

# HOUSE BILL REPORT

## HB 2312

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**As Reported by House Committee On:**  
Environment

**Title:** An act relating to involving communities in environmental decision making.

**Brief Description:** Involving communities in environmental decision making.

**Sponsors:** Representatives Pollet, Fitzgibbon, Moscoso, Farrell, Ryu, Santos, Freeman, Walkinshaw, Bergquist, Goodman, Tarleton and Roberts.

**Brief History:**

**Committee Activity:**

Environment: 1/24/14, 2/5/14 [DPS].

**Brief Summary of Substitute Bill**

- Directs the Department of Health to identify highly impacted communities which have disproportionate public health challenges, high unemployment, low median income, or a high percentage of foreign-born, minority, or low English proficiency residents.
- Gives the Department of Ecology authority to enter into agreements with parties to complete supplemental environmental projects in conjunction with the settlement of violations of environmental permits in highly impacted communities.
- Directs state agencies to integrate environmental justice into their agency missions, to the extent practical.

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### HOUSE COMMITTEE ON ENVIRONMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Senn, Vice Chair; Farrell, Fey, Kagi, Morris, Ortiz-Self and Tharinger.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Short, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Harris, Nealey and Overstreet.

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*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.*

**Staff:** Jacob Lipson (786-7196).

## **Background:**

### Environmental Justice.

The U.S. Environmental Protection Agency (EPA) defines environmental justice as the fair treatment and equal opportunity for all people under environmental laws, regulations, and policies, regardless of race, income, color, or national origin. Federal activity around environmental justice derives from at least two primary authorities:

- 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 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.

At the state level, the Department of Ecology (DOE) has developed a checklist for internal use to facilitate the incorporation of environmental justice considerations into agency decisions.

### Clean Air Act.

There are several types of air emission permits issued in Washington. The federal Clean Air Act requires all states to have statewide operating permit programs for businesses and industries that are the largest sources of air pollution.

The DOE, the Energy Facility Site Evaluation Council, and any of seven local air quality authorities in Washington, have received the EPA's approval to administer Washington's air operating permit program. Prior to establishing or modifying a new source or emissions unit that would be required to register with or obtain an operating permit from the DOE or a local air authority, a Notice of Construction (NOC) permit application must be filed with the applicable agency and must be approved following a New Source Review. In addition, the DOE is also delegated the authority to issue federal Prevention of Significant Deterioration (PSD) permits for major sources of industrial air emissions.

### Clean Water Act.

The federal Clean Water Act sets effluent-based limitations on pollutant discharges into navigable waters. The EPA has delegated federal Clean Water Act authority to the DOE, which issues a variety of permits under state and federal laws that stipulate conditions for discharges into state waters. Water discharge permits can either be an individual permit issued to a single regulated facility, or a general permit for a group of similar dischargers at diverse locations.

### Hazardous Waste Management.

In implementing the state Hazardous Waste Management law and the federal Resource Conservation and Recovery Act, the DOE requires dangerous waste generators to properly dispose of waste at approved dangerous waste management sites and facilities. Facilities that treat, store, dispose, transfer, or recycle dangerous wastes must apply for a dangerous waste

permit. Currently, there are fewer than 30 active permits held by facilities which treat, store or dispose of dangerous waste in Washington. Dangerous waste generators must follow certain rules related to their use and temporary storage of wastes, but need not hold a permit unless they store dangerous wastes for longer than 90 days.

#### The Model Toxics Control Act.

The state Model Toxics Control Act (MTCA) establishes procedures for requiring potentially liable persons to clean up hazardous waste sites. If a potentially liable person associated with a site is identified, the DOE oversees, rather than directly conducts, the site's cleanup activity. The DOE may issue orders that liable persons perform site cleanup actions under certain circumstances.

#### Supplemental Environmental Projects.

The DOE recovers monetary penalties for violations of air, water, and hazardous waste management permits, and for violations of MTCA orders. The amount of the penalties violators are liable for differs by permit type. Penalty amounts are appealable to the Pollution Control Hearings Board and in state court. In cases referred to it for enforcement actions, the Office of the Attorney General (AG) may act on behalf of the DOE to recover monetary penalties.

In conjunction with the settlement of these enforcement actions, the DOE or AG sometimes enters into settlements which, in addition to or instead of recovering penalties, direct the violator to perform a supplemental environmental project (SEP).

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### **Summary of Substitute Bill:**

#### Identification of Highly Impacted Communities.

The Department of Health (DOH) is directed, within existing resources, to identify and maintain a list of highly impacted communities. The list of highly impacted communities must include consideration of, at minimum, areas with:

- unemployment rates 20 percent above the state average;
- a median household income of less than 75 percent of the state median household income;
- disproportionate public health challenges; and
- a significant percentage of residents who are foreign-born, minority, or lack English proficiency.

The DOH is also authorized to use existing environmental, scientific and public health data in determining a highly impacted community. The DOH must identify the sources of information that it relied upon in identifying highly impacted communities, and any related records are subject to release pursuant to the Public Records Act.

#### Supplemental Environmental Projects.

The DOE, the AG, and local clean air authorities are authorized to offer and enter into a SEP agreement with a violator in conjunction with the settlement of certain clean air, clean water, hazardous waste and MTCA enforcement actions in highly impacted communities. The DOE

may not compel a party to fund a SEP unless it voluntarily agrees to do so in the course of the settlement of an enforcement action.

