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**SECOND SUBSTITUTE SENATE BILL 5489**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Saldaña, Das, Nguyen, Hasegawa, Darneille, Palumbo, Randall, McCoy, Conway, Billig, Cleveland, Keiser, Kuderer, Rolfes, Wilson, C., and Frockt)

1 AN ACT Relating to establishing a healthy environment for all by  
2 addressing environmental health disparities; and adding a new chapter  
3 to Title 43 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that it is  
6 state policy to encourage productive and enjoyable harmony between  
7 humankind and the environment, to promote efforts that will prevent  
8 or eliminate damage to the environment and the biosphere, and to  
9 stimulate the health and welfare of human beings.

10 (2) The legislature declares it is the public policy of the state  
11 to ensure for all people of Washington a safe, healthful, productive,  
12 and aesthetically and culturally pleasing surroundings and an  
13 environment that supports diversity and variety of individual choice.  
14 It is also the continuing policy of the state of Washington to use  
15 all practicable means and measures, including financial and technical  
16 assistance, in a manner calculated to: (a) Foster and promote the  
17 general welfare; (b) create and maintain conditions under which human  
18 beings and nature can exist in productive harmony; and (c) fulfill  
19 the social, economic, and other requirements of present and future  
20 generations of Washington residents.

1 (3) The legislature finds that there are communities and  
2 residents that face greater barriers to a healthy environment because  
3 of cumulative environmental hazards and population vulnerabilities.

4 (4) The legislature further finds that a fundamental principle of  
5 environmental justice and our democracy is that people most impacted  
6 by government actions should have, to the extent practicable, advance  
7 notice of government decisions that could impact them, a clear  
8 understanding of the options and their impacts, and a meaningful  
9 opportunity to provide input and be heard before decisions are made.

10 (5) Multiple agency actions recognize the need for public  
11 participation and outreach including, but not limited to, education,  
12 rule making, enforcement, permitting, grant making, planning, and  
13 other government actions. However, individuals and organizations  
14 representing vulnerable populations often face barriers to  
15 participation, such as limited time, lack of funds for technical  
16 experts and reviews, the ability to attend meetings that conflict  
17 with work, parenting, child care responsibilities, and language  
18 barriers.

19 (6) While state agencies have identified a need to more  
20 effectively target their implementation and enforcement actions and  
21 funding opportunities to those areas and populations in the state  
22 that face greater exposure and susceptibility to environmental  
23 burdens, there is limited understanding of which communities across  
24 the state are most likely highly impacted.

25 (7) Therefore, the legislature finds that it is necessary to  
26 incorporate environmental justice principles into the operations and  
27 activities of state agencies in order to achieve state policies of  
28 ensuring all people of Washington safe, healthful, productive, and  
29 aesthetically and culturally pleasing surroundings, ensuring the  
30 right of all Washington residents to a healthful environment, and  
31 achieving a balance between population and resource use that will  
32 permit high standards of living and wide sharing of life's amenities,  
33 including through a task force on environmental justice, and agency  
34 analysis and consideration of environmental justice in decision  
35 making.

36 NEW SECTION. **Sec. 2.** The definitions in this section apply  
37 throughout this chapter unless the context clearly requires  
38 otherwise.

1 (1) "Cumulative impact analysis" means the analysis identifying  
2 highly impacted communities and vulnerable populations and  
3 environmental health disparities in identified areas and populations  
4 as conducted by the department of health's Washington tracking  
5 network.

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

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

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

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

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

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

23 (5) "Fair treatment" means that no group of people, including  
24 racial, ethnic, or socioeconomic groups, should bear  
25 disproportionately high exposure to pollution or adverse human health  
26 or environmental impacts.

27 (6) "Highly impacted communities" means communities designated by  
28 state agencies based on the cumulative impact analysis required under  
29 section 5 of this act and census tracts that are fully or partially  
30 on "Indian country" as defined in 18 U.S.C. Sec. 1151.

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

34 (8) "Precautionary approach" means where there are threats of  
35 serious or irreversible damage, lack of full scientific certainty is  
36 not used as a reason for postponing measures to prevent environmental  
37 degradation.

38 (9) "State agency" means a state agency that is represented on  
39 the task force created under section 4 of this act.

1 (10) "Vulnerable populations" means communities that experience  
2 disproportionate cumulative risk from environmental burdens due to:

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

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

8 NEW SECTION. **Sec. 3.** To ensure implementation and adherence to  
9 state policies of fostering and promoting the general welfare by  
10 ensuring that all people of Washington have a safe and healthful  
11 environment, state agencies shall use all practicable means and  
12 measures to promote environmental justice and fair treatment.

13 NEW SECTION. **Sec. 4.** (1) Subject to the availability of amounts  
14 appropriated for this specific purpose, a task force is established  
15 to recommend strategies for incorporating environmental justice  
16 principles into how state agencies discharge their responsibilities.

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

19 (a) The director of the department of commerce, or the director's  
20 designee;

21 (b) The director of the department of ecology, or the director's  
22 designee;

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

25 (d) The secretary of the department of transportation, or the  
26 secretary's designee;

27 (e) The secretary of the department of health, or the secretary's  
28 designee;

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

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

33 (h) The commissioner of public lands, or the commissioner's  
34 designee;

35 (i) A member who is well-informed on the principles of  
36 environmental justice and with expertise in statewide environmental  
37 justice issues, appointed by the governor;

1 (j) Three members from community-based organizations, appointed  
2 by the cochairs specified under subsection (3) of this section, the  
3 nominations of which are based upon maintaining a balanced and  
4 diverse distribution of ethnic, geographic, gender, sexual  
5 orientation, age, socioeconomic status, and occupational  
6 representation, where practicable;

7 (k) A tribal leader, appointed by the governor;

8 (l) One member from an association representing business  
9 interests, appointed by the governor; and

10 (m) One member from a union or other organized labor association  
11 representing worker interests, appointed by the governor.

