

SENATE BILL REPORT

SB 5380

As of February 19, 2025

Title: An act relating to increasing environmental justice by improving government decisions.

Brief Description: Increasing environmental justice by improving government decisions.

Sponsors: Senators Lovelett, Trudeau, Hasegawa, Nobles, Saldaña, Stanford and Valdez.

Brief History:

Committee Activity: Environment, Energy & Technology: 2/21/25.

Brief Summary of Bill

- Adds environmental justice to the State Environmental Policy Act (SEPA) review process, including the elements of the environment considered under SEPA and the SEPA checklist filled out by project proponents or SEPA lead agencies.
- Requires SEPA lead agencies to complete an environmental justice impact statement, meeting specified substantive criteria and following specified processes, for potentially impactful projects in certain communities.
- Prohibits, under the Clean Air Act, approvals for certain new air contaminant sources located in specified communities.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Alicia Kinne-Clawson (786-7407)

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

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a project proponent, or the lead agency, completing an environmental checklist to identify and evaluate probable environmental impacts. The Department of Ecology (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, legislation known as the Healthy Environment for All Act (HEAL Act) established several requirements applicable to how state agencies consider environmental justice in their decision-making. Environmental justice means 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, rules, and policies; and includes addressing disproportionate environmental and health impacts by prioritizing vulnerable populations and overburdened communities, the equitable distribution of resources and benefits, and eliminating harm.

The Departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation and 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 are 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.

Clean Air Act. Regulation of new or modified sources of air pollution in Washington is carried out primarily at the state and local level pursuant to a mix of authority conferred by the federal and state Clean Air Acts. Ecology and seven local air pollution control authorities (local air authorities) share this responsibility and issue a number of types of permits to regulated entities. These permits include:

- before constructing or modifying a source or potential source of any air contaminant in the state, individuals must receive approval through Ecology or their local air authority. Approval to construct is granted, through a notice of construction order of approval, only if all applicable state and federal requirements are met;
- large facilities that qualify as major sources of emissions are required to obtain an air operating permit, which must be renewed every five years; and
- certain large facilities must obtain a prevention of significant deterioration permit to prevent air quality from worsening in an area that meets air quality standards.

Summary of Bill: Clean Air Act Permit Prohibition. Ecology and local air authorities may not issue a notice of construction order of approval under the Clean Air Act for new air contaminant sources that require an air operating permit or a prevention of significant deterioration permit, or are an incinerator or medical waste incinerator, in census tracts ranked as a nine or ten for environmental exposures in the Washington Environmental Health Disparities (EHD) map maintained by the Department of Health (DOH). Certain clean energy projects and national security facilities are exempt from these prohibitions. Ecology may adopt an alternative methodology for identifying census tracts if DOH substantively amends the current EHD map methodology.

State Environmental Policy Act. Ecology must add environmental justice, as defined in the HEAL Act, as an element of the environment under SEPA and as a component of the SEPA checklist.

An environmental justice impact statement (EJIS) is required for certain proposed actions with new or expanding potentially impactful projects (PIP) located at least partly within a pollution burdened community. For the purposes of the EJIS, the following applies:

- pollution burdened communities are defined to include communities ranked at seven or higher on the EHD map, or communities immediately adjacent to such communities. Ecology may adopt a rule to use a similar environmental or public health screening tool to identify pollution burdened communities; and
- potentially impactful projects are defined to include those that receive specified types of solid waste, air, or water permits under state laws. Potentially impactful projects do

not include certain clean energy projects, national security facility projects, fish hatchery projects, non-project 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.

The EJIS must be completed at or before the proposed agency receives a threshold determination under SEPA, and without regard to whether an environmental impact statement is required under SEPA. A lead agency's EJIS must assess potential environmental and public health stressors associated with a PIP, any adverse environmental or public health stressors that cannot be avoided if a permit is granted, and environmental or public health stressors borne by the community as a result of existing conditions:

- if the pollution-burdened community of the PIP is not subject to adverse cumulative stressors and the lead agency demonstrates through an analysis that the PIP will not cause a disproportionate impact by creating adverse cumulative stressors, then the EJIS must contain nine specified categories of information and analysis; or
- if a PIP is in a pollution-burdened community subject to adverse cumulative stressors or the PIP cannot be demonstrated to avoid disproportionate impacts by creating adverse cumulative stressors, then the EJIS must contain an additional 13 specified categories of information and analysis.

Upon completion of the EJIS, the lead agency must transmit it to the Office of Financial Management, to be published on their HEAL Act website. After publication of the EJIS, the lead agency must organize and conduct a public hearing on the EJIS, with specified requirements for the timing of the hearing and the provision of notice to community residents. After the public participation process, the lead agency must consider the EJIS, community feedback received, and other relevant information. The lead agency must then determine whether to deny or approve the proposed action, including evaluating whether to impose conditions on the operation and construction of the PIP. A lead agency must deny or mitigate actions associated with a PIP in a pollution burdened community, and mitigation must address each adverse impact on an environmental or public health stressor.

In addition to the HEAL Act environmental justice review requirements, the EJIS requirements 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.

Appropriation: None.

Fiscal Note: Available.

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

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