
Environment & Energy Committee

E2SSB 5141

Brief Description: Reducing environmental and health disparities and improving the health of all Washington state residents by implementing the recommendations of the environmental justice task force.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Saldaña, Lovelett, Carlyle, Das, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Nobles, Pedersen, Rolfes, Stanford and Wilson, C.).

Brief Summary of Engrossed Second Substitute Bill

- Requires the Puget Sound Partnership and the departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation (covered agencies) to complete environmental justice assessments when considering significant agency actions and to incorporate environmental justice principles into agency budget and fiscal processes.
- Encourages other state agencies to apply the principles of environmental justice in the implementation of their agency functions, and authorizes other state agencies to opt in to the environmental justice requirements applicable to covered agencies.
- Requires covered agencies to create and adopt a community engagement plan for engaging with overburdened communities and vulnerable populations in the evaluation of existing and new programs and activities.
- Requires covered agencies to offer consultation with Indian tribes on decisions that affect tribes' rights and interests in tribal lands.
- Establishes an environmental justice council with specified membership, staffed by the Department of Health, and which is assigned specified

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advisory and oversight responsibilities for covered agencies' implementation of environmental justice activities.

- Requires the Department of Health to continue to develop and maintain an environmental health disparities map.

Hearing Date: 3/12/21

Staff: Jacob Lipson (786-7196).

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 2000 President Clinton also signed Executive Order 13166, which requires federal agencies to examine the services they provide, and identify any need for services to those with limited English proficiency, and to develop and implement a system to provide those services. 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.

In 2005 Governor Gregoire issued Executive Order 05-03, which requires that state agencies use plain talk when communicating with the public.

Environmental Justice Task Force.

A proviso in the 2019-2021 Biennial Operating Budget directed the Governor's Interagency Council on Health Disparities to convene and staff an Environmental Justice Task Force (Task Force). The Task Force was directed to recommend strategies for incorporating environmental justice principles into future state agency actions across Washington. The Task Force published a report with its recommendations in the fall of 2020.

Washington Health Disparities Map.

In 2018 a collaborative group began making available to the public an interactive mapping tool that compares communities across Washington for environmental health disparities, known as the Washington Environmental Health Disparities Map (Map). The Map was developed by the University of Washington's Department of Environmental and Occupation Health Sciences, Front and Centered, Washington State Department of Health, Washington State Department of Ecology, and the Puget Sound Clean Air Agency. The Map includes 19 specific indicators of health disparities, which are divided into four themes: environmental exposures, environmental effects, sensitive populations, and socioeconomic factors.

Government-to-Government Relationship with Indian Tribes.

Indian tribal governments are sovereign, self-governing entities. Washington state has established several agreements with federally recognized Indian tribes to facilitate government-to-government relations, including the Centennial Accord (1989) and New Millennium (1999) agreements.

Under state law, in establishing a government-to-government relationship with federally recognized Indian tribes with traditional lands or territories in Washington, state agencies must:

- make reasonable efforts to collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affects Indian tribes, and develop a consultation process used by the agency for issues involving specific Indian tribes;
- designate a tribal liaison that receives specialized training; and
- submit an annual report to the Governor on the activities of the state agency.

Summary of Engrossed Second Substitute Bill:

Environmental Justice in State Agency Activities.

The Puget Sound Partnership and the departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation (covered agencies) must apply and comply with specified environmental justice requirements with respect to agency activities. Other state agencies are encouraged to apply the principles of environmental justice in applying state laws and agency rules and policies, and are authorized to opt in to the environmental justice requirements applicable to covered agencies.

Covered agencies must:

- Include an environmental justice implementation plan within the agency's strategic plan or planning document. This plan must include goals and deliverables, metrics to track and measure accomplishments, methods to provide equitable access and ensure nondiscrimination, and strategies to ensure compliance with existing federal and state laws and policies related to environmental justice.
- Create and adopt a community engagement plan by July 1, 2022, that describes planned engagement with overburdened communities and vulnerable populations. This plan must

include best practices for outreach and communication, the use of special screening tools, processes that facilitate the inclusion of community members affected by agency decision-making, and methods for outreach and communication.

