

SENATE BILL REPORT

SB 5141

As of February 19, 2021

Title: An act relating to implementing the recommendations of the environmental justice task force.

Brief Description: Implementing the recommendations of the environmental justice task force.
[**Revised for 1st Substitute:** 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: Senators Saldaña, Lovelett, Carlyle, Das, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Lias, Nobles, Pedersen, Rolfes, Stanford and Wilson, C..

Brief History:

Committee Activity: Environment, Energy & Technology: 1/20/21, 2/09/21 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/17/21.

Brief Summary of First Substitute Bill

- Establishes environmental justice plan implementation, equitable community engagement and public participation, tribal consultation, assessment, and budget and funding obligation requirements for the departments of Health, Ecology, Agriculture, Natural Resources, Commerce, and Transportation, and the Puget Sound Partnership.
- Establishes the Environmental Justice Council to adopt guidelines in coordination with an interagency workgroup, evaluate the progress of agencies implementing environmental justice requirements, identify and prioritize actions for assessments, and provide a forum for the public to testify on environmental justice concerns.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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

Majority Report: That Substitute Senate Bill No. 5141 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Liias, Nguyen, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Brown, Fortunato, Sheldon and Short.

Minority Report: That it be referred without recommendation.

Signed by Senator Hobbs.

Staff: Gregory Vogel (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Corban Nemeth (786-7736)

Background: Environmental Justice Task Force Report. The U.S. 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 the development, implementation, and enforcement of environmental laws, regulations, and policies."

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.

The task force was directed to recommend strategies for incorporating environmental justice principles into future state agency actions across Washington, including:

- guidance for using the Washington Environmental Health Disparities Map to identify communities highly impacted by environmental justice issues with current demographic data;
- best practices for increasing meaningful and inclusive community engagement that takes into account barriers to participation that may arise due to race, color, ethnicity, religion, income, or education level;
- measurable goals for reducing environmental health disparities for each community in Washington State and ways in which state agencies may focus their work towards meeting those goals; and
- model policies that prioritize highly impacted communities and vulnerable populations to reduce environmental health disparities and advance a healthy environment for all residents.

Some of the policy recommendations that the report, published in fall 2020, includes are to:

- embed environmental justice in agency strategic plans to integrate environmental justice in to protocols and processes;

- require use of environmental justice analysis, such as the Environmental Health Disparities map, to help guide agency-decision making;
- equitably distribute state environmental investments to ensure resources are allocated to overburdened communities; and
- convene a permanent interagency environmental justice workgroup including representatives from overburdened communities.

Washington Environmental Health Disparities Map. The Washington Environmental Health Disparities Map is an interactive mapping tool that compares communities across the state for environmental health disparities.

The data on the map include 19 indicators and are divided into four themes:

- environmental exposures—NOx-diesel emissions; ozone concentration; PM2.5 concentration; populations near heavy traffic roadways; toxic release from facilities;
- environmental effects—lead risk from housing; proximity to hazardous waste treatment, storage, and disposal facilities; proximity to National Priorities List sites (Superfund sites); proximity to Risk Management Plan facilities; wastewater discharge;
- sensitive populations—death from cardiovascular disease; low birth weight; and
- socioeconomic factors—limited English; no high school diploma; poverty; race—people of color; transportation expense; unaffordable housing; unemployed.

The map went live to the public in December 2018. It is a collaborative project by the University of Washington's Department of Environmental and Occupation Health Sciences, Front and Centered, Washington State Department of Health, Washington State Department of Ecology, and the Puget Sound Clean Air Agency. The collaborative project included listening sessions with communities in Washington State to provide input for development of the map.

Governor's Interagency Council on Health Disparities. Established in 2006, the council identifies priorities and creates recommendations for the Governor and Legislature on ways to promote health equity and eliminate health disparities in Washington.

Summary of Bill (First Substitute): Environmental justice plan implementation, equitable community engagement and public participation, tribal consultation, assessment, and budget and funding obligation requirements are established for the departments of Health, Ecology, Agriculture, Natural Resources, Commerce, and Transportation, and the Puget Sound Partnership.

Environmental justice is defined 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. This includes addressing disproportionate environmental and health impacts by prioritizing vulnerable populations and overburdened communities, equitably distributing resources and

benefits, and eliminating harm.

