

# FINAL BILL REPORT

## E2SSB 5141

---

---

### C 314 L 21

Synopsis as Enacted

**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, Liias, Nobles, Pedersen, Rolfes, Stanford and Wilson, C.).

**Senate Committee on Environment, Energy & Technology**  
**Senate Committee on Ways & Means**  
**House Committee on Environment & Energy**  
**House Committee on Appropriations**

**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

---

*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.*

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—NO<sub>x</sub>-diesel emissions; ozone concentration; PM<sub>2.5</sub> 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:** Environmental Justice in State Agency Activities. The departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation and the

Puget Sound Partnership (covered agencies) must apply and comply with specified environmental justice requirements with respect to agency activities.

Other state agencies are encouraged to apply the principles of environmental justice in applying state laws and agency rules and policies, and are authorized to opt in to the environmental justice requirements applicable to covered agencies. State agencies other than covered agencies may opt in by notifying the new Environmental Justice Council, and are not bound to the timelines and deadlines that apply to covered agency implementation of environmental justice requirements.

When implementing new environmental justice duties, covered agencies may not contract with entities that employ Washington-registered lobbyists.

Environmental Justice in Strategic Plans. Each covered agency must include an environmental justice implementation plan within the agency's strategic plan, by January 1, 2023. This plan must include goals and actions, metrics to track and measure accomplishments, methods to provide equitable access and ensure nondiscrimination, and strategies to ensure compliance with existing federal and state laws and policies related to environmental justice.

Community Engagement. Covered agencies must create and adopt a community engagement plan by July 1, 2022, that describes planned engagement with overburdened communities and vulnerable populations, and that identifies and prioritizes overburdened communities for purposes of implementing the agency's environmental justice responsibilities. Overburdened communities must be identified by covered agencies in such a way that allows for the measurement of the performance effectiveness of new environmental justice duties of covered agencies. This plan must include best practices and methods for outreach and communication, the use of special screening tools, and processes that facilitate the inclusion of community members affected by agency decision-making.

Each covered agency must regularly review their compliance with existing laws and policies that guide community engagement, and, where gaps exist, ensure compliance with Title VI of the 1964 Civil Rights Act, Executive Order 05-03, and guidance related to Executive Order 13166.

Environmental Justice Assessments. When considering a significant agency action initiated after July 1, 2023, a covered agency must conduct an environmental justice assessment to inform and support agency consideration of overburdened communities and vulnerable populations and to assist with the equitable distribution of benefits, the reduction of environmental harms, and the identification and reduction of environmental and health disparities.

Four categories of significant agency actions are established: (1) significant legislative rule adoption; (2) the development and adoption of new grant and loan programs; (3) capital

projects, grants, or loan awards of at least \$12 million and transportation projects, grants, or loans of at least \$15 million; and (4) the development of agency request legislation.

Covered agencies must also consider their agency's activities and identify additional significant actions that should be subject to environmental justice assessments by July 1, 2025. Covered agencies, beginning July 1, 2023, must publish on their website and in the Washington State Register the list of actions that are significant agency actions.

Covered agencies must aspire to complete environmental justice assessments without delaying the completion of the underlying agency action. Environmental justice assessments do not require novel quantitative or economic analysis or a comprehensive or exhaustive examination of potential impacts. The obligation of a covered agency to conduct an environmental justice assessment is satisfied by the completion of a checklist that includes, at minimum, six specified components.

Based on environmental justice assessments, covered agencies must seek to reduce or eliminate any environmental harms and maximize any benefits to overburdened communities and vulnerable populations. Covered agencies must consider nine specified mechanisms for reducing environmental impacts or equitably distributing benefits. If covered agencies do not have the ability or authority to avoid or reduce any estimated environmental harm of an action on overburdened communities and vulnerable populations or address the distribution of environmental and health benefits, the agency must provide a clear explanation of that determination.

The obligation of a covered agency to conduct an environmental justice assessment does not, by itself, trigger a requirement for environmental review under the State Environmental Policy Act. The issuance of forest practices permits and the sale of timber from state lands and state forest lands do not require an environmental justice assessment.

Covered agencies must file notices with the Office of Financial Management (OFM) for all significant agency actions for which the agency is initiating an environmental justice assessment, and OFM must post a list of initiated environmental justice assessments on its website each week.

Environmental Justice Relating to Budgets and Funding. Each covered agency must incorporate environmental justice principles into decision processes for budget development, expenditures, and granting or withholding benefits. Covered agencies must, to the extent allowed by law and consistent with legislative appropriations, equitably distribute funding and expenditures related to programs that address or may cause environmental harms or provide environmental benefits towards overburdened communities and vulnerable populations.

By July 1, 2023, covered agencies must, where practicable:

- focus applicable expenditures on creating environmental benefits experienced by

- overburdened communities and vulnerable populations;
- create opportunities for overburdened communities and vulnerable populations to meaningfully participate in agency expenditure decisions;
- clearly articulate environmental justice goals and assessment metrics for agency expenditures;
- consider a broad scope of grants and contracting opportunities that effectuate environmental justice principles; and
- establish a goal of directing 40 percent of expenditures that create environmental benefits to vulnerable populations and overburdened communities.

