Senate Bill 286

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of Governor Kate Brown for Office of the Governor)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject
to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the
measure as introduced.

Renames Environmental Justice Task Force as Environmental Justice Council. Establishes
council within Department of Environmental Quality. Modifies membership and duties of council.
Modifies definition of “natural resource agency.” Directs council to develop cumulative impact
analysis. Requires council to report to Governor and Legislative Assembly with guidelines for utiliz-
ation of cumulative impact analysis by natural resource agencies.
Requires natural resource agencies to utilize cumulative impact analysis.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to environmental justice; creating new provisions; amending ORS 182.535, 182.538, 182.542,
182.545, 182.550 and 183.333; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:  

RENAMEING AND REORGANIZING THE ENVIRONMENTAL JUSTICE TASK FORCE

SECTION 1. (1) The amendments to ORS 182.538 and 182.542 by sections 2 and 3 of this
2021 Act are intended to change the name of the “Environmental Justice Task Force” to the
“Environmental Justice Council” and establish that entity within the Department of Envi-
ronmental Quality.

(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel
may substitute for words designating the “Environmental Justice Task Force” wherever they
occur in statutory law, other words designating the Environmental Justice Council.

SECTION 2. ORS 182.538 is amended to read:

182.538. [(1) There is established the Environmental Justice Task Force consisting of 12 members
appointed by the Governor. The members shall be persons who are well-informed on the principles of
environmental justice and who, to the greatest extent practicable, represent minority communities, low-
income communities, environmental interests, industry groups and geographically diverse areas of the
state. Of the 12 members, the Governor shall appoint one member of the task force from each of the
following commissions:]

[(a) The Commission on Asian and Pacific Islander Affairs;]
[(b) The Commission on Black Affairs;]
[(c) The Commission on Hispanic Affairs; and]
[(d) The Commission on Indian Services.]

(1)(a) The Environmental Justice Council is established within the Department of Envi-
ronmental Quality. The council consists of 13 members. Of the 13 members, nine members
shall be appointed by the Governor and must be persons who have expertise and knowledge
in environmental justice, as well as expertise in at least one of the following areas:
(A) Environmental, racial or climate justice;
(B) The enforcement of environmental laws;
(C) Land use planning and development;
(D) Sustainability; or
(E) Community organizing.

(b) Four members shall be the chairperson or the designee of the chairperson of:
(A) The Commission on Asian and Pacific Islander Affairs;
(B) The Commission on Black Affairs;
(C) The Commission on Hispanic Affairs; and
(D) The Commission on Indian Services.

(2) The task force council shall submit an annual report to the Governor and to the Legisla-
tive Assembly setting forth its view of the progress of natural resource agencies toward achieving
the goals established pursuant to ORS 182.542 and identifying any other environmental issues that
the task force council determines need attention.

(3)(a) The term of office of each member appointed under subsection (1)(a) of this section is
four years, but a member may be reappointed. A member appointed under subsection
(1)(a) of this section serves at the pleasure of the Governor. Before the expiration of the term of
a member appointed under subsection (1)(a) of this section, the Governor shall appoint a suc-
cessor whose term begins on January 1 of the following year. [A member may be reappointed.] If
there is a vacancy for any cause, the Governor shall make an appointment to become immediately
effective for the unexpired term.

(b) The term of office of each member appointed under subsection (1)(b) of this section
is four years or until the person ceases to be a member of the Commission on Asian and
Pacific Islander Affairs, Commission on Black Affairs, Commission on Hispanic Affairs or
Commission on Indian Services, whichever occurs first. A member appointed under sub-
section (1)(b) of this section may be reappointed.

(4) A member of the task force council who is not a member of the Legislative Assembly is
entitled to compensation and expenses in the manner and amounts provided for in ORS 292.495.
Claims for compensation and expenses incurred in performing functions of the task force council
shall be paid out of funds appropriated to the Governor department for that purpose.

