
Environment & Energy Committee

HB 1347

Brief Description: Integrating community-based health assessments into foundational environmental policies to improve environmental justice.

Sponsors: Representatives Pollet, Lekanoff, Berry, Ramel, Kloba, Slatter, Ryu, Taylor and Doglio.

Brief Summary of Bill

- Requires the Department of Health (DOH) to initiate at least 10 annual community-based health assessments, based on a prioritized list developed by the Environmental Justice Council (EJC), at least five of which should include tribal nations, if five or more tribal nations have requested assessments to be carried out.
- Requires covered agencies subject to the 2021 environmental justice law to provide updated lists to the EJC of communities identified as overburdened by each covered agency, and to consider the results of community based health assessments in addressing community impacts identified during environmental justice assessments.
- Requires covered agencies subject to environmental justice assessment requirements to conduct community-based health assessments in certain circumstances.
- Requires the EJC to identify priority council-designated overburdened communities that multiple covered agencies have also identified.
- Authorizes the expenditures of funds from two Climate Commitment Act Accounts for purposes of community-based health assessments.
- Requires consideration and mitigation of disparate environmental and health disparities in council-designated overburdened communities under the State Environmental Policy Act.

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.

Hearing Date: 1/23/23

Staff: Jacob Lipson (786-7196).

Background:

The 2021 Environmental Justice Law.

In 2021 the Legislature enacted Senate Bill 5141 which established several requirements applicable to how state agencies consider environmental justice in their decision-making. The departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation and the Puget Sound Partnership must apply and comply with specified environmental justice requirements, and other state agencies are eligible to opt-in to the requirements established by the 2021 environmental justice law. To date, the Office of the Attorney General is the only agency that has opted-in to the requirements of the 2021 environmental justice law.

Covered Agency Obligations under the 2021 Environmental Justice Law.

Covered agencies were required to integrate environmental justice into agency decision-making and activities, including through:

- the creation and adoption 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. Overburdened communities must be identified by covered agencies in such a way that allows for the measurement of the performance effectiveness of new environmental justice duties of covered agencies; and
- conducting 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.

Four categories of significant agency actions, for which environmental justice assessments by covered agencies are required, are established:

1. significant legislative rule adoption;
2. the development and adoption of new grant and loan programs;
3. capital project, grant, or loan awards of at least \$12 million and transportation projects, grants, or loans of at least \$15 million; and
4. 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 must aspire to complete environmental justice assessments without delaying the completion of the underlying agency action. Environmental justice assessments do not require novel quantitative or economic analysis or a comprehensive or exhaustive examinations of potential impacts. A covered agency may satisfy its environmental justice assessments based on

the completion of a checklist that includes, at minimum, six specified components. 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 (SEPA).

Covered agencies must also 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 that may cause or address environmental harms or provide environmental benefits towards overburdened communities and vulnerable populations. By July 1, 2023, covered agencies must, where practicable, focus applicable expenditures on creating environmental benefits experienced by 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, granting or withholding benefits, and budget development processes. 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

Environmental Justice Council.

The 2021 environmental justice law also created an Environmental Justice Council (EJC) to advise covered agencies on incorporating environmental justice into agency activities. The EJC consists of 12 members representing specified interests, appointed by the Governor. The EJC must:

- provide a forum for public testimony;
- provide guidance to covered agencies on developing environmental justice 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;
- 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 EJC guidance, and communicate agency progress to the public, the Governor, and the Legislature.

The EJC's role is advisory and EJC decisions are not binding on an agency, individual, or organization. The DOH provides administrative and staff support for the EJC.

Covered agencies must consider guidelines developed by the EJC in carrying out covered agency obligations under the 2021 environmental justice law.

Government-to-Government Consultation with Indian Tribes.

Under the 2021 environmental justice law, covered agencies must develop a consultation framework in coordination with tribal governments. Consistent with this framework, covered agencies must offer consultation with Indian tribes on environmental justice implementation plans, community engagement plans, and significant agency actions that affect federally recognized Indian tribes' rights and interests in their tribal lands.

Climate Commitment Act Accounts.

The 2021 Climate Commitment Act (CCA) established a Cap-and-Invest program that requires The Department of Ecology (Ecology) to implement a cap on greenhouse gas emissions from covered entities and a program to track, verify, and enforce compliance through the use of compliance instruments, including allowances sold at auction to regulated entities. To ensure that the program achieves reductions in criteria pollutants regulated under the Clean Air Act, Ecology must:

- identify overburdened communities, which may occur through the process established in the 2021 environmental justice law;
- deploy an air monitoring network in overburdened communities; and
- within overburdened communities, analyze and identify the greatest contributors of criteria pollutants, and develop a high priority list of emitters.

