

A-Engrossed
Senate Bill 286

Ordered by the Senate April 2
Including Senate Amendments dated April 2

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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.

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] **Department of Environmental Quality** to develop [cumulative impact analysis] **environmental vulnerability assessment**. Requires council to report to Governor and Legislative Assembly with guidelines for utilization of [cumulative impact analysis] **environmental vulnerability assessment** by natural resource agencies.

Requires natural resource agencies to [utilize cumulative impact analysis] **consider environmental vulnerability assessment when developing administrative rules or agency policies or programs**.

Directs certain state agencies to confer and report to Governor and Legislative Assembly on climate impacts and strategies to guide state climate actions.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to environmental justice; creating new provisions; amending ORS 182.535, 182.538, 182.542,
3 182.545, 182.550 and 183.333; and prescribing an effective date.

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

5
6 **RENAMING AND REORGANIZING THE**
7 **ENVIRONMENTAL JUSTICE TASK FORCE**
8

9 **SECTION 1.** (1) **The amendments to ORS 182.538 and 182.542 by sections 2 and 3 of this**
10 **2021 Act are intended to change the name of the "Environmental Justice Task Force" to the**
11 **"Environmental Justice Council" and establish that entity within the Department of Envi-**
12 **ronmental Quality.**

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

16 **SECTION 2.** ORS 182.538 is amended to read:

17 182.538. [(1) *There is established the Environmental Justice Task Force consisting of 12 members*
18 *appointed by the Governor. The members shall be persons who are well-informed on the principles of*
19 *environmental justice and who, to the greatest extent practicable, represent minority communities, low-*
20 *income communities, environmental interests, industry groups and geographically diverse areas of the*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in **boldfaced** type.

1 *state. Of the 12 members, the Governor shall appoint one member of the task force from each of the*
 2 *following commissions:]*

3 [(a) *The Commission on Asian and Pacific Islander Affairs;*]

4 [(b) *The Commission on Black Affairs;*]

5 [(c) *The Commission on Hispanic Affairs; and*]

6 [(d) *The Commission on Indian Services.*]

7 **(1)(a) The Environmental Justice Council is established within the Department of Envi-**
 8 **ronmental Quality. The council consists of 13 members. Of the 13 members, nine members**
 9 **shall be appointed by the Governor and must be persons who have expertise and knowledge**
 10 **in environmental justice, as well as expertise in at least one of the following areas:**

11 **(A) Environmental, racial or climate justice;**

12 **(B) The enforcement of environmental laws;**

13 **(C) Land use planning and development;**

14 **(D) Sustainability; or**

15 **(E) Community organizing.**

16 **(b) Four members shall be appointed by the Governor as follows:**

17 **(A) One member shall be appointed from among persons nominated by the Commission**
 18 **on Asian and Pacific Islander Affairs;**

19 **(B) One member shall be appointed from among persons nominated by the Commission**
 20 **on Black Affairs;**

21 **(C) One member shall be appointed from among persons nominated by the Commission**
 22 **on Hispanic Affairs; and**

23 **(D) One member shall be appointed from among persons nominated by the Commission**
 24 **on Indian Services.**

25 (2) The *[task force]* **council** shall submit an annual report to the Governor **and the Environ-**
 26 **mental Quality Commission** setting forth its view of the progress of natural resource agencies
 27 toward achieving the goals established pursuant to ORS 182.542 and identifying any other environ-
 28 mental issues that the *[task force]* **council** determines need attention.

29 (3) The term of office of each member is four years, *[but a]* **and a member may be reappointed.**
 30 **A** member serves at the pleasure of the Governor. Before the expiration of the term of a member,
 31 the Governor shall appoint a successor whose term begins on January 1 of the following year. *[A*
 32 *member may be reappointed.]* If there is a vacancy for any cause, the Governor shall make an ap-
 33 pointment to become immediately effective for the unexpired term.

34 (4) A member of the *[task force who is not a member of the Legislative Assembly]* **council** is en-
 35 titled to compensation and expenses in the manner and amounts provided for in ORS 292.495.
 36 Claims for compensation and expenses incurred in performing functions of the *[task force]* **council**
 37 shall be paid out of funds appropriated to the *[Governor]* **department** for that purpose.

