

SENATE BILL REPORT

SB 5489

As of February 19, 2019

Title: An act relating to establishing a healthy environment for all by creating a definition of environmental justice, identifying communities with cumulative environmental health impacts, creating a task force to recommend how best to implement environmental justice principles in state agency decision making, and directing state agencies to address environmental health disparities.

Brief Description: Establishing a healthy environment for all by creating a definition of environmental justice, directing agencies to address environmental health disparities, and creating a task force.

Sponsors: Senators Saldaña, Das, Nguyen, Hasegawa, Darneille, Palumbo, Randall, McCoy, Conway, Billig, Cleveland, Keiser, Kuderer, Rolfes, Wilson, C. and Frockt.

Brief History:

Committee Activity: Environment, Energy & Technology: 2/13/19.

Brief Summary of Bill

- Creates a task force to recommend strategies for state agencies to incorporate environmental justice principles into their responsibilities.
- Requires certain state agencies to adopt a cumulative impacts analysis to address impacted communities' environmental burdens and to attain environmental health targets.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Jan Odano (786-7486)

Background: Environmental Justice. The United States Environmental Protection Agency defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to developing, implementing, and enforcing environmental laws, regulations, and policies.

The Governor's Interagency Council on Health Disparities. The Governor's Interagency Council on Health Disparities (Council) was established by the Legislature in 2006. The

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Council provides recommendations to the Governor and Legislature on methods to promote health equity and eliminate health disparities in Washington. The Council developed a state policy action plan to eliminate health inequities by race, ethnicity, and gender. In January 2018, the Council provided updates to the plan containing strategies for council members to commit to for promoting equity in state government. The Council's duties also include developing statewide policies to address social determinants of health that lead to disparities as well as other factors of health that can impact improving status, health literacy, physical activity, and nutrition.

The Council membership includes representation from state agencies such as the Department of Health (DOH), the State Board of Health, Department of Social and Health Services, and the Health Care Authority, as well as from the Department of Early Learning, the Office of the Superintendent of Public Instruction, the Workforce Education Training and Coordinating Board, Department of Commerce, Department of Agriculture, and the Department of Ecology (DOE). In addition, there are representatives from the commissions on African American Affairs, Asian Pacific American Affairs, and Hispanic Affairs, as well as the American Indian Health Commission and two consumer representatives.

University of Washington—Health Disparities Map. The University of Washington, Department of Environmental and Occupational Health Sciences developed an interactive map to evaluate environmental health risk factors in communities. The map reflects pollutant exposures and other factors affecting a person's vulnerability to environmental pollution. The map estimates a cumulative environmental health impact score for each census tract.

Department of Health. DOH established the Washington Tracking Network (WTN), which provides information regarding environmental and public health data. The data available on WTN is categorized by measure with more specific information included. The measures include climate and health; community characteristics; environment; exposure to pollutants; and health indicators. The WTN is available to the public on the DOH website.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): A task force is established to recommend strategies for state agencies to incorporate environmental justice principles into their responsibilities. The task force must provide a report to the Legislature with the goal of providing guidance to agencies, the Legislature and the Governor, including guidelines for adopting rules to implement the cumulative impact analysis.

The guidance must be based on best practices and current demographic data. The guidance must cover how agencies identify highly impacted communities and use the cumulative impacts analysis conducted by the UW as the basis for designating a highly impacted community along with other factors the task force deems appropriate. In addition, the report must include best practices, recommendations, and guidelines.

The guidelines must address how state agencies prioritize highly impacted communities and vulnerable populations by identifying, and where legally and fiscally feasible, implementing procedures, processes, applications and reporting requirements to maximize inspections, enforcement actions, investment of resources, planning and permitting, and public

participation for the purpose of reducing environmental health disparities and advancing a healthy environment for all residents.

Best practices for increasing public participation must take into account barriers to participation that may be due to race, color, ethnicity, religion, income, or education level. A specific recommendation must be included on how best to meaningfully consult with vulnerable populations when periodically evaluating and updating the designation of highly impacted communities and the cumulative impact analysis.

Recommendations for establishing a target level of environmental health for each community must be qualitative at the county level or greater resolution and quantitative at the census tract level or greater. It must include ways state agencies may focus their work to meeting the target environmental health level.