The CCA and subsequent amendments to the CCA in 2022 established a total of eight accounts into which allowance auction proceeds and other program revenues to the state are deposited, including a Climate Commitment Account, used for certain types of emission reduction and other uses, and an Air Quality and Health Disparities Account, used for certain types of environmental justice and air quality monitoring expenditures.

Each year or biennium, when allocating funds or administering grants or programs from certain CCA accounts, state agencies must:

- conduct an environmental justice assessment consistent with the requirements of the 2021 environmental justice law;
- establish a minimum of 35 percent, and a goal of 40 percent, of total investments that

provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities; and

- establish a minimum of 10 percent of total investments used for programs, activities, and projects formally supported by a resolution of an Indian Tribe.

The state must develop a process by which to evaluate the impacts of investments made under the CCA, work across state agencies to develop and track priorities across eligible funding categories, and work with the EJC.

State Environmental Policy Act.

SEPA establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact, known as a threshold determination, the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

Summary of Bill:

Community Based Health Assessments Performed by the Department of Health.

The Department of Health (DOH) must annually initiate at least 10 community based health assessment (CBHAs), based on a prioritized list developed and annually adopted by the Environmental Justice Council (EJC). CBHAs are described as comprehensive reports that document the current health status of a community in specified ways. The DOH must seek to enter into cooperative agreements with federally recognized tribal governments requesting a CHBA to fund and provide support for a CHBA to be carried out.

Each covered agency under the 2021 environmental justice law must submit to the EJC a list of all communities identified as overburdened, and the purposes for which the designation of the overburdened community by the agency is applicable, as well as accompanying information that will allow the DOH to determine whether a CBHA is warranted. Covered agencies must update this list periodically.

Funds for CHBAs may come from the Climate Commitment Account (CCA) or the Air Quality and Health Disparities Improvement Account. DOH must fund at least 10 CHBAs per year unless fewer than 10 communities or tribal nations identified as overburdened have not been the subject of CHBAs. By December 31, 2023, the DOH must conduct or initiate 10 CHBAs, at least five of which must be tribal nations if five tribal nations have requested assessments.

Environmental Justice Assessments.

In meeting 2021 environmental justice law obligations to reduce or eliminate environmental harms identified after an environmental justice assessment, covered agencies must use the results and findings of any relevant CBHAs in assessing potential harms and prioritizing actions to mitigate or reduce harm. Covered agencies must engage with residents and organizations in overburdened communities to incorporate CHBAs when conducting environmental justice assessments.

When a covered agency action triggers an environmental justice assessment under the 2021 environmental justice law related to at least one overburdened community and the overburdened community has not had a CBHA in the past 12 years, the covered agency must notify the EJC. The EJC may then request that a CBHA be conducted and funded. A covered agency that declines to fund a CBHA requested by the EJC must issue a written explanation of its decision and conduct a public meeting upon request of a local government, tribal government, or petition or organization representing at least 10 people.

The EJC may review applications from a community to be recommended for a CBHA. The EJC must also designate priority overburdened communities, if the community has been designated as overburdened by multiple covered agencies or for multiple purposes, and based upon the results of CHBAs.

State Environmental Policy Act Review.

Projects under State Environmental Policy Act (SEPA) review with a significant potential impact in a community designated by the EJC as a priority overburdened community are presumed to require an environmental justice assessment. Projects subject to SEPA review in priority-designated communities must specifically address environmental and health disparities in the SEPA checklist. If probable significant impacts include an increase in adverse health outcomes or increased environmental and health disparities in an overburdened community related to state or regional baselines, those impacts must be addressed in an environmental impact statement and avoided or mitigated consistent with SEPA mitigation authority.

Climate Commitment Act Expenditures.

As a supplement to the state's analysis required of CCA expenditures, the Department of Ecology, in consultation with the DOH, must recommend how to allocate funding from allowance auction revenues to reduce health disparities and environmental harms in overburdened communities. Funding recommendations must, among other factors, consider the results of CBHAs, be directed to efforts to reduce the greatest health risks in overburdened communities, and be based on community-prioritized solutions or interventions documented in a CBHA.

Other.

An intent section and severability clause are included.

Appropriation: None.

Fiscal Note: Requested on January 16, 2023.

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