
HOUSE BILL 2312

State of Washington

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By Representatives Pollet, Fitzgibbon, Moscoso, Farrell, Ryu, Santos, Freeman, Walkinshaw, Bergquist, Goodman, Tarleton, and Roberts

Read first time 01/15/14. Referred to Committee on Environment.

1 AN ACT Relating to involving communities in environmental decision
2 making; adding a new chapter to Title 70 RCW; creating a new section;
3 and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that every
6 individual in the state has a fundamental right to a healthful
7 environment, and a right to the pursuit of commonplace activities such
8 as breathing, drinking, eating, working, and recreating without risking
9 their health as a result of environmental degradation. There are
10 vulnerable communities throughout the state that bear a
11 disproportionate burden of pollution problems. Residents of these
12 communities face higher rates of cancer and other life-threatening
13 public health problems. All residents of the state, regardless of
14 race, color, culture, national origin, or income level, have a right to
15 participate meaningfully and receive fair treatment during the
16 implementation and enforcement of environmental laws, rules, and
17 policies. The improvement of environmental law and policy decision-
18 making processes helps state agencies meet their responsibility to

1 comply with 42 U.S.C. Sec. 2000(d). These important objectives and
2 responsibilities are satisfied by the passage of this act.

3 (2) Pursuant to the policy declared in this section, and consistent
4 with federal executive order 12898, state agencies shall, to the extent
5 practical, make achieving environmental justice part of their mission
6 by identifying and addressing, as appropriate, the disproportionately
7 high and adverse human health or environmental effects of their
8 programs, policies, and activities on minority populations and low-
9 income populations in Washington state.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Authority" has the same meaning as defined in RCW 70.94.030.

13 (2) "Department" means the department of ecology.

14 (3) "Highly impacted community" means a community that the
15 department has determined is likely to bear a disproportionate burden
16 of public health risks from environmental pollution.

17 (4) "Person" has the same meaning as defined in RCW 90.48.020.

18 (5) "Supplemental environmental project" means an environmentally
19 beneficial project that a person agrees to undertake in settlement of
20 an enforcement action, but which the person is not otherwise obligated
21 to perform.

22 NEW SECTION. **Sec. 3.** (1) Within available funds, the department
23 must identify and maintain a list of highly impacted communities in
24 this state.

25 (2) In identifying highly impacted communities, the department
26 shall consider, at minimum, including areas that have any of the
27 following characteristics:

28 (a) Unemployment rates more than twenty percent above the state
29 average;

30 (b) Median household income that is less than seventy-five percent
31 of the state median household income;

32 (c) Disproportionate public health challenges, as demonstrated by
33 scientific or public health data; or

34 (d) A significant percentage of community residents who are
35 minorities, foreign born, or who lack proficiency in the English
36 language.

1 (3) In determining whether a community is a highly impacted
2 community under this section, the department may rely on existing
3 scientific or public health data, including public health data compiled
4 by the department of health.

5 NEW SECTION. **Sec. 4.** (1) This section and section 5 of this act
6 apply to the settlement, registered with a judicial or quasi-judicial
7 body, of an enforcement action based upon a violation of a permit
8 issued under chapter 70.94, 70.105, or 90.48 RCW or a violation of an
9 order under RCW 70.105D.050. In conjunction with the settlement of an
10 enforcement action, the department may require a person whose activity
11 negatively affects public health in a highly impacted community to
12 contribute in-kind services or otherwise fund a supplemental
13 environmental project under the following circumstances:

14 (a) A supplemental environmental project may include projects to
15 protect human health, prevent pollution, reduce pollution, protect or
16 restore natural or man-made environments, assessments or audits of
17 environmental quality or pollution prevention, efforts to promote
18 environmental compliance, or emergency preparedness efforts.

19 (b) A supplemental environmental project authorized by the
20 department must:

21 (i)(A) Take place within the same highly impacted community in
22 which the violation occurred; or

23 (B) Primarily benefit the highly impacted community in which the
24 violation occurred;

25 (ii)(A) Be designed to reduce the likelihood that similar
26 violations will occur in the future;

27 (B) Reduce the adverse impact to public health or the environment
28 to which the violation at issue contributes within the highly impacted
29 community; or

30 (C) Reduce the overall risk to public health or the environment
31 potentially affected by the violation at issue;

32 (iii) Be of a scope and type defined in the signed settlement
33 agreement between the department and the person in violation of a
34 permit issued under chapter 70.94, 70.105, or 90.48 RCW or an order
35 under RCW 70.105D.050; and

36 (iv) Include deadlines and quantifiable performance metrics for the

1 achievement of intermediate deliverables or objectives towards the
2 completion of the supplemental environmental project.

3 (2) If the department requires a person to perform or fund a
4 supplemental environmental project in conjunction with the settlement
5 of an enforcement action related to the violation of a permit issued
6 under chapter 70.94, 70.105, or 90.48 RCW, the department or authority
7 shall also recover a monetary penalty in accordance with RCW 70.94.430,
8 70.94.431, 70.105.080, 70.105.085, or 70.105.090 or chapter 90.48 RCW.

9 (3) In determining the monetary amount to be recovered in the
10 settlement, in addition to the current factors considered in
11 determining the amounts of a penalty under RCW 70.94.430, 70.94.431,
12 70.105.080, 70.105.085, or 70.105.090 or chapter 90.48 RCW, the
13 department or authority shall consider:

14 (a) The cost to the person of the supplemental environmental
15 project; and

16 (b) The environmental or public health benefits anticipated to
17 accrue from the supplemental environmental project.

18 NEW SECTION. **Sec. 5.** To the maximum extent practicable, the
19 department shall seek the input of the highly impacted community in the
20 development of a proposed supplemental environmental project pursuant
21 to section 4 of this act. After the department has decided to consider
22 the inclusion of a supplemental environmental project in conjunction
23 with the settlement of an enforcement action, the department shall, to
24 the maximum extent practicable, seek to provide information to the
25 highly impacted community regarding:

26 (1) The proposed supplemental environmental project; and

27 (2) The process the department plans to follow in making a final
28 determination regarding the details of the supplemental environmental
29 project.

30 NEW SECTION. **Sec. 6.** The department may adopt rules as necessary
31 to implement this chapter.

32 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
33 a new chapter in Title 70 RCW.

1 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act take effect
2 January 1, 2015.

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