(5) The task force council shall elect one of its members as a chairperson and another as vice
chairperson, for the terms and with the duties and powers necessary for the performance of the
functions of such offices as the task force council determines.

(6) A majority of the members of the task force council constitutes a quorum for the trans-
action of business.

(7) The task force council shall meet at least once every three months at times and places
specified by the chairperson. The task force council also shall meet at other times and places
specified by the call of the chairperson or of a majority of the members of the task force council.

(8) The Governor shall provide the task force with the necessary clerical and administrative staff
support.

(8) The department is responsible for ensuring payment of the administrative expenses
of the council. The department may enter into interagency agreements under ORS 190.110
with natural resource agencies for sharing the administrative expenses of the council.
(9) The department shall act as the fiscal agent of the council for purposes of:
(a) Budgeting, interagency agreements for sharing administrative expenses or other
mechanisms for paying the administrative and other expenses of the council;
(b) Drafting and processing contracts, other agreements, grant applications or other
documents; and
(c) Taking all reasonable actions to ensure the council is in compliance with state fi-
nancial administration laws.

[(9)] (10) Natural resource agencies are directed to assist the [task force] council in the per-
formance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish
such information and advice as the members of the [task force] council consider necessary to per-
form their duties.

[(10)] (11) A member of the [task force] council who is a member of the Legislative Assembly
is a nonvoting member of the council and may serve in an advisory capacity only.

SECTION 3. ORS 182.542 is amended to read:
182.542. (1) The Environmental Justice [Task Force] Council shall:
[(1)] (a) Advise the Governor on environmental justice issues;
[(2)] (b) Advise natural resource agencies on environmental justice issues, including community
concerns and public participation processes;
[(3)] (c) Identify, in cooperation with natural resource agencies, [minority and low-income com-
munities] highly impacted communities or other communities that may be affected by environ-
mental decisions made by the agencies;
[(4)] (d) Meet with environmental justice communities and make recommendations to the Gov-
ernor regarding concerns raised by these communities; [and]
[(5)] (e) [Define] Elevate environmental justice issues in the state[.]; and
(f) Upon the request of a natural resource agency, serve as the advisory committee for
reviewing a natural resource agency’s proposed administrative rules under ORS 183.333 (1).

(2) The council may form work groups or consult with stakeholders as necessary to carry
out the duties of the council.

(Finance)

SECTION 4. (1) The unexpended balances of amounts authorized to be expended by the
office of the Governor for purposes of the Environmental Justice Task Force for the
biennium beginning July 1, 2021, from revenues dedicated, continuously appropriated, appro-
priated or otherwise made available to the office, are transferred to and are available for
expenditure by the Department of Environmental Quality for purposes of the Environmental
Justice Council for the biennium beginning July 1, 2021.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting
expenditures by the Environmental Justice Task Force remain applicable to expenditures by
the Environmental Justice Council under this section.

(Action, Proceeding, Prosecution)

SECTION 5. The amendments to ORS 182.538 and 182.542 by sections 2 and 3 of this 2021
Act do not affect any action, proceeding or prosecution involving or with respect to any du-
ties, functions and powers of the Environmental Justice Task Force begun before and pend-
ing as of the operative date specified in section 20 of this 2021 Act, except that the
Environmental Justice Council is substituted for the Environmental Justice Task Force in
any such action, proceeding or prosecution.

(Liability, Duty, Obligation)

SECTION 6. (1) Nothing in the amendments to ORS 182.538 and 182.542 by sections 2 and
3 of this 2021 Act relieves a person of a liability, duty or obligation accruing under or with
respect to the duties, functions and powers conferred by those statutes prior to the operative
date specified in section 20 of this 2021 Act. The Environmental Justice Council may
undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Environmental Justice Task Force legally incurred
under contracts, leases and business transactions executed, entered into or begun before the
operative date specified in section 20 of this 2021 Act are transferred to the Environmental
Justice Council. For the purpose of succession to these rights and obligations, the Environ-
mental Justice Council is a continuation of the Environmental Justice Task Force and not
a new authority.