- Regularly conduct compliance reviews of 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 Executive Order 13166.
- Conduct an environmental justice assessment when considering a significant agency action to inform and support agency consideration of overburdened 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. By July 1, 2023, covered agencies must develop a process for conducting environmental justice assessments that meet at least six specified criteria. Based on environmental justice assessments, covered agencies must seek to reduce or eliminate negative impacts and maximize benefits on overburdened communities and vulnerable populations. Covered agencies must consider nine specified mechanisms for reducing environmental impacts or equitably distributing benefits. If covered agencies cannot avoid or reduce harmful impacts of an action on overburdened communities and vulnerable populations or address the distribution of environmental and health benefits, the agency must provide a clear explanation of that determination as part of the agency's record of decision. The obligation of an agency to conduct an environmental justice assessment does not, by itself, trigger a requirement for environmental review under the State Environmental Policy Act.
- Incorporate environmental justice principles into decision processes for budget development, expenditures, granting or withholding benefits, and equitably distributing funding and expenditures towards overburdened communities and vulnerable populations. By July 1, 2023, covered agencies must focus expenditures on overburdened communities and vulnerable populations, create opportunities for overburdened communities and vulnerable populations, clearly articulate environmental justice goals and assessment metrics for fund distribution, consider a broad scope of grants and contracting opportunities that effectuate environmental justice principles, and establish a goal that 40 percent of expenditures that create environmental benefits are directed to vulnerable populations and overburdened communities. Agencies may adopt rules to incorporate environmental justice principles in expenditure decisions.

Exceptions to requirements to carry out environmental justice assessments or to incorporate environmental justice principles into budget and expenditure processes may be made if:

- the agency head determines that any delay in the significant agency action poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;
- an assessment or consultation 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 federal requirements that are a prescribed condition for the allocation of federal funds; or
- there is a conflict with constitutional limitations, including those applicable to state-owned

trust lands.

Environmental Justice Council.

An environmental justice council (Council) is established to advise covered agencies on incorporating environmental justice into agency activities. The Council consists of 12 members representing specified interests, appointed by the Governor, and subject to confirmation by the Senate. The Council must:

- provide a forum for public testimony;
- prioritize and make recommendations before July 1, 2023, on which of the environmental justice obligations of this act should be pursued by covered agencies first, and which significant agency actions should be subject to an environmental justice assessment first;
- work in an iterative fashion to develop guidance for the implementation of environmental justice requirements by state agencies;
- make recommendations to agencies on significant agency actions that require an environmental justice assessment; and
- biennially evaluate agency progress on applying Council guidance, and communicate agency progress to the public, the Governor, and the Legislature.

The Council's role is advisory and Council decisions are not binding on an agency, individual, or organization. The Council must convene by January 1, 2022. Council meetings are subject to open public meetings requirements, and public comment periods must be provided at every Council meeting.

The Department of Health (DOH) must hire a manager for the Council and provide administrative and staff support for the Council. The DOH must also establish standards for tracking community outcome data, create process and outcome performance measures, and create an online performance dashboard.

The DOH must also establish an interagency workgroup, which may include Council members, to assist covered agencies in implementing new environmental justice requirements. The interagency workgroup is responsible for providing technical assistance to support agency compliance, assisting the Council in developing a suggested schedule and timeline for sequencing significant agency actions, identifying goals and metrics, identifying other policies, priorities and projects, and developing guidelines for state agencies.

Covered agencies must consider guidelines developed by the Council in:

- developing required environmental justice implementation plans;
- developing community engagement plans;
- developing the agency's environmental justice assessment process; and
- incorporating environmental justice principles into expenditure decisions.

Covered agencies must annually update the Council on their development and implementation of these required plans and processes, and must publish an annual report beginning in 2024.

The Council must submit a report by November 30, 2022, to the Governor and the Legislature on certain activities of the Council.

Government-to-Government Consultation with Indian Tribes.

Covered agencies must offer consultation with Indian tribes on decisions that affect tribes' rights and interests in their tribal lands. The consultation must occur under state law governing government-to-government consultation processes. Agencies must develop a consultation framework in coordination with tribal governments.

Environmental Health Disparities Map.

The DOH, in consultation with the Council, must continue to develop and maintain an environmental health disparities map (map). In developing and maintaining the map, DOH must encourage participation by representatives of overburdened communities and vulnerable populations, and may consult with other interested partners. The DOH must document and publish a summary of regular updates and revisions to the map, and must perform an evaluation of the map at least every three years. The DOH must also develop technical guidance for covered agencies to use the map and provide support and consultation to agencies on the use of the map.

Appropriation: None.

Fiscal Note: Available.

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