

E2SSB 5141 - H COMM AMD

By Committee on Environment & Energy

NOT ADOPTED 04/10/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The purpose of
4 this chapter is to reduce environmental and health disparities in
5 Washington state and improve the health of all Washington state
6 residents. This chapter implements the recommendations of the
7 environmental justice task force established in section 221(48),
8 chapter 415, Laws of 2019 entitled "Report to the Washington state
9 governor and legislature, *Environmental Justice Task Force:*
10 *Recommendations for Prioritizing EJ in Washington State Government*
11 (October 2020)."

12 (2) As conveyed in the task force report, Washington state
13 studies and national studies found that people of color and low-
14 income people continue to be disproportionately exposed to
15 environmental harms in their communities. As a result, there is a
16 higher risk of adverse health outcomes for those communities. This
17 risk is amplified when overlaid on communities with preexisting
18 social and economic barriers and environmental risks, and creates
19 cumulative environmental health impacts, which this act seeks to
20 prevent and mitigate.

21 This chapter also seeks to reduce exposure to environmental
22 hazards within Indian country, as defined in 18 U.S.C. Sec. 1151, due
23 to off-reservation activities within the state, and to improve state
24 practices to reduce contamination of traditional foods wherever they
25 occur. Exposure to such hazards can result in generational health and
26 ecological problems, particularly on small reservations where it is
27 impossible to move away from a hazard.

28 (3) Accordingly, the state has a compelling interest in
29 preventing and addressing such environmental health disparities in
30 the administration of ongoing and new environmental programs,
31 including allocation of funds, and in administering these programs so

1 as to remedy the effects of past disparate treatment of overburdened
2 communities and vulnerable populations.

3 (4) The task force provided recommendations to state agencies for
4 measurable goals and model policies to reduce environmental health
5 inequities in Washington, equitable practices for meaningful
6 community involvement, and how to use the environmental health
7 disparities map to identify and promote the equitable distribution of
8 environmental benefits to overburdened communities. In order for all
9 communities in Washington state to be healthy and thriving, state
10 government should aim to concentrate government actions to benefit
11 communities that currently have the greatest environmental and health
12 burdens.

13 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
14 section apply throughout this chapter unless the context clearly
15 requires otherwise.

16 (1) "Council" means the environmental justice council established
17 in section 20 of this act.

18 (2) "Covered agency" means the departments of ecology, health,
19 natural resources, commerce, agriculture, and transportation, the
20 Puget Sound partnership, and any agency that opts to assume all of
21 the obligations of this act pursuant to section 11 of this act.

22 (3) "Cumulative environmental health impact" means the combined,
23 multiple environmental impacts and health impacts on a vulnerable
24 population or overburdened community.

25 (4) "Environmental benefits" means activities that:

26 (a) Prevent or reduce existing environmental harms or associated
27 risks that contribute significantly to cumulative environmental
28 health impacts;

29 (b) Prevent or mitigate impacts to overburdened communities or
30 vulnerable populations from, or support community response to, the
31 impacts of environmental harm; or

32 (c) Meet a community need identified by an overburdened community
33 or vulnerable population that is consistent with the intent of this
34 chapter.

35 (5) "Environmental harm" means the individual or cumulative
36 environmental health impacts and risks to communities caused by
37 historic, current, and projected:

1 (a) Exposure to pollution, conventional or toxic pollutants,
2 environmental hazards, or other contamination in the air, water, and
3 land;

4 (b) Adverse environmental effects, including exposure to
5 contamination, hazardous substances, or pollution that increase the
6 risk of adverse environmental health outcomes or create
7 vulnerabilities to the impacts of climate change;

8 (c) Loss or impairment of ecosystem functions or traditional food
9 resources and loss of access to gather cultural resources or harvest
10 traditional foods; and

11 (d) Health and economic impacts from climate change.

12 (6) "Environmental health disparities map" means the data and
13 information developed pursuant to section 19 of this act.

14 (7) "Environmental impacts" means environmental benefits or
15 environmental harms, or the combination of environmental benefits and
16 harms, resulting or expected to result from a proposed action.

17 (8) "Environmental justice" means the fair treatment and
18 meaningful involvement of all people regardless of race, color,
19 national origin, or income with respect to the development,
20 implementation, and enforcement of environmental laws, rules, and
21 policies. Environmental justice includes addressing disproportionate
22 environmental and health impacts in all laws, rules, and policies
23 with environmental impacts by prioritizing vulnerable populations and
24 overburdened communities, equitably distributing resources and
25 benefits, and eliminating harm.

26 (9) "Equitable distribution" means a fair and just, but not
27 necessarily equal, allocation intended to mitigate disparities in
28 benefits and burdens, and based on current conditions, including
29 existing legacy and cumulative impacts, that are informed by
30 cumulative environmental health impact analysis.

31 (10) "Overburdened community" means a geographic area where
32 vulnerable populations face combined, multiple environmental harms
33 and health impacts, and includes, but is not limited to, highly
34 impacted communities as defined in RCW 19.405.020.

35 (11) "Significant agency action" means:

36 (a) The process of developing and adopting significant
37 legislative rules as defined in RCW 34.05.328;

38 (b) The development and adoption of any covered agency new grant
39 or loan program;

1 (c) The allocation of more than \$25,000,000 in a single funding
2 round through a grant or loan program administered by a covered
3 agency;

4 (d) Major capital and transportation projects of at least
5 \$5,000,000;

6 (e) The development of agency request legislation; and

7 (f) Any other agency actions deemed significant by a covered
8 agency consistent with section 14 of this act.

