
Environment Committee

HB 2312

Brief Description: Involving communities in environmental decision making.

Sponsors: Representatives Pollet, Fitzgibbon, Moscoso, Farrell, Ryu, Santos, Freeman, Walkinshaw, Bergquist, Goodman, Tarleton and Roberts.

Brief Summary of Bill

- Directs the Department of Ecology to identify highly impacted communities which have disproportionate public health challenges, high unemployment, low median income, or a high percentage of foreign-born, minority, or low English proficiency residents.
- Gives the Department of Ecology authority to require parties to complete supplemental environmental projects in conjunction with the settlement of violations of environmental permits in highly impacted communities.
- Directs state agencies to integrate environmental justice into their agency missions, to the extent practical.

Hearing Date: 1/24/14

Staff: Jacob Lipson (786-7196).

Background:

Environmental Justice.

The U.S. Environmental Protection Agency (EPA) defines environmental justice as the fair treatment and equal opportunity for all people under environmental laws, regulations, and policies, regardless of race, income, color, or national origin. Federal activity around environmental justice derives from at least two primary authorities:

- Title VI of the Civil Rights Act of 1964 prohibits discrimination in all federally-assisted programs, on the grounds of race, color, or national origin.

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- In 1994 President Clinton signed Executive Order 12898, which directed federal agencies to make achieving environmental justice part of their agency missions by identifying and addressing disproportionately high or adverse environmental or human health effects of agency programs, policies, and activities on minority and low-income populations.

At the state level, the Department of Ecology (DOE) has developed a checklist for internal use to facilitate the incorporation of environmental justice considerations into agency decisions.

Clean Air Act.

There are several types of air emission permits issued in Washington. The federal Clean Air Act requires all states to have statewide operating permit programs for businesses and industries that are the largest sources of air pollution.

The DOE, the Energy Facility Site Evaluation Council, and any of seven local air quality authorities in Washington, have received the EPA's approval to administer Washington's air operating permit program. Prior to establishing or modifying a new source or emissions unit that would be required to register with or obtain an operating permit from the DOE or a local air authority, a Notice of Construction (NOC) permit application must be filed with the applicable agency and must be approved following a New Source Review. In addition, the DOE is also delegated the authority to issue federal Prevention of Significant Deterioration (PSD) permits for major sources of industrial air emissions.

Clean Water Act.

The federal Clean Water Act sets effluent-based limitations on pollutant discharges into navigable waters. The EPA has delegated federal Clean Water Act authority to the DOE, which issues a variety of permits under state and federal laws that stipulate conditions for discharges into state waters. Water discharge permits can either be an individual permit issued to a single regulated facility, or a general permit for a group of similar dischargers at diverse locations.

Hazardous Waste Management.

In implementing the state Hazardous Waste Management law and the federal Resource Conservation and Recovery Act, the DOE requires dangerous waste generators to properly dispose of waste at approved dangerous waste management sites and facilities. Facilities that treat, store, dispose, transfer, or recycle dangerous wastes must apply for a dangerous waste permit. Currently, there are fewer than 30 active permits held by facilities which treat, store or dispose of dangerous waste in Washington. Dangerous waste generators must follow certain rules related to their use and temporary storage of wastes, but need not hold a permit unless they store dangerous wastes for longer than 90 days.

The Model Toxics Control Act.

The state Model Toxics Control Act (MTCA) establishes procedures for requiring potentially liable persons to clean up hazardous waste sites. If a potentially liable person associated with a site is identified, the DOE oversees, rather than directly conducts, the site's cleanup activity. The

DOE may issue orders that liable persons perform site cleanup actions under certain circumstances.

Supplemental Environmental Projects.

The DOE recovers monetary penalties for violations of air, water, and hazardous waste management permits, and for violations of MTCA orders. The amount of the penalties violators are liable for differs by permit type. Penalty amounts are appealable to the Pollution Control Hearings Board and in state court. In cases referred to it for enforcement actions, the Office of the Attorney General may act on behalf of the DOE to recover monetary penalties.

In conjunction with the settlement of these enforcement actions, the DOE or Attorney General sometimes enters into settlements which, in addition to or instead of recovering penalties, direct the violator to perform a supplemental environmental project (SEP).

Summary of Bill:

Identification of Highly Impacted Communities.

The Department of Ecology (DOE) is directed, within existing resources, to identify and maintain a list of highly impacted communities. The list of highly impacted communities must include consideration of, at minimum, areas with:

- unemployment rates 20 percent above the state average;
- a median household income of less than 75 percent of the state median household income;
- disproportionate public health challenges; and
- a significant percentage of residents who are foreign-born, minority, or lack English proficiency.

The DOE is also authorized to use existing scientific and public health data in determining a highly impacted community.

Supplemental Environmental Projects.

The DOE is authorized to require the performance of a SEP by a violator in conjunction with the settlement of certain clean air, clean water, hazardous waste and MTCA enforcement actions in highly impacted communities. Settlements which include SEPs are only authorized if they are lodged with a court or a quasi-judicial body. SEPs must take place within or primarily benefit the highly impacted community, and meet additional specifications related to the scope, timeline, and purpose of the project. The DOE must consider the cost and benefits of the SEP in determining the amount of penalties recovered in the settlement of enforcement actions related to an environmental permit violation. The DOE must also seek to involve the highly impacted community in developing the SEP.

Other Provisions.

State agencies are directed to make achieving environmental justice part of their agency missions.

Washington residents are declared to have a right to participate meaningfully and receive fair treatment during the implementation and enforcement of environmental rules, laws, and policies, regardless of their race, color, culture, national origin, or income level. Individuals are also declared to have a right to breathe, eat, drink, work, and recreate without risking their health due to environmental degradation.

The DOE is given rulemaking authority.

Appropriation: None.

Fiscal Note: Requested on January 15, 2014.

Effective Date: The bill takes effect on January 1, 2015.