African Americans held title to approximately 16-19 million acres of farmland, and one in seven farmers was Black.<sup>83</sup> However, between 1910 and 2010, 98% of Black farmers were dispossessed through discriminatory practices.<sup>84</sup> Of the 43,225 total farm producers in Virginia, 41,924 are white, and only 1,335 are Black, 704 are Hispanic, and 376 are American Indian.<sup>85</sup>

One historic obstacle for minority-owned farms in Virginia has been the heirs' property system. Land becomes heirs' property when its owner dies without a will, and interests in it are divided among the owner's heirs. Heirs' property has historically been vulnerable to property speculators who could cause forced sales through partition proceedings.<sup>86</sup> Additionally, owners of heirs' property usually do not qualify for certain U.S. Department of Agriculture loans to purchase livestock or cover the cost of planting.<sup>87</sup> Individual heirs cannot use their land as collateral with banks or other institutions, so they are denied private financing and federal home-improvement loans.<sup>88</sup> Additionally, owners of heirs' property generally are not eligible for disaster relief funds.<sup>89</sup>

The owners of heirs' property are often unaware of the tenuous state of their title, but even when they are, clearing the title can be a costly and complex process, requiring owners to track

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<sup>83</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 19.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Samantha Willis, Growing forward: Facing historic and modern challenges, Virginia's black farmers look to bolster ranks and grow their communities, *Virginia Mercury*, Dec. 4, 2018, <https://www.virginiamercury.com/2018/12/04/growing-forward-facing-historic-and-modern-challenges-virginias-black-farmers-look-to-bolster-ranks-and-grow-their-communities/>.

<sup>87</sup> Lizzie Presser, Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It, *ProPublica*, July 15, 2019, <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* In the aftermath of Hurricane Katrina, approximately 25,000 families around New Orleans applied for rebuilding grants for their heirs' property, leading one attorney to estimate that up to \$165 million of recovery funds were never claimed because of title issues relating to heirs' property.

down every living heir.<sup>90</sup> Last session, the General Assembly passed [HB 1605](#), which incorporated major parts of the Uniform Partition of Heirs' Property Act, consisting of provisions designed to protect the owners of heirs' property during partition proceedings. Even with these protections for heirs' property owners, minority farmers are faced with systemic problems that limit their access to financing, consultation, and education services.

**Proposal 1: Modify Code § 58.1-3965 to allow an extended redemption period for tax sales involving heirs' property.** Currently, § 58.1-3965 provides for the "owner's right of redemption" prior to a tax sale. At least 30 days prior to instituting any judicial proceeding for the sale of property at auction for delinquent taxes, the officer charged with collecting taxes must send a notice to several addresses at which the property owner may be located and publish a list of the real estate which will be offered for sale in a newspaper of general circulation. Subsection B provides that "[t]he owner of the property listed may redeem it at any time before the date of the sale by paying all accumulated taxes, penalties, reasonable attorney's fees, interest, and costs thereon." Partial payment is insufficient to abate the sale. However, subsection C provides that the treasurer "may suspend any action for sale ... upon entering into an agreement with the owner of the real property for the payment of all delinquent amounts in installments over a period which is reasonable under the circumstances, but in no event shall exceed 36 months." Historically, many heirs' property owners are unaware of the state of their title, leading to delinquent property taxes.<sup>91</sup> To the unsuspecting owner, 30 days is likely insufficient to secure the necessary funds to prevent a tax sale. Therefore, the period between notice and sale, during which an owner may redeem the property, should be extended in cases involving heirs' property. Because of the circumstances unique to heirs' property, the period over which an owner may set up a payment plan should be extended in these cases as well.

**Proposal 2: Sufficiently fund Virginia Cooperative Extension services at Virginia State University.**

The Cooperative Extension services from Virginia's land grant institutions – Virginia State University and Virginia Tech - provide meaningful education and other support to farmers throughout the Commonwealth. These programs play a vital role in the success of small farms across Virginia, as well as other initiatives within communities. However, Virginia Tech receives almost 7 times more funding for its program than Virginia State receives.<sup>92</sup> While this is understandable given some of the different missions of each school's extension program, Virginia State, which houses the Small Farms Outreach Program, is primarily responsible for serving Black farmers (who often own small farms). More funding is required to serve more communities and more farmers within those communities. Notably, the Small Farms Outreach

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* See also April Simpson, Racial Justice Push Creates Momentum to Protect Black-Owned Land, Pew, Sep. 21, 2020, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/21/racial-justice-push-creates-momentum-to-protect-black-owned-land>. Additionally, communication with Ebonie Alexander, Executive Director of Black Family Land Trust, has conveyed that she is personally aware of these circumstances.

<sup>92</sup> Research into the state budget bill ([Chapter 1289, 2020 Acts of Assembly](#)) shows that the appropriation for Virginia Tech's program is just shy of \$94 million, while Virginia State's program is around \$14 million. Moreover, while approximately 80% of Virginia Tech's funds come from the General Fund, only about half of Virginia State's funds are from the General Fund.

Program currently lacks the resources to provide services in the Shenandoah Valley and parts of southwest Virginia, but it would be able to serve these communities with more resources.

**Proposal 3: Create an Office of Small Farms within the Virginia Department of Agriculture and Consumer Services (VDACS) with a duty to consider racial equity in farming.** Stakeholders have expressed concerns that VDACS does not adequately consider the interests of small farm owners.<sup>93</sup> Compared to large grain farms, those who operate smaller farms face unique challenges. There are currently seven boards and organizations that operate within VDACS, and none are geared toward addressing issues for small farms or racial equity.<sup>94</sup> According to the 2017 Agricultural Census, most minority farmers in Virginia operate farms with less acreage while a larger percentage of white farmers operate large farms.<sup>95</sup> Thus, the creation of an Office of Small Farms within VDACS would allow greater consideration for both the needs of small farmers and racial equity. While creating the Office would be the best means of achieving this outcome, an alternative approach is to add the consideration of racial equity and issues facing small farmers to the list of duties assigned to the Board of Agriculture and Consumer Services in § 3.2-109.

**Proposal 4: Order State Agencies and Institutions to implement a long-term goal for food procurement from minority producers.** In July 2019, Governor Northam issued [EO-35](#), which established a 42% target for food procurement from certified SWaM businesses. The SWaM program creates a preferential track for small businesses owned by women, minorities, and service-disabled veterans.<sup>96</sup> However, those working within the program have found that while it benefits women and veteran-owned businesses, it has largely left out minority farmers who are unable to obtain the required certifications.<sup>97</sup> The administration should take steps, through executive orders or other means, to help minority-owned businesses participate more fully in the procurement process.

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<sup>93</sup> This was revealed through discussions with stakeholders and experts in the areas of agricultural equity and heirs' property.

<sup>94</sup> The organizations and boards include the Aquaculture Advisory Board, Board of Agriculture & Consumer Services, Virginia Agricultural Council, Virginia's Agricultural Commodity Boards, Virginia's Charitable Gaming Board, Virginia Specialty Food & Beverage Association, and Virginia Winery Distribution Company.

<sup>95</sup> USDA Agriculture Census, 2017,

[https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_State\\_Level/Virginia/st51\\_1\\_0062\\_0062.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_State_Level/Virginia/st51_1_0062_0062.pdf)

<sup>96</sup> Va. Dep't of Small Business and Supplier Diversity, Governor Northam Signs Executive Order 35,

<https://www.sbsd.virginia.gov/2019/07/11430/>.

<sup>97</sup> This information is derived from communications with those in the field.

## EDUCATION

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This section discusses the education proposals offered in the presentation. Though the following recommendations focus exclusively on education, we are mindful that many factors outside the school house can have a big impact on the classroom success of students. More specifically, this section provides a more detailed examination at the racial disparities in school suspension rates and their role in creating the school-to-prison pipeline. We then conclude by providing background into the adverse effects that COVID-19 has wrought on Virginia’s education system.

### EDUCATION DISMANTLING THE SCHOOL TO PRISON PIPELINE

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**BACKGROUND:** What has come to be called the “School to Prison Pipeline” has been confirmed by multiple long-term studies: students overexposed to exclusionary discipline practice—such as out-of-school suspensions, or court referrals for simple school misconduct—are more likely to drop out of school, fall behind academically, and get caught up in the juvenile justice system. By relying on exclusionary discipline for relatively minor classroom misbehavior, school actors aggravate and worsen students’ long-term outcomes.<sup>1</sup> Despite a massive increase in Virginia’s student enrollment numbers, support staff numbers have dropped in the last fifteen years, with a corresponding increase in exclusionary discipline use.<sup>2</sup> The damaging consequences of this trend are overwhelmingly felt by students of color. For example, Virginia’s unusually high use of police officers to manage behavior in classrooms (one of the top 3 states in the nation) falls far more harshly on Black students, who are 2.5 times more likely to have the police called on them from class. Suspensions are also used disparately: as of 2018, Black students were 4.5 times more likely than their white classmates to be suspended from school.<sup>3</sup>

