

HB 2009 - H AMD 765

By Representatives Reeves, Lekanoff, Stanford, Kretz, DeBolt, Gregerson

ADOPTED 04/17/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

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

19 (3) "Environmental justice" means the fair treatment and
20 meaningful involvement of all people regardless of race, color,
21 national origin, or income with respect to the development,
22 implementation, and enforcement of environmental laws, regulations,
23 and policies.

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

26 (5) "Fair treatment" means that no group of people, including
27 racial, ethnic, or socioeconomic groups, should bear

1 disproportionately high exposure to pollution or adverse human
2 health or environmental impacts.

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

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

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

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

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

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

20
21 NEW SECTION. **Sec. 2.** To ensure implementation and adherence to
22 state policies of fostering and promoting the general welfare by
23 ensuring that all people of Washington have a safe and healthful
24 environment, state agencies shall use all practicable means and
25 measures to promote environmental justice and fair treatment.

26
27 NEW SECTION. **Sec. 3.** (1) Subject to the availability of
28 amounts appropriated for this specific purpose, a task force is
29 established to recommend strategies for incorporating environmental
30 justice principles into how state agencies discharge their
31 responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (5) The task force must submit a final report of its findings
24 and recommendations to the appropriate committees of the legislature
25 and the governor by October 31, 2020, and in compliance with RCW
26 43.01.036. State agencies may not adopt rules, policies, or
27 guidelines under section 4 of this act until after the legislature
28 approves the recommendations of the task force through the amendment
29 of this chapter or through specific reference in an appropriations
30 act. The goal of the final report is to provide guidance to
31 agencies, the legislature, and the governor, and at a minimum must
32 include the following:

33 (a) Guidance for state agencies when adopting rules, policies,
34 or guidelines regarding how to use the cumulative impact analysis,

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

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

22 (c) Recommendations for establishing measurable goals for
23 reducing environmental health disparities for each community in
24 Washington state and ways in which state agencies may focus their
25 work towards meeting those goals;

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

33 (e) Best practices for how local governments that plan under RCW
34 36.70A.040 may incorporate environmental justice principles into the

1 development of comprehensive plans to evaluate the ways in which the
2 plans they propose or adopt disproportionately contribute to or
3 threaten displacement of low-income communities and people of color
4 particularly in urban areas, or exacerbate environmental burdens to
5 vulnerable populations; and

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

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

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

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

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

30 (7) By December 1, 2019, and in compliance with RCW 43.01.036,
31 the task force must submit a preliminary report to the appropriate
32 committees of the legislature and the governor if the task force is
33 not able to complete the tasks required under this section because

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1 of insufficient funds appropriated to implement this section. The
2 preliminary report must include the following information:

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

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

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

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

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

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

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

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

33 (b) One year after the effective date of rules, policies, or
34 guidelines, and two years thereafter, each state agency must submit

1 a report to the governor, governor's interagency council on health
2 disparities, and appropriate committees of the legislature regarding
3 progress made towards reducing disproportionate environmental
4 burdens and attaining environmental health targets. The report must
5 be submitted in compliance with RCW 43.01.036.

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

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10 NEW SECTION. **Sec. 4.** (1) Upon the legislature's approval of the
11 task force's recommendations pursuant to section 3 of this act:

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

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

32 (c) If the task force created under section 3 of this act issues
33 guidance on how to use the cumulative impact analysis, the
34 department of health shall initiate a process, within sixty days

1 after the issuance of the task force's guidance, to develop model
2 policies for the purpose of providing uniform rules, policies, or
3 guidelines to all state agencies implementing the task force
4 guidance related to the cumulative impact analysis.

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

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11 NEW SECTION. **Sec. 5.** Sections 1 through 4 and 6 of this act
12 constitute a new chapter in Title 43 RCW.

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14 NEW SECTION. **Sec. 6.** This chapter may be known and cited as
15 the HEAL act.

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17 NEW SECTION. **Sec. 7.** Nothing in this act creates an
18 entitlement to services or a private right of action or claim on the
19 part of any individual, entity, or agency against the state or any
20 state agency, officer, employee, or agent.

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22 NEW SECTION. **Sec. 8.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

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27 NEW SECTION. **Sec. 9.** If specific funding for the purposes of
28 this act, referencing this act by bill or chapter number, is not
29 provided by June 30, 2019, in the omnibus appropriations act, this act
30 is null and void."

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32 Correct the title.

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EFFECT: Strikes all material in the underlying bill and does the following:

Creates a task force of 21 members, subject to the availability of amounts appropriated, to recommend strategies for incorporating environmental justice principles into how state agencies that are represented on the task force discharge their responsibilities.

Requires the task force to submit a final report to the Legislature and the Governor by October 31, 2020, that includes its findings and recommendations such as guidance for state agencies when adopting rules, policies, or guidelines regarding how to use the cumulative impact analysis and identify highly impacted communities.

Authorizes the task force to include, if time and resources permit, additional various recommendations in its final report.

Requires the task force to submit a preliminary report to the Legislature and the Governor, by December 1, 2019, that includes certain information, if the task force is not able to complete the required tasks under the bill because of insufficient funds appropriated.

Requires that the task force hold four regional meetings to seek input and receive feedback from, and present their work plan and proposals to, communities throughout the state.

Specifies that state agencies may not adopt rules, policies, or guidelines as required or authorized under the bill until the Legislature approves the recommendations of the task force through the amendment of the chapter created under this bill or through specific reference in an appropriations act.

Requires state agencies that are represented on the task force to use all practicable means and measures to promote environmental justice and fair treatment.

Requires the state agencies that are represented on the task force to notify the Governor's Interagency Council on Health Disparities (Council) and submit a report to the Legislature upon

the adoption of rules, policies, or guidelines related to the cumulative impact analysis.

Requires the state agencies that are represented on the task force to report to the Governor, Council, and Legislature one year after the effective date of the adopted rules, policies, or guidelines, and two years thereafter, on the progress made towards reducing disproportionate environmental burdens and attaining environmental health targets.

Specifies that standards or requirements established under state or federal laws preempt the recommendations of the task force, to the extent that the task force's recommendations are in conflict with state or federal laws.

Specifies that the act does not create an entitlement to services or private right of action or claim.

Includes a null and void clause.

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