

HOUSE BILL REPORT

E2SSB 5141

As Reported by House Committee On:
Environment & Energy

Title: An act relating to reducing environmental and health disparities and improving the health of all Washington state residents by implementing the recommendations of the environmental justice task force.

Brief Description: Reducing environmental and health disparities and improving the health of all Washington state residents by implementing the recommendations of the environmental justice task force.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Saldaña, Lovelett, Carlyle, Das, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Nobles, Pedersen, Rolfes, Stanford and Wilson, C.).

Brief History:

Committee Activity:

Environment & Energy: 3/12/21, 3/16/21, 3/25/21 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended By Committee)**

- Requires the Puget Sound Partnership and the departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation (covered agencies) to complete environmental justice assessments when considering significant agency actions and to incorporate environmental justice principles into agency budget and fiscal processes.
- Encourages other state agencies to apply the principles of environmental justice in the implementation of their agency functions, and authorizes other state agencies to opt in to the environmental justice requirements applicable to covered agencies.
- Requires covered agencies to create and adopt a community engagement

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plan for engaging with overburdened communities and vulnerable populations in the evaluation of existing and new programs and activities.

- Requires covered agencies to offer consultation with Indian tribes on decisions that affect tribes' rights and interests in tribal lands.
- Establishes an Environmental Justice Council with specified membership, staffed by the Department of Health (DOH), and which is assigned specified advisory and oversight responsibilities for covered agencies' implementation of environmental justice activities.
- Requires the DOH to continue to develop and maintain an environmental health disparities map.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Fitzgibbon, Chair; Duerr, Vice Chair; Berry, Fey, Harris-Talley, Ramel, Shewmake and Slatter.

Minority Report: Do not pass. Signed by 5 members: Representatives Dye, Ranking Minority Member; Klicker, Assistant Ranking Minority Member; Abbarno, Boehnke and Goehner.

Staff: Jacob Lipson (786-7196).

Background:

The United States Environmental Protection Agency (EPA) defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The EPA states that this goal will be achieved when everyone enjoys the same degree of protection from environmental health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

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. In 2000 President Clinton also signed Executive Order 13166, which requires federal agencies to examine the services they provide, and identify any need for services to those with limited English proficiency, and to develop and implement a system to provide those services. In

2011 the Federal Environmental Justice Interagency Working Group established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities. 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.

In 2005 Governor Gregoire issued Executive Order 05-03, which requires that state agencies use plain talk when communicating with the public.

Environmental Justice Task Force.

A proviso in the 2019-2021 Biennial Operating Budget directed the Governor's Interagency Council on Health Disparities to convene and staff an Environmental Justice Task Force (Task Force). The Task Force was directed to recommend strategies for incorporating environmental justice principles into future state agency actions across Washington. The Task Force published a report with its recommendations in the fall of 2020.

Washington Health Disparities Map.

In 2018 a collaborative group began making available to the public an interactive mapping tool that compares communities across Washington for environmental health disparities, known as the Washington environmental health disparities map (map). The map was developed by the University of Washington's Department of Environmental and Occupational Health Sciences, Front and Centered, the departments of Health and Ecology, and the Puget Sound Clean Air Agency. The map includes 19 specific indicators of health disparities, which are divided into four themes: environmental exposures, environmental effects, sensitive populations, and socioeconomic factors.

Government-to-Government Relationship with Indian Tribes.

Indian tribal governments are sovereign, self-governing entities. Washington state has established several agreements with federally recognized Indian tribes to facilitate government-to-government relations, including the Centennial Accord (1989) and New Millennium (1999) agreements.

Under state law, in establishing a government-to-government relationship with federally recognized Indian tribes with traditional lands or territories in Washington, state agencies must:

- make reasonable efforts to collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affects Indian tribes, and develop a consultation process used by the agency for issues involving specific Indian tribes;
- designate a tribal liaison that receives specialized training; and
- submit an annual report to the Governor on the activities of the state agency.

