

# HOUSE BILL REPORT

## HB 2070

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**As Reported by House Committee On:**  
Environment & Energy

**Title:** An act relating to integrating environmental justice considerations into certain project decisions.

**Brief Description:** Integrating environmental justice considerations into certain project decisions.

**Sponsors:** Representatives Mena, Pollet, Fitzgibbon, Berry, Simmons, Reed, Ormsby, Ramel, Fey, Street, Slatter, Ortiz-Self, Alvarado, Doglio, Cortes, Riccelli, Santos, Reeves and Macri.

**Brief History:**

**Committee Activity:**

Environment & Energy: 1/16/24, 1/29/24 [DPS].

**Brief Summary of Substitute Bill**

- Requires lead agencies to carry out environmental justice impact statements as a supplement to review under the State Environmental Policy Act (SEPA) for government actions related to certain potentially impactful projects.
- Specifies the contents of environmental justice impact statements, the process, including public notification and input processes, that must be followed when a SEPA lead agency is carrying out an environmental justice impact statement, and the means by which a lead agency must determine whether a project will have disproportionate impacts on pollution burdened communities.
- Requires lead agencies, after the completion of an environmental justice impact statement and using substantive SEPA authority, to deny or mitigate proposed actions that would cause or contribute to adverse environmental or public health stressors in a pollution burdened

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

community.

- Authorizes SEPA lead agencies to require project proponents to reimburse the agency for demonstrated costs associated with environmental justice impact statements.

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## HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Doglio, Chair; Mena, Vice Chair; Ybarra, Assistant Ranking Minority Member; Berry, Duerr, Fey, Lekanoff, Ramel, Slatter and Street.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Dye, Ranking Minority Member; Abbarno, Goehner and Sandlin.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Barnard.

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

### **Background:**

#### State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. The Department of Ecology has adopted rules that spell out the elements of the environment whose impacts must be considered in a SEPA checklist and any subsequent SEPA environmental review. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact, known as a threshold determination, the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS). If the SEPA review process identifies significant adverse environmental impacts, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

#### 2021 Healthy Environment for All Act.

In 2021 the Legislature enacted Senate Bill 5141, known as the Healthy Environment for

All Act (HEAL Act), 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, and other state agencies are eligible to opt-in to the requirements.

Covered agencies were required to integrate environmental justice into agency decision-making and activities, including through:

- conducting an environmental justice assessment when considering a significant agency action initiated after July 1, 2023, 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; and
- the creation and adoption of a community engagement plan by July 1, 2022, that describes planned engagement with overburdened communities and vulnerable populations, and that identifies and prioritizes overburdened communities for the purposes of implementing the agency's environmental justice responsibilities. Overburdened communities must be identified by covered agencies in such a way that allows for the measurement of the performance effectiveness of the new environmental justice duties of covered agencies.

Four categories of significant agency actions are established for which environmental justice assessments by covered agencies are required, including significant legislative rule adoption and Department of Transportation projects of more than \$15 million. 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.

Certain information about the environmental justice implementation activities of covered agencies must be posted and updated on an online dashboard on the Office of Financial Management's website.

#### Health Disparities Maps.

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 Occupational Health Sciences, Front and Centered, the Departments of Health and 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.

In the 2021 HEAL Act, the Department of Health (DOH), in consultation with the

Environmental Justice Council, was required to continue to develop and maintain the map. 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.

Similar tools exist in use by other states and at the federal level, including tools developed by the United States Environmental Protection Agency and a separate tool developed by the United States Council on Environmental Quality (CEQ). The CEQ's tool was developed in response to a 2021 executive order, and uses datasets that indicate burdens in eight categories: climate change, energy, health, housing, legacy pollution, transportation, water and wastewater, and workforce development. Under the CEQ's tool, census tracts that meet the tool's threshold for at least one category of burden, or are on land within the boundary of a federally recognized Indian tribe are considered disadvantaged.

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### **Summary of Substitute Bill:**

As a supplemental component of State Environmental Policy Act (SEPA) analysis for any proposed action associated with new or expanding potentially impactful projects, or the renewal of an existing potentially impactful project's permit, that is located at least partly within a pollution burdened community, a lead agency must complete an environmental justice impact statement (EJIS).

Pollution burdened communities are defined to include communities:

- ranked at seven or higher on the Washington Environmental Health Disparities Map; or
- identified as disadvantaged using the Climate and Economic Justice Screening Tool developed by the United States Council on Environmental Quality.