9 (12) "Tribal lands" has the same meaning as "Indian country" as
10 provided in 18 U.S.C. Sec. 1151, and also includes sacred sites,
11 traditional cultural properties, burial grounds, and other tribal
12 sites protected by federal or state law.

13 (13)(a) "Vulnerable populations" means population groups that are
14 more likely to be at higher risk for poor health outcomes in response
15 to environmental harms, due to: (i) Adverse socioeconomic factors,
16 such as unemployment, high housing and transportation costs relative
17 to income, limited access to nutritious food and adequate health
18 care, linguistic isolation, and other factors that negatively affect
19 health outcomes and increase vulnerability to the effects of
20 environmental harms; and (ii) sensitivity factors, such as low birth
21 weight and higher rates of hospitalization.

22 (b) "Vulnerable populations" includes, but is not limited to:

23 (i) Racial or ethnic minorities;

24 (ii) Low-income populations;

25 (iii) Populations disproportionately impacted by environmental
26 harms; and

27 (iv) Populations of workers experiencing environmental harms.

28 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE OBLIGATIONS FOR ALL
29 AGENCIES. Covered agencies are required to comply with all provisions
30 of this chapter. All other state agencies should strive to apply the
31 laws of the state of Washington, and the rules and policies of the
32 agency, in accordance with the policies of this chapter including, to
33 the extent feasible, incorporating the principles of environmental
34 justice assessment processes set forth in section 14 of this act into
35 agency decisions.

36 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.70
37 RCW to read as follows:

1 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF HEALTH.
2 The department must apply and comply with the substantive and
3 procedural requirements of chapter 70A.--- RCW (the new chapter
4 created in section 24 of this act).

5 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.21A
6 RCW to read as follows:

7 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF ECOLOGY.
8 The department must apply and comply with the substantive and
9 procedural requirements of chapter 70A.--- RCW (the new chapter
10 created in section 24 of this act).

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.23
12 RCW to read as follows:

13 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF
14 AGRICULTURE. The department must apply and comply with the
15 substantive and procedural requirements of chapter 70A.--- RCW (the
16 new chapter created in section 24 of this act).

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.30
18 RCW to read as follows:

19 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF NATURAL
20 RESOURCES. The department must apply and comply with the substantive
21 and procedural requirements of chapter 70A.--- RCW (the new chapter
22 created in section 24 of this act).

23 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.31
24 RCW to read as follows:

25 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF COMMERCE.
26 The department must apply and comply with the substantive and
27 procedural requirements of chapter 70A.--- RCW (the new chapter
28 created in section 24 of this act).

29 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.01
30 RCW to read as follows:

31 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF
32 TRANSPORTATION. The department must apply and comply with the
33 substantive and procedural requirements of chapter 70A.--- RCW (the
34 new chapter created in section 24 of this act).

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.71
2 RCW to read as follows:

3 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE PUGET SOUND PARTNERSHIP.
4 The partnership must apply and comply with the substantive and
5 procedural requirements of chapter 70A.--- RCW (the new chapter
6 created in section 24 of this act).

7 NEW SECTION. **Sec. 11.** AUTHORITY OF OTHER AGENCIES TO OPT IN TO
8 ENVIRONMENTAL JUSTICE OBLIGATIONS. (1) Any state agency, as the term
9 "agency" is defined in RCW 34.05.010, including the governor's office
10 and the office of the attorney general but excluding local
11 governmental entities, may opt in to assume all of the substantive
12 and procedural requirements of covered agencies under chapter 70A.---
13 RCW (the new chapter created in section 24 of this act) at any time
14 by notifying the council established in section 20 of this act.

15 (2) An agency that opts in to assume all of the substantive and
16 procedural requirements of chapter 70A.--- RCW (the new chapter
17 created in section 24 of this act) is not subject to the deadlines or
18 timelines established in sections 12, 13, 14, 16, and 20 of this act.

19 NEW SECTION. **Sec. 12.** INCORPORATING ENVIRONMENTAL JUSTICE INTO
20 AGENCY STRATEGIC PLANS. (1) By January 1, 2023, each covered agency
21 shall include an environmental justice implementation plan within its
22 strategic plan. A covered agency may additionally incorporate an
23 environmental justice implementation plan into other significant
24 agency planning documents. The plan must describe how the covered
25 agency plans to apply the principles of environmental justice to the
26 agency's activities and guide the agency in its implementation of its
27 obligations under this chapter.

28 (2) In its environmental justice implementation plan, each
29 covered agency must include:

30 (a) Agency-specific goals and deliverables to reduce
31 environmental and health disparities and for otherwise achieving
32 environmental justice in the agency's programs;

33 (b) Metrics to track and measure accomplishments of the agency
34 goals and deliverables;

35 (c) Methods to embed equitable community engagement with, and
36 equitable participation from, members of the public, into agency
37 practices for soliciting and receiving public comment;

1 (d) Strategies to ensure compliance with existing federal and
2 state laws and policies relating to environmental justice, including
3 Title VI of the civil rights act of 1964, 42 U.S.C. Sec.
4 2000d-2000d-4, Title IX of the Education Amendments of 1972, 20
5 U.S.C. Sec. 1681-1683, Section 504 of the Rehabilitation Act of 1973,
6 29 U.S.C. Sec. 794, and the age discrimination act of 1975, 42 U.S.C.
7 Sec. 6101-6107;

8 (e) The plan for community engagement required under section 13
9 of this act; and

10 (f) Specific plans and timelines for incorporating environmental
11 justice considerations into agency activities as required under this
12 chapter.

