

Senate Bill 286

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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 **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 utilization 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

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:**

RENAMING AND REORGANIZING THE ENVIRONMENTAL JUSTICE TASK FORCE

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6
7
8 **SECTION 1. (1) The amendments to ORS 182.538 and 182.542 by sections 2 and 3 of this**
9 **2021 Act are intended to change the name of the "Environmental Justice Task Force" to the**
10 **"Environmental Justice Council" and establish that entity within the Department of Envi-**
11 **ronmental Quality.**

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

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

16 182.538. *[(1) There is established the Environmental Justice Task Force consisting of 12 members*
17 *appointed by the Governor. The members shall be persons who are well-informed on the principles of*
18 *environmental justice and who, to the greatest extent practicable, represent minority communities, low-*
19 *income communities, environmental interests, industry groups and geographically diverse areas of the*
20 *state. Of the 12 members, the Governor shall appoint one member of the task force from each of the*
21 *following commissions:]*

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

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

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

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

26 **(1)(a) The Environmental Justice Council is established within the Department of Envi-**
27 **ronmental Quality. The council consists of 13 members. Of the 13 members, nine members**

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 **shall be appointed by the Governor and must be persons who have expertise and knowledge**
 2 **in environmental justice, as well as expertise in at least one of the following areas:**

- 3 (A) **Environmental, racial or climate justice;**
- 4 (B) **The enforcement of environmental laws;**
- 5 (C) **Land use planning and development;**
- 6 (D) **Sustainability; or**
- 7 (E) **Community organizing.**

8 (b) **Four members shall be the chairperson or the designee of the chairperson of:**

- 9 (A) **The Commission on Asian and Pacific Islander Affairs;**
- 10 (B) **The Commission on Black Affairs;**
- 11 (C) **The Commission on Hispanic Affairs; and**
- 12 (D) **The Commission on Indian Services.**

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

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

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

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

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

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

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

41 *[(8) The Governor shall provide the task force with the necessary clerical and administrative staff*
 42 *support.]*

43 (8) **The department is responsible for ensuring payment of the administrative expenses**
 44 **of the council. The department may enter into interagency agreements under ORS 190.110**
 45 **with natural resource agencies for sharing the administrative expenses of the council.**

1 ties, functions and powers of the Environmental Justice Task Force begun before and pend-
 2 ing as of the operative date specified in section 20 of this 2021 Act, except that the
 3 Environmental Justice Council is substituted for the Environmental Justice Task Force in
 4 any such action, proceeding or prosecution.

5
 6 (Liability, Duty, Obligation)
 7

8 **SECTION 6.** (1) Nothing in the amendments to ORS 182.538 and 182.542 by sections 2 and
 9 3 of this 2021 Act relieves a person of a liability, duty or obligation accruing under or with
 10 respect to the duties, functions and powers conferred by those statutes prior to the operative
 11 date specified in section 20 of this 2021 Act. The Environmental Justice Council may
 12 undertake the collection or enforcement of any such liability, duty or obligation.

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

19
 20 (References)
 21

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

27
 28 (Council as Advisory Committee for Review of Proposed Rules)
 29

30 **SECTION 8.** ORS 183.333 is amended to read:

31 183.333. (1) The Legislative Assembly finds and declares that it is the policy of this state that
 32 whenever possible the public be involved in the development of public policy by agencies and in the
 33 drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maxi-
 34 mum extent possible before giving notice of intent to adopt a rule. The agency may appoint an ad-
 35 visory committee that will represent the interests of persons likely to be affected by the rule, or use
 36 any other means of obtaining public views that will assist the agency in drafting the rule.

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

40 (3) If an agency appoints an advisory committee for consideration of a rule under subsection (1)
 41 of this section, the agency shall seek the committee's recommendations on whether the rule will
 42 have a fiscal impact, what the extent of that impact will be and whether the rule will have a sig-
 43 nificant adverse impact on small businesses. If the committee indicates that the rule will have a
 44 significant adverse impact on small businesses, the agency shall seek the committee's recommen-
 45 dations on compliance with ORS 183.540.

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

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

15 (6) An agency may appoint the Small Business Rules Advisory Committee established in ORS
 16 183.407 as the advisory committee or fiscal impact advisory committee for purposes of this section.

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

20 [(7)] (8) Subsection (5) of this section does not apply to any rule adopted by an agency to comply
 21 with a judgment or a settlement of a judicial proceeding.

22 [(8)] (9) If an agency is required by law to appoint an advisory committee under this section, the
 23 agency may not appoint an officer, employee or other agent of the agency to serve as a member of
 24 the advisory committee.

