

# SENATE BILL REPORT

## E2SSB 5141

---

---

As Amended by House, April 10, 2021

**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, 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, 2/19/21 [DP2S, DNP].

**Floor Activity:** Passed Senate: 3/1/21, 28-21.

Passed House: 4/10/21, 56-41.

### Brief Summary of Engrossed Second 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 to be considered by agencies, evaluate the progress of agencies implementing environmental justice requirements, recommend the identification and prioritization of actions for assessments, and provide a forum for the public to testify on

---

*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.*

environmental justice concerns.

---

## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**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

**Majority Report:** That Second Substitute Senate Bill No. 5141 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Carlyle, Conway, Darneille, Dhingra, Hasegawa, Hunt, Keiser, Liias, Pedersen and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital; Braun, Gildon, Mullet, Muzzall, Rivers, Van De Wege, Wagoner and Warnick.

**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 Engrossed Second Substitute Bill:** 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.

Significant agency action is defined as an agency action that may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population, in consideration with guidance issued by the Environmental Justice Council, in consultation with the interagency workgroup.

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;
- a plan for community engagement; and
- specific plans and timelines for incorporating environmental justice considerations into agency activities.

Equitable Community Engagement and Public Participation. By July 1, 2022, 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. Agencies may coordinate with the Office of Equity to identify policy and system barriers to meaningful engagement with communities.

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, but is not limited to, racial or ethnic minority, low-income populations disproportionately impacted by environmental harms or pollution, 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, considering guidance from and in iterative consultation with the Environmental Justice Council, must develop a process for conducting the assessments, determine 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; describe options to reduce impacts, or provide a reasonable justification for not doing so; identify direct and cumulative environmental and health impacts; and describe options and readily available costs projections for the agency to reduce impacts.

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. By July 1, 2023, an agency, while considering guidelines issued by and in iterative consultation with the Environmental Justice Council, 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.

Any expenditure and funding decisions under these provisions made by state transportation agencies funded in the transportation budget must be restricted solely to the agency's discretionary spending authority and be consistent with the appropriations in the budget.

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 and confirmed by the Senate, 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 suggested 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, make recommendations to agencies on the identification of significant agency actions requiring an environmental justice assessment, 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.

By November 30, 2022, the council must submit a report to the Governor and the appropriate committees of the House and Senate on:

- the council's recommendations to agencies on the identification of significant agency actions requiring an environmental justice assessment;
- the summary of agency progress reports provided to the council, including status of agency plans for performing environmental justice assessments; and
- guidance for environmental justice implementation into agency strategic plans, environmental justice assessments, budgeting and funding criteria, and community engagement plans.

The role of the council is purely advisory and council decisions are not binding on an agency, individual, or organization.

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.

Exceptions. Exceptions to the environmental justice assessment and incorporation of environmental justice principles into funding processes requirements may be made for any of the following reasons:

- the agency head determines 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 decisions concerning tax, debt, or other revenue administration; or
- the requirements would be in conflict with federal law or constitutional limitations, including those applicable to state-owned trust lands.

**Appropriation:** None.

**Fiscal Note:** Available.

**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.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: The amendment currently being worked on will help clarify the indeterminate aspects of the fiscal note. By giving government guidelines such as these, we create a government more fiscally responsible and effective in meeting agency needs. Life spans in my zip code remain thirteen years shorter than other places in Seattle. This bill will result in greater compliance to reduce poor outcomes. We are dependent on healthy air, water and soil. Environmental justice is critical to the health of the Evergreen State. Due to systematic discrimination, people of color face higher poverty, incarceration, and are more susceptible to environmental issues. This bill will lead to improved community engagement outcomes. Wildfires have been devastating to our state and communities. This bill will make the government more responsive and more effective targeting pollution reduction investments. The bill before you is the result of a years-long engagement with communities of color, state agencies, and the business community. Washington should set more ambitious goals for climate change. Not everyone is impacted the same way, and the best ideas come from those who are impacted the most. The investments in this bill will be shaped by data. We are not dramatically overhauling what state agencies are doing, just integrating environmental justice into existing work. There is a direct connection between historical discrimination and current health outcomes due to racialized wealth disparities leading to health outcome disparities. Supporting Black lives means working to eliminate health disparities in our communities through protecting our land, water, and cultures. Black, indigenous, and people of color are at increased risk for environmental health hazards. A budget is a moral document, and this bill upholds the morals of Washington State. Green policy does not mean anti-racist policy. We have lofty goals, but we need to work together to understand and address burdens on other communities. Sometimes it appears that Olympia regards people living in rural areas as resilient and able to take care of ourselves. However, family values cannot protect us against air pollution in the Yakima Valley.

Pollution damages our families.

CON: Permitting timelines and delays have become a big hindrance towards economic growth and job creation. We believe this work should be integrated into existing programs. The true costs of the bill are underestimated in the fiscal note. We believe this bill continues to need work.

OTHER: We are not sure what the impact of this bill will be on land managed by the Department of Natural Resources (DNR). Land trusts are managed by DNR and fund state programs. These trust lands generate \$250 million annually from timber harvest. We want to work with the committee to make sure there are not additional costs or delays to DNR operations on state timber lands and land trusts.

**Persons Testifying (Ways & Means):** PRO: Sharlett Mena, Ecology; Kimberly Goetz, Ecology; David Mendoza, The Nature Conservancy in WA; Adrienne Hampton, Duwamish River Cleanup Coalition; Oskar Zambrano Méndez, Latino Community Fund of Washington; Guillermo Rogel Jr., Front & Centered; Emily Tansey, UAW 4121; Sakara Remmu, The WA Black Lives Matter Alliance; Lyn Idahosa; Jean Mendoza; Laura Johnson, Washington Department of Health.