13 (3) In developing and updating its plan, each covered agency must
14 consider any guidance developed by the council pursuant to section 20
15 of this act.

16 NEW SECTION. **Sec. 13.** **EQUITABLE COMMUNITY ENGAGEMENT AND PUBLIC**
17 **PARTICIPATION.** (1) By July 1, 2022, each covered agency must create
18 and adopt a community engagement plan that describes how it will
19 engage with overburdened communities and vulnerable populations as it
20 evaluates new and existing activities and programs. This plan must
21 describe how the agency plans to facilitate equitable participation
22 and support meaningful and direct involvement of vulnerable
23 populations and overburdened communities. The plan must include:

24 (a) How the covered agency will identify and prioritize
25 overburdened communities for purposes of this chapter;

26 (b) Best practices for outreach and communication to overcome
27 barriers to engagement with overburdened communities and vulnerable
28 populations;

29 (c) Use of special screening tools that integrate environmental,
30 demographic, and health disparities data, such as the environmental
31 health disparities map, to evaluate and understand the nature and
32 needs of the people who the agency expects to be impacted by
33 significant agency actions under section 14 of this act and processes
34 under section 16 of this act to overcome barriers to participation;

35 (d) Processes that facilitate and support the inclusion of
36 members of communities affected by agency decision making including,
37 to the extent legal and practicable, but not limited to, child care,
38 and reimbursement for travel and other expenses; and

1 (e) Methods for outreach and communication with those who face
2 barriers, language or otherwise, to participation.

3 (2) Covered agencies must regularly review their compliance with
4 existing laws and policies that guide community engagement and must
5 comply with the following:

6 (a) Title VI of the civil rights act, prohibiting discrimination
7 based on race, color, or national origin and requiring meaningful
8 access to people with limited English proficiency, and disability;

9 (b) Executive Order 05-03, requiring plain talk when
10 communicating with the public; and

11 (c) Guidance related to Executive Order 13166, requiring
12 meaningful access to agency programs and services for people with
13 limited English proficiency.

14 (3) In developing and updating its plan, each covered agency must
15 consider any guidance developed by the council pursuant to section 20
16 of this act.

17 (4) A covered agency may coordinate with the office of equity to
18 identify policy and system barriers to meaningful engagement with
19 communities as conducted by the office under RCW 43.06D.040(1)(b).

20 NEW SECTION. **Sec. 14.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1)

21 When considering a significant agency action initiated after July 1,
22 2023, a covered agency must conduct an environmental justice
23 assessment in accordance with this section to inform and support the
24 agency's consideration of overburdened communities and vulnerable
25 populations when making decisions and to assist the agency with the
26 equitable distribution of environmental benefits, the reduction of
27 environmental harms, and the identification and reduction of
28 environmental and health disparities.

29 (2)(a) Consistent with section 2(11)(f) of this act, for the
30 purpose of preparing environmental justice assessments, a covered
31 agency may deem actions significant that are additional to the
32 significant agency actions identified in section 2(11) (a) through
33 (e) of this act, in iterative consultation with the council and
34 interagency work group established under section 20 of this act. By
35 July 1, 2025, each covered agency must consider their agency's
36 activities and identify and begin applying environmental justice
37 assessments to any actions that the agency identifies as significant
38 that are in addition to the significant agency actions identified in
39 section 2(11) (a) through (e) of this act. Significant agency actions

1 designated by a covered agency under this subsection must be actions
2 that may cause environmental harm or may affect the equitable
3 distribution of environmental benefits to an overburdened community
4 or a vulnerable population.

5 (b) In the identification of significant agency actions, covered
6 agencies shall consider guidance issued by the council established in
7 section 20 of this act. Each covered agency must periodically review
8 and update its identified types of significant agency actions for
9 which an environmental justice assessment is required under this
10 section, and the relevant factors to the agency's environmental
11 justice assessments that result from the unique mission, authorities,
12 and priorities of the agency.

13 (3) By July 1, 2023, and periodically thereafter, after an
14 opportunity for public comment on its determinations, each covered
15 agency must:

16 (a) Publish on its website the types of agency actions that the
17 agency has determined are significant agency actions that require an
18 environmental justice assessment under this section, including any
19 significant agency actions identified under subsection (2)(a) of this
20 section;

21 (b) Provide notification of the determination of the types of
22 significant agency actions in the Washington State Register; and

23 (c) Prepare an environmental justice assessment when considering
24 a listed action, after publication of the list of any additional
25 significant agency actions identified under (a) of this subsection.