Summary of Amended Bill:

Environmental Justice in State Agency Activities.

The Puget Sound Partnership and the departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation (covered agencies) must apply and comply with specified environmental justice requirements with respect to agency activities. Other state agencies are encouraged to apply the principles of environmental justice in applying state laws and agency rules and policies, and are authorized to opt in to the environmental justice requirements applicable to covered agencies. State agencies other than covered agencies may opt in by notifying the new Environmental Justice Council (Council), and are not bound to the timelines and deadlines that apply to covered agency implementation of environmental justice requirements.

Covered agencies must:

- Include an environmental justice implementation plan within the agency's strategic plan, by January 1, 2023. This plan must include goals and deliverables, metrics to track and measure accomplishments, methods to provide equitable access and ensure nondiscrimination, and strategies to ensure compliance with existing federal and state laws and policies related to environmental justice.
- Create and adopt a community engagement plan by July 1, 2022, that describes planned engagement with overburdened communities and vulnerable populations, and that identifies and prioritizes overburdened communities for purposes of implementing the agency's environmental justice responsibilities. This plan must include best practices for outreach and communication, the use of special screening tools, processes that facilitate the inclusion of community members affected by agency decision-making, and methods for outreach and communication.
- Regularly conduct compliance reviews of existing laws and policies that guide community engagement, and, where gaps exist, ensure compliance with Title VI of the 1964 Civil Rights Act, Executive Order 05-03, and guidance related to Executive Order 13166.
- Conduct an environmental justice assessment when considering a significant agency action initiated after July 1, 2023, to inform and support agency consideration of overburdened and vulnerable populations and to assist with the equitable distribution of benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities. Five categories of significant agency actions are established: (1) significant legislative rule adoption; (2) the development of new grant and loan programs; (3) the allocation of at least \$25 million in a single funding round through an existing grant or loan program; (4) major capital and transportation projects; and (5) the development of agency request legislation. Covered agencies must also consider their agency's activities and identify additional significant actions that should be subject to environmental justice assessments by July 1, 2025. Covered agencies, beginning July 1, 2023, must publish on their website and in the Washington State Register the list of actions that are

significant agency actions. Based on environmental justice assessments, covered agencies must seek to reduce or eliminate environmental harms and maximize benefits on overburdened communities and vulnerable populations. Covered agencies must consider nine specified mechanisms for reducing environmental impacts or equitably distributing benefits. If covered agencies do not have the ability or authority to avoid or reduce any estimated environmental harm of an action on overburdened communities and vulnerable populations or address the distribution of environmental and health benefits, the agency must provide a clear explanation of that determination. The obligation of an agency to conduct an environmental justice assessment does not, by itself, trigger a requirement for environmental review under the State Environmental Policy Act. The issuance of forest practices permits and the sale of timber from state lands and state forest lands do not require an environmental justice assessment.

- Incorporate environmental justice principles into decision processes for budget development, expenditures, and granting or withholding benefits. Covered agencies must, to the extent allowed by law and consistent with legislative appropriations, equitably distribute funding and expenditures towards overburdened communities and vulnerable populations. By July 1, 2023, covered agencies must, where practicable, focus applicable expenditures on overburdened communities and vulnerable populations, create opportunities for overburdened communities and vulnerable populations, clearly articulate environmental justice goals and assessment metrics for agency expenditures, consider a broad scope of grants and contracting opportunities that effectuate environmental justice principles, and establish a goal of directing 40 percent of expenditures that create environmental benefits to vulnerable populations and overburdened communities. Covered agencies may adopt rules to incorporate environmental justice principles in expenditure decisions. Covered agencies may not take actions or make expenditures that are inconsistent with or conflict with other statutes or with appropriations limitations.

