

HOUSE BILL REPORT

2SSB 5489

As Reported by House Committee On:
State Government & Tribal Relations
Appropriations

Title: An act relating to establishing a healthy environment for all by addressing environmental health disparities.

Brief Description: Establishing a healthy environment for all by addressing environmental health disparities.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Saldaña, Das, Nguyen, Hasegawa, Darneille, Palumbo, Randall, McCoy, Conway, Billig, Cleveland, Keiser, Kuderer, Rolfes, Wilson, C. and Frockt).

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/19/19, 3/28/19 [DPA];

Appropriations: 4/6/19, 4/8/19 [DPA(APP w/o SGOV)].

**Brief Summary of Second Substitute Bill
(As Amended by Committee)**

- Creates a task force, subject to the availability of funds appropriated for this purpose, to recommend various strategies for incorporating environmental justice principles into how certain agencies discharge their responsibilities.
- Requires certain state agencies to adopt a cumulative impact analysis tool to identify highly impacted communities.
- Requires the Department of Health to develop model policies for the implementation of the task force's guidance, if any are issued, related to the use of the cumulative impact analysis tool.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass as amended. Signed by 5 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Appleton, Dolan and Hudgins.

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.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Mosbrucker and Smith.

Staff: Desiree Omli (786-7105).

Background:

The United States Environmental Protection Agency (EPA) 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. The EPA states that this goal will be achieved when everyone enjoys the same degree of protection from environmental health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

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. In 2011 the Federal Environmental Justice Interagency Working Group established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities. 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.

At the state level, the Department of Ecology (ECY) has established a full-time environmental justice coordinator role and developed an environmental justice and Title VI review checklist for rulemaking. In addition, the Board of Health works on reducing health disparities, including those related to environmental justice.

Summary of Amended Bill:

Task Force Created.

Subject to the availability of amounts appropriated, a task force is created to recommend strategies for incorporating environmental justice principles into how certain state agencies discharge their responsibilities. The task force includes the following members:

- the Director of the Department of Commerce;
- the Director of the ECY;
- the Executive Director of the Puget Sound Partnership;
- the Secretary of the Department of Transportation;
- the Secretary of the Department of Health (DOH);
- the Chair of the Energy Facility Site Evaluation Council;
- the Chair of the Governor's Interagency Council on Health Disparities (Council);
- the Commissioner of Public Lands;

- a member who is well-informed on the principles of environmental justice and with expertise in statewide environmental justice issues, as appointed by the Governor;
- three members from community-based organizations, appointed by the co-chairs of the task force, the nominations of which are based upon maintaining a balanced and diverse distribution of ethnic, geographic, gender, sexual orientation, age, socioeconomic status, and occupational representation, where practicable;
- a tribal leader, appointed by the Governor;
- one member from an association representing business interests, appointed by the Governor; and
- one member from a union or other organized labor association representing worker interests, appointed by the Governor.

The Chair of the Council and the appointed member with expertise in statewide environmental justice issues will serve as co-chairs. The Council must provide staff support for the task force, but the Council may work with other agencies as necessary to provide staff support.

Task Force Duties.

The task force must report to the Legislature and the Governor by October 31, 2020. The report must include the following:

- guidance for agencies when adopting rules, policies, or guidelines regarding how to use a cumulative impact analysis, which is a tool used by the DOH's Washington Tracking Network to identify highly impacted communities, vulnerable populations, and environmental health disparities in identified areas and populations;
- best practices for increasing public participation and engagement;
- recommendations for establishing measurable goals for reducing environmental health disparities; and
- guidelines for prioritizing highly impacted communities and vulnerable populations.

The report may include:

- recommendations for approaches to integrate an analysis of the distribution of environmental burdens across population groups into evaluations performed under the State Environmental Policy Act (SEPA);
- recommendations for creating and implementing equity analysis into all significant planning, programmatic and policy decision making, and investments;
- best practices and needed resources for cataloging and cross-referencing current research and data collection for programs relating to the health and environment of all people in the state;
- recommendations for criteria to identify and address gaps in current research and data collection; and
- methods for incorporating the precautionary approach to decision making, including permitting.