The SEPs must take place within or primarily benefit the highly impacted community, and meet additional specifications related to the scope, timeline, and purpose of the project. The DOE must consider the cost and benefits of the SEP in determining the amount of penalties recovered in the settlement of enforcement actions related to the environmental permit violation. The DOE must also seek to involve the highly impacted community in developing the SEP.

The process established for conducting SEPS in highly impacted communities is declared to not affect existing DOE authority under environmental statutes to enter into SEPs outside of the process created by the bill. The establishment of the SEP process in highly impacted communities is declared to not establish a cause of action against the DOE if it decides to enter into a SEP or decides not to enter into a SEP, nor does it provide a cause of action to challenge the contents of any SEP agreement. The act is also declared not to create a cause of action with respect to liabilities associated with hazardous wastes or substances.

#### Other Provisions.

State agencies are directed to make achieving environmental justice part of their agency missions.

The DOE must report to the Legislature on the processes that it and the DOH use to engage potentially affected communities under environmental and public health laws, including the Growth Management Act, State Environmental Policy Act, Clean Air Act, Solid Waste Management, Hazardous Waste Management, Model Toxics Control Act, Clean Water Act, and Shoreline Management Act. This report must also analyze the extent to which environmental laws already require mitigation or the solicitation of public input.

Washington residents are declared to have a right to participate meaningfully and receive fair treatment during the implementation and enforcement of environmental rules, laws, and policies, regardless of their race, color, culture, national origin, or income level. Individuals are also declared to have a right to breathe, eat, drink, work, and recreate without risking their health due to environmental degradation.

The DOE is given rule-making authority. The identification of highly impacted communities and SEP authority takes effect January 1, 2016. However, if the DOE does not report to the Legislature on the existing processes that it and the DOH use to engage potentially affected communities under existing environmental and public health laws, the highly impacted community identification and SEP authority do not take effect. The responsibilities of the DOH and the DOE are contingent on the appropriation of funding; should the Legislature not provide funding by July 1, 2020, the DOE must bring agency request legislation to repeal the statute.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill shifts the responsibility for identifying highly impacted communities from the DOE to the DOH. The DOH must identify the sources of information that it relied upon

in identifying highly impacted communities, and any related records are subject to release pursuant to the Public Records Act.

The substitute bill eliminates the DOE's ability to require the performance of a SEP in conjunction with an enforcement action, and instead gives the DOE the ability to offer and enter into a SEP agreement. The DOE may not compel a party to fund a SEP unless it voluntarily agrees to do so in the course of the settlement of an enforcement action.

The substitute bill no longer requires SEP settlements to be lodged with a court or a quasi-judicial body. The authority to enter into SEPs is expanded to include local clean air authorities that have been delegated federal Clean Air Act implementation responsibilities, and to also explicitly include the AG.

The substitute bill requires the DOE to report to the Legislature on the processes that it and the DOH use to engage potentially affected communities under environmental and public health laws, including the Growth Management Act, the State Environmental Policy Act, the Clean Air Act, Solid Waste Management, Hazardous Waste Management, the Model Toxics Control Act, the Clean Water Act, and the Shoreline Management Act.

The substitute bill delays the effective date from January 1, 2015, until January 1, 2016. However, if the DOE does not report to the Legislature on the existing processes that it and the DOH use to engage affected communities under existing environmental and public health laws, the remainder of the bill does not take effect. In addition, the responsibilities of the DOH and DOE are made contingent on the appropriation of funding; if the Legislature does not provide funding by July 1, 2020, the DOE must bring agency request legislation to repeal the statute.

The substitute bill declares that the establishment of the SEP process in highly impacted communities does not establish a cause of action against the DOE if it decides to enter into a SEP or decides not to enter into a SEP, nor does it provide a cause of action to challenge the contents of any SEP agreement. The substitute bill also declares that the bill does not create a cause of action with respect to the liability of parties to claimants, including liabilities associated with hazardous wastes or substances.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect on January 1, 2016, contingent upon the submission of the report in section 10, which takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill is designed to better protect low-income communities of color that face a disproportionate share of pollution-related problems. Certain areas are subject to

significant health impacts. This is a scaled down version of House Bill 1434 from last year, with a narrowed focus on identifying communities and performing supplemental environmental projects. Supplemental environmental projects have the potential to be good for communities and companies. Environmental projects keep the benefits from penalties local, and help businesses rebuild trust in their communities. Supplemental environmental projects are intended to be a voluntary process. Local groups should be given an opportunity to work with agencies to identify communities in need of additional protections when local companies repeatedly violate standards.

(In support with concerns) We appreciate the ideas, and have provided some language to strengthen the bill. We can't complete this work without devoting some additional resources to identifying highly impacted communities and performing community outreach. Supplemental environmental projects are already something that the DOE has experience with. Parties that have been penalized for environmental violations sometimes propose to do a supplemental environmental project when settling an enforcement action. One key thing that this bill would do beyond current supplemental environmental projects is to increase the amount of community involvement in the projects, and to help identify those communities that are highly impacted.

(Opposed) This bill has serious enough problems that it should not be advanced. The bill requires that violators still pay monetary penalties on top of performing supplemental environmental projects. There should be more discretionary ability to set penalties in the bill. The bill might also preclude businesses from entering into the types of supplemental environmental project agreements that businesses already perform.

**Persons Testifying:** (In support) Bruce Wishart, Sierra Club; Jose Vasquez, Latino Community Fund; Bang Nguyen, Community Coalition for Environmental Justice; Darcy Nonemacher, Washington Environmental Council; and Miguel Perez-Gibson, Progress Latino.

(In support with concerns) K Seiler, Washington State Department of Ecology.

(Opposed) Brandon Houskeeper, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.