#### **PROPOSAL: Improve school discipline practices.**

- 1. Establish the Virginia Council to Dismantle the School-to-Prison Pipeline via statute.** We propose that this Commission consider recommending the creation of the Virginia Council to Dismantle the School-to-Prison Pipeline, a statutorily-established body charged with tracking law enforcement practices within public schools. Creating such a body will build upon efforts from previous administrations, while also establishing a central authority that can continue to effect positive change in this space long after the Northam administration has ended. Specifically, this body will be responsible for (1) studying current disciplinary practices and trends, particularly as it relates to disparate educational outcomes and justice involvement by racial category within Virginia K-12 schools and (2) recommending best practices that will lead to safer school environments and more equitable disciplinary practices.
- 2. Limit the presence of school resource officers (SRO).** We propose that the Commission consider recommending that the Governor support limiting the presence of SROs within schools by endorsing [HB 5126](#). A school resource officer (SRO) is a “certified law-enforcement officer hired by a local law enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.”<sup>98</sup> A 2017-2018 School

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<sup>98</sup> <https://law.lis.virginia.gov/vacode/title9.1/chapter1/section9.1-101/>

Safety audit, the most recent data available, found that approximately 770 SROs were placed in nearly 1100 schools across the Commonwealth.<sup>99</sup> This total amounts to roughly 55% of all Virginia schools.<sup>100</sup> The presence of SROs in Virginia schools has had a disproportionately adverse effect on children of color.<sup>101</sup> Specifically, though students of color represent approximately 40% of the school-age population, they accounted for nearly 60% of school arrests.<sup>102</sup> According to Justice Forward Virginia, “Black girls make up 17% of the school population,” but were “43% of the students arrested or referred to law enforcement for prosecution.”<sup>103</sup>

The American Civil Liberties Union (ACLU) has recently provided helpful guidance on how to remove police from schools while creating and maintaining a safe school environment.<sup>104</sup> Specifically, the ACLU recommends that states provide additional school-based mental health professionals and counselors, provide trauma-informed training for staff, and ensure accurate data collection so as to better identify and address safety concerns.<sup>105</sup>

In 2015, the McAuliffe Administration established the Classrooms not Courtrooms initiative, a comprehensive plan to reduce student referrals to SROs, particularly among African-American students and students with disabilities.<sup>106</sup> Two years later, in May of 2017, the Administration created the Virginia School-Law Enforcement Partnership Model Memorandum of Understanding (MOU) to ensure that the appropriate practices and procedures were being followed by school districts receiving grant funding through the SRO Incentive Grants Fund. That same year, however, Virginia Tech researchers found that – in terms of law enforcement referral rates – there was no statistically significant difference between schools employing MOU agreements and schools that did not.<sup>107</sup> This effect is underscored by a study that found, when such an agreement is created, school resource officers are either unaware of an MOU’s terms, or – more alarmingly – “rarely refer to them.”<sup>108</sup>

As an example of what might have happened with decreased officer presence, in June 2020, the Charlottesville City School Board, Police Department, and the City of Charlottesville

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<sup>99</sup> <https://www.justice4all.org/2020/06/05/sro-va-law/>

<sup>100</sup> <https://www.justice4all.org/wp-content/uploads/2016/01/School-Policing-Report-Full.pdf>

<sup>101</sup> <https://wecametolearn.com/>

<sup>102</sup> *Id.*

<sup>103</sup> <https://justiceforwardva.com/police-in-schools>

<sup>104</sup> [https://www.aclu.org/sites/default/files/field\\_document/030419-acluschooldisciplinereport.pdf](https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf)

<sup>105</sup> *Id.*

<sup>106</sup> [http://center.wf/administrators/superintendents\\_memos/2015/277-15.shtml](http://center.wf/administrators/superintendents_memos/2015/277-15.shtml)

<sup>107</sup>

<https://public.timberlane.net/sau/trsb/Shared%20Documents/SCHOOL%20BOARD%20TRAINING%20MATERIALS/2017%20NSBA%20CONFERENCE/Addressing%20the%20School%20to%20Prison%20Pipeline%20in%20Virginia;%20Strategic%20Partnerships%20with%20Law%20Enforcement.pdf>

<sup>108</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6597313/>

discontinued the MOU that assigned SROs within city schools, ending the \$300,000 annual allotment to the police department.<sup>109</sup> Jennifer McKeever, the chair of the Charlottesville School Board, noted that a national search is underway to identify a new model that will support the district's safety and wellness while investing in mental health supports and other resources that will build community and foster a positive school climate.<sup>110</sup> Similarly, the President of the Fairfax NAACP, Sean Perryman, recently drafted and sent a letter – which was signed by more than a dozen organizations in Virginia – to Governor Northam requesting that \$9 million in state funds be reallocated away from the SRO program during the special session.<sup>111</sup> More than a dozen advocates signed onto the letter, including Delegate Kaye Kory (D-Fairfax).<sup>112</sup> These calls for reform were codified with the introduction of [HB 5126](#)<sup>113</sup>, a measure which would cut \$4.7 million from the state's SRO program over the next two fiscal years so as to invest in more effective school services, like increased counselors and mental health supports. As of Oct. 20th, 2020, HB 5126 has remained In Committee for 57 days.

3. **Impose stronger statutory limits on out-of-school suspension.** Due to the devastating effects that out-of-school suspensions can have on students, and the racially disproportionate use of such suspension, Virginia, in 2018, reduced the maximum length of longterm suspensions from 365 days to 45 days, and limited available suspensions for K-3 students to 3 days. However, Virginia could go further still. New York, for example, has a 20 day limit.<sup>114</sup> We propose that the Commission recommend that Virginia impose stronger statutory limits on such suspensions.
4. **Increase support staff funding as an alternative to suspension.** Access to quality support staff, where a student is supported academically, socially and emotionally, can lead to positive outcomes in a student's life. Specifically, recent research has found that, "just one additional counselor at a school can have nearly a 10 percentage point increase on average in 4-year college attendance rates."<sup>115</sup> For nearly 15 years, however, Virginia's student population has increased by nearly 60,000, but such critical investments – like these social and emotional supports – have decreased.<sup>116</sup> Currently, a Virginia school counselor's average caseload is more than 360 students per counselor. In some jurisdictions, this ratio balloons to more than 1,000 students per

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<sup>109</sup> <https://www.cbs19news.com/story/42237927/city-schools-government-police-release-joint-statement-on-sro-mou>

<sup>110</sup> *Id.*

<sup>111</sup> <https://wtop.com/virginia/2020/07/letter-to-gov-northam-pushes-for-shift-in-school-resource-officer-funding/>

<sup>112</sup> *Id.*

<sup>113</sup> **School resource officers; duties; prohibitions.** Clarifies that a school resource officer is a certified law-enforcement officer who is hired by the local law-enforcement agency for the singular purpose of providing law-enforcement and security services to Virginia public elementary and secondary schools and is prohibited from enforcing school board student discipline policies that have no connection to the provision of such law-enforcement and security services. <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+HB5126>.

<sup>114</sup> <https://chalkbeat.org/posts/ny/2019/06/20/nyc-is-capping-suspensions-at-20-days-a-major-victory-for-discipline-reform-advocates/>

<sup>115</sup> <https://www.thecommonwealthinstitute.org/wp-content/uploads/2020/02/Sufficiently-Staffed-Counselors-Are-Key-for-Safe-and-Healthy-Schools.pdf>.

<sup>116</sup> *Id.*

counselor.<sup>117</sup> What's more, providing these additional supports will help to increase the likelihood that children who have suffered from adverse childhood experiences, as Catherine mentioned earlier in this presentation, receive the help that they need. We propose, then, that the Commission consider recommending an increase of state funding to adequately staff schools with such critical counseling and student support services.

## EDUCATION RECOVERY AFTER COVID-19

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**BACKGROUND:** COVID-19 has had a devastating impact on Virginia's public schools. Last March schools closed for the year, and this fall schools across the Commonwealth are experimenting with online coursework, hybrid learning, and limited opening plans. Despite the heroic efforts of educators during this difficult time, new alarming research shows that all these learning disruptions are having a big impact, and one that is disparately harming children of color.<sup>118</sup> Some of this disparity is due to lack of access to computers, quiet spaces at home, good and affordable internet service, or even stable housing.<sup>119</sup> Other disparities are a result of schools themselves—some schools and school divisions have far more resources to provide engaging face-to-face online learning.<sup>120</sup> Students with special needs are particularly struggling with online learning, which requires high executive functioning and rarely includes the special support and redirection needed from qualified educators in the classroom.<sup>121</sup>

All in all, researchers estimate the learning loss to be significant for all children, but to be most severe for children in low income homes, particularly Black and Hispanic/Latinx children.<sup>122</sup> It will be essential for Virginia to prioritize equity next year as it begins to lay out plans for recovery. Rather than laying out a specific solution, below are several principles the governor should follow in making choices on spending, budget cuts, and allocation of emergency funds for education during or following a crisis. These guidelines were created in collaboration with The Commonwealth Institute. We hope the Commission approves these principles for the governor's consideration, particularly as he considers any further federal COVID-19 related funds and makes decisions for the upcoming session's budget.

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<sup>117</sup> *Id.*

<sup>118</sup> <https://www.politico.com/news/2020/09/23/how-the-coronavirus-is-making-school-segregation-worse-420839>

<sup>119</sup> <https://www.nytimes.com/2020/06/05/us/coronavirus-education-lost-learning.html>

<sup>120</sup> *Id.*

<sup>121</sup> <https://www.vox.com/2020/8/6/21353154/schools-reopening-covid-19-special-education-disabilities>

<sup>122</sup> <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime>



## PROPOSAL: Guidelines for crisis education spending.

**1. Federal emergency funds should not be distributed equally to all school divisions, but should be distributed proportionally by need.** The use of federal recovery funds is essential help in an emergency, but acting as if all schools need the same amount of help ignores the reality of a crisis's effect on education.<sup>123</sup> Crises harm poor and disadvantaged students more severely than their wealthier peers. Thus, to preserve any kind of fairness it is essential that federal funds be distributed based on student need. While the federal CARES funds have largely been allocated, there are ongoing discussions for additional federal assistance. State leaders should allocate any additional federal assistance based on student need.