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

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

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

(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 duties, functions and powers of the Environmental Justice Task Force begun before and pending as of the operative date specified in section 21 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 21 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 21 of this 2021 Act are transferred to the Environmental Justice Council. For the purpose of succession to these rights and obligations, the Environmental 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, reference 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 Environmental 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 maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory 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

1 have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-
2 nificant adverse impact on small businesses. If the committee indicates that the rule will have a
3 significant adverse impact on small businesses, the agency shall seek the committee's recommen-
4 dations on compliance with ORS 183.540.

5 (4) An agency shall consider an advisory committee's recommendations provided under sub-
6 section (3) of this section in preparing the statement of fiscal impact required by ORS 183.335
7 (2)(b)(E).

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

19 (6) An agency may appoint the Small Business Rules Advisory Committee established in ORS
20 183.407 as the advisory committee or fiscal impact advisory committee for purposes of this section.

21 **(7) A natural resource agency as defined in ORS 182.535 may appoint a member of the**
22 **Environmental Justice Council established under ORS 182.538 to an advisory committee ap-**
23 **pointed under subsection (1) of this section.**

24 [(7)] (8) Subsection (5) of this section does not apply to any rule adopted by an agency to comply
25 with a judgment or a settlement of a judicial proceeding.

26 [(8)] (9) If an agency is required by law to appoint an advisory committee under this section, the
27 agency may not appoint an officer, employee or other agent of the agency to serve as a member of
28 the advisory committee.

29
30 **ENVIRONMENTAL VULNERABILITY ASSESSMENT**

31
32 **SECTION 9.** ORS 182.535 is amended to read:

33 182.535. *[For purposes of]* **As used in** ORS 182.535 to 182.550[,]:

34 (1) **"Environmental burdens" means the cumulative risks to communities caused by his-**
35 **toric and current:**

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

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

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

42 (2) **"Environmental justice" means the equal protection from environmental and health**
43 **risks, fair treatment and meaningful involvement in decision making of all people regardless**
44 **of race, color, national origin, immigration status, income or other identities with respect**
45 **to the development, implementation and enforcement of environmental laws, regulations and**

1 **policies that affect the environment in which people live, work, learn and practice spirituality**
2 **and culture.**

3 (3) **“Equity analysis” means an analysis used to determine or evaluate environmental**
4 **justice considerations.**

5 (4) **“Fair treatment” means that no one group of people, including racial, ethnic or**
6 **socioeconomic groups, should bear a disproportionate share of the negative environmental**
7 **consequences resulting from industrial, municipal and commercial operations or the exe-**
8 **cution of federal, state, local and tribal environmental programs and policies.**

9 (5) **“Highly impacted community” means a demographic group that experiences a dis-**
10 **proportionate amount of environmental burdens or environmental harms or risks.**

11 (6) **“Meaningful involvement” means:**

12 (a) **Members of vulnerable populations have appropriate opportunities to participate in**
13 **decisions about a proposed activity that will affect their environment or health;**

14 (b) **Public contributions can influence a decision maker’s decision;**

15 (c) **The concerns of all participants involved are considered in the decision-making pro-**
16 **cess; and**

17 (d) **Decision makers seek out and facilitate the involvement of members of vulnerable**
18 **populations.**

19 (7) **“Natural resource agency” means the Department of Environmental Quality, the State De-**
20 **partment of Agriculture, the Water Resources Department, the State Department of Fish and**
21 **Wildlife, the State Parks and Recreation Department, the State Department of Energy, the**
22 **State Forestry Department, the Department of State Lands, [the Department of Education,] the State**
23 **Department of Geology and Mineral Industries, the Department of Land Conservation and Develop-**
24 **ment, the State Marine Board, the Public Utility Commission, the Department of Transportation, the**
25 **State Fire Marshal and the Oregon Health Authority.**

26 (8) **“Vulnerable population” may include:**

27 (a) **Communities affected by adverse socioeconomic factors, including unemployment,**
28 **high costs for housing and transportation relative to income, limited access to food and**
29 **health care, historic disadvantage, low levels of educational attainment and linguistic iso-**
30 **lation;**

31 (b) **Communities affected by negative public health factors that increase vulnerability to**
32 **the effects of environmental burdens; or**

33 (c) **Black, indigenous or other people of color or low-income, rural, tribal, coastal or**
34 **homeless populations.**