Time and resources permitting, the task force may also include additional findings and recommendations in its report. The task force may provide recommendations for:

- integrating an analysis into State Environmental Policy Act evaluations of the distribution of environmental burdens across population groups;
- creating and implementing an equity analysis including, but not limited to, cumulative impact analysis into all significant planning, programmatic and policy decision making and investments—equity analysis methods may include a process for describing potential risks and benefits to and opportunities for highly impacted communities and vulnerable populations;
- criteria for identifying and addressing gaps in current research and data collection to inform agency action, to refine the common cumulative impact methodology, and to identify factors that may impeded the achievement of environmental justice;
- best practices and needed resources for cataloging and cross-referencing current research and data collection programs within all state agencies relating to the health and environment of all people; and
- methods to incorporate the precautionary approach into decision making and permitting to the extent allowed by law.

The task force membership includes the following or their designees: directors of the departments of Commerce, DOE, and Puget Sound Partnership, the secretaries of the departments of Transportation, DOH, and Utilities Transportation Commission, the chair of the Council, the commissioner of Public Lands, a member of an organization representing statewide environmental justice interests, and three members appointed by the co-chairs of the task force based on maintaining a balanced and diverse distribution of ethnic, geographic, gender, sexual orientation, age, socioeconomic status, and occupational representation, where practicable.

The task force must hold four regional meetings. The task force may form work groups or consult with stakeholders as necessary to carry out its duties. The Council must provide staff to support the task force. Members of the task force who are not state employees are entitled to reimbursement paid by the Council for their travel expenses for task force duties.

Within 60 days of issuance of the task force report, DOE must initiate rulemaking to adopt rules to implement the recommendations related to the cumulative impacts analysis. The purpose of the rulemaking is to provide uniform rules and guidelines to state agencies.

State agencies serving on the task force are required to adopt rules related to the cumulative impacts analysis, as conducted by the University of Washington and hosted on DOH's WTN. A state agency must notify the Council when the rules have been adopted.

State agencies must adopt the cumulative impacts analysis in accordance with the task force recommendations and guidelines. State agencies may adopt interim guidelines prior to adopting rules. They may also issue policies, guidance and adopt rules necessary to identify highly impacted communities, create target environmental health standards, and prioritize highly impacted communities and their vulnerable populations in the development, adoption, implementation, and enforcement of environmental laws and policies and funding decisions.

The Council must reconvene the task force five years after the last state agency has adopted its cumulative impacts analysis rule. Once the task force reconvenes, it must evaluate each state agency's cumulative impacts analysis findings to determine if the agency is promoting the reduction in disproportional environmental burdens and attainment of the environmental health targets. The task force's evaluations and findings must be available for public inspection and copying through the Council and on its website. A revised report with updated findings and recommendations must be submitted to the Legislature and Governor.

Appropriation: None.

Fiscal Note: Requested on February 5, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: A clean environment is essential for youth to reach their full potential. This is a strong, target policy to advance the health of impacted communities. There is a need to recognize the disproportionate impacts to low-income and communities of color. Our communities are in trouble and this tool helps to identify impacts to our children. To reverse this trend we need support by state agencies. The task force is important and critical to address the needs of these communities and need to make sure the entire state is working with the same information. Engagement with the community leads to discussion about quality of life for the community. This does not change regulatory standards, it just includes better tools to better serve the people of the state.

CON: Businesses are not represented on the task force. Agencies are required to adopt the task force recommendations. The recommendations should be provided to the Legislature to provide proper direction to the state agencies. This creates extra constitutional inalienable rights that are not in our constitution and provides additional benefits for unidentified individuals that are not available to all citizens.

OTHER: This provides cross agency coordination. However there are concerns about the amount of work required in a short amount of time.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Paul Parker, Transportation Commission; David Mendoza, Front & Centered; Herbert Carey, Community Development and Outreach Services Ministries; Maria Batayola, El Centro de la Raza; Ben Henry, Asian Pacific Islander Americans for Civic Empowerment; Jeff Bisonette, Union of Concerned Scientists; Craig Kenworthy, Puget Sound Clean Air Agency; Darcy Nonemacher, Washington Environmental Council; Ali Lee, Climate Reality Project Coalition; Tom Bugert, DNR; Anne Kroeker, citizen; Matthew Lang, Transit Riders Union.

CON: Steve Gano, Building Industry Association of Washington; Mike Ennis, Association of Washington Business; Peter Godlewski, Association of Washington Business; Cindy Alia, CAPR.

OTHER: Sharlett Mena, Department of Ecology; Lauren Jenks, Department of Health; Jeff Parsons, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: No one.