One way to do this is to allocate assistance based on the previous year's Title I shares similar to the Elementary and Secondary School Emergency Relief funds (ESSER) in CARES. Another way would be to count the ADM (average daily membership) for each district, add an additional ADM number for each child from a family in poverty, and an additional ADM for children with an IEP or ELL status. The resulting 'score' for each school will be proportionally based on the concentration of need, and funds distributed based on these scores to school divisions to give those who most need help a greater chance of recovery.

**2. When using emergency funds to support education during a crisis, decisionmakers must consider affordability issues for families.** Since the COVID crisis has thrown much into disarray, state and local leaders have also allocated new resources to important factors outside of the school building that affect education-- things like food security, housing stability and evictions, and broadband access or computer ownership for remote learning. All of these are excellent priorities. But it is important to consider not just *access* to each of these elements, but *affordability*. For example, the Commonwealth Institute discovered that despite legislators' focus on broadband expansion, there is actually a huge broadband affordability problem, with many children of color who live in cities with broadband networks still excluded from effective online schooling.<sup>124</sup> When state leaders use federal funds or other emergency funds to solve problems like these, it is important for them to consider the issue of affordability for families. For example, Alabama used its CARES act funding to provide internet credits for students who are recipients of free and reduced-price lunch.<sup>125</sup> Just like housing vouchers can help people pay the rent, internet credits can help people purchase the expensive broadband service that has become essential in an emergency. [Note that these are not "vouchers" that would offer alternate private education services but similar to coupons for internet service].

**3. Cuts to state spending due to crisis economic conditions should preserve equity efforts.** Even in a budget shortfall, it is critical to look at the entire budget and preserve equity-based

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<sup>123</sup> <https://www.nbcwashington.com/news/local/northam-announces-additional-220m-in-federal-funds-for-schools/2439348/>

<sup>124</sup> <https://thehalfsheet.org/post/627080175386066944/addressing-barriers-to-virtual-learning-for>

<sup>125</sup> <https://www.al.com/news/2020/07/alabama-to-give-100-million-in-internet-vouchers-for-low-income-students.html>

investments. The suspension of new state K-12 funding this spring did not affect all students equally. School divisions with the highest share of students of color and students from low-income households lost significantly more funding on a per pupil basis from the suspension of new state budget spending.<sup>126</sup> Though it appears these funds are being restored under the new special session budget,<sup>127</sup> the initial decision was exactly the reverse of what policymakers should have done, since there is increasing evidence that students of color and students from low income households face major barriers to education at this time. If state spending on education is cut during a crisis, the governor should preserve the At-Risk Add-On (as has been proposed by the General Assembly) and other equity efforts, while cutting from general education assistance instead. This is a matter of policy effectiveness: losing a dollar in a high poverty school hurts a lot more than losing a dollar in other schools.

**4. Spending restoration after the crisis should prioritize equity initiatives first.** The Board of Education last year passed new Standards of Quality that not only realistically addressed staffing and resource needs for Virginia’s schools but prioritized equity by creating a brand-new fund for addressing students learning in settings of concentrated poverty—the Equity Fund.<sup>128</sup> The combination of the Equity Fund and the At-Risk Add-On (or alternatively, a recalculation of the Local Composite Index that includes these same factors) should be the first priority of state leaders as soon as the crisis begins to wind down and budgets begin to grow. Recovery requires resources—great teachers, great curriculum, safe buildings, and plenty of support staff. The Commonwealth has the power and capacity to raise funds to provide these things to our high-needs schools. It is essential, in the wake of an educational crisis, to do so.

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<sup>126</sup> <https://www.thecommonwealthinstitute.org/2020/06/08/virginia-can-choose-equity-for-school-funding-during-economic-crisis/>

<sup>127</sup> [https://roanoke.com/news/general-assembly-passes-budget-but-its-unlikely-to-go-into-effect-for-weeks/article\\_3bcf8e07-f040-55e9-bb03-390c550acedf.html](https://roanoke.com/news/general-assembly-passes-budget-but-its-unlikely-to-go-into-effect-for-weeks/article_3bcf8e07-f040-55e9-bb03-390c550acedf.html)

<sup>128</sup> <https://vpm.org/news/articles/7760/virginia-board-of-education-prioritizes-equity-in-funding-recommendations>



## Memorandum

**Date:** July 14, 2020

**To:** The Commission to Examine Racial Inequity in Virginia Law

**From:** Kenneth Gilliam, Jr., Policy Director, New Virginia Majority

**Re:** Identifying Additional Legislative Steps for the 2021 Legislative Session

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As an organization that seeks to empower and lift up the voices of some of Virginia's most vulnerable communities, New Virginia Majority (NVM) applauds the work of the Commission to Examine Racial Inequity in Virginia Law (Commission) to create a more equitable and welcoming Commonwealth. We reviewed the Commission's policy recommendations and believe they will move Virginia forward.

Below, are our recommendations in the following areas: Housing, Criminal Justice, Voting Rights, and Health. We also included recommendations for Environmental Justice. Although not a current priority area of the Commission, we strongly believe it should be more thoroughly considered as a policy pathway for improving the health, economic conditions, and climate resilience of low-income communities and communities of color in Virginia.

### Housing

Our policy recommendations closely mirror the Commission's. The focus is on data collection, the creation of affordable housing, and eviction prevention. The Commission provides multiple courses of action of note under the respective topics, including subsidized lending. Here are additional measures to consider:

#### Prohibit Predatory Practices

- **Recommendation:** Prohibit predatory practices from renting companies (including lawsuits, excessive fees) and landlords that unfairly target low income renters and coerce them into vacating or threatening eviction, and codify penalties for such actions.<sup>123</sup>

#### Rent Control

- **Recommendation:** Implement rent control policies. The COVID-19 pandemic and economic recession have made housing stability for extremely low- and very low-income renters across the Commonwealth more difficult.<sup>4</sup> Even before both crises, about 87 percent of extremely low-income renter households<sup>5</sup> and about 81 percent of very low income households<sup>6</sup> were cost burdened in Virginia-- spending more than 30 percent of their income on housing and utilities.<sup>7</sup> Meanwhile, 70 percent of extremely low-income renter households<sup>8</sup> and about 33 percent of very

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<sup>1</sup> <https://www.courthousenews.com/tenants-kushner-owned-real-estate-fight-predatory-fees/>

<sup>2</sup> <https://theintercept.com/2020/04/04/jared-kushner-real-estate-company-evictions/>

<sup>3</sup> <https://richmondbizsense.com/2019/06/20/kushner-enters-richmond-market-98m-apartments-deal/>

<sup>4</sup> <https://nlihc.org/sites/default/files/Need-for-Rental-Assistance-During-the-COVID-19-and-Economic-Crisis.pdf>

<sup>5</sup> [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

<sup>6</sup> [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

<sup>7</sup> [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

<sup>8</sup> [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)



low-income households<sup>9</sup> were severely cost burdened-- spending more than half of their income on housing and utilities.<sup>10</sup> Implementing rent control policies can help bring stability to the rental market and reduce mass displacement of low-income renters in quickly gentrifying communities.

<sup>11</sup>

### **Criminal Justice**

The policy recommendations proposed in the criminal justice section are strong recommendations that New Virginia Majority has agreed with and advocated for this past session. The Commission acknowledged that Virginia's criminal justice has far reaching consequences for people of color and creates negative disparities across multiple stages of the legal process and shares our position that the lack of data is a contributing factor to these disparities. New Virginia Majority invested much effort in support of bills calling for data collection on bail determinations and pretrial detention. The Commission also referenced mandatory minimum sentencing and specifically referenced a defeated bill that called for a study of all mandatory minimum sentences in Virginia's code, which New Virginia Majority also supported. The final recommendation presented is a good recommendation to help remove incentives that detain and criminalize. As mentioned in the memo, this list is not meant to be exhaustive or comprehensive, and in that spirit here are other potential recommendations:

#### **Public Safety and Policing**

- **Recommendations:**

- "Ban Warrior Training"- Warrior training teaches police to have a "readiness to kill" and to view community members as threats<sup>12,13</sup>;
- Implement a Last Resort Use of Force Policy- All police departments should have clearly defined use of force policies that emphasize deescalation tactics, lethal force only as a last option, and a duty to intervene clause, if officers witness their fellow officers' failure to meet the policy standards. Camden County Police Department in New Jersey has a [similar policy](#)<sup>14</sup>; and
- Collect and publish data on uses of force (lethal and non-lethal) annually.

#### **For-Profit Jails, Prisons, and Immigration Detention Centers**

- **Recommendation:** End the use of for-profit jails, prisons, and immigration detention centers, which incentivizes mass incarceration and exploits the labor of incarcerated individuals.<sup>15</sup>

#### **Sentencing**

- **Recommendation:** Engage in restorative justice practices like expungement, clemency, sentence reductions and retroactive sentencing that both reflect Virginia's current sentencing guidelines

<sup>9</sup> [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

<sup>10</sup> [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

<sup>11</sup> <https://nlchp.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>

<sup>12</sup> <https://harvardlawreview.org/2015/04/law-enforcements-warrior-problem/>

<sup>13</sup> <https://www.businessinsider.com.au/bulletedproof-dave-grossman-police-trainer-teaching-officers-how-to-kill-2020-6>

<sup>14</sup> <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf>

<sup>15</sup> <https://www.nationalreview.com/2017/01/prison-labor-laws-wages/>



and rights past wrongs in the criminal legal system. This occurs on the [federal level](#)<sup>16</sup> with certain drug offenses and would be applicable for marijuana convictions in Virginia.