Incorporation of Environmental Justice into Agency Plans. By January 1, 2023, each agency must include an environmental justice implementation plan within its strategic plan or other planning document. The plan must describe how the agency will apply the principles of environmental justice to the agency's activities and guide the agency in its implementation of its obligations under the act.

The plan must include:

- agency-specific goals and deliverables to reduce environmental and health disparities and for otherwise achieving environmental justice in the agency's programs;
- metrics to track and measure accomplishments of the agency goals and deliverables;
- methods to provide equitable access and ensure nondiscrimination in agency practices to solicit and receive information and opinions from members of the public;
- strategies to ensure compliance with existing federal and state laws and policies relating to environmental justice; and
- a plan for community engagement.

Equitable Community Engagement and Public Participation. An agency must create and adopt a community engagement plan that describes how it will engage with overburdened communities and vulnerable populations as it evaluates new and existing activities and programs. The plan must include:

- best practices for outreach and communication to overcome barriers to engagement with overburdened communities and vulnerable populations;
- use of screening tools that integrate environmental, demographic, and health disparities data to evaluate and understand the nature and needs of the people who may be impacted by agency decisions;
- processes that facilitate and support the inclusion of members of communities affected by agency decision making; and
- methods for outreach and communication with those who face barriers to participation.

Agencies must regularly conduct compliance reviews of existing laws and policies that guide community engagement, and where gaps exist, ensure compliance with Title VI of the Civil Rights Act, and executive orders requiring plain talk communication and meaningful access for people with limited English proficiency.

Overburdened communities are geographic areas where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities. Vulnerable populations are population groups that may be more likely to have adverse health outcomes in response to environmental harms, due to adverse socioeconomic factors, sensitivity factors, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms. Vulnerable populations include racial or ethnic minority, low-income, tribal,

indigenous populations, and populations of workers experiencing environmental risks.

Tribal Consultation. An agency must offer consultation with Indian tribes on decisions that affect Indian tribes' rights and interests in their tribal lands.

Environmental Justice Assessment. When considering a significant agency action, an agency must conduct an environmental justice assessment to better inform and support the agency considering overburdened and vulnerable populations when making decisions to assist the agency with the equitable distribution of environmental benefits, reduction of environmental harms, and the identification and reduction of environmental and health disparities.

Beginning July 1, 2023, each agency must develop a process for conducting the assessments, determining what actions prompt an assessment and any other relevant factors for assessment based on the unique mission, authorities, and priorities of each agency.

In conducting the assessment, an agency must consider guidelines prepared by the Environmental Justice Council; use cumulative environmental health impact analyses; identify overburdened communities and vulnerable populations who may be affected by the proposed action and the potential environmental and health impacts; summarize community input and describe how communities and tribes may be further involved; and describe options to reduce impacts, or provide a reasonable justification for not doing so.

Based on the assessment, the agency must reduce or eliminate the negative impacts and maximize the benefits created by the action on overburdened communities and vulnerable populations. To do so, the agency must consider eliminating disparities and the unequal effect of environmental harms; reducing or ensuring the action does not add to cumulative environmental health impacts; providing equitable participation and meaningful engagement in the development of the action; and other mitigation techniques.

If the agency determines it cannot reduce the impact of the action, the agency must provide a clear explanation and provide notice of the explanation to members of the public who participated in the decision process.

Significant agency action refers to actions that have the potential to cause environmental harm or benefit to an overburdened community or a vulnerable population. This may include agency actions such as major capital projects, rulemaking, and any decision or activity with probable environmental impacts to overburdened communities or vulnerable populations.

The obligation of an agency to conduct environmental justice assessment for significant agency actions does not, by itself, trigger State Environmental Policy Act review.

Obligations Relating to Budgets and Funding. An agency must incorporate environmental

justice principles into its decision processes for budget development, making expenditures, granting or withholding benefits, and distributing funding in order to direct funding and expenditures towards overburdened communities and vulnerable populations.

In making such decisions, an agency must focus investments on creating environmental benefits; ensure meaningful participation in spending and expenditure decisions; clearly articulate environmental justice goals and assessment metrics; and establish a goal of 40 percent and no less than 35 percent of expenditures that create environmental benefits directed to vulnerable populations and overburdened communities.

Agencies must also consider a broad scope of grants and contracting opportunities that effectuate environmental justice principles, including: community grants to monitor pollution; grants focused on building capacity and providing training for community scientists; technical assistance for communities new to grant funding; and education and work readiness youth programs focused on infrastructure or utility-related internships.

