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**ENGROSSED HOUSE BILL 2009**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Reeves, Lekanoff, Thai, Gregerson, Jinkins, Ortiz-Self, Ryu, Doglio, Valdez, Stanford, Chapman, Shewmake, Santos, Fitzgibbon, Fey, Appleton, Slatter, Senn, Pettigrew, Pollet, Stonier, Pellicciotti, Tarleton, Frame, Leavitt, and Macri

AN ACT Relating to establishing a healthy environment for all by addressing environmental health disparities; adding a new chapter to Title 43 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cumulative impact analysis" means the analysis tool used by the department of health's Washington tracking network to identify highly impacted communities and vulnerable populations and environmental health disparities in identified areas and populations.

(2) "Environmental burdens" means the cumulative risks to communities caused by historic and current:

(a) Exposure to conventional and toxic hazards in the air, water, and land;

(b) Adverse environmental effects, which include environmental conditions caused or made worse by contamination or pollution or that create vulnerabilities to climate impacts; and

(c) Exposure to hazards made worse by changes in the climate, such as water stress and drought, flooding, wildfire, air quality, ocean acidification, and infectious disease.

(3) "Environmental justice" means 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.

(4) "Equity analysis" means an analysis used to determine or evaluate environmental justice considerations.

(5) "Fair treatment" means that no group of people, including racial, ethnic, or socioeconomic groups, should bear disproportionately high exposure to pollution or adverse human health or environmental impacts.

(6) "Highly impacted communities" means communities designated by state agencies based on their findings from implementing the cumulative impact analysis defined in this section and census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151.

(7) "Meaningful involvement" means all groups of people have appropriate access to meaningful public participation in decisions that affect their environment.

(8) "State agency" means a state agency that is represented on the task force created under section 3 of this act.

(9) "Vulnerable populations" means communities that experience disproportionate cumulative risk from environmental burdens due to:

(a) Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and

(b) Sensitivity factors, such as low birth weight and higher rates of hospitalization.

NEW SECTION. **Sec.**  To ensure implementation and adherence to state policies of fostering and promoting the general welfare by ensuring that all people of Washington have a safe and healthful environment, state agencies shall use all practicable means and measures to promote environmental justice and fair treatment.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, a task force is established to recommend strategies for incorporating environmental justice principles into how state agencies discharge their responsibilities.

(2) The membership of the task force established under this section is as follows:

(a) The director of the department of commerce, or th director's designee;

(b) The director of the department of ecology, or the director's designee;

(c) The executive director of the Puget Sound partnership, or the executive director's designee;

(d) The secretary of the department of transportation, or the secretary's designee;

(e) The secretary of the department of health, or the secretary's designee;

(f) The chair of the energy facility site evaluation council, or the chair's designee;

(g) The chair of the governor's interagency council on health disparities, or the chair's designee;

(h) The commissioner of public lands, or the commissioner's designee;

(i) Two members of the senate, one from each major caucus, appointed by the president of the senate, and two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives;

(j) A member who is well-informed on the principles of environmental justice and with expertise in statewide environmental justice issues, appointed by the governor;

(k) Three members from community-based organizations, appointed by the cochairs specified under subsection (3) of this section, the nominations of which are based upon maintaining a balanced and diverse distribution, where practicable, of: (i) Representation from census tracts that are ranked at an eight or higher on the cumulative impact analysis; and (ii) ethnic, geographic, gender, sexual orientation, age, socioeconomic status, and occupational representation;

(l) A tribal leader, invited by the governor;

(m) One member from an association representing business interests, appointed by the governor;

(n) One member from a union or other organized labor association in the building trade representing worker interests, appointed by the governor;

(o) One member from a minority-owned small business located in, and serving, one or more census tracts that are ranked at an eight or higher on the cumulative impact analysis, appointed by the governor;

(p) One member from a midsize economic development organization or a midsize organization representing business interests, appointed by governor who must solicit and consider nominations from economic development organizations and organizations representing business interests; and

(q) One member from an organization representing statewide agricultural interests, selected by the commissioner of public lands.

(3) The representative of statewide environmental justice interests, and the chair of the governor's interagency council on health disparities, or the chair's designee, must cochair the task force.

(4) The governor's interagency council on health disparities shall provide staff support to the task force. The interagency council may work with other agencies, departments, or offices as necessary to provide staff support to the task force.

(5) The task force must submit a final report of its findings and recommendations to the appropriate committees of the legislature and the governor by October 31, 2020, and in compliance with RCW 43.01.036. State agencies may not adopt rules, policies, or guidelines under section 4 of this act until after the legislature approves the recommendations of the task force through the amendment of this chapter or through specific reference in an appropriations act. The goal of the final report is to provide guidance to agencies, the legislature, and the governor, and at a minimum must include the following:

(a) Guidance for state agencies when adopting rules, policies,
 or guidelines regarding how to use the cumulative impact analysis, defined under section 1 of this act. Guidance must cover how agencies identify highly impacted communities and must be based on best practices and current demographic data. The guidance provided relating to the designation of a highly impacted community must utilize as a basis for this determination the cumulative impact analysis, and may use exposure scenarios developed by tribes for use in remediation decisions at, or to mitigate and address natural resource damage from, national priority list sites pursuant to the federal comprehensive environment response, compensation, and liability act, 42 U.S.C. 9601 et seq., or sites regulated under chapter 70.105D RCW, and additional factors as the task force deems appropriate;

(b) Best practices for increasing public participation and engagement by providing meaningful opportunities for involvement for all people, taking into account barriers to participation that may arise due to race, color, ethnicity, religion, income, or education level. In addition, a specific recommendation on how to best meaningfully consult vulnerable populations, including how to consider exposure scenarios developed by tribes as described in (a) of this subsection, when periodically evaluating and updating the cumulative impact analysis;