Agency heads may exempt a state agency on a case-by-case basis from requirements to carry out environmental justice assessments or to incorporate environmental justice principles into budget and expenditure processes upon determining:

- that any delay in the significant agency action poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;
- an assessment would delay a significant agency decision related to administration of taxes, debts, revenues, receipts, financial filings, or insurance rate or form filings;
- there is a conflict with federal law or federal program requirements; or
- there is a conflict with constitutional limitations, including those applicable to state lands and state forestlands.

Agency actions that are subject to or result from the environmental justice requirements applicable to covered agencies may be appealed under the Administrative Procedures Act. The new environmental justice requirements do not create a new private right of action against any state agency.

Environmental Justice Council.

An Environmental Justice Council (Council) is established to advise covered agencies on incorporating environmental justice into agency activities. The Council consists of 12 members representing specified interests, appointed by the Governor. The Council must:

- provide a forum for public testimony;
- provide guidance to covered agencies on developing environmental assessments for significant agency actions;
- make recommendations to state agencies regarding actions that may cause environmental harm or affect the distribution of environmental benefits, and therefore should be considered significant agency actions that require environmental justice assessments;
- make recommendations to covered agencies on the identification and prioritization of overburdened communities, and related to the use of the Department of Health's (DOH) environmental health disparities map (map);
- work in an iterative fashion to develop guidance for the implementation of environmental justice requirements by state agencies; and
- biennially evaluate agency progress on applying Council guidance, and communicate agency progress to the public, the Governor, and the Legislature.

The Council's role is advisory and Council decisions are not binding on an agency, individual, or organization. The Council must convene by January 1, 2022. Council meetings are subject to open public meetings requirements, and public comment periods must be provided at every Council meeting.

The DOH must hire a manager for the Council and provide administrative and staff support for the Council. The DOH must also establish standards for tracking community outcome data, create process and outcome performance measures, and create an online performance dashboard.

The DOH must also establish an interagency workgroup, which may include Council members, to assist covered agencies in implementing new environmental justice requirements. The interagency workgroup is responsible for providing technical assistance to support agency compliance, assisting the Council in developing a suggested schedule and timeline for sequencing significant agency actions, identifying goals and metrics, identifying other policies, priorities and projects, and developing guidelines for state agencies.

Covered agencies must consider guidelines developed by the Council in:

- developing required environmental justice implementation plans;
- developing community engagement plans;
- developing the agency's environmental justice assessment process; and
- incorporating environmental justice principles into expenditure decisions.

Covered agencies must annually update the Council on their development and implementation of these required plans and processes, and must publish an annual report beginning in 2024.

The Council must submit a report by November 30, 2022, to the Governor and the Legislature on certain activities of the Council.

Government-to-Government Consultation with Indian Tribes.

Covered agencies must offer consultation with Indian tribes on decisions that affect tribes' rights and interests in their tribal lands. The consultation must occur in accordance with state law governing government-to-government consultation processes, and is in addition to the requirements for consultation that apply to all state agencies.

Environmental Health Disparities Map.

The DOH, in consultation with the Council, must continue to develop and maintain an map. In developing and maintaining the map, the DOH must encourage participation by representatives of overburdened communities and vulnerable populations, and may consult with other interested partners. The DOH must document and publish a summary of regular updates and revisions to the map, and must perform an evaluation of the map at least every three years. The DOH must also develop technical guidance for covered agencies to use the map and provide support and consultation to agencies on the use of the map.

Amended Bill Compared to Engrossed Second Substitute Bill:

The striking amendment makes the following changes to the underlying bill.

Covered Agencies.

The striking amendment:

- identifies the agencies required to assume environmental justice obligations as "covered agencies" (Puget Sound Partnership, and the departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation) and distinguishes provisions of the bill that apply to covered agencies as opposed to all state agencies; and
- specifies that state agencies may opt in to assume the obligations of covered agencies by notifying the Environmental Justice Council (Council), and clarifies that agencies that opt in to assume environmental justice obligations of covered agencies are not bound by the deadlines or timelines for the environmental justice obligations that apply to covered agencies.