Dashboard Reporting. By September 1st of each year, an agency must annually update the Environmental Justice Council on the development and implementation of environmental justice implementation in agency strategic plans, budgeting and funding criteria for making budgeting and funding decisions, and community engagement plans. Beginning in 2024, agencies must also include updates on environmental justice assessments.

By September 1st of each year beginning in 2024, each agency must publish a dashboard report or an updated dashboard report, in a uniform dashboard format on the Office of Financial Management's website, describing its progress on implementing environmental justice in its strategic plan and its environmental justice assessments of proposed significant agency actions.

Environmental Health Disparities Map. In consultation with the Environmental Justice Council, the Department of Health (DOH) must continue to develop and maintain an environmental health disparities map with the most current available information necessary to identify cumulative environmental health impacts and overburdened communities.

The map must include tools to track changes in disparities over time in an interactive, regularly updated display, and measure the link between overall environmental health disparity ranks, environmental data, vulnerable population characteristics, such as race and income, and human health data.

In developing and maintaining the map, DOH must encourage participation by representatives from overburdened communities and vulnerable populations through community engagement and listening sessions.

DOH may request assistance from the University of Washington, other academic researchers, and other agencies to perform modeling, create evidence-based indicators,

conduct sensitivity analyses, and collect statewide environmental data.

DOH must publish a summary of regular updates to the map and, at least every three years, perform an evaluation of the map to ensure the most current modeling and methods are being used to develop and update the map's indicators.

Cumulative environmental health impact is defined as the combined, multiple environmental harms and health impacts on a vulnerable population or overburdened community.

Environmental Justice Council. The Environmental Justice Council is established to advise agencies on incorporating environmental justice into agency activities. The council consists of 12 members, appointed by the Governor, each serving four-year terms, including:

- seven community representatives, including one youth representative;
- two members representing tribal communities, appointed by the Governor's Office of Indian Affairs in consultation with all federally recognized tribes in Washington State, including all tribes with treaty reserved rights;
- two representatives who are environmental justice practitioners or academics, to serve as environmental justice experts; and
- one representative at large, based on applied and demonstrated work and focus on environmental justice.

All obligated agencies must serve as nonvoting, ex officio liaisons to the council and each agency must identify an executive team level staff person to participate on behalf of the agency.

DOH must hire a manager who is responsible for overseeing all staffing and administrative duties of the council. DOH must provide all administrative and staff support for the council.

In collaboration with the Office of Equity, the Office of Financial Management, the council, and agencies, DOH must:

- establish standards for the collection, analysis, and reporting of disaggregated data as it pertains to tracking population level outcomes of communities;
- create statewide and agency-specific process and outcome measures to show performance; and
- create an online performance dashboard to publish state and agency performance measures and outcomes.

With input and assistance from the council, DOH must establish an interagency work group to assist agencies in incorporating environmental justice into agency decision making. The work group must include staff from each obligated agency and may include members from the council.

DOH must provide assistance to the workgroup by facilitating information sharing on environmental justice issues; developing and providing assessment tools to use in the development and evaluation of agency programs, services, policies, and budgets; providing technical assistance and compiling resources; and training agency staff on effectively using data and tools for environmental justice assessments.

The duties of the work group include:

- providing technical assistance to support agency compliance with environmental justice requirements under the act;
- assisting the council in developing a schedule and timeline for sequencing the types of significant agency actions subject to environmental assessments, and funding and expenditure decisions subject to environmental justice principles;
- identifying goals and metrics that the council may use to assess agency performance; and
- developing guidelines for agencies in coordination with the council.

The council has the following powers and duties:

- to provide a forum for the public to testify on environmental justice concerns, assist the council in understanding environmental justice priorities, and identify agencies for contact purposes;
- work with the work group to develop guidance for the environmental justice; and
- in consultation with the work group, determine which obligations of the act, agencies must pursue first, and identify and prioritize significant agency actions requiring an environmental justice assessment.

Beginning December 1, 2023, and biennially thereafter, the council will evaluate progress of agencies on applying council guidance, and communicate agencies' progress to the public, the Governor, and the Legislature.

The council must convene by January 1, 2022.

