
SUBSTITUTE HOUSE BILL 2312

State of Washington

63rd Legislature

2014 Regular Session

By House Environment (originally sponsored by Representatives Pollet, Fitzgibbon, Moscoso, Farrell, Ryu, Santos, Freeman, Walkinshaw, Bergquist, Goodman, Tarleton, and Roberts)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to involving communities in environmental decision
2 making; amending RCW 34.05.272; adding a new chapter to Title 70 RCW;
3 creating new sections; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that every
6 individual in the state has a fundamental right to a healthful
7 environment, and a right to the pursuit of commonplace activities such
8 as breathing, drinking, eating, working, and recreating without risking
9 their health as a result of environmental degradation. There are
10 vulnerable communities throughout the state that bear a
11 disproportionate burden of pollution problems. Residents of these
12 communities face higher rates of cancer and other life-threatening
13 public health problems. All residents of the state, regardless of
14 race, color, culture, national origin, or income level, have a right to
15 participate meaningfully and receive fair treatment during the
16 implementation and enforcement of environmental laws, rules, and
17 policies. The improvement of environmental law and policy decision-
18 making processes helps state agencies meet their responsibility to

1 comply with 42 U.S.C. Sec. 2000(d). These important objectives and
2 responsibilities are satisfied by the passage of this act.

3 (2) Pursuant to the policy declared in this section, and consistent
4 with federal executive order 12898, state agencies shall, to the extent
5 practical, make achieving environmental justice part of their mission
6 by identifying and addressing, as appropriate, the disproportionately
7 high and adverse human health or environmental effects of their
8 programs, policies, and activities on minority populations and low-
9 income populations in Washington state.

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

12 (1) "Authority" has the same meaning as defined in RCW 70.94.030.

13 (2) "Department" means the department of ecology.

14 (3) "Highly impacted community" means a community that the
15 department of health has determined is likely to bear a
16 disproportionate burden of public health risks from environmental
17 pollution.

18 (4) "Person" has the same meaning as defined in RCW 90.48.020.

19 (5) "Supplemental environmental project" means an environmentally
20 beneficial project that a person agrees to undertake in settlement of
21 an enforcement action, but which the person is not otherwise obligated
22 to perform.

23 NEW SECTION. **Sec. 3.** (1) Within available funds and consistent
24 with section 13 of this act, the department of health must identify and
25 maintain a list of highly impacted communities in this state.

26 (2) In identifying highly impacted communities, the department of
27 health shall consider, at minimum, including areas that have any of the
28 following characteristics:

29 (a) Unemployment rates more than twenty percent above the state
30 average;

31 (b) Median household income that is less than seventy-five percent
32 of the state median household income;

33 (c) Disproportionate public health challenges, as demonstrated by
34 environmental, scientific, or public health data; or

35 (d) A significant percentage of community residents who are

1 minorities, foreign born, or who lack proficiency in the English
2 language.

3 (3) In identifying whether a community is a highly impacted
4 community under this section, the department of health may rely on
5 existing environmental, economic, scientific, or public health data.

6 (4)(a) All data, documents, and other records used in the
7 identification of highly impacted communities are subject to release
8 pursuant to the procedures established under RCW 42.56.070.

9 (b) The department of health must identify the sources of
10 information that it reviewed and relied upon in identifying highly
11 impacted communities as required by RCW 34.05.272.

12 NEW SECTION. **Sec. 4.** (1) This section and section 5 of this act
13 apply to the settlement of an enforcement action based upon a violation
14 of a permit issued under chapter 70.94, 70.105, or 90.48 RCW or a
15 violation of an order under RCW 70.105D.050. In conjunction with the
16 settlement of an enforcement action, the department, authority, or
17 attorney general may offer and enter into an agreement with a person
18 whose activity negatively affects public health in a highly impacted
19 community to contribute in-kind services or otherwise fund a
20 supplemental environmental project under the following circumstances:

21 (a) A supplemental environmental project may include projects to
22 protect human health, prevent pollution, reduce pollution, protect or
23 restore natural or man-made environments, assessments or audits of
24 environmental quality or pollution prevention, efforts to promote
25 environmental compliance, or emergency preparedness efforts.

26 (b) A supplemental environmental project authorized by the
27 department must:

28 (i)(A) Take place within the same highly impacted community in
29 which the violation occurred; or

30 (B) Primarily benefit the highly impacted community in which the
31 violation occurred;

32 (ii)(A) Be designed to reduce the likelihood that similar
33 violations will occur in the future;

34 (B) Reduce the adverse impact to public health or the environment
35 to which the violation at issue contributes within the highly impacted
36 community; or

1 (C) Reduce the overall risk to public health or the environment
2 potentially affected by the violation at issue;

3 (iii) Be of a scope and type defined in the signed settlement
4 agreement between the department and the person in violation of a
5 permit issued under chapter 70.94, 70.105, or 90.48 RCW or an order
6 under RCW 70.105D.050; and

7 (iv) Include deadlines and quantifiable performance metrics for the
8 achievement of intermediate deliverables or objectives towards the
9 completion of the supplemental environmental project.

10 (2) If the department, attorney general, or authority enters an
11 agreement for a person to perform or fund a supplemental environmental
12 project in conjunction with the settlement of an enforcement action
13 related to the violation of a permit issued under chapter 70.94,
14 70.105, or 90.48 RCW, the department, attorney general, or authority
15 shall also recover a monetary penalty in accordance with RCW 70.94.430,
16 70.94.431, 70.105.080, 70.105.085, or 70.105.090 or chapter 90.48 RCW.

