S-0668.2

SENATE BILL 5489

State of Washington 66th Legislature 2019 Regular Session

By Senators Saldaña, Das, Nguyen, Hasegawa, Darneille, Palumbo, Randall, McCoy, Conway, Billig, Cleveland, Keiser, Kuderer, Rolfes, Wilson, C., and Frockt

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1 AN ACT Relating to establishing a healthy environment for all by creating a definition of environmental justice, identifying communities with cumulative environmental health impacts, creating a task force to recommend how best to implement environmental justice principles in state agency decision making, and directing state agencies to address environmental health disparities; adding new sections to chapter 43.21C RCW; and creating a new section.

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

3 NEW SECTION. Sec. 1. (1) The legislature recognizes that it is state policy to encourage productive and enjoyable harmony between humankind and the environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere; and to stimulate the health and welfare of human beings.

4 (2) It is also the continuing policy of the state of Washington to use all practicable means and measures, including financial and technical assistance, in a manner calculated to: (a) Foster and promote the general welfare; (b) create and maintain conditions under which human beings and nature can exist in productive harmony; and (c) fulfill the social, economic, and other requirements of present and future generations of Washington citizens.
(3) The legislature has further established that it is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Maintain, wherever possible, an environment which supports diversity and variety of individual choice; and

(d) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

(4) The legislature has further recognized that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(5) The legislature finds that there are communities and residents that face greater barriers to a healthy environment because of cumulative environmental hazards and population vulnerabilities.

(6) The legislature further finds that a fundamental principle of environmental justice and our democracy is that people most impacted by government actions should have advance notice of government decisions that could impact them, a clear understanding of the options and their impacts, and a meaningful opportunity to provide input and be heard before decisions are made.

(7) Multiple agency actions recognize the need for public participation and outreach including, but not limited to, education, rule making, enforcement, permitting, grant making, planning, and other government actions. However, individuals and organizations representing vulnerable populations often face barriers to participation such as limited time, lack of funds for technical experts and reviews, ability to attend meetings that conflict with work, parenting, child care responsibilities, and language barriers.

(8) While state agencies have identified a need to more effectively target their implementation and enforcement actions and funding opportunities to those areas and populations in the state that face greater exposure and susceptibility to environmental
burdens, there is limited understanding of which communities across the state are most likely highly impacted.

(9) Therefore, the legislature finds that it is necessary to incorporate environmental justice principles into the operations and activities of state agencies in order to achieve state policies of assuring all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings, assuring the right of all Washington residents to a healthful environment, and achieving a balance between population and resource use which will permit high standards of living and wide sharing of life's amenities, including through a task force on environmental justice, and agency analysis and consideration of environmental justice in decision making.

NEW SECTION. Sec. 2. A new section is added to chapter 43.21C RCW to read as follows:

(1) To ensure implementation and adherence to state policies of fostering and promoting the general welfare by assuring all people of Washington have a safe and healthful environment and serving as trustee of the environment for succeeding generations, the legislature establishes that state agencies will use all practicable means and measures to promote environmental justice and fair treatment.

(2) For purposes of this section:

(a) "Environmental justice" means the fair treatment of all persons, regardless of race, color, national origin, ethnicity, language disability, income, or other demographic or geographic characteristics with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(b) "Fair treatment" has the meaning given in section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 43.21C RCW to read as follows:

(1) A task force is established to recommend how best to incorporate 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 his or her designee;
(b) The director of the department of ecology, or his or her designee;
(c) The executive director of the Puget Sound partnership, or his or her designee;
(d) The secretary of the department of transportation, or his or her designee;
(e) The secretary of the department of health, or his or her designee;
(f) The secretary of the utilities and transportation commission, or his or her designee;
(g) The executive director of the governor's interagency council on health disparities, or his or her designee;
(h) The commissioner of public lands, or his or her designee;
(i) The following members appointed by the governor:
  (i) A tribal leader;
  (ii) A representative of statewide environmental justice interests;
  (iii) A representative of statewide environmental interests;
  (iv) A representative of business interests;
  (v) A representative of statewide labor organizations; and
  (vi) Four representatives from different geographic areas who live in communities in the state that are most significantly burdened by, and vulnerable to, high levels of pollution including, but not limited to, communities with diverse racial and ethnic populations and communities with low-income populations; and
(j) Other agency directors or their designees appointed by the governor.

(3) The task force shall be cochaired by the representative of statewide environmental justice interests and the executive director of the governor's interagency council on health disparities or his or her designee.