(c) Recommendations for establishing 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;

(d) Guidelines for prioritizing highly impacted communities and vulnerable populations by identifying and implementing, where practicable, procedures, processes, applications, and reporting requirements so that inspections, enforcement actions, investment of resources, planning and permitting, and public participation are maximized for the purpose of reducing environmental health disparities and advancing a healthy environment for all residents;

(e) Best practices for how local governments that plan under RCW 36.70A.040 may incorporate environmental justice principles into the development of comprehensive plans to evaluate the ways in which the plans they propose or adopt disproportionately contribute to or threaten displacement of low-income communities and people of color particularly in urban areas, or exacerbate environmental burdens to vulnerable populations; and

(f) Recommendations for how to address the equity implications of historical applications of environmental and land use laws with respect to rural communities, including any disproportionate economic burdens placed on rural communities attributable to or correlated with the implementation of federal and state environmental or land use laws.

(6) If time and resources permit, the task force may also include in its final report:

(a) Recommendations for creating and implementing equity analysis into all significant planning, programmatic and policy decision making, and investments. The equity analysis methods may include a process for describing potential risks to, benefits to, and opportunities for highly impacted communities and vulnerable populations;

(b) Best practices and needed resources for cataloging and cross-referencing current research and data collection for programs within all state agencies relating to the health and environment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state; and

(c) Recommendations for criteria for identifying and addressing gaps in current research and data collection to inform agency actions, to refine the common cumulative impact methodology, and to identify factors that may impede the achievement of environmental justice.

(7) By December 1, 2019, and in compliance with RCW 43.01.036, the task force must submit a preliminary report to the appropriate committees of the legislature and the governor if the task force is not able to complete the tasks required under this section because of insufficient funds appropriated to implement this section. The preliminary report must include the following information:

(a) Tasks that could not be completed as a result of insufficient funds appropriated;

(b) The status of the task force's activities; and

(c) Additional resources the task force needs to complete all of the requirements under this section.

(8)(a) For attendance at meetings of the task force or in attending to such other business of the task force as may be authorized, legislative members of the task force shall be reimbursed and receive allowances in accordance with RCW 44.04.120.

(b) Nonlegislative members of the task force who are not state employees must be compensated in accordance with RCW 43.03.240 and are entitled to reimbursement individually for travel expenses incurred in the performance of their duties as members of the task force in accordance with RCW 43.03.050 and 43.03.060. Such expenses of the task force must be paid by the governor's interagency council on health disparities.

(9) The task force may form work groups or consult with stakeholders as necessary to assist the task force in carrying out its duties.

(10) The task force must hold four regional meetings to seek input from, present their work plan and proposals to, and receive feedback from communities throughout the state. The following locations must be considered for these meetings: Northwest Washington, central Puget Sound region, south Puget Sound region, southwest Washington, central Washington, and eastern Washington.

(11)(a) Upon adoption of rules, policies, or guidelines related to the cumulative impact analysis, as required under section 4 of this act, each state agency must notify the governor's interagency council on health disparities and submit a report to the appropriate committees of the legislature.

(b) One year after the effective date of rules, policies, or guidelines, and two years thereafter, each state agency must submit a report to the governor, governor's interagency council on health disparities, and appropriate committees of the legislature regarding progress made towards reducing disproportionate environmental burdens and attaining environmental health targets. The report must be submitted in compliance with RCW 43.01.036.

(12) Reports submitted under this section must be available for public inspection and copying through the governor's interagency council on health disparities and must be posted on its web site.

NEW SECTION. **Sec.**  (1) Upon the legislature's approval of the task force's recommendations pursuant to section 3 of this act:

(a) State agencies, through rules, policies, or guidelines, shall adopt the use of the cumulative impact analysis to identify highly impacted communities and vulnerable populations and reduce environmental health disparities in identified areas and populations. If the task force created under section 3 of this act issues guidance on how to use the cumulative impact analysis, the rules, policies, or guidelines adopted pursuant to this subsection must be consistent with the task force's guidance, unless a state agency provides a compelling reason to deviate from the task force's guidance. A state agency that deviates from the task force's guidance when adopting a rule, policy, or guideline pursuant to this subsection must report such deviation in writing to the governor's interagency council on health disparities and the appropriate committees of the legislature;

(b) State agencies may issue policies, guidance, or adopt practices, guidelines, or rules as necessary to identify highly impacted communities, establish measurable goals for reducing environmental health disparities, and prioritize highly impacted communities and their vulnerable populations in the development, adoption, implementation, and enforcement of environmental laws, regulations, policies, and funding decisions; and

(c) If the task force created under section 3 of this act issues guidance on how to use the cumulative impact analysis, the department of health shall initiate a process, within sixty days after the issuance of the task force's guidance, to develop model policies for the purpose of providing uniform rules, policies, or guidelines to all state agencies implementing the task force guidance related to the cumulative impact analysis.

(2) To the extent that the recommendations, guidelines, or best practices of the task force conflict with standards or requirements established under other state statutes or federal law, those standards and requirements supersede, preempt, and take precedence over the recommendations of the task force.

NEW SECTION. **Sec.**  Sections 1 through 4 and 6 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. **Sec.**  This act may be known and cited as the HEAL act.

NEW SECTION. **Sec.**  Nothing in this act creates an entitlement to services or a private right of action or claim on the part of any individual, entity, or agency against the state or any state agency, officer, employee, or agent.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2019, in the omnibus appropriations act, this act is null and void.

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