Potentially impactful projects are defined to include:

- projects regulated under an air operating permit, notice of construction permit, prevention of significant deterioration permit, or general order permit under the state Clean Air Act;
- significant sources of air pollution from transportation impacts associated with a project;
- incinerators and medical incinerators;
- municipal sewage sludge processing facilities and sewage treatment plants;
- facilities required to obtain a solid waste handling permit; and
- projects covered by certain types of water discharge permits.

Potentially impactful projects do not include:

- certain clean energy projects;
- certain national security facility projects administered by the United States

- government;
- nonproject actions by a lead agency;
- fish hatcheries;
- Department of Transportation projects of less than \$15 million; and
- project actions that propose to develop residential housing units only.

This requirement applies to potentially impactful projects whose SEPA review had not been initiated as of June, 2024, and whose SEPA review is completed on or after January 1, 2027.

#### Environmental Justice Impact Statements: Contents.

Lead agencies preparing an EJIS must assess:

- the potential environmental and public health stressors associated with the proposed new or expanding potentially impactful project or existing potentially impactful project;
- adverse environmental or public health stressors that cannot be avoided; and
- the environmental or public health stressors already borne by the pollution burdened community.

The EJIS must include specified information. If the pollution burdened community for the EJIS is not subject to adverse cumulative stressors and the potentially impactful project will avoid causing a disproportionate impact by creating adverse cumulative stressors, a comparatively narrower set of information must be included in the EJIS, including:

- a description of current and proposed operations;
- a listing of existing environmental and public health stressors, and an analysis of those stressors;
- an assessment of positive or negative impacts of the potentially impactful project on each environmental and public health stressor; and
- a demonstration that the potentially impactful project will avoid a disproportionate impact that would occur by creating adverse cumulative stressors.

If the pollution burdened community for the EJIS is subject to adverse cumulative stressors or the potentially impactful project will cause a disproportionate impact by creating adverse cumulative stressors, additional information must be included in the EJIS, including:

- a site map, including specified topographic, biological, and hydrological features, and scenic or recreational attributes;
- information related to contamination, air quality, and subsurface hydrology;
- localized climate and flooding impacts on the project;
- a traffic study; and
- several other descriptions and analyses.

#### Environmental Justice Impact Statements: Logistics.

Lead agencies must complete an EJIS at or before a proposed action receives a SEPA threshold determination of significance, nonsignificance, or mitigated nonsignificance, and must occur without regard to which of these types of SEPA threshold determinations the project otherwise receives.

Completed EJISs must be posted on the Office of Financial Management's (OFM) online dashboard, which must be posted along with information related to opportunities for public comment for consideration by the lead agency with respect to the EJIS. Within 60 days of posting the EJIS on the OFM's dashboard, a lead agency must conduct a public hearing in the pollution burdened community on the EJIS. This hearing may be held coincident with other required hearings related to the proposed action. Notice of the hearing must be provided in a manner that meets specified criteria, including that it be mailed to each residence located within the pollution burdened community in which a potentially impactful project is proposed. At the public hearing, the lead agency must provide clear, accurate, and complete information about a proposed potentially impactful project, and must require the participation of the project proponent. Written and oral comments must be accepted at the public hearing and within a reasonable amount of time after the public hearing.

At least 45 days after the publication of the EJIS and the conclusion of the public hearing, the lead agency must take into consideration the EJIS and testimony and written comments received on the EJIS, and determine how to use substantive SEPA authority for the proposed action.

Environmental Justice Impact Statements: Substantive State Environmental Policy Act Authority.

A project proponent of a new or expanding potentially impactful project located in a pollution burdened community subject to adverse cumulative stressors must analyze and propose all control measures necessary to avoid contributions to all environmental and public health stressors in the community. Project proponents for the renewal of an existing permit in a pollution burdened community must propose feasible control measures necessary to avoid contributions to adverse stressors in the community.

Lead agencies must use substantive SEPA authority with respect to a potentially impactful project in a pollution burdened community, as follows:

- The proposed action must be denied if the potentially impactful project is a new project or an expansion of an existing project and the action would, together with other environmental or public health stressors, cause or contribute to adverse environmental or public health stressors in the pollution burdened community that are higher than those borne by other communities used as a geographic point of comparison.
- The proposed action must be mitigated, rather than denied, if the above description holds true but there is also a finding that the potentially impactful project would serve a compelling public interest in the community where it is

to be located.

- Compelling public interest is to be determined based on a demonstration that the project will primarily serve essential needs for individuals in the community, and is necessary to serve those needs, and that reasonable alternatives cannot be sited outside of the community and serve the same individuals' needs. Lead agencies may consider public input in assessing a compelling public interest. Project proponents that seek to demonstrate a compelling public interest must also propose specific types of control measures.
- The proposed action must be mitigated if the potentially impactful project is the renewal of a permit to an existing project in a pollution burdened community, if together with other environmental or public health stressors, the action would cause or contribute to adverse environmental or public health stressors in the pollution burdened community that are higher than those borne by other communities used as a geographic point of comparison.