(References)

SECTION 7. Whenever, in any statutory law or resolution of the Legislative Assembly
or in any rule, document, record or proceeding authorized by the Legislative Assembly, ref-
erence is made to the Environmental Justice Task Force or an officer or employee of the
Environmental Justice Task Force, the reference is considered to be a reference to the En-
vironmental Justice Council or an officer or employee of the Environmental Justice Council.

(Council as Advisory Committee for Review of Proposed Rules)

SECTION 8. ORS 183.333 is amended to read:

183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that
whenever possible the public be involved in the development of public policy by agencies and in the
drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-
mum extent possible before giving notice of intent to adopt a rule. The agency may appoint an ad-
visory committee that will represent the interests of persons likely to be affected by the rule, or use
any other means of obtaining public views that will assist the agency in drafting the rule.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties
of any issue that may be the subject of rulemaking and invite the parties to make comments on the
issue.

(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1)
of this section, the agency shall seek the committee’s recommendations on whether the rule will
have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-
nificant adverse impact on small businesses. If the committee indicates that the rule will have a
significant adverse impact on small businesses, the agency shall seek the committee’s recommen-
dations on compliance with ORS 183.540.
(4) An agency shall consider an advisory committee’s recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (2)(b)(E).

(5) If an agency does not appoint an advisory committee for consideration of a permanent rule under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the agency’s statement of fiscal impact as required by ORS 183.335 (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (1) is given. If the agency determines that the statement does not adequately reflect the rule’s fiscal impact, the agency shall extend the period for submission of data or views under ORS 183.335 (3)(a) by at least 20 days. The agency shall include any recommendations from the committee in the record maintained by the agency for the rule.

(6) An agency may appoint the Small Business Rules Advisory Committee established in ORS 183.407 as the advisory committee or fiscal impact advisory committee for purposes of this section.

(7) A natural resource agency as defined in ORS 182.535 may appoint the Environmental Justice Council established under ORS 182.538 as the advisory committee for purposes of subsection (1) of this section.

(8) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with a judgment or a settlement of a judicial proceeding.

(9) If an agency is required by law to appoint an advisory committee under this section, the agency may not appoint an officer, employee or other agent of the agency to serve as a member of the advisory committee.

CUMULATIVE IMPACT ANALYSIS

SECTION 9. ORS 182.535 is amended to read:

ORS 182.535. [For purposes of] As used in ORS 182.535 to 182.550,:

(1) “Cumulative impact analysis” means the analysis developed under section 10 of this 2021 Act to identify highly impacted communities, vulnerable populations and environmental health disparities in identified areas and populations.

(2) “Environmental burdens” means the cumulative risks to communities caused by historic and current:

(a) Exposure to conventional and toxic hazards in the air or in or on water or land;

(b) Adverse environmental effects, which include environmental conditions caused or made worse by contamination or pollution or that create vulnerabilities to climate impacts; and

(c) Exposure to hazards made worse by changes in the climate, such as water stress and drought, flooding, wildfire, air quality, ocean acidification and infectious disease.

(3) “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, regulations and policies.

