

# SENATE BILL REPORT

## SB 5990

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As of January 30, 2024

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

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

**Sponsors:** Senators Lovelett, Saldaña, Dhingra, Frame, Hasegawa, Keiser, Kuderer, Nobles, Salomon, Stanford, Trudeau, Valdez and Wilson, C..

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 1/30/24.

### Brief Summary of 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 community.
- Authorizes SEPA lead agencies to require project proponents to

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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.*

reimburse the agency for demonstrated costs associated with environmental justice impact statements.

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Staff:** Adam Brunmeier (786-7357)

**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 review process requires a project proponent or lead agency to identify and evaluate probable environmental impacts.

If an initial review results in a threshold determination that the decision has a probable significant adverse environmental impact, an Environmental Impact Statement (EIS) must be performed. If significant adverse environmental impacts are identified, the lead agency may deny a government decision or may require mitigation for identified environmental impacts.

Healthy Environment for All Act. The Healthy Environment for All Act establishes requirements governing how state agencies consider environmental justice in their decision-making. The act applies to seven named agencies and allows for others to opt in voluntarily.

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

- adoption of a community engagement plan that describes planned engagement with overburdened communities and vulnerable populations; and
- conducting an environmental justice assessment to evaluate the impact of significant agency action on overburdened and vulnerable populations.

Four categories of significant agency actions are established for which environmental justice assessments are required, including significant legislative rule adoption.

Health Disparities Maps. The Health Disparities Map (map) is an interactive mapping tool that compares communities across Washington for environmental health disparities. The map includes 19 specific indicators of health disparities, which are divided into four themes: environmental exposures, environmental effects, sensitive populations, and socioeconomic factors. It can be used by government agencies to identify overburdened and vulnerable populations for purposes of environmental justice assessments and environmental impact statements.

**Summary of Bill:** Environmental Justice Impact Statement. An environmental justice impact statement (EJIS) must be prepared as a component of SEPA analysis for potentially impactful projects in pollution burdened communities. Lead agencies preparing the statement must assess:

- potential environmental and public health stressors associated with the project;
- adverse environmental or public health stressors that cannot be avoided if the permit is granted; and
- the environmental or public health stressors already borne by the pollution burdened community as a result of existing conditions.

The lead agency must complete the statement at or before the time a threshold determination has been made on the potential environmental impacts of the proposed project. Upon completion it must be delivered to the Office of Financial Management (OFM) to be published on their website alongside information describing the project and methods for public comment.

Statements must be published at least 30 days in advance of public hearing. A public hearing must be held no sooner than 60 days after publication where the lead agency must present clear, accurate, and complete information about the project and accept oral and written comments from the public.

Environmental Justice Impact Statement—Contents. The EJIS must include:

- 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.

Additional information must be included if the pollution burdened community is subject to adverse cumulative stressors or the project will cause a disproportionate impact:

- a site map, including specified topographic, biological, 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.

Proposals and Determinations. A project proponent 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 must propose feasible control measures necessary to avoid contributions to adverse stressors in the community.

Where proposed control measures will prevent disproportionate adverse impacts to pollution burdened communities, proposed actions may be approved by the lead agency.

An action must be denied or mitigated if it would cause environmental impacts to a pollution burdened community that are higher than those borne by other communities in the geographic point of comparison, unless the lead agency determines that the action would serve a compelling public interest in the community where it is located. A compelling public interest may be found where:

- the proposed project will primarily serve the environmental, health, or safety needs of the overburdened community;
- the proposed project is necessary to serve such interests; and
- there are no reasonable alternatives that can be sited outside to satisfy the needs the pollution burdened community.

EJIS requirements are in addition to the Healthy Environment for All Act environmental justice review requirements that may also apply to a proposed action.

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.

**Appropriation:** None.

**Fiscal Note:** Requested on January 23, 2024

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Current systems do not adequately address impacts to overburdened communities. Environmental impacts are disproportionately imposed along lines of socioeconomic status, with lower income communities and communities of color bearing the most severe burdens while receiving the least benefits from the same activities contributing to environmental harm in their communities. These concerns are raised by members of the Duwamish and South Park communities where public health issues arising out of environmental conditions are acutely felt, particularly by the young residents who grow up in these communities. This bill will help the overburdened communities and will prevent future projects from exacerbating the existing conditions. These policies are already in practice in other states like New York and New Jersey.

CON: This bill adds complexity and increases costs and delays to the processes of government decision-making but is not likely to uncover new environmental health impacts that are not already addressed under the existing programs. This bill may make it more difficult for overburdened and urban communities to invite in projects that they desire. The application to projects that are already in progress may raise constitutional concerns.

OTHER: Environmental justice is an important concern that needs to be addressed but the design of this bill may create additional problem. The scope is too broad, otherwise permitted housing developments may be drawn in based on traffic concerns. The bill would make essential services in burdened urban communities incredibly difficult to site. Some of the blanket exemptions should be modified including for clean energy projects. There are concerns that the bill does not integrate well into existing processes under SEPA and the HEAL Act. The thresholds and formula for mandatory permit denial should be revisited. Concerns are expressed that the bill places the burden on Washingtonians without addressing the contributions from entities outside of Washington in the global economy.

**Persons Testifying:** PRO: Senator Liz Lovelett, Prime Sponsor; Guillermo Rogel, Front and Centered; Christian Poulsen, Duwamish River Community Coalition; Eric Gonzalez, Earth Justice; Neli Jasuja, Young Women Empowered (Y-WE); Andrea Martinez; Darcy Nonemacher, Washington Conservation Action; Adrienne Joyce, Washington State Catholic Conference.

CON: Brent Ludeman, Building Industry Association of Washington; Peter Godlewski , Association of Washington Business.

OTHER: John Worthington; Paul Jewell, Washington State Association of Counties; Ahmer Nizam, Washington State Department of Transportation; Adam Eitmann, Washington State Department of Ecology; Carly Michiels, Washington Public Ports Association.

**Persons Signed In To Testify But Not Testifying:** No one.