

HOUSE BILL REPORT

EHB 2009

As Passed House:
April 17, 2019

Title: An act relating to establishing a healthy environment for all by addressing environmental health disparities.

Brief Description: Establishing a healthy environment for all by addressing environmental health disparities.

Sponsors: Representatives Reeves, Lekanoff, Thai, Gregerson, Jinkins, Ortiz-Self, Ryu, Doglio, Valdez, Stanford, Chapman, Shewmake, Santos, Fitzgibbon, Fey, Appleton, Slatter, Senn, Pettigrew, Pollet, Stonier, Pellicciotti, Tarleton, Frame, Leavitt and Macri.

Brief History:

Committee Activity:

State Government & Tribal Relations: 2/15/19, 2/19/19 [DP].

Floor Activity:

Passed House: 4/17/19, 88-10.

Brief Summary of Engrossed Bill

- Creates a task force of 22 members to recommend strategies for incorporating environmental justice principles into how specified state agencies discharge their responsibilities.
- Requires certain state agencies to adopt the use of the cumulative impact analysis in accordance with the task force's guidance, with certain exceptions, upon the Legislature's approval of the task force's recommendations.
- Requires the Department of Health, upon the Legislature's approval of the task force's recommendations, to develop model policies related to the cumulative impact analysis.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 5 members: Representatives Gregerson, Chair; Pellicciotti, Vice Chair; Appleton, Dolan and Hudgins.

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.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Goehner, Assistant Ranking Minority Member; Smith.

Minority Report: Without recommendation. Signed by 1 member: Representative Mosbrucker.

Staff: Desiree Omli (786-7105).

Background:

The United States Environmental Protection Agency (EPA) 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. The EPA states that this goal will be achieved when everyone enjoys the same degree of protection from environmental health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

In 1994 President Clinton signed Executive Order 12898, which directed federal agencies to make achieving environmental justice part of their agency missions by identifying and addressing disproportionately high or adverse environmental or human health effects of agency programs, policies, and activities on minority and low-income populations. In 2011 the Federal Environmental Justice Interagency Working Group established a Title VI Committee to address the intersection of agencies' environmental justice efforts with their Title VI enforcement and compliance responsibilities. Title VI of the Civil Rights Act of 1964 prohibits discrimination in all federally assisted programs, on the grounds of race, color, or national origin.

At the state level, the Department of Ecology (ECY) has established a full-time environmental justice coordinator role and developed an environmental justice and Title VI review checklist for rulemaking. In addition, the Board of Health works on reducing health disparities, including those related to environmental justice.

Summary of Engrossed Bill:

Task Force—Created.

Subject to the availability of amounts appropriated for this purpose, a task force is created to recommend strategies for incorporating environmental justice principles into how state agencies that are represented on the task force discharge their responsibilities.

The task force includes the following 22 members:

- the Director of the Department of Commerce;
- the Director of the ECY;
- the Executive Director of the Puget Sound Partnership;
- the Secretary of the Department of Transportation;
- the Secretary of the Department of Health (DOH);
- the Secretary of the Energy Facility Site Evaluation Council;
- the Chair of the Governor's Interagency Council on Health Disparities (Council);

- the Commissioner of Public Lands;
- four member from the Legislature;
- a member who is well-informed on the principles of environmental justice and with expertise in statewide environmental justice issues, appointed by the Governor;
- three members from community-based organizations, appointed by the co-chairs of the task force, the nominations of which are based upon maintaining a balanced and diverse distribution, where practicable, of: representation from census tracts that are ranked at an eight or higher on the cumulative impact analysis and ethnic, geographic, gender, sexual orientation, age, socioeconomic status, and occupational representation;
- a tribal leader, invited by the Governor;
- one member from an association representing business interests, appointed by the Governor;
- one member from a union or other organized labor association in the building trade representing worker interests, appointed by the Governor;
- one member from a minority-owned small business located in, and serving, one or more census tracts that are ranked at an eight or higher on the cumulative impact analysis, appointed by the Governor;
- one member from a midsize economic development organizations or a midsize organization representing business interests, appointed by Governor who must solicit and consider nominations from economic organizations and organizations representing business interests; and
- one member from an organization representing statewide agricultural interests, selected by the Commissioner of Public Lands

The Chair of the Council and the member with expertise in statewide environmental justice issues will serve as co-chairs. The Council must provide staff support for the task force, but the Council may work with other agencies as necessary to provide staff support.

Task Force Duties.

The task force must report to the Legislature and the Governor by October 31, 2020 and provide the following:

- guidance for state agencies when adopting rules, policies, or guidelines regarding how to use the cumulative impact analysis and identify highly impacted communities;
- best practices for increasing public participation and engagement;
- recommendations for establishing measurable goals for reducing environmental health disparities;
- guidelines for prioritizing highly impacted communities by identifying certain agency actions that maximize the reduction of environmental health disparities;
- best practices for how local governments that plan under the Growth Management Act may incorporate environmental justice principles into the development of comprehensive plans to evaluate ways in which the plans contribute to or threaten displacement; and
- recommendations for how to address the equity implications of historical applications of environmental and land use laws with respect to rural communities.

The task force may also include in its final report, if time and resource permit, the following:

- recommendations for creating and implementing equity analysis, which is an analysis used to determine or evaluate environmental justice considerations, into all significant agency decision-making;
- best practices and needed resources for cataloging and cross-referencing current research and data collection for programs within all state agencies; and
- recommendations for criteria for identifying and addressing gaps in current research and data collection.

To the extent that the task force's recommendations, guidelines, or best practices conflict with the standards or requirements established under other laws, those standards and requirements supersede and preempt the recommendations of the task force.