26 (4) At a minimum, environmental justice assessments must:

27 (a) Consider guidance prepared by the council under section 20 of
28 this act relating to best practices on environmental justice
29 assessments and when and how to use cumulative environmental health
30 impact analysis;

31 (b) Use cumulative environmental health impact analysis, such as
32 the environmental health disparities map or other data that considers
33 the effects of a proposed action on overburdened communities and
34 vulnerable populations;

35 (c) Identify overburdened communities and vulnerable populations
36 who are expected to be affected by the proposed action and the
37 potential environmental and health impacts;

38 (d) Identify if the proposed action is expected to have any local
39 or regional impacts to federally reserved tribal rights and resources

1 including, but not limited to, those protected by treaty, executive
2 order, or federal law;

3 (e) Summarize community input and describe how the covered agency
4 can further involve overburdened communities, vulnerable populations,
5 affected tribes, and indigenous populations in development of the
6 proposed action; and

7 (f) Describe options and, where practicable, related cost
8 projections for the agency to reduce, mitigate, or eliminate
9 identified probable impacts on overburdened communities and
10 vulnerable populations, or provide a justification for not reducing,
11 mitigating, or eliminating identified probable impacts.

12 (5) To obtain information for the purposes of assessments, a
13 covered agency must solicit feedback from members of overburdened
14 communities and vulnerable populations to assist in the accurate
15 assessment of the potential impact of the action and in developing
16 the means to reduce or eliminate the impact on overburdened
17 communities and vulnerable populations.

18 (6) Based on the environmental justice assessment, each covered
19 agency must seek, to the extent legal and feasible and consistent
20 with the underlying statute being implemented, to reduce or eliminate
21 the environmental harms and maximize the environmental benefits
22 created by the significant agency action on overburdened communities
23 and vulnerable populations. Consistent with agency authority,
24 mission, and statutory responsibilities, the covered agency must
25 consider each of the following methods for reducing environmental
26 harms or equitably distributing environmental benefits:

27 (a) Eliminating the disparate impact of environmental harms on
28 overburdened communities and vulnerable populations;

29 (b) Reducing cumulative environmental health impacts on
30 overburdened communities or vulnerable populations;

31 (c) Preventing the action from adding to the cumulative
32 environmental health impacts on overburdened communities or
33 vulnerable populations;

34 (d) Providing equitable participation and meaningful engagement
35 of vulnerable populations and overburdened communities in the
36 development of the significant agency action;

37 (e) Prioritizing equitable distribution of resources and benefits
38 to overburdened communities;

39 (f) Promoting positive workforce and job outcomes for
40 overburdened communities;

1 (g) Meeting community needs identified by the affected
2 overburdened community;

3 (h) Modifying substantive regulatory or policy requirements; and

4 (i) Any other mitigation techniques, including those suggested by
5 the council, the office of equity, or representatives of overburdened
6 communities and vulnerable populations.

7 (7) If the covered agency determines it does not have the ability
8 or authority to avoid or reduce any estimated environmental harm of
9 the significant agency action on overburdened communities and
10 vulnerable populations or address the distribution of environmental
11 and health benefits, the agency must provide a clear explanation of
12 why it has made that determination and provide notice of that
13 explanation to members of the public who participated in the
14 environmental justice assessment process for the significant agency
15 action and who provided contact information to the agency.

16 (8) In developing a process for conducting environmental justice
17 assessments, each covered agency must consider any guidance developed
18 by the council pursuant to section 20 of this act.

19 (9) The issuance of forest practices permits under chapter 76.09
20 RCW or sale of timber from state lands and state forestlands as
21 defined in RCW 79.02.010 do not require an environmental justice
22 assessment under this section.

23 NEW SECTION. **Sec. 15.** The obligation of a covered agency to
24 conduct an environmental justice assessment pursuant to section 14 of
25 this act for significant agency actions does not, by itself, trigger
26 requirements in chapter 43.21C RCW.

27 NEW SECTION. **Sec. 16.** ENVIRONMENTAL JUSTICE OBLIGATIONS OF
28 AGENCIES RELATING TO BUDGETS AND FUNDING. (1) With consideration of
29 the guidelines issued by the council in section 20 of this act, and
30 in iterative consultation with the council, each covered agency must
31 incorporate environmental justice principles into its decision
32 processes for budget development, making expenditures, and granting
33 or withholding benefits. Through the incorporation of environmental
34 justice principles into its decision processes, including by
35 conducting environmental justice assessments where required under
36 section 14 of this act, each covered agency, to the extent allowed by
37 law and consistent with legislative appropriations, must equitably

1 distribute funding and expenditures towards overburdened communities
2 and vulnerable populations.

3 (2) Beginning on or before July 1, 2023, each covered agency
4 must, where practicable, take the following actions when making
5 expenditure decisions or developing budget requests to the office of
6 financial management and the legislature:

7 (a) Focus applicable expenditures on creating environmental
8 benefits, including reducing or eliminating environmental harms,
9 creating community and population resilience, and improving the
10 quality of life of overburdened communities and vulnerable
11 populations;

12 (b) Create opportunities for overburdened communities and
13 vulnerable populations to meaningfully participate in agency
14 expenditure decisions;

15 (c) Clearly articulate environmental justice goals and assessment
16 metrics to communicate the basis for agency expenditures;

17 (d) Consider a broad scope of grants and contracting
18 opportunities that effectuate environmental justice principles,
19 including:

20 (i) Community grants to monitor pollution;

21 (ii) Grants focused on building capacity and providing training
22 for community scientists and other staff;

23 (iii) Making technical assistance available for communities that
24 may be new to receiving agency grant funding; and

25 (iv) Education and work readiness youth programs focused on
26 infrastructure or utility-related internships to develop career paths
27 and leadership skills for youth; and

28 (e) Establish a goal of directing 40 percent of grants and
29 expenditures that create environmental benefits to vulnerable
30 populations and overburdened communities.