### Voting Rights

The 2020 General Assembly session resulted in multiple bills that ease voting restrictions and increase voter access. The Commission's recommendation of collecting more data and considering broader questions around voting in precincts of color will be important to fully addressing voting inequities. We agree that ending the practice of felony disenfranchisement by passing a constitutional right to vote is an important policy change. Here is an additional measure to consider:

#### State Preclearance Requirements

- **Recommendation:** Establish a state preclearance requirement to protect voting rights. The passage of the Voting Rights Act (VRA) of 1965 helped ensure that state and local governments could not deny citizens their right to vote based on their race, color, or membership in a minority language group.<sup>17</sup> In *Shelby County v. Holder*, the United States Supreme Court invalidated a key provision of the VRA that required jurisdictions with a history of discrimination to obtain approval before changing voting rules.<sup>18</sup> As a result, it is critically important for Virginia to pass a state-level preclearance requirement to ensure that voters of color are protected, given such uncertainty at the federal level.

### Health

Healthcare access in Virginia, no more important than during the current COVID-19 pandemic, has improved with a record enrollment in Medicaid since the March 12th state of emergency declaration [19]. The recent expansion of Medicaid in Virginia has helped save countless lives to-date, providing coverage to an additional 400,000 Virginians. But, drastically reducing poorer generational health outcomes for low-income individuals and people of color and eliminating existing barriers to consistent, affordable healthcare coverage will not occur in Virginia without a federal or state public health insurance program that benefits all Virginians regardless of employment or immigration status [20]. Here is an important measure to consider:

#### Increasing Availability of Health Insurance

- **Recommendation:** Direct the Joint Legislative Audit and Review Commission (JLARC) or a qualified entity to study the feasibility of establishing a state-based universal health care system that provides comprehensive coverage and health benefits to state residents regardless of immigration or employment status and focuses on addressing the racial and income disparities in health outcomes across the Commonwealth. This study is much needed, with Virginia's uninsured rates around 26% and 22% respectively for Latinx and Black nonelderly people [21]. Nationally,

<sup>16</sup> <https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports>

<sup>17</sup> <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-reform/voting-rights-act>

<sup>18</sup> <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-reform/voting-rights-act>

<sup>19</sup> [Virginia sees historic Medicaid enrollment during COVID-19 pandemic](#)

<sup>20</sup> [400,000 Virginians Enrolled in Health Coverage Through Medicaid Expansion](#)

<sup>21</sup> [Virginia: Distribution of the Nonelderly Uninsured by Race/Ethnicity \(2018\)](#)



the Latinx population's higher rates of being uninsured have been linked to their lack of access to employment-based insurance, and undocumented Latinx healthcare seekers are excluded from participating in federally-subsidized insurance plans or purchasing health plans with Medicaid benefits and federal subsidies [22]. During the 2020 legislative session, HB529 would have commissioned a study of the feasibility, merits, and challenges of establishing a state-based universal health care system in Virginia, but it was left in the House Rules Committee.

### **Environmental Justice**

In the absence of federal momentum on climate change and an unprecedented initiative to weaken federal environmental laws led by the federal administration [23], many states, including Virginia, have taken efforts to enact laws on energy generation, transportation infrastructure, building construction, and agricultural production that prioritize climate change mitigation. With the recent passage of the Virginia Clean Economy Act, the Environmental Justice Act, and codification of the state's Virginia Council on Environmental Justice, there is greater statutory foundation than ever before to address and prevent environmental injustices across the state. It is vital for the state to prioritize a *just transition* in its climate change mitigation strategy to ensure that it benefits all Virginians, especially in lieu of the adverse impacts of COVID-19 on Black communities with higher exposures to toxic pollution [24][25][26]. Here are some valuable environmental justice measures worthy of consideration:

### **Environmental Impact Reports**

- **Recommendation:** In alignment with the Virginia Environmental Justice Act and updates to DEQ directives [27], require state agencies, boards, authorities, commissions, and any branches of state government to include potential environmental justice impacts of any major state projects in the development and review of environmental impact reports and within the State Environmental Review Process (SERP)[28] [29]. Environmental justice impacts should also be considered in feedback provided to the federal government on federal projects being reviewed under the National Environmental Policy Act (NEPA). Any significant environmental justice impacts found in proposals for state projects should be addressed and/or mitigated through modification of the projects when feasible. (§ 10.1-1188.)

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<sup>22</sup>[Key Facts about the Uninsured Population](#)

<sup>23</sup> [The National Environmental Policy Act \(NEPA\)](#), among other historic environmental laws, NEPA has recently been targeted by the administration during the coronavirus pandemic. As of [June 4, 2020](#), the executive administration encouraged federal agencies to identify pathways from "expediting", via emergency authorities, permitting processes that require environmental reviews that are essential for integrating public review and feedback in the federal decision-making process on major energy and transportation projects. The Executive Order 12898, published by the Clinton Administration in 1994, is a major federal environmental justice protections, as it requires federal agencies to consider environmental justice in all of their activities, and it is specifically operationalized through NEPA's environmental assessments of federal projects.

<sup>24</sup> [Just Transition](#): a climate justice framework that has traditionally argued for a "fair and equitable process of moving towards a post-carbon society" that centers on "promoting a jobs-based solution to the transition to a post carbon society."

<sup>25</sup>[Climate Justice Alliance: Just Transition Principles](#)

<sup>26</sup>[Harvard T.H. Chan School of Public Health: Exposure to air pollution and COVID-19 mortality in the United States \(April 2020\)](#)

<sup>27</sup>[Dept of Environmental Quality \(DEQ\): With the enactment of HB1162 on July 1, 2020, DEQ's directives now include a definition of environmental justice and mandate to further it in its statement of policy.](#)

<sup>28</sup>[Procedures Manual Environmental Impact Review of Major State Facilities \(Oct 2018\)](#)

<sup>29</sup>[State Environmental Review Process: Via a Memorandum of Agreement \(MOA\), the Secretaries of Natural Resource and Transportation have established the State Environmental Review Process \(SERP\) for review and comment on highway construction projects. \(§ 10.1-1188.\)](#)



### Equitable Development of New Green Jobs Workforce

- **Recommendation:** Provide more comprehensive guidance and additional funding to state agencies developing and overseeing job creation, job training, and apprenticeship programs in offshore wind, solar, energy efficiency, and other related “green” fields. Guidance should require examination and elimination of immediate barriers to entry into these emerging industries (*e.g. lack of “shovel ready” jobs, occupational segregation, educational costs, reliable transportation, employment discrimination*) for low-income individuals, people of color, workers from fossil-fuel dependent economies, underserved youth, and returning-citizens. This also means accounting for the relationship between job demand and subsidized workforce training to prevent prolonged unemployment or inconsistent employment [30]. Additionally, this guidance should identify options for prioritizing (*e.g. reserved enrollment slots, industry outreach, hiring practices*) and financially supporting (*e.g. full-tuition, grants, scholarships, housing, transportation, hiring bonuses*) the attainment of credentials, post-secondary education, workforce training, and family-sustaining careers in these fields for the aforementioned populations to increase their completion of job programs and retention of positions [31].
- **Recommendation:** Align eligibility requirements of the Green Jobs Tax Credit with language in the Virginia Clean Economy Act (VCEA) that requires Dominion Energy to consider options for prioritizing the hiring, apprenticeship, and training of local workers, workers from historically economically disadvantaged communities (HEDC), and veterans in the construction of new renewable energy facilities [32] [33]. Requiring businesses that are eligible for the tax credit to prioritize options for hiring workers from these populations in the process of job creation will continue to facilitate the direct inclusion of these workers in these new emerging industries. This criteria will help avert occupational segregation in these sectors and build wealth among populations historically excluded from new economic activity due to prejudiced zoning, employment, and educational practices in the Commonwealth. (§ 1-439.12:05.)

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<sup>30</sup> [Environmental Law Institute: Environmental Justice, Just Transition, and a Low-Carbon Future for California \(March 2020\)](#)

<sup>31</sup> [The Virginia Clean Economy Act](#) includes foundations for justly creating green job workforce: (1) directs Department of Mines, Minerals, and Energy (DMME) to allocate 50% of deficiency payment revenues, from utilities that do not meet their renewable portfolio standard targets, to job training programs in Historically Economically Disadvantaged Communities (HEDC), (2) directs the State Corporation Commission (SCC), DMME, and Virginia Environmental Justice Council to develop job training programs and determine the benefits of those programs for HEDC’s, local workers, veterans, and individuals from Virginia’s coal field regions, and (3) directs the phase I utility, in the construction of offshore wind facilities, to develop and submit a workforce development plan to the SCC that outlines job creation and economic development benefits of a project and opportunities to advance the Commonwealth’s workforce and economic development goals; this plan must prioritize benefits to local workers, HEDCs, and veterans.

<sup>32</sup> [Green job creation tax credit](#). Sunset date for tax credit was recently extended to January 1, 2025.