35 **SECTION 10. (1) The Department of Environmental Quality, in consultation with the**
36 **Environmental Justice Council, natural resource agencies, local agencies and officials and**
37 **community representatives, shall conduct an environmental vulnerability assessment to de-**
38 **termine susceptibility to environmental burdens by bringing together existing and new data**
39 **to identify highly impacted communities and vulnerable populations and environmental**
40 **health disparities in identified geographic areas and populations.**

41 (2) **The department shall review and update the environmental vulnerability assessment**
42 **at least once every five years.**

43 (3) **When developing or revising the environmental vulnerability assessment, the depart-**
44 **ment shall hold at least four meetings in different regions of the state to:**

45 (a) **Present the department’s work plan and proposals; and**

1 (b) Receive input and feedback from communities throughout the state.

2 **SECTION 11.** (1) The Environmental Justice Council, in consultation with natural re-
3 source agencies, shall identify in a report to the Governor and, in the manner required in
4 ORS 192.245, the Legislative Assembly:

5 (a) Guidance for state agencies when adopting rules, policies or guidelines regarding how
6 to use the environmental vulnerability assessment. The guidance must be flexible to accom-
7 modate for differences in agency directives.

8 (b) Best practices for increasing public participation and engagement by providing
9 meaningful involvement for all people, taking into account barriers to participation that may
10 arise due to race, color, ethnicity, religion, income or education level.

11 (c) A specific recommendation on how to best meaningfully consult vulnerable popu-
12 lations when utilizing and updating the environmental vulnerability assessment.

13 (d) Recommendations for establishing measurable goals for reducing environmental dis-
14 parities across Oregon and ways in which state agencies may focus their work toward
15 meeting those goals.

16 (e) Guidelines for identifying highly impacted communities and vulnerable populations for
17 the purpose of reducing environmental health disparities and advancing a healthy environ-
18 ment for all residents.

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

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

23 (b) Equity analysis methods that may include a process for describing potential risks to,
24 benefits to and opportunities for highly impacted communities and vulnerable populations;

25 (c) Best practices for cataloging and collecting data on programs within natural resource
26 agencies related to the health and environment of people of all races, cultures and income
27 levels, including minority populations and low-income populations; and

28 (d) Recommendations for criteria for identifying and addressing gaps in current research
29 and data collection to inform state agency actions, to refine the environmental vulnerability
30 assessment and to identify factors that may impede the achievement of environmental jus-
31 tice.

32 (3) The council, in consultation with the natural resource agencies, shall review and up-
33 date the report required under this section at least once every five years.

34 **SECTION 12.** (1) Natural resource agencies shall consider the environmental vulnerability
35 assessment when developing administrative rules or agency policies or programs. Natural
36 resource agencies shall consider the recommendations in the report required by section 11
37 of this 2021 Act when utilizing the environmental vulnerability assessment.

38 (2) A natural resource agency may develop or revise agency policies, programs and
39 practices as necessary to:

40 (a) Identify highly impacted communities and vulnerable populations affected by agency
41 programs;

42 (b) Conduct outreach and engagement activities with highly impacted communities or
43 vulnerable populations to inform the development, adoption, implementation or enforcement
44 of environmental laws, administrative rules or agency policies;

45 (c) Establish measurable goals for reducing environmental health disparities within

1 **agency programs; and**

2 **(d) Prioritize agency funding to help address identified impacts on highly impacted com-**
3 **munities or vulnerable populations.**

4 **SECTION 13.** ORS 182.545 is amended to read:

5 182.545. In order to provide greater public participation and to ensure that all persons affected
6 by decisions of the natural resource agencies have a voice in those decisions, each natural resource
7 agency shall:

8 (1) In making a determination whether and how to act, consider the effects of the action on
9 environmental justice issues.

10 (2) Hold hearings at times and in locations that are convenient for people in the communities
11 that will be affected by the decisions stemming from the hearings.

12 (3) Engage in public outreach activities in the communities that will be affected by decisions
13 of the agency.

14 (4) Create a [*citizen*] **public** advocate position that is responsible for:

15 (a) Encouraging public participation;

16 (b) Ensuring that the agency considers environmental justice issues; and

17 (c) Informing the agency of the effect of its decisions on **highly impacted communities and**
18 **other** communities traditionally underrepresented in public processes.