31 (3) A covered agency may adopt rules for criteria and procedures
32 applicable to incorporating environmental justice principles in
33 expenditure decisions under this section.

34 (4) In incorporating environmental justice principles into its
35 decision processes for budget development, making expenditures, and
36 granting or withholding benefits, each covered agency must consider
37 any guidance developed by the council pursuant to section 20 of this
38 act.

39 (5) A covered agency may not take actions or make expenditures
40 under this section that are inconsistent with or conflict with other

1 statutes or with conditions or limitations on the agency's
2 appropriations.

3 NEW SECTION. **Sec. 17.** REPORTING REQUIREMENTS. (1) By September
4 1st of each year, each covered agency must annually update the
5 council on the development and implementation of environmental
6 justice in agency strategic plans pursuant to section 12 of this act,
7 budgeting and funding criteria for making budgeting and funding
8 decisions pursuant to section 16 of this act, and community
9 engagement plans pursuant to section 13 of this act.

10 (2) (a) Beginning in 2024, as part of each covered agency's annual
11 update to the council under subsection (1) of this section, each
12 covered agency must include updates on the agency's implementation
13 status with respect to the environmental justice assessments under
14 section 14 of this act.

15 (b) By September 1st of each year beginning in 2024, each covered
16 agency must publish or update a dashboard report, in a uniform
17 dashboard format on the office of financial management's website,
18 describing the agency's progress on:

19 (i) Environmental justice in its strategic plan;

20 (ii) The obligations of agencies relating to budgets and funding
21 under section 16 of this act; and

22 (iii) Its environmental justice assessments of proposed
23 significant agency actions.

24 NEW SECTION. **Sec. 18.** TRIBAL CONSULTATION. (1) Covered agencies
25 must offer consultation with federally recognized Indian tribes on
26 decisions that affect federally recognized Indian tribes' rights and
27 interests in their tribal lands. The consultation must occur in
28 accordance with chapter 43.376 RCW and must be independent of any
29 public participation process required by state law, or by a state
30 agency, and regardless of whether the agency receives a request for
31 consultation from an Indian tribe. Covered agencies collaboration
32 should include protocols for communication and development of best
33 practices in consultation.

34 (2) Nothing in this chapter is intended to direct, authorize, or
35 encourage covered agencies to collect, maintain, or provide data
36 related to sacred sites, traditional cultural properties, burial
37 grounds, and other tribal sites protected by federal or state law.

1 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.70

2 RCW to read as follows:

3 ENVIRONMENTAL HEALTH DISPARITIES MAP. (1) In consultation with
4 the environmental justice council established in section 20 of this
5 act, the department must continue to develop and maintain an
6 environmental health disparities map with the most current available
7 information necessary to identify cumulative environmental health
8 impacts and overburdened communities. The department may also consult
9 with other interested partners, such as the University of Washington
10 department of environmental and occupational health sciences, other
11 academic partners, members of overburdened communities and vulnerable
12 populations, and other agencies. The environmental health disparities
13 map must include tools to:

14 (a) Track changes in environmental health disparities over time
15 in an interactive, regularly updated display; and

16 (b) Measure the link between overall environmental health
17 disparity map ranks, environmental data, vulnerable populations
18 characteristics, such as race and income, and human health data.

19 (2) In further developing and maintaining the environmental
20 health disparities map, the department must solicit feedback by
21 representatives from overburdened communities and vulnerable
22 populations through community engagement and listening sessions in
23 all regions of the state and provide opportunities for public
24 comment.

25 (3) The department may request assistance from:

26 (a) The University of Washington;

27 (b) Other academic researchers to perform modeling and create
28 evidence-based indicators and with conducting sensitivity analyses to
29 assess the impact of new indicators on communities and determination
30 of an overburdened community; and

31 (c) Other state agencies to provide applicable statewide
32 environmental and sampling data for air, water, soil, polluted sites,
33 toxic waste, pesticides, toxic chemicals, and other applicable media.

34 (4) The department must:

35 (a) Document and publish a summary of the regular updates and
36 revisions to the environmental health disparities map that happen
37 over time as the new data becomes available, in order to help the
38 public understand different versions of the map as they are
39 published;

1 (b) At least every three years, perform a comprehensive
2 evaluation of the map to ensure that the most current modeling and
3 methods available to evaluate cumulative environmental health impacts
4 are being used to develop and update the environmental health
5 disparities map's indicators;

6 (c) Develop technical guidance for agencies that includes an
7 online training video detailing a description of how to use the
8 environmental health disparities map's features, access source data,
9 and explanation of map and indicator limitations; and

10 (d) Provide support and consultation to agencies on the use of
11 the environmental health disparities map by Washington tracking
12 network staff.

13 NEW SECTION. **Sec. 20.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The
14 environmental justice council is established to advise covered
15 agencies on incorporating environmental justice into agency
16 activities.