(4) “Equity analysis” means an analysis used to determine or evaluate environmental justice considerations.
“Highly impacted community” may include but is not limited to:
(a) Census tracts that are fully or partially on Indian country as defined in 18 U.S.C. 1151;
(b) Rural communities;
(c) Coastal communities; and
(d) Areas with a high concentration of members of a vulnerable population.
(6) “Natural resource agency” means the Department of Environmental Quality, the State Department of Agriculture, the Water Resources Department, the State Department of Fish and Wildlife, the State Forestry Department, the Department of State Lands, [the Department of Education, the State Department of Geology and Mineral Industries,] the Department of Land Conservation and Development, the State Marine Board, the Public Utility Commission, the Department of Transportation, [the State Fire Marshal] and the Oregon Health Authority.
(7) “Precautionary approach” means an approach to decision-making where a lack of full scientific certainty is not used as a reason for postponing measures to prevent environmental degradation that might result in serious or irreversible damage.
(8) “Vulnerable population” may include but need be limited to communities that experience disproportionate cumulative risk from environmental burdens due to:
(a) Adverse socioeconomic factors, including unemployment, high costs for housing and transportation relative to income, limited access to food and health care, historic disadvantage, low levels of educational attainment and linguistic isolation; and
(b) Negative public health factors that increase vulnerability to the effects of environmental burdens.

SECTION 10. (1) The Environmental Justice Council, in consultation with the Portland State University Population Research Center, the Oregon Health Authority, other relevant state agencies, local agencies and officials and community representatives, shall develop a cumulative impact analysis to be used to identify highly impacted communities and vulnerable populations and environmental health disparities in identified geographic areas and populations. The cumulative impact analysis must take into consideration geographic, socioeconomic, historic disadvantage, public health and environmental hazard criteria.
(2) The methodology required by this section must give greater weight to those criteria that the council determines are the most accurate measurements of vulnerability to the impacts of environmental burdens.
(3) The council shall review and update the cumulative impact analysis and the report required under section 11 of this 2021 Act at least once every five years.
(4) When developing or revising the cumulative impact analysis, the council shall hold at least four meetings in different regions of the state to:
(a) Present the council's work plan and proposals; and
(b) Receive input and feedback from communities throughout the state.

SECTION 11. (1) The Environmental Justice Council shall provide to the Governor and, in the manner required in ORS 192.245, the Legislative Assembly a report that must include:
(a) Guidance for state agencies when adopting rules, policies or guidelines regarding how to use the cumulative impact analysis to identify highly impacted communities, vulnerable populations and environmental health disparities. Guidance must be based on best practices and current demographic data.
(b) Best practices for increasing public participation and engagement by providing meaningful opportunities for involvement for all people, taking into account barriers to par-
participation that may arise due to race, color, ethnicity, religion, income or education level. In
addition, a specific recommendation on how to best meaningfully consult vulnerable popu-
lations when utilizing and updating the cumulative impact analysis.

(c) Recommendations for establishing measurable goals for reducing environmental dis-
parities for each community in Oregon and ways in which state agencies may focus their
work toward meeting those goals.

(d) Guidelines for prioritizing highly impacted communities and vulnerable populations
by identifying and implementing, where practicable, procedures, processes, applications and
reporting requirements so that inspections, enforcement actions, investment of resources,
planning and permitting and public participation are maximized for the purpose of reducing
environmental health disparities and advancing a healthy environment for all residents.

(2) The report prepared under this section may include:

(a) Recommendations for approaches to integrate an analysis of the distribution of envi-
ronmental burdens across population groups into evaluations performed under state envi-
ronmental laws;

(b) Recommendations for creating and implementing equity analysis into all significant
planning, programmatic and policy decision-making and investments. The equity analysis
methods may include a process for describing potential risks to, benefits to and opportunities
for highly impacted communities and vulnerable populations;

(c) Best practices and needed resources for cataloging and cross-referencing current re-
search and data collection for programs within all state agencies relating to the health and
environment of people of all races, cultures and income levels, including minority populations
and low-income populations of the state;

(d) Recommendations for criteria for identifying and addressing gaps in current research
and data collection to inform state agency actions, to refine the cumulative impact method-
ology and to identify factors that may impede the achievement of environmental justice; and

(e) Methods for incorporating the precautionary approach into decision-making, including
permitting, to the extent allowed by law.

SECTION 12. (1) Natural resource agencies shall utilize the cumulative impact analysis
when developing administrative rules or agency policies or programs. Natural resource
agencies must consider the guidelines recommended by the Environmental Justice Council
in the report required by section 11 of this 2021 Act when utilizing the cumulative impact
analysis.