The task force must hold four regional meetings throughout the state and may form work groups or consult with stakeholders as necessary.

If the task force is not able to complete the tasks required because of insufficient funds appropriated, the task force must submit a preliminary report to the Legislature and the Governor by December 1, 2019, that includes the following information:

- tasks that could not be completed as a result of insufficient funds appropriated;
- the status of the task force's activities; and
- additional resources the task force needs to complete all of the requirements reflected under the bill.

State Agency Requirements.

State agencies represented on the task force must use all practicable means and measures to promote environmental justice and fair treatment. Environmental justice is 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. 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 and that all groups of people have appropriate access to meaningful public participation in decisions that affect their environment.

Each state agency with representation on the task force must adopt the use of the cumulative impact analysis by rule, policy, or guidelines. If the task force issues guidance on how to use the cumulative impact analysis, the agencies must adopt the rules, policies, and guidelines in a consistent manner with the task force's guidance.

If the task force issues guidance on how to use the cumulative impact analysis, then within 60 days of the task force issuing the guidance, the DOH must initiate a process to develop model policies for the purpose of providing uniform rules, policies, or guidelines to state agencies implementing the task force's guidance relating to the cumulative impact analysis.

The state agency may also issue or adopt policies or guidance, or adopt rules, to identify highly impacted communities, establish measurable goals for reducing environmental health disparities, and prioritize highly impacted communities and their vulnerable populations.

The state agencies with representation on the task force must notify the Council upon adoption of rules, policies, or guidelines related to the cumulative impact analysis. One year after such adoption of rules, policies, or guidelines by the relevant agencies, and two years thereafter, each agency must report to the Council, the Governor, and the Legislature regarding progress made towards reducing disproportionate environmental burdens and attaining environmental health targets. The reports issued by the task force and the state agencies must be available on the Council's website.

Amended Bill Compared to Second Substitute Bill:

The definition of "cumulative impact analysis" is modified to mean the analysis tool used by the DOH's Washington Tracking Network to identify highly impacted communities and vulnerable populations and environmental health disparities in identified areas and populations.

If there are insufficient funds appropriated, the task force must issue a preliminary report to the Legislature and the Governor by December 1, 2019, that details:

- tasks that could not be completed as a result of insufficient funds appropriated;
- the status of the task force's activities; and
- additional resources the task force needs to complete all of the requirements reflected under the bill.

The DOH is only required to initiate a process to provide uniform rules relating to the cumulative impact analysis if the task force issues guidance on how to use the cumulative impact analysis.

Provisions relating to a state agency's obligation to adopt rules, policies, or guidelines around adopting the cumulative impact analysis is modified to state that the agency must adopt the use of the cumulative impact analysis through rules, policies, or guidelines. If the task force issues guidance on how to use the cumulative impact analysis, then the rules, policies, or guidelines adopted must be consistent with the task force's guidance.

The intent section is decodified.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 28, 2019.

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

Staff Summary of Public Testimony:

(In support) Environmental disparities mean different life expectancy, health, and quality of life outcomes that affect the state's most vulnerable populations. A study out of California found that communities of color are exposed to substantially more air pollution than other demographic groups. This phenomenon is not unique to California communities. A community air tool was developed for the Puget Sound region and identified 21 communities that suffered environmental air impacts beyond that suffered by the average citizen. Improving the health of individuals will lead to a savings in healthcare costs. This bill would increase efforts to address the environmental challenges faced by, and provide resources to, communities where the environment is in the worst shape.

The policy in the bill requires select state agencies to use a disparity mapping tool that looks at cumulative impact and identifies a range of issues affecting communities throughout the state. The task force created under this bill would help to identify ways in which the mapping tool can inform a broad range of agency decision making. It begins a process to improve cross-agency collaboration in reducing environmental health disparities. A similar tool is being piloted to use in fire-related plans to identify social vulnerabilities to hazards and target communities experiencing higher impacts.