17 (2) The council consists of 12 members appointed by the governor.
18 The councilmembers must be persons who are well-informed regarding
19 and committed to the principles of environmental justice and who, to
20 the greatest extent practicable, represent diversity in race,
21 ethnicity, age, and gender, urban and rural areas, and different
22 regions of the state. The members of the council shall elect two
23 members to serve as cochairs for two-year terms. The council must
24 include:

25 (a) Seven community representatives, including one youth
26 representative, the nominations of which are based upon applied and
27 demonstrated work and focus on environmental justice or a related
28 field, such as racial or economic justice, and accountability to
29 vulnerable populations and overburdened communities;

30 (i) The youth representative must be between the ages of 18 and
31 25 at the time of appointment;

32 (ii) The youth representative serves a two-year term. All other
33 community representatives serve four-year terms, with six
34 representatives initially being appointed to four-year terms and five
35 being initially appointed to two-year terms, after which they will be
36 appointed to four-year terms;

37 (b) Two members representing tribal communities, one from eastern
38 Washington and one from western Washington, appointed by the
39 governor. The governor shall solicit and consider nominees from each

1 of the federally recognized tribes in Washington state. The governor
2 shall collaborate with federally recognized tribes on the selection
3 of tribal representatives. The tribal representatives serve four-year
4 terms. One representative must be initially appointed for a four-year
5 term. The other representative must be initially appointed for a two-
6 year term, after which, that representative must be appointed for a
7 four-year term;

8 (c) Two representatives who are environmental justice
9 practitioners or academics to serve as environmental justice experts,
10 the nominations of which are based upon applied and demonstrated work
11 and focus on environmental justice; and

12 (d) One representative at large, the nomination of which is based
13 upon applied and demonstrated work and focus on environmental
14 justice.

15 (3) Covered agencies shall serve as nonvoting, ex officio
16 liaisons to the council. Each covered agency must identify an
17 executive team level staff person to participate on behalf of the
18 agency.

19 (4) Nongovernmental members of the council must be compensated
20 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and
21 43.03.220.

22 (5) The department of health must:

23 (a) Hire a manager who is responsible for overseeing all staffing
24 and administrative duties in support of the council; and

25 (b) Provide all administrative and staff support for the council.

26 (6) In collaboration with the office of equity, the office of
27 financial management, the council, and covered agencies, the
28 department of health must:

29 (a) Establish standards for the collection, analysis, and
30 reporting of disaggregated data as it pertains to tracking population
31 level outcomes of communities;

32 (b) Create statewide and agency-specific process and outcome
33 measures to show performance:

34 (i) Using outcome-based methodology to determine the
35 effectiveness of agency programs and services on reducing
36 environmental disparities; and

37 (ii) Taking into consideration community feedback from the
38 council on whether the performance measures established accurately
39 measure the effectiveness of covered agency programs and services in
40 the communities served; and

1 (c) Create an online performance dashboard to publish performance
2 measures and outcomes as referenced in section 17 of this act for the
3 state and each covered agency.

4 (7) The department of health must coordinate with the
5 consolidated technology services agency to address cybersecurity and
6 data protection for all data collected by the department.

7 (8)(a) With input and assistance from the council, the department
8 of health must establish an interagency work group to assist covered
9 agencies in incorporating environmental justice into agency decision
10 making. The work group must include staff from each covered agency
11 directed to implement environmental justice provisions under this
12 chapter and may include members from the council. The department of
13 health shall provide assistance to the interagency work group by:

14 (i) Facilitating information sharing among covered agencies on
15 environmental justice issues and between agencies and the council;

16 (ii) Developing and providing assessment tools for covered
17 agencies to use in the development and evaluation of agency programs,
18 services, policies, and budgets;

19 (iii) Providing technical assistance and compiling and creating
20 resources for covered agencies to use; and

21 (iv) Training covered agency staff on effectively using data and
22 tools for environmental justice assessments.

23 (b) The duties of the interagency work group include:

24 (i) Providing technical assistance to support agency compliance
25 with the implementation of environmental justice into their strategic
26 plans, environmental justice obligations for budgeting and funding
27 criteria and decisions, environmental justice assessments, and
28 community engagement plans;

29 (ii) Assisting the council in developing a suggested schedule and
30 timeline for sequencing the types of: (A) Funding and expenditure
31 decisions subject to rules; and (B) criteria incorporating
32 environmental justice principles;

33 (iii) Identifying other policies, priorities, and projects for
34 the council's review and guidance development;

35 (iv) Identifying goals and metrics that the council may use to
36 assess agency performance in meeting the requirements of this act for
37 purposes of communicating progress to the public, the governor, and
38 the legislature; and

39 (v) Developing the guidance under subsection (9)(c) of this
40 section in coordination with the council.