Environmental Justice For All Agencies. State agencies not required to comply with the environmental justice requirements of the act should strive to apply the laws of the state, and the rules and policies of the agency, in accordance with the policies of the act.

Agency Opt-in. Any state agency, including the Governor's Office and the Office of the Attorney General, may opt in to assume the substantive and procedural requirements of the act.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Amends the title 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.
- Sets implementation dates of January 1, 2023, for incorporation of environmental justice into agency strategic plans and July 1, 2023, for environmental justice assessments.
 - Requires agencies to consider council guidelines in the development of the environmental justice obligations.
 - Directs the council and interagency workgroup to identify and prioritize the types of significant agency actions subject to assessments.
 - Requires agencies to develop a process for conducting environmental justice assessments, determining what actions prompt an assessment, and other relevant factors for assessment based on the unique mission, authorities, and priorities of each agency.
 - Specifies that the obligation of an agency to conduct an assessment shall not apply to significant agency actions for which, prior to the effective date of the act, an EIS has been completed.
 - Requires agencies to annually update the council on development and implementation of all environmental justice obligations, in addition to previous dashboard requirements on assessments and strategic plans.
 - Directs DOH to provide training for agencies on how to utilize the Environmental Health Disparities map.
 - Requires the council to elect two members as co-chairs, adds a youth representative, and specifies that tribal members are appointed by the Governor's Office of Indian Affairs.
 - Removes the three agency members, and instead requires agency liaisons from all seven obligated agencies.
 - In collaboration with the Office of Equity, Office of Financial Management, and the council, requires DOH to establish data standards and measures to communicate agency performance.
 - Establishes an interagency workgroup, comprised of representatives from all obligated agencies, to provide technical assistance to support agency compliance, assist the council in developing a schedule and timeline for significant agency actions and funding and investment decisions, identify goals and metrics to assess agency performance, and develop guidelines in coordination with the council;
 1. DOH must assist in information sharing, developing assessment tools, and training staff.
 - Establishes additional powers and duties for the council, including providing a forum for the public to testify on environmental justice concerns and assist the council in understanding priorities for recommendation to agencies, determining which of the obligations of the act—implementation in strategic plans, budgeting and funding criteria, or community engagement plans—agencies shall pursue first, developing guidance in coordination with the workgroup, and identifying and prioritizing significant agency actions requiring environmental justice assessment.
 - Specifies that nothing in the act shall prevent other agencies from adopting environmental justice policies and processes consistent with the act, and nothing in

- the act shall be construed to override other existing legal obligations of an agency.
- Removes provisions relating to establishing the Office of Environmental Justice Advocate.
 - Adds a severability clause.

Appropriation: None.

Fiscal Note: Requested on January 15, 2021.

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 (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: The bill today is the result of much work done by the task force, and includes business, agency, and community input, guidance on how to use mapping tools, an environmental justice definition and principles, and application to improve policies, particularly environmental policy. It advances policy centered on who is benefiting, who is burdened, and the principle that no one community has to shoulder burdens. It is critical to build a framework around environmental policies, so that policies that come through this committee that create environmental benefit for all.

There are significant barriers that prevent meaningful involvement in the regulatory process. This bill is needed to level the playing field and create real accountability. This work is long overdue. Now is the time for the committee and Legislature to act on this issue.

We know through voluminous data that people of color bear greater environmental burdens and impacts from pollution than more affluent and white communities. We need to address this historic environmental burden. This bill further improves policies and practices already intended to benefit communities in environmental laws. Many projects unintentionally can have positive and negative impacts, this will increase oversight and look at how those impacts are distributed across communities.

As the bill moves forward, we want to support work to engage with tribal nations. One element of environmental racism is a lack of data and data gaps, for instance, monitoring sites for water and air pollution. Disparities could be worse than what we know currently. This bill seeks to provide a fuller picture of the needs of everyone in Washington, centers the voice of the most impacted communities, and provides a path to policies that support health and prosperity for all.

The privilege of enjoying birds in the backyard is not equitably distributed. Burdened communities rarely have the green space where enjoyment of the natural world can occur.

This enjoyment has tangible and measurable health benefits. The HEAL Act ensures that these opportunities are shared more broadly across the state.

We know that geographic health disparities were created by early discriminatory housing policies such as redlining. Communities with more exposure to pollution have higher rates of respiratory diseases and are at greater risk from COVID-19. The EHD map provides population, health, and magnitude or environmental threat data to show how pollution puts communities at greater risk. The HEAL Act will preserve precious health care resources.