Planning and General Obligations of Covered Agencies.

The striking amendment:

- authorizes, rather than requires, covered agencies to include environmental justice implementation plans within planning documents other than the agency's strategic plan, while retaining the requirement that environmental justice implementation plans be included in the agency's strategic plan;
- requires covered agencies to update required environmental justice implementation plans and community engagement plans;
- requires each covered agency to identify, as part of its community engagement plan, how the agency will identify and prioritize overburdened communities, and requires the Council to provide related guidance to covered agencies regarding the identification and prioritization of overburdened communities;
- limits several of the obligations of state agencies with respect to environmental justice implementation by requiring those activities only to the extent legal, practicable, consistent with statutory authority, or consistent with appropriations; and
- adds, as a type of environmental harm to be addressed by covered agencies, the loss or impairment of ecosystem functions or traditional food resources, or loss of access to gather cultural resources or traditional foods.

Significant Agency Actions and Environmental Justice Assessments.

The striking amendment:

- narrows the definition of "significant agency actions" for which covered agencies must conduct an environmental justice assessment to the following five categories: (1) significant legislative rules; (2) new grant or loan program development and adoption; (3) the allocation of at least \$25 million in a single funding round through a grant or loan program; (4) major capital and transportation projects of at least \$5 million; and (5) the development of agency request legislation;
- establishes a process for covered agencies to identify and periodically evaluate additional types of significant agency actions beyond the five categories included in the definition, and requires covered agencies to consider other agency actions that may be significant by 2025;
- requires each covered agency to publish by July 1, 2023, a list of actions that the agency has determined is a significant agency action, and for which environmental justice assessments must be completed;
- clarifies that environmental justice assessment requirements apply only to significant agency actions initiated after July 1, 2023;
- specifies that the issuance of forest practice permits and sale of timber from state lands and state forestlands do not require an environmental justice assessment;
- requires the Council to provide guidance to covered agencies on the agency activities that are automatically defined as significant agency actions, and to make recommendations to covered agencies as to which other agency actions should be considered significant agency actions because they may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened

- community; and
- requires covered agencies to periodically evaluate their list of identified significant agency actions.

Budget and Expenditure Obligations of Covered Agencies.

The striking amendment:

- provides limits on the requirement that covered agencies incorporate environmental justice principles into decision processes for budget development and making expenditures, including by requiring incorporation of principles only to the extent allowed by law, where practicable, consistent with legislative appropriations, and to apply only to applicable expenditures;
- clarifies that all covered agencies, rather than just the Department of Transportation, may not take actions or make expenditures that are inconsistent with or conflict with other statutes or conditions and limitations on the agency's appropriations; and
- requires covered agencies to provide updates on the implementation of environmental justice principles in agency expenditures and budgets, as part of the annual update on the covered agency's activities posted on the Office of Financial Management's website.

Environmental Justice Council.

The striking amendment:

- eliminates Senate confirmation of Council members;
- makes the Governor responsible for appointment of Council members representing tribal communities, rather than the Governor's Office of Indian Affairs;
- requires the Governor to solicit and consider nominees and collaborate with each tribe on the selection of tribal representatives, rather than to make the selection in consultation with all tribes; and
- eliminates the requirement that the Council make recommendations on the prioritization and phase-in of implementation priorities prior to July 1, 2023.

Indian Tribe Consultation.

The striking amendment:

- specifies that consultation requirements applicable to covered agencies pertain only to federally recognized Indian tribes;
- requires covered agency collaboration to include protocols for communication and best practice in consultation, rather than requiring covered agencies to develop a consultation framework; and
- specifies that the new consultation obligations of covered agencies are in addition to requirements that apply to all state agencies with respect to Indian tribe consultation.

Other.