17 (3) In determining the monetary amount to be recovered in the
18 settlement, in addition to the current factors considered in
19 determining the amounts of a penalty under RCW 70.94.430, 70.94.431,
20 70.105.080, 70.105.085, or 70.105.090 or chapter 90.48 RCW, the
21 department, attorney general, or authority shall consider:

22 (a) The cost to the person of the supplemental environmental
23 project; and

24 (b) The environmental or public health benefits anticipated to
25 accrue from the supplemental environmental project.

26 (4) Nothing in this section affects the authority of the
27 department, attorney general, or authority to enter into a supplemental
28 environmental project agreement in the settlement of enforcement
29 actions under existing statutory authorities.

30 NEW SECTION. **Sec. 5.** To the maximum extent practicable, the
31 department, attorney general, or authority shall seek the input of the
32 highly impacted community in the development of a proposed supplemental
33 environmental project pursuant to section 4 of this act. After the
34 department, attorney general, or authority has decided to consider the
35 inclusion of a supplemental environmental project in conjunction with
36 the settlement of an enforcement action, the department, attorney

1 general, or authority shall, to the maximum extent practicable, seek to
2 provide information to the highly impacted community regarding:

- 3 (1) The proposed supplemental environmental project; and
- 4 (2) The process the department, attorney general, or authority
5 plans to follow in making a final determination regarding the details
6 of the supplemental environmental project.

7 **Sec. 6.** RCW 34.05.272 and 2013 c 69 s 2 are each amended to read
8 as follows:

9 (1) This section applies only to the water quality and shorelands
10 and environmental assistance programs within the department of ecology,
11 except as provided in subsection (3)(b) of this section.

12 (2) Before taking a significant agency action, the department of
13 ecology or the department of health as provided in subsection (3)(b) of
14 this section must identify the sources of information reviewed and
15 relied upon by the agency in the course of preparing to take
16 significant agency action. Peer-reviewed literature, if applicable,
17 must be identified, as well as any scientific literature or other
18 sources of information used. The department of ecology shall make
19 available on the agency's web site the index of records required under
20 RCW 42.56.070(6) that are relied upon, or invoked, in support of a
21 proposal for significant agency action.

22 (3) For the purposes of this section, "significant agency action"
23 means an act of the department of ecology that:

24 (a) Results in the development of a significant legislative rule as
25 defined in RCW 34.05.328; (~~or~~)

26 (b) Results in the identification of a highly impacted community by
27 the department of health pursuant to section 3 of this act; or

28 (c) Results in the development of technical guidance, technical
29 assessments, or technical documents that are used to directly support
30 implementation of a state rule or state statute.

31 (4) This section is not intended to affect agency action regarding
32 individual permitting, compliance and enforcement decisions, or
33 guidance provided by an agency to a local government on a case-by-case
34 basis.

35 NEW SECTION. **Sec. 7.** (1)(a) Nothing in this chapter provides a

1 cause of action for a party to challenge a decision by the department
2 to enter into an agreement that results in the performance of a
3 supplemental environmental project.

4 (b) Nothing in this chapter provides a cause of action for a party
5 to challenge a decision by the department not to enter into an
6 agreement that results in the performance of a supplemental
7 environmental project.

8 (c) Nothing in this chapter provides a cause of action for a party
9 to challenge the contents of a supplemental environmental project
10 agreement.

11 (2) Under no circumstances may the department compel a party to
12 fund a supplemental environmental project, unless the party has
13 voluntarily agreed to do so in the settlement of an enforcement action.

14 NEW SECTION. **Sec. 8.** Nothing in sections 1 through 5 of this act
15 creates a new cause of action, or eliminates or restricts any cause of
16 action, with respect to the liability of a party to a claimant,
17 including but not limited to the liability of a party associated with
18 hazardous wastes or substances.

19 NEW SECTION. **Sec. 9.** The department may adopt rules as necessary
20 to implement this chapter.

21 NEW SECTION. **Sec. 10.** The department of ecology must report to
22 appropriate committees of the legislature on the processes that it and
23 the department of health currently use to engage potentially affected
24 communities under existing environmental and public health laws
25 including, but not limited to, chapters 36.70A, 43.21C, 70.94, 70.95,
26 70.105, 70.105D, 90.48, and 90.58 RCW. This report must include an
27 analysis of existing requirements to solicit public input or otherwise
28 engage communities during permitting and other decision-making
29 processes. This report must also include an analysis of the extent to
30 which environmental laws already require mitigation projects that
31 benefit affected communities.

32 NEW SECTION. **Sec. 11.** Sections 1 through 5, 9, and 13 of this act
33 constitute a new chapter in Title 70 RCW.

1 NEW SECTION. **Sec. 12.** Sections 1 through 5, 9, and 13 of this act
2 take effect January 1, 2016, unless the department of ecology does not
3 submit a report to the legislature pursuant to section 10 of this act.

4 NEW SECTION. **Sec. 13.** The responsibility of the department and
5 the department of health to fulfill the requirements of this chapter is
6 contingent upon specific funding for the purposes of this act,
7 referencing this act by bill or chapter number. If such funding is not
8 provided by July 1, 2020, in the omnibus appropriations act, the
9 department must bring request legislation to repeal this act.

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