(2) A natural resource agency may adopt rules, polices or guidelines as necessary to:

(a) Identify highly impacted communities or vulnerable populations;

(b) Establish measurable goals for reducing environmental health disparities; and

(c) Prioritize highly impacted communities and vulnerable populations in the develop-
ment, adoption, implementation or enforcement of environmental laws or administrative
rules, agency policies or funding decisions.

SECTION 13. ORS 182.545 is amended to read:

182.545. In order to provide greater public participation and to ensure that all persons affected
by decisions of the natural resource agencies have a voice in those decisions, each natural resource
agency shall:

(1) In making a determination whether and how to act, consider the effects of the action on
environmental justice issues.
(2) Hold hearings at times and in locations that are convenient for people in the communities
that will be affected by the decisions stemming from the hearings.
(3) Engage in public outreach activities in the communities that will be affected by decisions
of the agency.
(4) Create a citizen public advocate position that is responsible for:
   (a) Encouraging public participation;
   (b) Ensuring that the agency considers environmental justice issues; and
   (c) Informing the agency of the effect of its decisions on highly impacted communities and
other communities traditionally underrepresented in public processes.

SECTION 14. ORS 182.550 is amended to read:
182.550. All directors of natural resource agencies, and other agency directors as the Governor
may designate, shall report annually to the Environmental Justice [Task Force] Council and to the
Governor on the results of the agencies’ efforts to:
   (1) Address environmental justice issues;
   (2) Increase public participation of individuals and communities affected by agencies’ decisions;
   (3) Determine the effect of the agencies’ decisions on highly impacted communities and other
traditionally underrepresented communities; [and]
   (4) Improve plans to further the progress of environmental justice in Oregon[.]; and
   (5) Utilize the cumulative impact analysis when developing administrative rules or agency
policies or programs.

SECTION 15. Sections 10 to 12 of this 2021 Act are added to and made a part of ORS
182.535 to 152.550.

TEMPORARY PROVISIONS

SECTION 16. The Environmental Justice Council shall develop the cumulative impact
analysis under section 10 of this 2021 Act and provide the initial report required under sec-
section 11 of this 2021 Act to the Governor and the Legislative Assembly no later than Sep-
ember 15, 2022.

SECTION 17. Notwithstanding the amendments to ORS 182.538 by section 2 of this 2021
Act, members appointed to the Environmental Justice Task Force before the operative date
specified in section 20 of this 2021 Act shall continue to serve the remainder of their terms
as members of the Environmental Justice Council unless replaced by the Governor in ac-
cordance with ORS 182.538 (3).

SECTION 18. (1) Section 16 of this 2021 Act is repealed on January 2, 2023.
   (2) Section 17 of this 2021 Act is repealed on January 2, 2026.

CAPTIONS

SECTION 19. The unit captions used in this 2021 Act are provided only for the conven-
ience of the reader and do not become part of the statutory law of this state or express any
legislative intent in the enactment of this 2021 Act.

OPERATIVE DATE
SECTION 20. (1) Sections 1, 4 to 7 and 10 to 12 of this 2021 Act and the amendments to ORS 182.535, 182.538, 182.542, 182.545, 182.550 and 183.333 by sections 2, 3, 8, 9, 13 and 14 of this 2021 Act become operative on January 1, 2022.

(2) The office of the Governor, the Department of Environmental Quality, and the Environmental Justice Task Force may take any action before the operative date specified in subsection (1) of this section that is necessary for the office, the department or the task force to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the office, the department or the task force by sections 1, 4 to 7 and 10 to 12 of this 2021 Act and the amendments to ORS 182.535, 182.538, 182.542, 182.545, 182.550 and 183.333 by sections 2, 3, 8, 9, 13 and 14 of this 2021 Act.

EFFECTIVE DATE

SECTION 21. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.