19 **SECTION 14.** ORS 182.550 is amended to read:

20 182.550. All directors of natural resource agencies, and other agency directors as the Governor
21 may designate, shall report annually to the Environmental Justice [*Task Force*] **Council** and to the
22 Governor on the results of the agencies' efforts to:

23 (1) Address environmental justice issues;

24 (2) Increase public participation of individuals and communities affected by agencies' decisions;

25 (3) Determine the effect of the agencies' decisions on **highly impacted communities and other**
26 **traditionally underrepresented communities; [and]**

27 (4) Improve plans to further the progress of environmental justice in Oregon[.]; **and**

28 (5) **Utilize the environmental vulnerability assessment when developing administrative**
29 **rules or agency policies or programs.**

30 **SECTION 15.** Sections 10 to 12 of this 2021 Act are added to and made a part of ORS
31 **182.535 to 182.550.**

32
33 **AGENCY CONFERENCE AND REPORT**
34

35 **SECTION 16.** (1) **The Department of Environmental Quality, the Department of Land**
36 **Conservation and Development, the State Department of Agriculture, the State Forestry**
37 **Department, the Water Resources Department, the State Department of Fish and Wildlife,**
38 **the State Department of Energy, the Department of Transportation, the Oregon Health Au-**
39 **thority, the Oregon Watershed Enhancement Board, the Public Utility Commission, the State**
40 **Parks and Recreation Department, the Environmental Justice Council, the Oregon Global**
41 **Warming Commission and the Sustainability Board established under ORS 184.427 shall an-**
42 **nually confer to discuss climate impacts on impacted communities and to develop strategies**
43 **to guide state climate actions.**

44 (2) **No later than September 15 of each year, the agencies and other bodies listed in**
45 **subsection (1) of this section shall jointly report to the Governor and the interim committees**

1 of the Legislative Assembly related to the environment in the manner provided under ORS
2 192.245. The report must summarize the discussions required under subsection (1) of this
3 section and may make recommendations for legislation.

4
5 **TEMPORARY PROVISIONS**

6
7 **SECTION 17.** (1) The Department of Environmental Quality shall first conduct the envi-
8 ronmental vulnerability assessment under section 10 of this 2021 Act no later than Septem-
9 ber 15, 2024.

10 (2) The Environmental Justice Council shall provide the initial report required under
11 section 11 of this 2021 Act to the Governor and the Legislative Assembly no later than Sep-
12 tember 15, 2024.

13 **SECTION 18.** Notwithstanding the amendments to ORS 182.538 by section 2 of this 2021
14 Act, members appointed to the Environmental Justice Task Force before the operative date
15 specified in section 21 of this 2021 Act shall continue to serve the remainder of their terms
16 as members of the Environmental Justice Council unless replaced by the Governor in ac-
17 cordance with ORS 182.538 (3).

18 **SECTION 19.** (1) Section 17 of this 2021 Act is repealed on January 2, 2025.

19 (2) Section 18 of this 2021 Act is repealed on January 2, 2026.

20
21 **CAPTIONS**

22
23 **SECTION 20.** The unit captions used in this 2021 Act are provided only for the conven-
24 ience of the reader and do not become part of the statutory law of this state or express any
25 legislative intent in the enactment of this 2021 Act.

26
27 **OPERATIVE DATE**

28
29 **SECTION 21.** (1) Sections 1, 4 to 7 and 10 to 12 of this 2021 Act and the amendments to
30 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
31 2021 Act become operative on January 1, 2022.

32 (2) The office of the Governor, the Department of Environmental Quality, and the Envi-
33 ronmental Justice Task Force may take any action before the operative date specified in
34 subsection (1) of this section that is necessary for the office, the department or the task
35 force to exercise, on and after the operative date specified in subsection (1) of this section,
36 all of the duties, functions and powers conferred on the office, the department or the task
37 force by sections 1, 4 to 7 and 10 to 12 of this 2021 Act and the amendments to ORS 182.535,
38 182.538, 182.542, 182.545, 182.550 and 183.333 by sections 2, 3, 8, 9, 13 and 14 of this 2021 Act.

39
40 **EFFECTIVE DATE**

41
42 **SECTION 22.** This 2021 Act takes effect on the 91st day after the date on which the 2021
43 regular session of the Eighty-first Legislative Assembly adjourns sine die.