

SENATE BILL REPORT

SB 5489

As Reported by Senate Committee On:
Environment, Energy & Technology, February 19, 2019
Ways & Means, February 28, 2019

Title: 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.

Brief Description: Establishing a healthy environment for all by creating a definition of environmental justice, directing agencies to address environmental health disparities, and creating a task force. [**Revised for 2nd Substitute:** Establishing a healthy environment for all by addressing environmental health disparities.]

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

Brief History:

Committee Activity: Environment, Energy & Technology: 2/13/19, 2/19/19 [DPS-WM, w/oRec, DNP].
Ways & Means: 2/27/19, 2/28/19 [DP2S, DNP].

Brief Summary of Second Substitute Bill

- Creates a task force to recommend strategies for state agencies to incorporate environmental justice principles into their responsibilities.
- Requires state agencies to adopt the cumulative impact analysis for the purposes of identifying highly impacted communities.
- Provides that the task force provide guidance to agencies, the Legislature, and the Governor regarding how to use the cumulative impact analysis for designating highly impacted communities.
- Requires the Department of Health to initiate a process to develop model policies for implementing task force recommendations.
- Requires state agencies to submit a report on progress made towards reducing environmental burdens and attaining environmental health targets.

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.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5489 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Liias, McCoy, Nguyen and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Fortunato, Assistant Ranking Member, Environment.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Sheldon, Assistant Ranking Member, Energy & Technology; Brown, Rivers and Short.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5489 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Schoesler, Wagoner, Warnick and Wilson, L..

Staff: Julie Murray (786-7711)

Background: Environmental Justice. The United States 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 developing, implementing, and enforcing environmental laws, regulations, and policies.

The Governor's Interagency Council on Health Disparities. The Governor's Interagency Council on Health Disparities (Council) was established by the Legislature in 2006. The Council provides recommendations to the Governor and Legislature on methods to promote health equity and eliminate health disparities in Washington. The Council developed a state policy action plan to eliminate health inequities by race, ethnicity, and gender. In January 2018, the Council provided updates to the plan containing strategies for council members to commit to for promoting equity in state government. The Council's duties also include developing statewide policies to address social determinants of health that lead to disparities as well as other factors of health that can impact improving status, health literacy, physical activity, and nutrition.

The Council membership includes representation from state agencies such as the Department of Health (DOH), the State Board of Health, Department of Social and Health Services, and the Health Care Authority, as well as from the Department of Early Learning, the Office of the Superintendent of Public Instruction, the Workforce Education Training and Coordinating Board, Department of Commerce, Department of Agriculture, and the Department of Ecology (DOE). In addition, there are representatives from the commissions on African American Affairs, Asian Pacific American Affairs, and Hispanic Affairs, as well as the American Indian Health Commission and two consumer representatives.

Department of Health. DOH established the Washington Tracking Network (WTN), which provides information regarding environmental and public health data. The data available on WTN is categorized by measure with more specific information included. The measures include climate and health; community characteristics; environment; exposure to pollutants; and health indicators. The WTN is available to the public on the DOH website.

Summary of Bill (Second Substitute): A task force is established to recommend strategies for state agencies to incorporate environmental justice principles into their responsibilities. The task force must provide a report to the Legislature with the goal of providing guidance to agencies, the Legislature and the Governor, including guidelines for using the cumulative impact analysis.

The guidance must cover how agencies identify highly impacted communities and must be based on best practices and current demographic data. The cumulative impacts analysis must be used as the basis for designating a highly impacted community along with other factors the task force deems appropriate. In addition, the report must include best practices, recommendations, and guidelines.

Best practices for increasing public participation by providing meaningful opportunities for involvement must take into account barriers to participation that may be due to race, color, ethnicity, religion, income, or education level. A specific recommendation must be included on how best to meaningfully consult with vulnerable populations when periodically evaluating and updating the designation of highly impacted communities and the cumulative impact analysis.

Recommendations for establishing measurable goals for reducing environmental health disparities for each community. It must include ways state agencies may focus their work to meeting the goals.

Time and resources permitting, the task force may also include additional findings and recommendations in its report. The task force may provide recommendations for:

- integrating an analysis into State Environmental Policy Act evaluations of the distribution of environmental burdens across population groups;
- creating and implementing an equity analysis into all significant planning, programmatic and policy decision making and investments. Equity analysis methods may include a process for describing potential risks and benefits to and opportunities for highly impacted communities and vulnerable populations;

- criteria for identifying and addressing gaps in current research and data collection to inform agency action, to refine the common cumulative impact methodology, and to identify factors that may impeded the achievement of environmental justice;
- best practices and needed resources for cataloging and cross-referencing current research and data collection programs within all state agencies relating to the health and environment of all people; and
- methods to incorporate the precautionary approach into decision making and permitting to the extent allowed by law.

The task force membership includes the following or their designees: directors of the departments of Commerce, DOE, and Puget Sound Partnership, the secretaries of the departments of Transportation, DOH, and Energy Facilities Site Evaluation Council, the chair of the Council, the commissioner of Public Lands, a member of an organization representing statewide environmental justice interests, and three members appointed by the co-chairs of the task force based on maintaining a balanced and diverse distribution of ethnic, geographic, gender, sexual orientation, age, socioeconomic status, and occupational representation, where practicable, and three members appointed by the Governor to represent the interests of tribes, business community and organized labor.