If the task force is not able to complete the tasks required under the bill, the task force must, by December 1, 2019, submit a preliminary report to the Legislature and the Governor that includes the following:

- tasks that could not be completed as a result of insufficient funds appropriated;
- the status of the task force's activities; and
- additional resources the task force needs to complete all of the requirements under the bill.

The task force must hold four regional meetings and may form work groups or consult with stakeholders as necessary.

State Agency Requirements.

State agencies represented on the task force must use all practicable means and measures to promote environmental justice and fair treatment. Environmental justice is 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. 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.

State agencies that are represented on the task force must adopt the use of the cumulative impact analysis through rules, policies, or guidelines. However, state agencies may not adopt such rules, policies, or guidelines until after the Legislature has approved the recommendations of the task force through the amendment of the chapter created under this act, or through specific reference in an appropriations act. If the task force issues guidance on how to use the cumulative impact analysis, then the rules, policies, or guidelines adopted by the state agencies must be consistent with the task force's guidance, unless a state agency provides a compelling reason to deviate from the task force's guidance.

Upon the Legislature's approval of the task force's recommendations, within 60 days of the task force issuing its guidance on how to use the cumulative impact analysis the DOH must initiate a process to develop model policies for the purpose of providing uniform rules, policies, or guidelines to state agencies implementing the task force's guidance related to the cumulative impact analysis.

In addition, upon the Legislature's approval of the task force's recommendations, state agencies represented on the task force may adopt practices, guidelines, or rules to identify highly impacted communities, establish measurable goals for reducing environmental health disparities, and prioritize highly impacted communities in agency decision-making.

Upon the adoption of rules, policies, or guidelines related to the cumulative impact analysis, state agencies that are represented on the task force must notify the Council and submit a report to the Legislature. One year after the effective date of the adopted rules, policies, or guidelines, the state agencies must submit a report to the Governor, Council, and Legislature regarding the progress made towards reducing disproportionate environmental burdens and attaining environmental health targets.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) A clean environment is critical to the health of our state, counties, and cities. Where you live, your income, race, and language ability should not determine how healthy or safe you are or whether your environment is free from pollution. This is not about how to remodel the SEPA, but how to ensure everyone has a voice at the table in the process of determining how projects will impact them and their communities. This bill is about how to save the communities that are most impacted when environmental justice is not taken into consideration. The Beacon Hill community in Seattle is comprised of nearly 80 percent people of color; nearly 40 percent are immigrants and refugees. On a scale from one to 10, the Washington Environmental Health Disparities Map shows census tracts in the Beacon Hill neighborhood rating nine or 10 on issues from diesel pollution to toxic releases from facilities. In addition, Latino people, like those who work in the orchards, are exposed to pesticides at work and are twice as likely to have cardiovascular disease than those who are not. The presence of pollution and climate change further compounds vulnerabilities that medically sensitive populations already face, therefore hindering academic performance and financial well being.

Projects need to be supported in order for them to be durable and lift up the communities where they are located. The smartest investments are also those that provide multiple benefits, including returns on health well-being. The bill makes fiscal sense by prioritizing areas where communities are suffering most by pollution.

The health disparities mapping analysis tool provided for in the bill provides an easy to use framework for agencies to identify and map out which populations are most vulnerable to environmental threats. The tool will equip agencies with the ability to inform a broad range of agency decision making. The bill begins a process to improve cross-agency collaboration and accountability, and cross-cultural responsiveness, with the goal of reducing environmental health disparities. The bill does not create regulation, but focuses the work of

agencies on these disparities and gives the agencies the flexibility of using rules, policies, or guidelines in order to adopt the use of this tool. It will also help agencies to learn from one another.

Regarding costs, we are paying for the cost of health impacts already. For example, we are paying for the cost of lost business opportunities when people cannot work due to health impacts, the cost to take time off work to care for a sick child, and the loss of biodiversity. These costs vastly outweigh any perceived or temporary costs to business as usual, and we must look at the human cost of this impact.

(Opposed) The bill creates an inalienable right to a healthful environment and compounds this with a mandate that each person contribute to the preservation and enhancement of the environment. A bill cannot mandate a balance between population and resource use, which will permit high standards of living and a wide sharing of life's amenities. This requirement violates the Administrative Procedures Act (APA). Our state is a representative republic, and the APA requires public notice and meaningful opportunity to be heard before decisions are made.

The proponents of the bill talk about the need to have every voice at the table, but the task force does not have a business representative as a member of that task force. This is also not strictly a task force bill because it also requires rulemaking.

(Other) The bill includes the use of the Environmental Health Disparities Map, which maps environmental exposures, population characteristics, and health impacts to identify communities that are exposed to a disproportionate amount of environmental exposures. It is good that the bill names this as a data point that agencies will use to inform their agency decision making. The original version of the bill has a large fiscal note and implementation challenges. Environmental justice issues are not easy to solve and require investments that are not considered in the Governor's budget.

To be successful, it is crucial for the task force to resist the temptation to speak for victims of environmental injustice, but rather elevate their voices.

Persons Testifying: (In support) Representative Reeves, prime sponsor; Ken Lans, Physicians for Social Responsibility; David Mendoza, Front & Centered; Scott Richards, The Nature Conservancy; Maria Batayola, El Centro de la Raza; Salvador Salazar, Progreso; Gregory Christopher, Shiloh Baptist Church; Tom Bugert, Department of Natural Resources; Anne Kroeker; and Margo Rolf.

(Opposed) Cindy Alia, Citizens Alliance for Property Rights; and Steve Gano, Building Industry Association of Washington.

(Other) Lauren Jenks, Department of Health; Millie Piazza, Department of Ecology; and Jeff Parsons, Puget Sound Partnership.

Persons Signed In To Testify But Not Testifying: None.