(4) The task force shall report its findings and recommendations to the legislature and the governor by July 31, 2020. The report must discuss:
(a) Methods to increase public participation and engagement by providing meaningful opportunities for involvement to all people taking into account barriers to participation that may arise due to race, color, ethnicity, religion, income, or education level;
(b) Draft rules for agency adoption regarding cumulative impact analyses that will identify highly impacted communities, based on the best science and current demographic data. Designation must be based on analyses of vulnerable populations and environmental burdens conducted by the University of Washington's department of environmental and occupational health sciences;

(c) Methods on how best to meaningfully consult vulnerable populations in periodically evaluating and updating the designation of highly impacted communities and the cumulative impact analysis of vulnerable populations and environmental burdens;

(d) Methods for creating and implementing equity analyses, including but not limited to cumulative impact analyses, into all significant planning, programmatic and policy decision making, and investments, including describing potential risks, benefits, and opportunities to highly impacted communities and vulnerable populations;

(e) Methods for prioritizing highly impacted communities and vulnerable populations by identifying and, where legally and fiscally feasible, implementing procedures, processes, application, and reporting requirements to maximize inspection, enforcement actions, investment of resources, planning and permitting, and public participation for the purpose of reducing environmental health disparities and advancing a healthy environment for all residents;

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

(g) Methods for establishing a target level of environmental health for each community in Washington state, qualitative at the resolution of the county level or greater and quantitative at the census tract level or greater;

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

(i) Methods for incorporating the precautionary approach to decision making, including permitting, to the extent allowed by law.

(5) 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.

(6) The task force shall have regional meetings to present their  
work plan and proposals to communities throughout the state. At least  
one meeting each must be held in northwest Washington, the central  
Puget Sound region, the south Puget Sound region, southwest  

(7) The task force shall reconvene five years after the adoption  
of the last rules to evaluate the findings of each department and  
update their findings and recommendations.

(8) As used in this section:
   
(a) "Cumulative impact analyses" refer to analyses that identify  
environmental health risk as a factor of environmental burdens and  
vulnerable populations.
   
(b) "Environmental burdens" refer to the cumulative risks to  
communities caused by historic and current:
   
   (i) Exposure to conventional and toxic hazards in the air, water,  
   and land;
   
   (ii) Adverse environmental effects, which include environmental  
   conditions caused or made worse by contamination or pollution or that  
   create vulnerabilities to climate impacts; and
   
   (iii) 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.

(c) "Environmental justice" means the fair treatment of and right  
of all persons, regardless of race, color, national origin,  
ethnicity, income, wealth, or other demographic or geographic  
characteristics, to have access to a safe, healthy environment to  
live, work, learn, practice spirituality, and play.

(d) "Equity analyses" refer to analyses that can be used to  
determine or evaluate environmental justice.

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

(f) "Highly impacted communities" are those communities  
designated by the agencies based on cumulative impact analyses in
subsection (4)(b) of this section and census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151.

(g) "Precautionary approach" means where there are threats of serious or irreversible damage, lack of full scientific certainty is not used as a reason for postponing measures to prevent environmental degradation.

(h) "Tribal leader" means persons identified by Indian tribes under RCW 43.376.050 or other designees formally appointed by the Indian tribe.

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

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

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

NEW SECTION. Sec. 4. A new section is added to chapter 43.21C RCW to read as follows:

After the issuance of the task force report in section 3 of this act, the state agencies represented on the task force shall adopt rules as recommended in the report, subject to the requirements of chapter 34.05 RCW. The agencies may adopt interim guidelines and practices prior to the adoption of rules. Within sixty days after the issuance of the task force report, it is the duty and function of the department of ecology to adopt rules implementing the task force recommendations for the purpose of providing uniform rules and guidelines to all state agencies serving on the task force. The state agencies shall issue policies, guidance, and rules necessary to implement the use of cumulative impact analyses to identify highly impacted communities, to create target environmental health standards, and to prioritize these communities and their vulnerable populations in the development, adoption, implementation, and enforcement of environmental laws, regulations, policies, and funding decisions. Every five years after the adoption of the rules required under this section, the state agencies shall periodically review their programs, plans, and policies to ensure they are promoting the reduction in disproportionate environmental burdens and attainment of the environmental health targets and shall announce and make results publicly available. Based on the review, the state agencies shall
adopt such rules, policies, guidance, and prioritizations as are needed to reduce disproportionate environmental burdens and promote attainment of environmental health targets.

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