CON: Josie Cummings, Building Industry Association of Washington; Peter Godlewski, Association of Washington Business.

OTHER: Heath Heikkila, American Forest Resource Council.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.

## **EFFECT OF HOUSE AMENDMENT(S):**

### Covered Agencies.

- Identifies the agencies subject to environmental justice requirements as "covered agencies."
- Specifies that state agencies may opt-in to assume the obligations of covered agencies by notifying the environmental justice council, and that opt-in 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.

- Requires covered agencies to update 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.
- 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.

- Prohibits covered agencies from contracting with entities that employ registered lobbyists for purposes of implementing environmental justice responsibilities.
- Requires covered agencies to identify overburdened communities in such a way as to allow the measurement of the performance effectiveness of the environmental justice obligations of covered agencies.

#### Significant Agency Actions and Environmental Justice Assessments.

- Revises the definition of "significant agency action" for which covered agencies must conduct an environmental justice assessment to: (1) significant legislative rules; (2) new grant or loan program development and adoption; (3) the award by a covered agency of a capital project, grant, or loan of at least \$12 million or a transportation project, grant, or loan of at least \$15 million; (4) the submission of agency request legislation to the Office of the Governor or the Office of Financial Management (OFM) for approval; and (5) any other actions deemed significant by a covered agency consistent with environmental justice assessment requirements.
- Establishes a process for covered agencies to identify and periodically evaluate additional types of significant agency actions beyond the 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.
- Provides 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.
- Directs that environmental justice assessments by covered agencies are satisfied by the completion of a checklist that functions akin to an environmental checklist under the State Environmental Policy Act (SEPA), and that contains the minimum criteria specified as part of environmental justice assessments.
- Limits a covered agency's requirement to reduce or eliminate environmental harms and maximize environmental benefits under an environmental justice assessment to the extent legal and feasible and consistent with the underlying statute being implemented.
- Requires covered agencies to use cumulative environmental health impact analysis as part of environmental justice assessments only where applicable.
- Specifies that environmental justice assessments are not required to be comprehensive or exhaustive examinations of potential impacts of a significant agency action, and do not require novel quantitative or economic analysis of proposed actions.
- Requires covered agencies to aspire to complete environmental justice assessments without delaying the underlying significant agency action and include logistical metrics related to completion of assessments in their annual dashboard report on OFM's website.
- 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.

- Requires covered agencies to periodically evaluate their list of identified significant agency actions.
- Requires covered agencies to file a notice with OFM for significant agency actions for which the agency is initiating an environmental justice assessment, and for OFM to post covered agency filings on its website and make it available to interested parties.

#### Budget and Expenditure Obligations of Covered Agencies.

- 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 incorporate principles only to applicable expenditures related to programs that address or may cause environmental harms or provide environmental benefits.
- Specifies 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.
- 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 OFM's website.
- Authorizes covered agencies to determine that it is not practicable to take specified actions to incorporate environmental justice principles into expenditure decisions or budget requests for all applicable expenditure decisions and budget requests developed by a covered agency, and requires each covered agency, by July 1, 2023, to publish the types of decision processes that will be subject to incorporation of environmental justice principles into expenditure decisions.

#### Environmental Justice Council.

- Removes Senate confirmation of council members.
- Expands the council from 12 to 14 members by adding one representative from a business regulated by a covered agency and whose business is affected by at least one other covered agency, and one representative of a union representing workers in the building and construction trades.
- 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.
- Removes the requirement that the council make recommendations on the prioritization and phase-in of implementation priorities prior to July 1, 2023.
- Authorizes the council to provide requested assistance to state agencies that are not covered agencies related to the voluntary incorporation of environmental justice principles



into agency activities.

#### Indian Tribe Consultation.

- Specifies that consultation requirements applicable to covered agencies pertain only to federally recognized Indian tribes.
- Requires covered agencies to develop a consultation framework in collaboration with tribal governments.
- Limits consultation obligations of covered agencies to actions taken to incorporate environmental justice into covered agency strategic plans, actions related to the community engagement plan developed by covered agencies, and significant agency actions that affect federally recognized Indian tribes' rights and interests in tribal lands.
- Requires DOH to offer consultation with federally recognized Indian tribes related to the development of the environmental health disparities map.
- 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 and removes the requirement that covered agency consultations with tribes be done in accordance with the existing state statute that address tribal consultation.
- Provides that the identification of the expected impacts on tribal rights and resources of proposed significant agency actions undergoing an environmental justice assessment be identified by covered agencies through the tribal consultation process that is required for significant agency actions.

#### Environmental Health Disparities Map.

- Establishes a definition for "evidence-based", which pertains to evidence-based indicators that DOH may request assistance from researchers to apply.
- Requires, rather than authorizes, DOH to request assistance from state universities, other academic researchers, and other state agencies for specified types of input into the development of the health disparities map.
- Requires the Washington State Institute for Public Policy (WSIPP) to conduct a technical review of DOH's environmental health disparities map by November 1, 2022.
- Requires DOH and the University of Washington provide technical documentation and other information as needed to WSIPP for their technical review.
- Requires WSIPP to submit a report of their findings to the Legislature, the Governor, and the council by November 1, 2022.

#### Other.

- Specifies that decisions related to the designation of significant agency actions and environmental justice assessments for agency actions as defined in the Administrative Procedures Act are subject to appeal.
- Specifies that the Act does not create a new private right of action other than the specified appeal process.
- Provides 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.