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## Environment & Energy Committee

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### HB 1606

**Brief Description:** Concerning the correction of culverts.

**Sponsors:** Representatives Barkis, Abbarno, Caldier, Eslick, Walsh, Robertson, Graham, Corry, Stokesbary, Sutherland, Dufault, Gilday, Jacobsen, Griffey, Chambers and Young.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Exempts from environmental justice review requirements Department of Transportation projects correcting fish barriers under a 2013 federal court injunction.</li></ul>
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**Hearing Date:** 1/28/22

**Staff:** Jacob Lipson (786-7196).

**Background:**

State Agency Consideration of Environmental Justice.

In 2021, the Legislature enacted Senate Bill 5141, which established several requirements applicable to how state agencies consider environmental justice in their decision-making. 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.

The environmental justice duties of covered agencies include:

- each covered agency must include an environmental justice implementation plan within the agency's strategic plan, by January 1, 2023;
- covered agencies must create and adopt a community engagement plan by July 1, 2022, that describes planned engagement with overburdened communities and vulnerable

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populations, and that identifies and prioritizes overburdened communities for purposes of implementing the agency's environmental justice responsibilities;

- 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;
- 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;
- covered agencies must develop a consultation framework in coordination with tribal governments; and
- 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 subject to environmental justice review requirements 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.

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.

#### Department of Transportation Culvert and Other Fish Passage Barrier Projects.

In 2001, 21 Western Washington treaty tribes filed suit in U.S. District Court, *United States v. Washington*, alleging that the existence of state-owned barrier culverts under roads that restrict or completely block salmon and trout access to historic spawning and rearing habitat is a violation of treaty rights. In March 2013, the court found in favor of the tribes and issued a permanent injunction requiring the State of Washington to accelerate barrier correction on salmon and

steelhead streams within specified areas by 2030. Among the state agencies subject to the injunction is the Washington State Department of Transportation (WSDOT). The WSDOT has currently identified 1,002 of its culverts that apply to the injunction. The WSDOT develops a biennial list of planned fish passage barrier removal projects.

**Summary of Bill:**

The Department of Transportation (WSDOT) is directed to apply and comply with the substantive and procedural requirements for covered agencies related to environmental justice unless otherwise directed by law. Environmental justice requirements do not apply to WSDOT projects correcting a fish barrier under the 2013 federal court injunction in *United States v. Washington*.

An intent section is included.

**Appropriation:** None.

**Fiscal Note:** Requested on January 18, 2022.

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