This is an opportunity to make the government a better listener, and to ensure that community input is included. When a community is identified and engaged, the government is able to help them solve their problems as the community itself defines them. It works strategically to benefit all. The bill would not change regulations, but would add value to the agency process by looking at the impact to communities.

(Opposed) The bill is improved with the addition of one person from the business sector as a member of the task force. However, there should be more business sector representation on the task force. This bill would impact the business community significantly. With the task force considering issues around SEPA, there needs to be a more balanced representation on the task force to reflect the numerous views across the state.

There is concern about the wide scope of authority of the task force. The Legislature should have the final say in recommendations by this task force. By requiring agencies to adopt the cumulative impact analysis, this bill goes around the Administrative Procedures Act.

(Other) It is important to make environmental issues more objective and less political. However, there is concern about the data and methodology underlying this bill. The cumulative impact analysis is not the only answer when looking at health disparities. This map is urban-centric and was developed by certain organizations, and might not work for the state as a whole.

Persons Testifying: (In support) Senator Saldaña, prime sponsor; David Mendoza, Front and Centered; Pastor Herbert Carey, To God Be The Glory House of Worship; Jeff Bissonette, Union of Concerned Scientists; Craig Kenworthy, Puget Sound Clear Air Agency; Tom Bugert, Department of Natural Resources; Darcy Nonemacher, Washington Environmental Council and Washington Conservation Voters; and Greg Rock, Carbon Washington.

(Opposed) Steve Gano, Building Industry Association of Washington; and Peter Godlewski, Association of Washington Business.

(Other) Van Collins, American Council of Engineering Companies of Washington.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on State Government & Tribal Relations. Signed by 17 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Stanford, Sullivan and Tarleton.

Minority Report: Do not pass. Signed by 14 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Dye, Hoff, Kraft, Mosbrucker, Schmick, Springer, Steele, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Tharinger.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government & Tribal Relations:

The bill as amended by the Appropriations Committee makes the following changes to the task force's final report:

- requires exposure scenarios developed by tribes pursuant to certain state and federal cleanup laws to be used as part of the basis for guidance on designations of highly impacted communities;
- requires that recommendations on how to meaningfully consult vulnerable populations when periodically evaluating and updating the cumulative impact analysis include consideration of the exposure scenarios developed by tribes; and
- requires the inclusion of best practices for how local governments may incorporate environmental justice principles into the development of Growth Management Act plans.

The bill also requires funding to be provided by June 30, 2019, in the omnibus appropriations act, otherwise the bill is null and void.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill is a cost-effective way to address health disparities, which exist in every part of the state. The task force created by the bill would increase collaboration and consistency across agencies. The Legislature and stakeholders would have ample opportunity to provide input before any of the task force's recommendations are adopted. The recommendations could guide health investments and lead to health care savings. The Washington Environmental Health Disparities Map shows that certain communities are more susceptible to environmental contaminants than others. This bill would help the government to be more responsive to making all neighborhoods equal beneficiaries of environmentally friendly infrastructure and management practices.

(Opposed) The task force is unbalanced and lacks sufficient representation from the business community and the Legislature. The bill's requirement that agencies must adopt the recommendations of an unelected task force is concerning and will have significant costs to agencies. The bill creates uncertainty around agency decisions and enforcement actions that may impact long-term capital investments. The bill does not provide enough time for the

actions involved. The task force should not be making recommendations on the State Environmental Policy Act.

Persons Testifying: (In support) David Mendoza, Front and Centered; Sameer Ranade, Duwamish River Cleanup Coalition; and Herbert Carey, To God Be The Glory House of Worship.

(Opposed) Jan Himebaugh, Building Industry Association of Washington; Diana Carlen, Port of Longview and Washington Association of Wheat Growers; Kathleen Collins, Washington Water Policy Alliance; Peter Godlewski, Association of Washington Business; and Bill Stauffacher, Northwest Pulp and Paper Association.

Persons Signed In To Testify But Not Testifying: None.