1 (9) The council has the following powers and duties:
2 (a) To provide a forum for the public to:
3 (i) Provide written or oral testimony on their environmental
4 justice concerns;
5 (ii) Assist the council in understanding environmental justice
6 priorities across the state in order to develop council
7 recommendations to agencies for issues to prioritize; and
8 (iii) Identify which agencies to contact with their specific
9 environmental justice concerns and questions;
10 (b) (i) The council shall work in an iterative fashion with the
11 interagency work group to develop guidance for environmental justice
12 implementation into covered agency strategic plans pursuant to
13 section 12 of this act, environmental justice assessments pursuant to
14 section 14 of this act, budgeting and funding criteria for making
15 budgeting and funding decisions pursuant to section 16 of this act,
16 and community engagement plans pursuant to section 13 of this act;
17 (ii) The council and interagency work group shall regularly
18 update its guidance;
19 (c) In consultation with the interagency work group, the council:
20 (i) Shall provide guidance to covered agencies on developing
21 environmental assessments for the following significant agency
22 actions: The development and adoption of any agency grant or loan
23 program, rule making, major capital projects, and agency request
24 legislation;
25 (ii) Shall make recommendations to covered agencies on which
26 agency actions may cause environmental harm or may affect the
27 equitable distribution of environmental benefits to an overburdened
28 community or a vulnerable population and therefore should be
29 considered significant agency actions that require an environmental
30 justice assessment under section 14 of this act;
31 (iii) Shall make recommendations to covered agencies on the
32 identification and prioritization of overburdened communities under
33 this chapter, and related to the use by covered agencies of the
34 environmental and health disparities map in agency efforts to
35 identify and prioritize overburdened communities;
36 (iv) May make recommendations to a covered agency on the timing
37 and sequencing of a covered agencies' efforts to implement sections
38 12 through 16 of this act; and

1 (v) May make recommendations to the governor and the legislature
2 regarding ways to improve agency compliance with the requirements of
3 this chapter;

4 (d) By December 1, 2023, and biennially thereafter, and with
5 consideration of the information shared on September 1st each year in
6 covered agencies' annual updates to the council required under
7 section 17 of this act the council must:

8 (i) Evaluate progress of each agency in applying council
9 guidance, and update guidance as needed; and

10 (ii) Communicate each covered agency's progress to the public,
11 the governor, and the legislature. This communication is not required
12 to be a report and may take the form of a presentation or other
13 format that communicates the progress of the state and its agencies
14 in meeting the state's environmental justice goals in compliance with
15 this act, and summarizing the work of the council pursuant to (a)
16 through (d) of this subsection, and subsection (11) of this section.

17 (10) By November 30, 2022, and in compliance with RCW 43.01.036,
18 the council must submit a report to the governor and the appropriate
19 committees of the house of representatives and the senate on:

20 (a) The council's recommendations to covered agencies on the
21 identification of significant agency actions requiring an
22 environmental justice assessment under subsection (9)(c)(ii) of this
23 section;

24 (b) The summary of covered agency progress reports provided to
25 the council under section 17(1) of this act, including the status of
26 agency plans for performing environmental justice assessments
27 required by section 14 of this act; and

28 (c) Guidance for environmental justice implementation into
29 covered agency strategic plans, environmental justice assessments,
30 budgeting and funding criteria, and community engagement plans under
31 subsection (9)(c)(i) of this section.

32 (11) The council may:

33 (a) Review incorporation of environmental justice implementation
34 plans into covered agency strategic plans pursuant to section 12 of
35 this act, environmental justice assessments pursuant to section 14 of
36 this act, budgeting and funding criteria for making budgeting and
37 funding decisions pursuant to section 16 of this act, and community
38 engagement plans pursuant to section 13 of this act;

1 (b) Make recommendations for amendments to this chapter or other
2 legislation to promote and achieve the environmental justice goals of
3 the state;

4 (c) Review existing laws and make recommendations for amendments
5 that will further environmental justice;

6 (d) Recommend to specific agencies that they create environmental
7 justice-focused, agency-requested legislation; and

8 (e) Recommend funding strategies and allocations to build
9 capacity in vulnerable populations and overburdened communities to
10 address environmental justice.

11 (12) The role of the council is purely advisory and council
12 decisions are not binding on an agency, individual, or organization.

13 (13) The department of health must convene the first meeting of
14 the council by January 1, 2022.

15 (14) All council meetings are subject to the open public meetings
16 requirements of chapter 42.30 RCW and a public comment period must be
17 provided at every meeting of the council.

18 NEW SECTION. **Sec. 21.** LEGAL OBLIGATIONS. (1) Nothing in this
19 act prevents state agencies that are not covered agencies from
20 adopting environmental justice policies and processes consistent with
21 this act.

22 (2) The head of a covered agency may, on a case-by-case basis,
23 exempt a significant agency action or decision process from the
24 requirements of sections 14 and 16 of this act upon determining that:

25 (a) Any delay in the significant agency action poses a
26 potentially significant threat to human health or the environment, or
27 causes serious harm to the public interest;

28 (b) An assessment would delay a significant agency decision
29 concerning the assessment, collection, or administration of any tax,
30 tax program, debt, revenue, receipt, a regulated entity's financial
31 filings, or insurance rate or form filing;

32 (c) The requirements of sections 14 and 16 of this act are in
33 conflict with:

34 (i) Federal law or federal program requirements;

35 (ii) The requirements for eligibility of employers in this state
36 for federal unemployment tax credits; or

37 (iii) Constitutional limitations, including those applicable to
38 the management of state lands and state forestlands as defined in RCW
39 79.02.010.

1 NEW SECTION. **Sec. 22.** APPEALS. (1) Agency actions, as defined
2 in chapter 34.05 RCW, that are subject to or result from the
3 requirements of this chapter may be appealed as provided in chapter
4 34.05 RCW.

5 (2) Nothing in this act shall be construed to create a new
6 private right of action on the part of any individual, entity, or
7 agency against any state agency.