25
 26 **CUMULATIVE IMPACT ANALYSIS**
 27

28 **SECTION 9.** ORS 182.535 is amended to read:

29 182.535. *[For purposes of]* **As used in** ORS 182.535 to 182.550[,]:

30 (1) **“Cumulative impact analysis” means the analysis developed under section 10 of this**
 31 **2021 Act to identify highly impacted communities, vulnerable populations and environmental**
 32 **health disparities in identified areas and populations.**

33 (2) **“Environmental burdens” means the cumulative risks to communities caused by his-**
 34 **toric and current:**

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

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

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

41 (3) **“Environmental justice” means the fair treatment and meaningful involvement of all**
 42 **people regardless of race, color, national origin or income with respect to the development,**
 43 **implementation and enforcement of environmental laws, regulations and policies.**

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

1 (5) **“Highly impacted community” may include but is not limited to:**

2 (a) **Census tracts that are fully or partially on Indian country as defined in 18 U.S.C. 1151;**

3 (b) **Rural communities;**

4 (c) **Coastal communities; and**

5 (d) **Areas with a high concentration of members of a vulnerable population.**

6 (6) **“Natural resource agency” means the Department of Environmental Quality, the State De-**
 7 **partment of Agriculture, the Water Resources Department, the State Department of Fish and**
 8 **Wildlife, the State Forestry Department, the Department of State Lands, [the Department of Educa-**
 9 **tion, the State Department of Geology and Mineral Industries,] the Department of Land Conservation**
 10 **and Development, the State Marine Board, the Public Utility Commission, the Department of**
 11 **Transportation[, the State Fire Marshal] and the Oregon Health Authority.**

12 (7) **“Precautionary approach” means an approach to decision-making where a lack of full**
 13 **scientific certainty is not used as a reason for postponing measures to prevent environ-**
 14 **mental degradation that might result in serious or irreversible damage.**

15 (8) **“Vulnerable population” may include but need be limited to communities that experi-**
 16 **ence disproportionate cumulative risk from environmental burdens due to:**

17 (a) **Adverse socioeconomic factors, including unemployment, high costs for housing and**
 18 **transportation relative to income, limited access to food and health care, historic disadvan-**
 19 **tage, low levels of educational attainment and linguistic isolation; and**

20 (b) **Negative public health factors that increase vulnerability to the effects of environ-**
 21 **mental burdens.**

22 **SECTION 10. (1) The Environmental Justice Council, in consultation with the Portland**
 23 **State University Population Research Center, the Oregon Health Authority, other relevant**
 24 **state agencies, local agencies and officials and community representatives, shall develop a**
 25 **cumulative impact analysis to be used to identify highly impacted communities and vulner-**
 26 **able populations and environmental health disparities in identified geographic areas and**
 27 **populations. The cumulative impact analysis must take into consideration geographic,**
 28 **socioeconomic, historic disadvantage, public health and environmental hazard criteria.**

29 (2) **The methodology required by this section must give greater weight to those criteria**
 30 **that the council determines are the most accurate measurements of vulnerability to the**
 31 **impacts of environmental burdens.**

32 (3) **The council shall review and update the cumulative impact analysis and the report**
 33 **required under section 11 of this 2021 Act at least once every five years.**

34 (4) **When developing or revising the cumulative impact analysis, the council shall hold**
 35 **at least four meetings in different regions of the state to:**

36 (a) **Present the council’s work plan and proposals; and**

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

38 **SECTION 11. (1) The Environmental Justice Council shall provide to the Governor and,**
 39 **in the manner required in ORS 192.245, the Legislative Assembly a report that must include:**

40 (a) **Guidance for state agencies when adopting rules, policies or guidelines regarding how**
 41 **to use the cumulative impact analysis to identify highly impacted communities, vulnerable**
 42 **populations and environmental health disparities. Guidance must be based on best practices**
 43 **and current demographic data.**

44 (b) **Best practices for increasing public participation and engagement by providing**
 45 **meaningful opportunities for involvement for all people, taking into account barriers to par-**

1 participation that may arise due to race, color, ethnicity, religion, income or education level. In
 2 addition, a specific recommendation on how to best meaningfully consult vulnerable popu-
 3 lations when utilizing and updating the cumulative impact analysis.

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

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

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

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

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

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

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

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

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

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

35 (a) Identify highly impacted communities or vulnerable populations;

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

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

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

41 182.545. In order to provide greater public participation and to ensure that all persons affected
 42 by decisions of the natural resource agencies have a voice in those decisions, each natural resource
 43 agency shall:

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

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

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

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

6 (a) Encouraging public participation;

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

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

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

11 182.550. All directors of natural resource agencies, and other agency directors as the Governor
12 may designate, shall report annually to the Environmental Justice [*Task Force*] **Council** and to the
13 Governor on the results of the agencies' efforts to:

14 (1) Address environmental justice issues;

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

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

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

19 (5) **Utilize the cumulative impact analysis when developing administrative rules or agency**
20 **policies or programs.**

21 **SECTION 15.** Sections 10 to 12 of this 2021 Act are added to and made a part of ORS
22 **182.535 to 152.550.**

23
24 **TEMPORARY PROVISIONS**

25
26 **SECTION 16.** The Environmental Justice Council shall develop the cumulative impact
27 **analysis under section 10 of this 2021 Act and provide the initial report required under sec-**
28 **tion 11 of this 2021 Act to the Governor and the Legislative Assembly no later than Sep-**
29 **tember 15, 2022.**

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

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

36 (2) Section 17 of this 2021 Act is repealed on January 2, 2026.

37
38 **CAPTIONS**

39
40 **SECTION 19.** The unit captions used in this 2021 Act are provided only for the conven-
41 **ience of the reader and do not become part of the statutory law of this state or express any**
42 **legislative intent in the enactment of this 2021 Act.**

43
44 **OPERATIVE DATE**