<sup>33</sup> [The Virginia Clean Economy Act](#) defines “historically economically disadvantaged community” as (i) a community in which a majority of the population are people of color or (ii) a low-income geographic area. “Low-income geographic area” is defined as any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

## MEMORANDUM

**TO:** Cynthia Hudson, Chair of the Commission to Examine Racial Inequity in Va. Law  
Andy Block, Vice Chair of the Commission to Examine Racial Inequity in Va. Law

**FROM:** Michael Cassidy, The Commonwealth Institute for Fiscal Analysis

**RE:** Policies to Dismantle Racist Structures in Virginia

**DATE:** June 12, 2020

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This memo offers policy proposals for the consideration of the Commission to Examine Racial Inequity in Virginia Law as you continue your work to dismantle racist structures in Virginia. We outline policies in the following areas:

- Criminal Justice
- Housing
- Health
- Education
- Labor and Wage
- Legislative Review
- Local Government

We are available to answer any questions or provide additional resources to members on the Commission in regards to these policy proposals and greatly appreciate the Commission undertaking this critical work.

### **Criminal Justice**

- Fair Chance Hiring Practices
  - Ban the Box for the Private Sector: In the 2020 session, the General Assembly adopted legislation ([HB 757](#)) to “ban the box” in Virginia and promote fair chance hiring for people with past records. The legislation applied only to public sector jobs. Moving forward, Virginia should consider expanding those protections to private sector jobs, as 13 other states have done.
  - Clean Slate Legislation: In recent years, “clean slate” has emerged as a novel policy tool for fair chance hiring by automatically sealing certain conviction records after a person stays crime-free for a specified period of time. This policy has attracted bipartisan support where it has been adopted.
- Fines and Fees Reforms
  - Fines and fees operate as a regressive tax: they place the heaviest burdens on low-income families and can create poverty traps, especially when an individual’s ability to pay is not considered. Certain fines and fees that are doing more harm than good should be repealed. Lawmakers should also strengthen laws requiring the courts to assess an individual’s ability to pay court debt, including before fines and fees are imposed, and granting judges more authority to waive or reduce amounts owed by people in Virginia with low income.



## Housing

- Eviction Reforms
  - Adopt a policy whereby eviction court records are sealed unless and until there is a final judgement against the tenant, as other other states have done. This reform can help to reduce the collateral consequences of evictions (e.g., damage to credit score, appearance on “tenant screening lists” used by landlords, etc.) that do not actually result in a final judgment.

## Health

- Remove Discriminatory Barriers to Health Care
  - Remove the 40 quarter barrier to Medicaid coverage for immigrant communities. Many legally residing immigrants have been barred from coverage due to a Virginia barrier requiring them to prove a 10 year (40 quarter) work history before being eligible for Medicaid coverage. This barrier was set to be removed July 1, 2020 but funding to do so was unallotted during the reconvened session meaning this rule is still in place. Virginia is currently one of only six states to enact this barrier to Medicaid coverage for immigrants.

## Education

- Facilitate School Integration:
  - Leverage school accreditation process to facilitate zoning integration by adding diversity to the new federal accountability framework in ESSA. To move accountability beyond just test scores, ESSA requires states to choose at least one indicator to measure school quality or student success. Adding a diversity metric can be done by the Board of Education, which has authority to set the state accreditation process. Research has shown that diversity is important for the growth of all students, from resource equity and to personal growth and relationship building. Since diversity is necessary for a quality education and adequate workforce preparation, it should be part of the state accreditation process. This proposal has been put forward in a [study](#) that focused on housing and education segregation in Greater Richmond.
- More Equitable School Finance Reform
  - Strengthen At-Risk Add-On Program: Virginia has a regressive school finance system, where state and local governments spend less per student in the highest poverty divisions than in the wealthiest. This has large impacts on Black and Latinx students who account for almost 80% of students in Virginia’s highest poverty schools. In the 2020 legislation session, the governor proposed and legislators adopted a significant increase to Virginia’s need-based aid program called the At-Risk Add-On. Unfortunately, support for this increase was unallotted in the reconvened session. These funds are needed if Virginia is going to address inequity of resources in Virginia schools.
  - Instructors for English learners (EL): High quality language instruction for EL students, who are largely (91%) students of color, has been shown to improve

academic outcomes and language proficiency. Yet, Virginia only requires one specialized teacher for about every 59 EL students - current budget action would increase to one for every 54 students for the upcoming school year. Other southern states have better staffing standards including North Carolina (1 to 20) and Tennessee (1 to 30). Insufficient staffing and resources is having clear consequences on the students. Pass rates for EL students on the SOL reading tests were a staggering 47.5 percentage points lower than non-EL students on the most recent 2019 tests.

### **Labor and Wage Policy**

- Eliminate Minimum Wage Carve Outs
  - Eliminate carve outs in current minimum wage statutes for agricultural workers, caddies, and people with certain visa statuses. The exemptions that long existed in Virginia minimum wage statute included a number of historically-Black occupations (which were often the only occupations that were open to Black people) and were rooted in the deliberate exclusion of Black occupations from New Deal-era programs and protections. While some of these exemptions were removed during the 2019 and 2020 legislative sessions, farmworkers and select other workers continue to be excluded. Most farmworkers in the United States are people of color.

### **Legislative Review**

- Racial Equity Impact Statements
  - Require racial equity impact statements be attached to legislation: A critical tool for lawmakers, racial equity impact statements would provide an opportunity to study the potential impact of a bill on communities of color prior to its enactment. It is easier to modify proposed legislation than it is to reverse a law. Evaluating potential disparities prior to enacting and implementing a bill will create a proactive, intentional opportunity to advance racial equity.

### **Local Government Limits**

- Eliminate ban on city-initiated annexations (§ 15.2-748)
  - Although some annexations prior to the moratorium and ban were attempts to maintain white-majority city councils, today the annexation ban isolates many majority-Black cities and creates a barrier to more equitable and integrated K12 schools and other public services.
- Reform restrictions on local government revenue options
  - For example, because localities cannot have local income taxes or progressive property taxes, local governments in Virginia are reliant on regressive revenue sources, including fines and fees.
- Eliminate restrictions imposed on localities to provide tax relief to local community members.
  - Currently local tax relief for the real estate and personal property taxes owed by individuals is only available to select groups, like elderly and disabled property

owners, as well as certain veterans, their surviving spouses, and surviving spouses of soldiers killed in action.

Please don't hesitate to get in touch if you have any questions or would like additional information. You can reach me at [michael@thecommonwealthinstitute.org](mailto:michael@thecommonwealthinstitute.org).

**FOR IMMEDIATE RELEASE**

June 24, 2020

**Contact:** Adele McClure, Executive Director

**Phone:** (804) 876-0221

**The Virginia Legislative Black Caucus Priorities for Special Session**

The Commonwealth is past the point for studies on policing and law enforcement—immediate action must be taken to eliminate law enforcement abuse, prevent and punish racist behaviors, weed out institutional discrimination, and increase accountability at all levels of law enforcement. The country and the Commonwealth stand at the threshold of substantial and necessary social and political change. As leaders, the next steps are to ensure that there is a bold swing towards greater racial and social justice and change across Virginia.

The people have taken to the streets for weeks to raise their voices in protest to demand drastic change. Across the Commonwealth, there have been calls to reallocate funding from large law enforcement budgets towards critical areas in communities. There have been calls for greater accountability towards law enforcement who engage in violent, abusive, or unlawful behaviors. And on a larger scale, this moment is calling on leaders to combat institutional racism and societal discrimination that exists in the criminal justice system, economic structures, housing, education, in healthcare, mental health, in environmental policy, and many other areas.

For decades, members of the Virginia Legislative Black Caucus (VLBC) have been working to break down systems of oppression, including working to reframe the ways that State government approaches public safety. The pressure created by the protests has generated a larger public shift and facilitated avenues for such changes to be made in new and creative ways. Today, the VLBC announces its policy priorities and proposals.

**VLBC Priorities**

This Special Session the VLBC plans to introduce legislation to:

**Address & Combat Racism Directly by:**

- Declaring Racism a Public Health Crisis in the Commonwealth of Virginia
- Uncovering Racial Disparities in all Areas of Policy & Creating Solutions to Bridge the Gaps
- Expanding Hate Crimes to Include False 911 Calls Based on Race
- Requiring Courts to Publish Racial and Other Demographic Data of all Low-level Offenses

**Hold Police Accountable, Strengthen Regulation, & Improve Transparency by:**

- Creating a Civilian Review Board with Subpoena Power
- Ending Qualified Immunity & Making Changes to Sovereign Immunity
- Establishing a Statewide Officer Database
- Standardizing and Reforming Police Administration, Training, and Accountability
- Expanding Police Decertification Criteria
- Expanding the Use of Body Cams
- Requiring Independent Investigations for All Police-Involved Shootings/Deaths

**Prevent Law Enforcement Excessive Use of Force by:**

- Defining and Restricting Excessive Use of Force
- Banning the Use of Chokeholds
- Restricting the Use of Tear Gas and Militarization Tactics and Weapons Against Civilians
- Passing “Breonna’s Law” to End No-Knock Warrants

**Replace Law Enforcement’s Role in Certain Areas with Trained Specialists by:**

- Implementing the “Marcus Alert” to Require Behavioral/Mental Health Professionals to Respond to those thought to be having Mental Health Crises
- DIVESTING from Large Law Enforcement Budgets & INVESTING More in Communities
- Reducing SRO Presence in Schools & Replacing them with Mental Health Professionals

**Continue the Fight for Criminal Justice Reform by:**

- Implementing Automatic Expungement
- Reinstating Parole
- Passing Cash Bail Reform
- Increasing Good Behavior Sentence Credits
- Legalizing Marijuana

**Pass COVID-19 Relief & Protections by:**

- Expanding Protections Related to Housing & Evictions
- Providing Rent and Mortgage Relief
- Classifying Frontline Workers as Essential Workers
- Requiring Hazard Pay and PPE for Essential Workers
- Guaranteeing Paid Sick Leave

And the work does not stop here. In the coming weeks, VLBC members will be hosting events to engage community members to receive feedback and input on the agenda leading up to the Special Session. The caucus will continue to work with the community to ensure the voices of the people are heard, continue to incorporate community input, and continue to work with the community to pursue these goals. The VLBC understands this evolving list as a part of the work needed to ensure that Black lives truly matter in our Commonwealth.