Covered agencies may adopt rules to incorporate environmental justice principles in expenditure decisions, granting or withholding benefits, and budget development processes. Covered agencies may not take actions or make expenditures that are inconsistent with or conflict with other statutes or with appropriations limitations.

Tribal Consultation. Covered agencies must develop a consultation framework in coordination with tribal governments. Consistent with this framework, covered agencies must offer consultation with Indian tribes on environmental justice implementation plans, community engagement plans, and significant agency actions that affect federally recognized Indian tribes' rights and interests in their tribal lands. The Department of Health (DOH) must also offer consultation with federally recognized Indian tribes on the development of the Environmental Health Disparities Map.

Exemptions. Agency heads may exempt a state agency on a case-by-case basis from requirements to carry out environmental justice assessments or to incorporate environmental justice principles into budget and expenditure processes upon determining:

- that any delay in the significant agency action poses a potentially significant threat to human health or the environment, or is likely to cause serious harm to the public interest;
- an assessment would delay a significant agency decision related to administration of taxes, debts, revenues, receipts, financial filings, or insurance rate or form filings;
- there is a conflict with federal law or federal program requirements; or
- there is a conflict with constitutional limitations or fiduciary obligations, including those applicable to state lands and state forestlands.

Environmental Justice Council. An Environmental Justice Council is established to advise covered agencies on incorporating environmental justice into agency activities. The council consists of 14 members appointed by the Governor: 2 environmental justice practitioners; 1 at large representative; and 11 members representing communities, tribes, businesses, and workers. Council members must be persons who are well-informed of and committed to the principles of environmental justice.

The council must:

- provide a forum for public testimony on environmental justice concerns;

- provide guidance to covered agencies on developing environmental justice assessments for significant agency actions;
- make recommendations to state agencies regarding actions that may cause environmental harm or affect the distribution of environmental benefits, and therefore should be considered significant agency actions that require environmental justice assessments;
- make recommendations to covered agencies on the identification and prioritization of overburdened communities, and related to the use of DOH's Environmental Health Disparities Map;
- work in an iterative fashion to develop guidance for the implementation of environmental justice requirements by state agencies; and
- biennially evaluate agency progress on applying council guidance, and communicate agency progress to the public, the Governor, and the Legislature.

The council's role is advisory and council decisions are not binding on an agency, individual, or organization. The council must convene by January 1, 2022. Council meetings are subject to open public meetings requirements, and public comment periods must be provided at every council meeting.

DOH must hire a manager for the council and provide administrative and staff support for the council. DOH must also establish standards for tracking community outcome data, create process and outcome performance measures, and create an online performance dashboard.

DOH must also establish an interagency workgroup, which may include council members, to assist covered agencies in implementing new environmental justice requirements. The interagency workgroup is responsible for providing technical assistance to support agency compliance; assisting the council in developing a suggested schedule and timeline for sequencing the types of funding and expenditure decisions subject to rules and criteria incorporating environmental justice principles; identifying goals and metrics; identifying other policies, priorities and projects for the council's review and guidance development; and developing guidelines for state agencies in coordination with the council.

Covered agencies must consider guidelines developed by the council in:

- developing required environmental justice implementation plans;
- developing community engagement plans;
- developing the agency's environmental justice assessment process; and
- incorporating environmental justice principles into budget development, expenditure, and benefit decisions.

Covered agencies must annually update the council on their development and implementation of these required plans and processes, and must publish an annual report on OFM's website, beginning in 2024.

The council must submit a report by November 30, 2023, to the Governor and the Legislature on activities of the council.

Environmental Health Disparities Map. DOH, in consultation with the council, must continue to develop and maintain the Environmental Health Disparities Map. In developing and maintaining the map, DOH must encourage participation by representatives of overburdened communities and vulnerable populations, and must request assistance from state universities, other academic researchers, and other state agencies.

DOH must document and publish a summary of regular updates and revisions to the map, and must perform an evaluation of the map at least every three years. DOH must also develop technical guidance for covered agencies to use the map and provide support and consultation to agencies on the use of the map. The Washington State Institute for Public Policy must conduct a technical review of the map by November 1, 2022.

Appeals. Actions and duties set forth in the act are not subject to appeal, except for the following:

- decisions related to the designation of significant agency actions by a covered agency; and
- environmental justice assessments by a covered agency for agency actions that are appealable under the Administrative Procedure Act.

Appeals of environmental justice assessments must be of the environmental justice assessment together with the accompanying agency action.

Other than these appeals, no new private right of action is created on the part of any individual, entity, or agency against any state agency, and nothing may be construed to expand, contract, or otherwise modify any rights of appeal or procedures for appeals under other laws.

**Votes on Final Passage:**

Senate	28	21	
House	56	41	(House amended)
Senate	27	22	(Senate concurred)

**Effective:** July 25, 2021