This bill allows those that work the land and support the food chain to have a say in environmental priorities. Farmworkers feel unsafe in reporting environmental violations because they fear retaliation. Parents worry about exposing their children to pesticides and associated illnesses. The HEAL Act will ensure that everyone can live, play, and work in a healthy environment.

2020 was a difficult year, the economic downturn left many wondering where their next meal will come from. Many issues today are not new, the pandemic has just shed a light on what many in person of color communities have been experiencing for years. The best solutions come from those directly facing these challenges. The HEAL Act is a result of deep listening from frontline communities with the goal of achieving environmental health in these communities.

These recommendations are only the beginning of providing reparations to those who have been oppressed. Those who say these impacts do not exist are in positions of power to end them.

We are overall enthused by this very bold legislation and very supportive of incorporating environmental justice analysis. DNR already uses the EHD map in various ways, including in consideration of long term forest health and wildfire danger. It is important to note that DNR has a fiduciary responsibility for state trust lands. The revenue is a bit constrained from prioritizing other goals.

CON: The definition of significant agency action is too broad. Details are not clear on how long or expensive an environmental justice assessment will be. There is concern that projects will be delayed or never happen. There is concern about the expansive authority and lack of supervision for the environmental justice advocate and the council. We ask that business members be included on the council. This bill adds another level of regulatory red tape to slow development.

We recognize the need for steps to address environmental disparities but we must make sure these steps are harmonized with the existing regulatory process. Incorporating environmental justice in the state agency process is one piece of many when addressing this larger issue. The environmental justice assessment combined with the broad definition of significant agency action propose considerable barriers to increasing jobs and prosperity.

Our opposition rests on governance structures created in this bill and mechanisms created to carry out its purposes. Concentration of power within the council and advocate, unelected community members, is a departure from a democratic basis of society.

OTHER: Environmental justice is integral to Ecology's mission to protecting and preserving the environment for every Washingtonian. This last year has underscored the imperative to achieve environmental justice for communities disproportionately affected by pollutants at home and in their jobs. This bill helps expand environmental justice considerations to a full range of government decisions to help agencies identify and eliminate underlying inequities.

Commerce is looking to continue to bring environmental justice in our communities with the clearest connection to environmental health. One example is the 2021 state energy strategy, where equity appears for the first time, including recommendations for community engagement. Commerce took a similar approach to CARES Act dollars and other grants to create a business resiliency network using outreach and metrics. This work is powerful when done well.

The bill continues efforts to create a healthy environment for all in the state by following up on the work of the task force. While the bill requires additional staff resources, we are excited about the approach to environmental justice centered around community voices and very pleased that the EHD map is named as a source of data to inform decision making.

We understand and appreciate the intent but there will be extreme unintended consequences. The approval by the council and massive workload will bog down government work to a snail's pace. How will this gigantic work be funded? This bill will dramatically slow adoption of emergency rules.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Rebecca Saldaña, Prime Sponsor; Bruce Wishart, Sierra Club/Puget Soundkeeper; Vlad Gutman-Britten, Climate Solutions, Washington State Labor Council; Darcy Nonemacher, Washington Environmental Council; David Mendoza, The Nature Conservancy; Adam Maxwell, Audubon Washington; Judy Twedt, UAW 4121; Claire Richards, Washington Physicians for Social Responsibility; Hamdi Abdulle, African Community Housing and Development; Australia Crosby, Community to Community Development; Guillermo Rogel, Front and Centered; Maria Batayola, Beacon Hill Council; Emily Pinckney, Washington Build Back Black Alliance; Dr. Helene Wright, NAACP, HDW Consulting; Stephanie Celt, Department of Natural Resources; Oskar Zambrano, Progreso, Latino Progress; Tom Geiger, UFCW 21; Giovanni Severino, Progreso: Latino Progress.

CON: Josie Cummings, Building Industry Association of Washington; Peter Godlewski, Association of Washington Business; Tom Davis, Washington Farm Bureau.

OTHER: Laura Watson, Department of Ecology; Heather Hansen, Washington Friends of

Farms & Forests; Michael Furze, Department of Commerce; Lauren Jenks, Department of Health.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): CON: Michele Woodhouse, citizen; Tracy Doriot, Doriot Construction.