##

*The Virginia Legislative Black Caucus (VLBC) is made up of 23 members in the Virginia General Assembly. VLBC is committed to improving the economic, educational, political, and social conditions of African Americans and underrepresented groups in Virginia. A vital part of VLBC’s mission is to raise the consciousness of other groups to the contributions made by African Americans to the Commonwealth and the Nation.*

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# VIRGINIA LEGISLATIVE BLACK CAUCUS ANNOUNCES ITS 2020 LEGISLATIVE AGENDA: A RESTORATIVE AND EQUITABLE AGENDA

Written on 01/08/2020  
Adele McClure

 SHARE

 TWEET



## FOR IMMEDIATE RELEASE

January 8, 2020

**Contact:** Adele McClure, Executive Director

**Phone:** (804) 876-0221

**E-Mail:** vlbc10@gmail.com

### **Virginia Legislative Black Caucus Announces its 2020 Legislative Agenda:**

#### A Restorative and Equitable Agenda

**Richmond, VA**– This 2020 Legislative Session the Virginia Legislative Black Caucus (VLBC) is supporting a comprehensive and reform-minded legislative agenda with restorative and equitable aims. This agenda comprises 8 key priority areas: Civil Rights & Democracy For All, Criminal Justice Reform, Economic Opportunity & Security, Housing, Healthcare, Education & Ending the School-to-Prison Pipeline, Environmental Justice, and Public Safety.

The VLBC, at 23-members strong, proudly represents the diverse faces of Virginia in every corner of the Commonwealth on a number of issues. Decade after decade, the Caucus works to improve the economic, educational, political, and social conditions of African Americans and underrepresented groups in Virginia. All Virginians, regardless of legislative district, age, race, gender, and socioeconomic status, deserve the equitable opportunity to live in a commonwealth that helps and does not hinder their ability to prosper. We accomplish equity of opportunity by breaking down barriers to education, economic security, justice, and democracy.

This upcoming 2020 General Assembly Session presents a potent opportunity to achieve bold, generational change that benefits not only Black Virginians and Virginians from other underrepresented communities -- but change that benefits all Virginians. Building on our advocacy efforts for a more equitable budget (see previous press release on this [here](#)), the Caucus' legislative agenda supports a holistic approach to the problems facing our community and the Commonwealth, recognizing that all of these issues are interconnected, with solutions for one issue deeply tied to solutions for other issues.

**For the 2020 General Assembly Session, VLBC will advocate for the following priorities:**

**Civil Rights & Democracy For All:** As we commemorate the 150<sup>th</sup> anniversary of the ratification of the 15<sup>th</sup> Amendment and the 55<sup>th</sup> anniversary of the Voting Rights Act, VLBC continues to fight for a Virginia where everyone's rights are protected, where everyone has equal access to the ballot box, and where electoral districts are drawn fairly. We will strongly oppose any attempts at voter suppression, discrimination, and inequality. We support expanding and protecting access to voting rights, ratifying the Equal Rights Amendment, and removing inequity and discrimination remaining in Virginia Law. We also support equitable redistricting that acknowledges the history of voter suppression against Black and minority communities and seeks to end racial gerrymandering that diminishes the power of Black votes.

**Criminal Justice Reform:** VLBC believes all Virginians should be protected equally under the law and should receive equal access to just and fair court proceedings. Poverty should not be criminalized, and our communities should be free from mass incarceration. We therefore support comprehensive criminal justice reform, including reforming pretrial services, cash bail, and the criminal discovery process; banning the suspension of Driver's Licenses for non-driving offenses; reinstating and expanding parole; and allowing the expungement, in certain circumstances, of misdemeanor and nonviolent felony convictions for certain offenses. We also support building on the Caucus' previous work by further increasing the Felony Larceny Threshold, reforming the Commonwealth's marijuana laws, and commuting related sentences. VLBC also believes in supporting avenues for reform and success for returning citizens

VIRGINIA LEGISLATIVE BLACK CAUCUS ANNOUNCES ITS 2020 LEGISLATIVE AGENDA: A RE  SHARE  TW

**Economic Opportunity & Security:** VLBC advocates for a Virginia where everyone has the tools and resources needed to support their families and not only make ends meet, but also to thrive in a prosperous economy. This is why we support empowering workers through raising the minimum wage to \$15 an hour and removing certain minimum wage exemptions, repealing the ban on project labor agreements, prohibiting discrimination against pregnant workers, introducing paid medical and family leave, and prohibiting retaliation against employees who pursue collecting unpaid wages. VLBC also believes in supporting all Virginians by relieving tax burdens on low and middle income individuals and families, changing the definition of "small business," and making Virginia's Earned Income and Tax Credit fully refundable. We also support measures to protect Virginians as borrowers, such as eliminating predatory lending and establishing a student loan borrower's Bill of Rights. VLBC further believes in ending discrimination in and eliminating barriers to housing and employment in Virginia, through banning discrimination in employment and housing based on sexual orientation and gender identity, prohibiting employment discrimination based on hair style and texture, and removing salary history questions for public sector job applicants.

**Housing:** VLBC believes in increasing the supply of affordable housing, expanding access to housing affordability for more Virginians, and introducing further protections for and eliminating barriers to housing in the Commonwealth. Housing is a human right, and housing stability is strongly correlated with the well-being of communities, families, and individuals. As such, we support increasing funding for the Housing Trust Fund, the Eviction Prevention and Diversion Pilot Program, and relevant Legal Aid funding. We will also continue our work in addressing the eviction crisis and strengthening tenant rights. In addition, VLBC supports further prohibiting discrimination in housing against individuals based on their sexual orientation and gender identity, their status as domestic violence victims, and their source of income.

**Healthcare:** VLBC believes in expanding access to affordable and quality healthcare, encouraging healthy communities, and supporting better health outcomes for all Virginians. We therefore strongly support legislation further reforming our healthcare system, such as banning surprise billing, additionally expanding mental health services, and lowering prescription drug costs. VLBC believes in expanding Medicaid coverage for pregnant women, dental care, and eyecare, as well as removing Medicaid work requirements. We also strongly support removing barriers to reproductive health access and introducing various measures to improve maternal health and address racial disparities in maternal health.

**Education & Ending the School-To-Prison Pipeline:** VLBC seeks a Virginia where all students have access to productive, safe learning environments with adequate supports and resources for success. In pursuit of this, we strongly support fully funding our K-12 education needs, addressing inequity in the education system, increasing pay and support to education professionals, reforming student-staff quotas, increasing early access to quality education, and improving educational infrastructure. VLBC also favors providing in-state tuition regardless of immigration status. In addition, VLBC supports increasing diversity in the education workforce, increasing funding for Virginia HBCUs, and increasing bias training and accountability to education staff (including SROs). We will continue our work in ending the school-to-prison pipeline through such measures as eliminating school-based disorderly conduct charges, returning discretion to administrators on when to refer certain incidents to law enforcement, reducing biases in school dress codes, and increasing funding to At-Risk Programs, especially those in more economically depressed communities.

**Environmental Justice:** VLBC recognizes the devastating impacts climate change has on our communities. Environmental destruction disproportionately affects communities of color and other vulnerable communities. We believe that environmental justice is of paramount importance. Therefore, VLBC supports removing barriers to expanding renewable energy sources, banning off-shore oil and gas drilling, reducing greenhouse gas emissions, strengthening clean air and water protections, and introducing a mandatory clean energy standard. We further support protecting Virginia consumers and citizens through implementing electric rate regulatory reform to combat high energy bills and establishing an Environmental Justice Council. VLBC also believes in better educating Virginia's youth on the environment through setting education standards on climate change curriculum.

**Public Safety:** VLBC strives for a safe and secure Virginia for all. We acknowledge the trauma caused in our communities when Virginians live in fear of preventable harm, violence, and death. As we work on gun violence prevention, we are committed to comprehensive measures that address the everyday gun violence that many of our districts experience. We will also continue to support legislation that prevents domestic violence that disproportionately impacts our communities, including efforts to provide further services and support to survivors of domestic violence. VLBC thus strongly supports establishing a Domestic Violence Prevention fund, prohibiting individuals subject to a Final Protective Order from possessing firearms, establishing an Extreme-Risk Protective Order, and implementing red flag laws that restrict firearm access for those with restraining orders or violent offense records. In addition, we further support a number of gun violence prevention measures, including requiring the reporting of lost or stolen firearms, instituting universal background checks for all gun purchases and transfers, limiting handgun purchases to one gun a month, and expanding local jurisdictions' ability to regulate firearms.