The task force must hold four regional meetings. The task force may form work groups or consult with stakeholders as necessary to carry out its duties. The Council must provide staff to support the task force. Members of the task force who are not state employees are entitled to reimbursement paid by the Council for their travel expenses for task force duties.

Within 60 days of issuance of the task force report, DOH must initiate a process to develop model policies for the purpose of providing uniform rules, policies, or guidelines to all state agencies implementing task force recommendations related to the cumulative impacts analysis.

To identify highly impacted communities and vulnerable populations, and to reduce environmental health disparities, state agencies must adopt the cumulative impacts analysis through rules, policies, or guidelines consistent with the task force recommendations and guidance. State agencies may also issue policies, guidance and adopt rules necessary to identify highly impacted communities, establish measurable goals for reducing environmental health disparities, and prioritize highly impacted communities and their vulnerable populations in the development, adoption, implementation, and enforcement of environmental laws and policies and funding decisions. Each state agency must notify the Council upon adoption of rules, policies, or guidelines related to the cumulative impact analysis. One year after the adoption of rules, policies, or guidelines, and two years thereafter, each state agency must submit a report to the Governor, the Council and the Legislature on the progress made towards reducing disproportionate environmental burdens and attaining environmental health targets.

The task force's evaluations and findings must be available for public inspection and copying through the Council and on its website. A revised report with updated findings and recommendations must be submitted to the Legislature and Governor.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Three members are add to the task force to represent the interests of tribes, business and organized labor.
- The task force and its activities are made subject to the availability of amounts appropriated specifically for the task force.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Removes requirement that state agencies adopt rules as recommended by the task force.
- Removes the requirement that the task force reconvene five years after state agencies adopt rules.
- Requires state agencies to adopt the cumulative impact analysis for the purposes of identifying highly impacted communities.
- Provides that the task force provide guidance to agencies, the Legislature, and the Governor regarding how to use the cumulative impact analysis and designating highly impacted communities.
- Requires DOH to initiate a process to develop model policies for implementing task force recommendations.
- Requires state agencies to submit a report on progress made towards reducing environmental burdens and attaining environmental health targets.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

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: A clean environment is essential for youth to reach their full potential. This is a strong, target policy to advance the health of impacted communities. There is a need to recognize the disproportionate impacts to low-income and communities of color. Our communities are in trouble and this tool helps to identify impacts to our children. To reverse this trend we need support by state agencies. The task force is important and critical to address the needs of these communities and need to make sure the entire state is working with the same information. Engagement with the community leads to discussion about quality of life for the community. This does not change regulatory standards, it just includes better tools to better serve the people of the state.

CON: Businesses are not represented on the task force. Agencies are required to adopt the task force recommendations. The recommendations should be provided to the Legislature to

provide proper direction to the state agencies. This creates extra constitutional inalienable rights that are not in our constitution and provides additional benefits for unidentified individuals that are not available to all citizens.

OTHER: This provides cross agency coordination. However there are concerns about the amount of work required in a short amount of time.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Rebecca Saldaña, Prime Sponsor; Paul Parker, Transportation Commission; David Mendoza, Front & Centered; Herbert Carey, Community Development and Outreach Services Ministries; Maria Batayola, El Centro de la Raza; Ben Henry, Asian Pacific Islander Americans for Civic Empowerment; Jeff Bisonette, Union of Concerned Scientists; Craig Kenworthy, Puget Sound Clean Air Agency; Darcy Nonemacher, Washington Environmental Council; Ali Lee, Climate Reality Project Coalition; Tom Bugert, DNR; Anne Kroeker, citizen; Matthew Lang, Transit Riders Union.

CON: Steve Gano, Building Industry Association of Washington; Mike Ennis, Association of Washington Business; Peter Godlewski, Association of Washington Business; Cindy Alia, CAPR.

OTHER: Sharlett Mena, Department of Ecology; Lauren Jenks, Department of Health; Jeff Parsons, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):
No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This bill will direct state agencies to use an existing tool to inform a range of agency decision making to reduce environmental health disparities on vulnerable populations. A clean environment is necessary for youth development. Communities of color and people of low income are at the front line of health impacts from environmental hazards. This bill will prioritize resources to where the environment is in the worst shape and provide a process to increase the input of impacted communities in decision making so our communities can heal. Diesel and other air pollutants disproportionate impact on communities of color resulting in lung and heart ailments, asthma and premature death. The environmental health disparity mapping tool is already available and would become a required reference to identify and address the needs of these communities.

CON: The businesses that may be most impacted by the task force are unrepresented on the task force. The bill will add costs from new regulations, but those who will have to implement them are not participating on the task force.

Persons Testifying (Ways & Means): PRO: David Mendoza, Front & Centered; Pastor Herbert Carey, To God be the Glory Church; Jeff Bissonette, Union of Concerned Scientists; Tom Bugert, DNR.

CON: Steve Gano, Building Industry Association of Washington; Peter Godlewski, Association of Washington Business.

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