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

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

20 (5) The task force must report its findings and recommendations  
21 to the appropriate committees of the legislature and the governor by  
22 October 31, 2020, and in compliance with RCW 43.01.036. The goal of  
23 the report is to provide guidance to agencies, the legislature, and  
24 the governor, and at a minimum must include the following:

25 (a) Guidance for state agencies when adopting rules, policies, or  
26 guidelines regarding how to use the cumulative impact analysis  
27 required under section 5 of this act. Guidance must cover how  
28 agencies identify highly impacted communities and must be based on  
29 best practices and current demographic data. The guidance provided  
30 relating to the designation of a highly impacted community must  
31 utilize as a basis for this determination the cumulative impact  
32 analysis and additional factors as the task force deems appropriate;

33 (b) Best practices for increasing public participation and  
34 engagement by providing meaningful opportunities for involvement for  
35 all people, taking into account barriers to participation that may  
36 arise due to race, color, ethnicity, religion, income, or education  
37 level. In addition, a specific recommendation on how to best  
38 meaningfully consult vulnerable populations when periodically  
39 evaluating and updating the cumulative impact analysis;

1 (c) Recommendations for establishing measurable goals for  
2 reducing environmental health disparities for each community in  
3 Washington state and ways in which state agencies may focus their  
4 work towards meeting those goals; and

5 (d) Guidelines for prioritizing highly impacted communities and  
6 vulnerable populations by identifying and implementing, where  
7 practicable, procedures, processes, applications, and reporting  
8 requirements so that inspections, enforcement actions, investment of  
9 resources, planning and permitting, and public participation are  
10 maximized for the purpose of reducing environmental health  
11 disparities and advancing a healthy environment for all residents.

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

14 (a) Recommendations for approaches to integrate an analysis of  
15 the distribution of environmental burdens across population groups  
16 into evaluations performed under the state environmental policy act,  
17 chapter 43.21C RCW;

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

24 (c) Best practices and needed resources for cataloging and cross-  
25 referencing current research and data collection for programs within  
26 all state agencies relating to the health and environment of people  
27 of all races, cultures, and income levels, including minority  
28 populations and low-income populations of the state;

29 (d) Recommendations for criteria for identifying and addressing  
30 gaps in current research and data collection to inform agency  
31 actions, to refine the common cumulative impact methodology, and to  
32 identify factors that may impede the achievement of environmental  
33 justice; and

34 (e) Methods for incorporating the precautionary approach into  
35 decision making, including permitting, to the extent allowed by law.

36 (7) Members of the task force who are not state employees must be  
37 compensated in accordance with RCW 43.03.240 and are entitled to  
38 reimbursement individually for travel expenses incurred in the  
39 performance of their duties as members of the task force in  
40 accordance with RCW 43.03.050 and 43.03.060. The expenses of the task

1 force must be paid by the governor's interagency council on health  
2 disparities.

3 (8) The task force may form work groups or consult with  
4 stakeholders as necessary to assist the task force in carrying out  
5 its duties.

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

12 (10)(a) Upon adoption of rules, policies, or guidelines related  
13 to the cumulative impact analysis required under section 5 of this  
14 act, each state agency must notify the governor's interagency council  
15 on health disparities.

16 (b) One year after the adoption of rules, policies, or  
17 guidelines, and two years thereafter, each state agency must submit a  
18 report to the governor, governor's interagency council on health  
19 disparities, and appropriate committees of the legislature regarding  
20 progress made towards reducing disproportionate environmental burdens  
21 and attaining environmental health targets. The report must be  
22 submitted in compliance with RCW 43.01.036.

23 (c) Reports submitted under this subsection must be available for  
24 public inspection and copying through the governor's interagency  
25 council on health disparities and must be posted on its web site.

26 NEW SECTION. **Sec. 5.** (1) State agencies, through rules,  
27 policies, or guidelines and consistent with task force  
28 recommendations, shall adopt the cumulative impact analysis,  
29 including any needed modifications, for the purpose of identifying  
30 highly impacted communities and vulnerable populations and reducing  
31 environmental health disparities in identified areas and populations.  
32 State agencies must use the cumulative impact analysis, in accordance  
33 with the recommended guidelines provided by the task force under  
34 section 4 of this act.

35 (2) State agencies may issue policies, guidance, or adopt  
36 practices, guidelines, or rules as necessary to identify highly  
37 impacted communities, establish measurable goals for reducing  
38 environmental health disparities, and prioritize highly impacted  
39 communities and their vulnerable populations in the development,

1 adoption, implementation, and enforcement of environmental laws,  
2 regulations, policies, and funding decisions.

3 (3) Within sixty days after the issuance of the task force's  
4 initial report, the department of health shall initiate a process to  
5 develop model policies for the purpose of providing uniform rules,  
6 policies, or guidelines to all state agencies implementing task force  
7 recommendations related to the cumulative impact analysis.

8 NEW SECTION. **Sec. 6.** Sections 1 through 5 and 7 of this act  
9 constitute a new chapter in Title 43 RCW.

10 NEW SECTION. **Sec. 7.** This chapter may be known and cited as the  
11 HEAL act.

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