##

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| Twitter/Facebook: @VABlackCaucus | Phone: 804-876-0221

 **VLBC 2020 Legislative Agenda**



To: M. Norman Oliver, MD, MA; State Health Commissioner

From: Melody Armstrong, MPA, Chair, Advisory Council on Health Disparity & Health Equity (ACHDHE), Virginia Department of Health (VDH)

Date: January 14, 2020

Subject: ACHDHE Recommendation for Program Enhancement:

In response to the October 8, 2019 presentation on “Virginia’s Maternal Child Health Program,” presented to the ACHDHE by Carla Hegwood, Shannon Pursell, and Owshola Ogunleye, we respectfully present the following recommendations in two categories, community engagement and programing strategies:

**Community Engagement Strategies:**

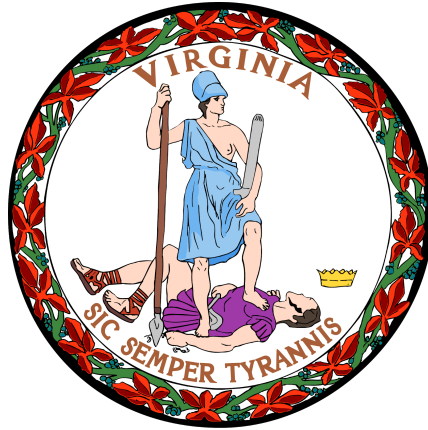
- The Virginia Department of Health (VDH) develops more gubernatorial and/or cabinet level inter-agency engagement efforts with internal and external stakeholder engagement to directly and collaboratively address the social determinants of health associated with maternal child health outcomes.
- The Virginia Department of Health (VDH) continue to strategically implement Virginia’s Plan for Well-Being to address barriers around maternal mortality and institute strong and effective coalitions that include community leaders across additional public, private, and the nonprofit (faith-based) sectors in Virginia.
- The Virginia Department of Health (VDH) at a future meeting shares with the ACHDHE other innovative ways state legislators can be engaged to address maternal mortality and as well be informed of the need to conduct research to assist a robust leadership decision for improved maternal health outcomes.

**VDH Programing Strategies:**

- The Virginia Department of Health (VDH) makes available community outreach and awareness data sources that outline the root causes of maternal mortality such as safe and decent housing, income inequality, and family leave policies. Other elements of data sources may include underlying/preexisting health conditions, affordable access to healthy foods, and transportation to healthcare. These elements could be included in the program plans and also housed within the Health Opportunity Index as part of the growing **ALICE** (Asset, Limited, Income, Constrained, Employed) community.
- The Virginia Department of Health (VDH) includes in its maternal mortality program, measurable metrics on parents with higher Adverse Childhood Experiences (ACE) scores or disabilities given that “extra action of chronic disease” could present additional risk factors.
- That the Virginia Department of Health (VDH) supports the co-location of services and early health interventions for infants and toddlers (where possible).
- The Virginia Department of Health (VDH) provide to the ACHDHE a follow-up presentation on Title V initiatives including updated data specific to people with special needs in Virginia.
- The Virginia Department of Health, Office of Health Equity adopts the October 8, 2019 meeting format that included an engaged post presentation detailed discussion session.

Signed: *Melody Armstrong*

Melody Armstrong, MPA, & Chair, ACHDHE



*Commonwealth of Virginia*  
*Office of Governor Ralph S. Northam*

# **VIRGINIA COUNCIL ON ENVIRONMENTAL JUSTICE**

**2020 ANNUAL REPORT**  
**JULY 15, 2020**

**Report prepared by members of the Virginia Council on Environmental Justice**

## APPENDIX C: Recommendations 20-22 Background Information

The following section details recommended strategies and policies to ensure a more sustainable, healthier, and equitable agricultural system.

1. **Land Access** - *Fostering a new generation of culturally diverse farmers through equitable and inclusive practices.*

Innovative programs can transform the historical discrimination of government policies and agency practices against socially disadvantaged farmers. Equitable policies must limit land consolidation by large-scale corporate agriculture and investment funds in order to make more farmland available to beginning and socially-disadvantaged farmers who plan to farm sustainably. The rights of landowners to set prices and influence land management must be integrated by the need to establish farmers who practice sustainable agriculture.<sup>61</sup>

### **Policy recommendations:**

1. Create educational and legal/grant assistance programs to address heirs' property issues and loss of black farmland and indigenous land.
2. Appoint a *Land Commission* that includes black, hispanic, and indigenous members to conduct a periodic statewide land tenure study. This will provide a holistic perspective on the socio-economic, political, and market-based factors limiting equitable access to land and provide policy recommendations to address these inequities. (Consider state financial tools that go to farmers)

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<sup>61</sup> Meleiza Figueroa and Leah Penniman, Land Access for Beginning and Disadvantaged Farmers, Green New Deal Policy Series: Food and Agriculture, pg.8, March 2020.

3. Study state own lands that have the potential for agriculture and explore potential state acreage to be converted to community land trusts for farmers from traditionally marginalized and exploited groups. Establish state and federal partnerships for land banks of properties to make available below market rate to new culturally diverse farmer cooperatives under special sustainable agriculture covenants. In addition, explore state owned land to be converted to community land trusts for farmers from traditionally marginalized and exploited groups. *(Example legislation: California AB936 - REEAL Act of 2019).*
4. Limit land investment by large corporations and lower barriers to entry for new farmers from disadvantaged communities. *(Example legislation: North Dakota Cent. Code § 10-06.1-01 to -25, recently upheld in state court; South Dakota Codified Law 47-9A - Corporate Farming Restrictions)*
5. The state offers various resources for those looking to start a farm, but very few grant/loan opportunities. Create state grant and loan guarantee programs to strengthen land access rights for culturally diverse and beginning farmers, as well as help meet marketing challenges faced by small farmers and rural communities. Examples include strengthening/establishing local markets, Community-Supported Agriculture (CSA) networks between producers and consumers, and providing incentives for cooperative business development.

**II. Regenerative and Sustainable Agriculture - *Providing training and technical assistance to support culturally diverse farmers.***

There are many obstacles for new and current farmers that want to establish operations based on agroecology and regenerative agriculture. USDA Natural Resource Conservation Service programs exist with soil experts but receive very little funding to train farmers.<sup>62</sup> Additionally, the current crop insurance programs and subsidy programs support commodity crop production instead of food production and ecological restoration. Increasing investments in state conservation programs, and supply management programs centered on ensuring that markets provide fair prices for farmers are critical for the family farming sector. Reforming current federal farming subsidy programs to prioritize independent, family-scale producers and eliminate loopholes that allow corporations and large-scale absentee landowners to receive the majority of farm program benefits are also part of this solution. Innovative programs must both ensure that a new generation of small-scale and mid-scale farmers can make a living feeding their communities, nurturing land and watershed health, and addressing the climate crisis, while also addressing the unprecedented levels of corporate control and concentration that are pushing farmers off the land.<sup>63</sup>

**Policy recommendations:**

1. Develop and provide anti-oppression training for state agriculture departments and support existing community education groups that offer culturally diverse approaches.
2. Create a *Land Commission* that includes black, hispanic, women, and indigenous members who can work closely with the Virginia Department of Agriculture and

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<sup>62</sup> Horst, Megan, and Amy Marion. "Racial, Ethnic and Gender Inequities in Farmland Ownership and Farming in the U.S." *Agriculture and Human Values*, pp. 1–16. October 2018.

<sup>63</sup> Meleiza Figueroa and Leah Penniman, *Land Access for Beginning and Disadvantaged Farmers*, Green New Deal Policy Series: Food and Agriculture, pg.9, March 2020.

Consumer Services and VSU's Small Farm Outreach program, to increase access to federal farm loan and price support programs for beginning farmers, racial and ethnic minority farmers and women producers. This would be designed to increase access to value-added, direct sale, organic, and specialty crop operations, agricultural youth organizations needing financial assistance for income-producing, educational, and agricultural projects, urban farmers and roof-top producers, and operations using alternative farming methods such as hydroponics, aeroponics, vertical farming, and freight container farming.

3. Increase funding to state conservation programs such as the Virginia Cooperative Extension, the Virginia Department of Conservation and Recreation, and the Agricultural Stewardship program to increase on-ground staff and technical assistance capacity to train in the principles of agroecology targeting disadvantaged farmers. Invest in and adapt from existing programs such as Future Harvest CASA's Field School and Farm School NYC for examples of culturally diverse agricultural training.<https://www.futureharvestcasa.org/foodshed-field-school> and <http://www.farmschoolnyc.org/>. Additional information can be found in *Data for Progress' Regenerative Farming* document.
4. Increase funding in upcoming years for Virginia House Bill 1509 (McQuinn) Virginia Food Access and Investment Program and Fund.
5. Earmark funds for down-payment assistance and financial support grants for new farms practicing sustainable agriculture through the first 10 years of operation.