The geographic point of comparisons to be used in adverse stressors is the lower value of the fiftieth percentile of the state or county in which the pollution burdened community is located, calculated excluding the values of other pollution burdened communities.

#### Other.

Environmental justice impact statement requirements are in addition to the Healthy Environment for All Act (HEAL Act) environmental justice review requirements that may also apply to a proposed action. A lead agency under the SEPA that is also a covered agency under the HEAL Act may adopt an environmental justice assessment or other analyses under the HEAL Act to satisfy EJIS requirements, to the extent that a HEAL environmental justice assessment analysis is sufficient to satisfy the requirements applicable to environmental justice impact statements.

Lead agencies may require a proponent of a proposed action to reimburse the agency for demonstrated costs associated with an EJIS.

The Department of Ecology may update, by rule, the definition of "pollution burdened community" to maintain consistency with a similar successor to the United States Council on Environmental Quality's Climate and Economic Justice Screening Tool.

#### **Substitute Bill Compared to Original Bill:**

Compared to the original bill, the substitute bill:

- excludes the following project categories from the potentially impactful projects subject to environmental justice impact statement (EJIS) processes:
  - fish hatchery projects;
  - nonproject actions of a lead agency;



- Department of Transportation projects of less than \$15 million; and
- project actions that propose to develop residential housing units only, such as affordable housing projects;
- authorizes covered agencies under the Healthy Environment for All Act (HEAL Act) to adopt an environmental justice assessment or other analyses under that law to satisfy EJIS requirements, to the extent that a HEAL Act analysis or process is sufficient to satisfy the requirements applicable to EJISs; and
- requires notice of the public hearing on an environmental justice impact statement to be mailed to each residence in the pollution burdened community affected by the proposed action, and to notify residents that their residence is located in a pollution burdened community.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) State Environmental Policy Act (SEPA) lead agencies should consider the cumulative environmental health burdens of communities, and this bill will ensure that no additional cumulative burden is added to communities that already face heavy pollution burdens. Public health studies and mapping demonstrate that some communities bear more extensive environmental and health burdens than others do, and it degrades and shortens the lives of their residents. Most environmental laws currently do not explicitly consider the cumulative burdens of pollution, or adequately factor cumulative burdens into their policy structures. Polluting facilities and pollution have tended to concentrate near communities of color. This bill will be a step towards healing historic harms, and providing equal access to a clean environment.

(Opposed) Businesses are concerned about the scope of changes to the permitting process contemplated in the bill, and the potential to add complexity. The manner in which consideration of a compelling public interest excludes economic benefits means that a community that wants the jobs from a proposed project would be unable to get those jobs.

(Other) Environmental justice is important to consider during the SEPA process. There is a risk that residential permits, transportation projects of the Department of Transportation, and nonproject actions would get caught in the new process. The bill is unclear as to whether existing SEPA exemptions would carry over to new environmental justice impact statement processes. The Department of Ecology supports the intent to improve outcomes from the SEPA process, including more explicit authority to deny or mitigate permits based



on cumulative health impacts, but has concerns about the ability to operationalize some of the bill's requirements, and the lack of clarity regarding some of the key terms in the bill. The bill should consider how to make Healthy Environment for All Act and SEPA processes more compatible.

**Persons Testifying:** (In support) Representative Sharlett Mena, prime sponsor; Guillermo Rogel, Front and Centered; Paul Tabayoyon, Asian Pacific Islander Coalition Yakima; Christian Poulsen, Duwamish River Community Coalition; and Jamie Stroble, The Nature Conservancy.

(Opposed) Peter Godlewski, Association of Washington Business.

(Other) Adam Eitmann, Department of Ecology; Ahmer Nizam, Department of Transportation; and Paul Jewell, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** Travis Vandervort and Maria Luisa Duque-Barroga, Saint Madeleine Sophie Church; Kelly Campbell, Columbia Riverkeeper; Diana Boyle, Saint John Vianney Kirkland; Aaron Erlandson; Ralph Grummer, Christ the King Parish; Frances Pavlas Bose, Sacred Heart Catholic Church Pullman; Katherine Burghardt, Saint Nicholas Church; Anisa Ralls; Jennifer Kelly; Adrienne Joyce, Washington State Catholic Conference; Byron Brunelle; Scott Hazlegrove, Master Builders Association of King and Snohomish Counties; John Worthington; Jan Himebaugh, Building Industry Association of Washington; Carl Schroeder, Association of Washington Cities; and Carly Michiels, Washington Public Ports Association.