The striking amendment:

- specifies that agency actions, as defined in the Administrative Procedure Act (APA), that are subject to or result from the new environmental justice requirements in the bill are appealable under the APA;
- specifies that the act does not create a new private right of action;
- clarifies that specified types of exemptions to environmental justice assessment and budget obligations of covered agencies must be determined by the head of a covered agency on a case-by-case basis;
- adds a federal funding savings clause;
- amends the intent section; and
- makes numerous other clarifying and technical edits.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 25, 2021.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Environmental impacts of growth, development, and industrial activity are not evenly distributed across communities. Environmental justice is about remedying the greater health risks and burdens that some populations and neighborhoods currently face, including childhood asthma, premature birthweight, and other health disparities. Your race and where you live should not impact your health and the quality and length of your life. Everyone deserves a clean environment, and a healthy environment relies on a healthy economy. The new requirements for state agencies will create a legal, financial, and political framework to address longstanding inequalities. New state agency processes will involve a data-driven approach to spending resources where they will have the greatest impact. With new environmental justice evaluative processes, voices on the margins will be prioritized and state agencies will be able to better consider and understand the needs of communities currently bearing environmental and health impacts. The Department of Health currently maps environmental health disparities, and is a resource that state agencies can use to analyze how their actions impact communities. The Department of Fish and Wildlife should opt-in to assume the environmental justice responsibilities of other agencies under this bill. The bill introduces new consultation requirements to include tribal governments in agency decision-making.

(Opposed) The scope of the bill is too broad. Instead of rolling out new requirements to all state agencies at once, the Department of Ecology is best suited to take on these new responsibilities and should be the first one subject to these new requirements. The

definition for significant agency actions under the bill is too broad, and will lead to environmental justice assessments for too many types of agency decisions. The timing and details of environmental justice assessments are not clear. Delays in government action hinder affordable housing goals by adding to construction costs. Uncertainty has the potential to stop government permitting for projects. The Environmental Justice Council should have representatives from business, labor, and with scientific expertise. The Department of Health's mapping effort should undergo review to make sure it is rigorous, and to ensure agency decisions are based on science. The bill is a complicated and bureaucratic way to achieve the goals.

(Other) Counties benefit from forestlands held in trust. The Department of Natural Resources will experience costs and time delays as a result of the new requirements, which will have negative impacts for trust beneficiaries, many of which are rural and poor counties. The poorest counties will suffer harm from these new requirements as a result. Language added to the bill in the Senate to address trustland management responsibilities is insufficient to exempt any activities. Utility districts should be part of the policy conversation around environmental justice goals.

Persons Testifying: (In support) Senator Saldaña, prime sponsor; Guillermo Rogel, Front and Centered; Bruce Wishart, Sierra Club and Puget Soundkeeper; Ricardo Ortega, Legacy of Equality Leadership and Organizing; Vlad Gutman-Britten, Climate Solutions; Lauren Hawkins, Pediatricians for Climate Action; Mario Villanueva, Washington State Catholic Conference; Laura Watson, Department of Ecology; Anna Dyer, Earth Ministry; Laura Johnson, Department of Health; Dawn Vyvyan, Yakama Nation, Puyallup Tribe, and Mountain Lion Foundation; and David Mendoza, The Nature Conservancy.

(Opposed) Josie Cummings, Building Industry Association of Washington; Tom Davis, Washington Farm Bureau; Peter Godlewski, Association of Washington Business; and Heather Hansen, Washington Friends of Farms and Forests.

(Other) Paul Jewell, Washington State Association of Counties; Heath Heikkila, American Forest Resource Council; Russ Pfeiffer-Hoyt, Washington State School Directors' Association; and Mike Gonzalez, Franklin Public Utility District.

Persons Signed In To Testify But Not Testifying: Justin Allegro, The Nature Conservancy; Saba Rahman, King County; Robin Schwarz, Duwamish River Cleanup Coalition; and Edmund Seto, University of Washington.