### **III.) Farmer Administration - *Promoting racial justice in farm ownership, operation, and income.***

White people own 97% of all Virginia farmland and thus generate nearly all farm-related income from land ownership.<sup>64</sup> Black, hispanic, and indigenous farmers, especially those renting land, can face discrimination in a system that provides legal and social power to landowners.<sup>65</sup> Farmers that are vulnerable, because of their race, ethnicity, legal status, or farming history are particularly at risk of predatory lease arrangements. Creating new recourse and oversight for farmers who experience discrimination and state immigration reform is vital in providing a pathway for beginning and socially disadvantaged farmers.<sup>66</sup>

#### **Policy recommendations:**

1. Create an Office of Equity at the Virginia Department of Agriculture and Consumer Services (VDACS) with robust anti-discrimination guidelines to review policy proposals and mandate black, hispanic, and indigenous participation on agricultural decision making boards.
2. Empower the new office to legally address claims of discrimination in agricultural credit, land credit & markets; conduct oversight of VDACS practices. (Model: National Labor Relations Board)

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<sup>64</sup> 2017 Census for Agriculture: Race/Ethnicity/Gender Profile.

<sup>65</sup> Federation of Southern Cooperatives/ Land Assistance Fund. Land Loss Trends Among Socially Disadvantaged Farmers and Ranchers in the Black Belt Region From 1969 to 2018. Report submitted to Socially Disadvantaged Farmers and Ranchers Policy Research Center, 2018. <https://bit.ly/2qNTE81>

<sup>66</sup> Meleiza Figueroa and Leah Penniman, Land Access for Beginning and Disadvantaged Farmers, Green New Deal Policy Series: Food and Agriculture, pg.10, March 2020.

3. Examine the role of heirs property in the loss of land for black farmers and Virginia tribal communities, and offer education and technical assistance for families to retain property.
4. Support comprehensive immigration reform that provides pathways to citizenship. The proposed “blue card” legislation in California provides a template for a bare minimum approach that would protect farm tenants who are currently undocumented.<sup>67</sup>
5. Examine and repeal any Jim Crow era legislation still on the Virginia books related to farming and land use/rights for farmers and tenant farmers. Explore and develop decolonizing land programs that return to indigenous sovereignty.

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<sup>67</sup> Meleiza Figueroa and Leah Penniman, Land Access for Beginning and Disadvantaged Farmers, Green New Deal Policy Series: Food and Agriculture, pg. 10, March 2020.





## Virginia Department of Environmental Quality Environmental Justice Initiative

October 16, 2020

### EXECUTIVE SUMMARY

The Virginia Department of Environmental Quality (DEQ) and its consultants have completed an 18-month process to create a comprehensive [Environmental Justice Study](#) to identify how to best integrate environmental justice into the work of the agency. One theme was communicated loud and clear: environmental justice is a *process*. This document outlines the agency's next steps in that open and transparent process. We invite everyone from across the Commonwealth to engage with us as we move forward.

We are grateful to our consultants from [Skeo Solutions and the Metropolitan Group](#) for their work on the study and to all the Virginians who participated in this undertaking. The final Study contains recommendations across a number of categories. Embedded within these recommendations is the recognition that success in advancing environmental justice through DEQ's work will depend less on checking off individual recommendations and more on the process we put in place to build trust, share understanding, and align values among staff, stakeholders and partners. Our work to incorporate environmental justice into the things we do will be an ongoing process, one that is inclusive, collaborative and transparent by design.

Responding to the consultant's recommendations will take time, and it should be noted that many of the recommendations will require increased resources, staffing or even new legislative authority for the agency. Still others will require community involvement and collaboration to be sure we get it right. The agency is committed to the process and will make every investment possible within our capacity to ensure success.

That is why the agency will move quickly to act on the recommendation to create an Office of Environmental Justice and hire an Environmental Justice Director. This process will start immediately. A key deliverable for DEQ's new Environmental Justice Director will be to develop, with community input, an Environmental Justice action plan that builds on this Environmental Justice Study by creating an implementation plan for the recommendations.

However, this important effort will not fall on a few individuals within DEQ. The Environmental Justice initiative will be a statewide effort, supported by all staff within DEQ's Central Office and six regional offices, with the full engagement of the agency's leadership team.

The actions outlined below include immediate steps the agency will take by the end of the year to address environmental justice and position the agency to deliver on the Study recommendations through next year's action plan, as well as focus areas for the year ahead.

For ongoing status updates on this important environmental justice work at DEQ, please visit our website: [www.DEQ.Virginia.gov/ConnectWithDEQ/EnvironmentalJustice.aspx](http://www.DEQ.Virginia.gov/ConnectWithDEQ/EnvironmentalJustice.aspx).

## Categories of Actions:

- **Authority:** Strengthen and clarify legal and statutory authority to integrate environmental justice into DEQ programs.
- **Leadership:** Foster subject matter understanding and cohesive support for environmental justice among DEQ leadership.
- **Intergovernmental Coordination:** Coordinate with local and state government agencies to ensure alignment with environmental justice policies.
- **Staff Capacity, Guidance and Tools:** Increase staff clarity and capacity to effectively support environmental justice and apply environmental justice considerations throughout DEQ programs, build the capacity of communities to participate meaningfully in environmental decision-making, provide guidance and tools to ensure clear and consistent implementation of adopted policies and practices and develop tools to provide more transparent, accessible and real-time environmental information to the public.
- **Community Relationships, Engagement and Capacity:** Build productive relationships with environmental justice and other adversely impacted communities and proactively and authentically engage communities on issues and decision-making that could potentially affect their health and quality of life.

## IMMEDIATE

### Authority:

- New laws passed by the General Assembly and signed by the Governor established that it is the policy of the Commonwealth to advance environmental justice. Further, DEQ's statement of policy (§10.1-1183, Code of Virginia) was amended to make environmental justice an explicit part of DEQ's mission<sup>1, 2</sup>
- DEQ will work with the Office of the Secretary of Natural Resources to evaluate the potential for future legislation.
- DEQ will meet with the environmental section of the Office of the Attorney General to discuss environmental justice and will meet with them regularly going forward as issues evolve and develop.

### Leadership:

- Create and establish an Office of Environmental Justice led by an Environmental Justice Director who reports directly to the DEQ Director. The Environmental Justice Director will create and implement an Environmental Justice Action Plan for the Department that builds on these immediate actions and is responsive to the Environmental Justice Study.<sup>3</sup>

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<sup>1</sup> DEQ's new statement of policy reads, in part: "to further environmental justice and enhance public participation in the regulatory and permitting processes."

<sup>2</sup> Pursuant Environmental Justice Study recommendations 1A and 2B.

<sup>3</sup> Pursuant to Environmental Justice Study Recommendation 2A and 2B.

### **Intergovernmental Coordination:**

- DEQ Director will remain committed and involved in the Interagency Environmental Justice Working Group and provide subject-matter expertise and best practices to other state agencies while leading by example.<sup>4</sup>
- The DEQ Director will contact local government to begin a regular dialogue about environmental justice – including discussions regarding local siting review and approvals and how intergovernmental roles and responsibilities in the permitting process may relate to environmental justice considerations and DEQ’s regulatory authority.<sup>5</sup>
- Coordinate with the Virginia Economic Development Partnership to identify a process for early identification of potential environmental justice issues and outreach to potentially affected communities.<sup>6</sup>

### **Staff Capacity, Guidance and Tools:**

- Launch a new DEQ website in December which will facilitate greater usability among a variety of audiences. The redesigned website will reflect the combination of compelling theme and effective, straightforward navigation to create a user experience that is user-friendly, intuitive, helpful and smart. The website will be designed to showcase DEQ’s mission while offering easy access to projects, permits, policies, news, research and help navigating Virginia’s environmental network.<sup>7</sup>
- Through the Tidewater Air Monitoring and Evaluation (TAME) project, DEQ will deploy air quality monitors near the Lambert’s Point community in Norfolk and the Southeast community in Newport News to measure air toxics and particulate pollution from coal dust. The Virginia Department of Health will conduct a health risk assessment to help community members understand the risks and drive future plans to address the health consequences of air pollution.
- The TAME project was preceded by another air toxics study DEQ conducted from 2006-2010 in Hopewell. The study measured community exposure to air toxics, identified “hot spots,” conducted a health risk assessment, and provided information to evaluate future emission control programs.

### **Community Relationships, Engagement and Capacity:**

- Continue regular meetings with DEQ senior leadership and members of the Virginia Environmental Justice Collaborative and other environmental advocates. DEQ will continue these ongoing meetings and seek input from the Collaborative for additional needed outreach.<sup>8</sup>
- The DEQ Director will contact leaders from Virginia’s Tribal communities and seek their input for additional outreach.<sup>9</sup>

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<sup>4</sup> Pursuant to Environmental Justice Study Recommendation 2G.

<sup>5</sup> Pursuant to Environmental Justice Study Recommendation 9A.

<sup>6</sup> Pursuant to Environmental Justice Study Recommendation 9A.

<sup>7</sup> Pursuant to Environmental Justice Study Recommendation 4A.

<sup>8</sup> Pursuant to Environmental Justice Study Recommendation 6C.

<sup>9</sup> Pursuant to Environmental Justice Study Recommendation 6C.

## **INITIAL 2021 FOCUS AREAS**

- Develop an Environmental Justice Action Plan and incorporate environmental justice into DEQ's strategic planning process. The next revision of the agency's strategic plan will begin in Spring of 2021 for the 2022-2024 Strategic Plan.
- Address increasing diversity and representation in agency management and staff in association with ongoing DHRM's guidance.
- Develop and execute internal environmental justice training program.
- Establish local government and other stakeholder workgroups to facilitate engagement in environmental justice issues.
- Continue senior leadership engagement with the Virginia Environmental Justice Collaborative and other community representatives.