8 **Sec. 23.** RCW 43.376.020 and 2012 c 122 s 2 are each amended to
9 read as follows:

10 In establishing a government-to-government relationship with
11 Indian tribes, state agencies must:

12 (1) Make reasonable efforts to collaborate with Indian tribes in
13 the development of policies, agreements, and program implementation
14 that directly affect Indian tribes and develop a consultation process
15 that is used by the agency for issues involving specific Indian
16 tribes. Covered agencies, as defined in section 2 of this act,
17 subject to the requirements of chapter 70A.--- RCW (the new chapter
18 created in section 24 of this act), must offer consultation with
19 Indian tribes on decisions that affect Indian tribes' rights and
20 interests in their tribal lands, as required in section 18 of this
21 act;

22 (2) Designate a tribal liaison who reports directly to the head
23 of the state agency;

24 (3) Ensure that tribal liaisons who interact with Indian tribes
25 and the executive directors of state agencies receive training as
26 described in RCW 43.376.040; and

27 (4) Submit an annual report to the governor on activities of the
28 state agency involving Indian tribes and on implementation of this
29 chapter.

30 NEW SECTION. **Sec. 24.** Sections 1 through 3, 11 through 18, and
31 20 through 22 of this act constitute a new chapter in Title 70A RCW.

32 NEW SECTION. **Sec. 25.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 26.** If any part of this act is found to be in
2 conflict with federal requirements that are a prescribed condition to
3 the allocation of federal funds to the state, the conflicting part of
4 this act is inoperative solely to the extent of the conflict and with
5 respect to the agencies directly affected, and this finding does not
6 affect the operation of the remainder of this act in its application
7 to the agencies concerned. Rules adopted under this act must meet
8 federal requirements that are a necessary condition to the receipt of
9 federal funds by the state."

10 Correct the title.

EFFECT: Covered Agencies.

Identifies the agencies required to assume environmental justice obligations as "covered agencies" (Puget Sound Partnership, and the Departments of Agriculture, Commerce, Ecology, Health, Natural Resources, and Transportation), and distinguishes provisions of the bill that apply to covered agencies as opposed to all state agencies.

Specifies that state agencies may opt-in to assume the obligations of covered agencies by notifying the environmental justice council, and clarifies that agencies that opt-in to assume environmental justice obligations of covered agencies are not bound by the deadlines or timelines for the environmental justice obligations that apply to covered agencies.

Planning and General Obligations of Covered Agencies.

Authorizes, rather than requires, covered agencies include environmental justice implementation plans within planning documents other than the agency's strategic plan, while retaining the requirement that environmental justice implementation plans be included in the agency's strategic plan.

Requires covered agencies to update required environmental justice implementation plans and community engagement plans.

Requires each covered agency to identify, as part of its community engagement plan, how the agency will identify and prioritize overburdened communities, and requires the environmental justice council to provide related guidance to covered agencies regarding the identification and prioritization of overburdened communities.

Limits several of the obligations of state agencies with respect to environmental justice implementation by requiring those activities only to the extent legal, practicable, consistent with statutory authority, or consistent with appropriations.

Adds, as a type of environmental harm to be addressed by covered agencies, the loss or impairment of ecosystem functions or traditional food resources, or loss of access to gather cultural resources or traditional foods.

Significant Agency Actions and Environmental Justice Assessments.

Narrows the definition of 'significant agency actions' for which covered agencies must conduct an environmental justice assessment to the following five categories: (1) significant legislative rules, (2) new grant or loan program development and adoption, (3) the allocation of at least \$25 million in a single funding round through a grant or loan program, (4) major capital and transportation

projects of at least \$5 million, and (5) the development of agency request legislation.

Establishes a process for covered agencies to identify and periodically evaluate additional types of significant agency actions beyond the five categories included in the definition, and requires covered agencies to consider other agency actions that may be significant by 2025.

Requires each covered agency to publish by July 1, 2023, a list of actions that the agency has determined is a significant agency action, and for which environmental justice assessments must be completed.

Clarifies that environmental justice assessment requirements apply only to significant agency actions initiated after July 1, 2023.

Specifies that the issuance of forest practice permits and sale of timber from state lands and state forestlands do not require an environmental justice assessment.

Requires the environmental justice council to provide guidance to covered agencies on the agency activities that are automatically defined as significant agency actions, and to make recommendations to covered agencies as to which other agency actions should be considered significant agency actions because they may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community.

Requires covered agencies to periodically evaluate their list of identified significant agency actions.

Budget and Expenditure Obligations of Covered Agencies.

Provides limits on the requirement that covered agencies to incorporate environmental justice principles into decision processes for budget development and making expenditures, including by requiring incorporation of principles only to the extent allowed by law, where practicable, consistent with legislative appropriations, and to apply only to applicable expenditures.

Clarifies that all covered agencies, rather than just the Department of Transportation, may not take actions or make expenditures that are inconsistent with or conflict with other statutes or conditions and limitations on the agency's appropriations.

Requires covered agencies to provide updates on the implementation of environmental justice principles in agency expenditures and budgets, as part of the annual update on the covered agency's activities posted on the Office of Financial Management's website.

Environmental Justice Council.

Eliminates senate confirmation of environmental justice council members.

Makes the governor responsible for appointment of environmental justice council members representing tribal communities, rather than the Governor's office of Indian affairs.

Requires the Governor to solicit and consider nominees and collaborate with each tribe on the selection of tribal representatives, rather than to make the selection in consultation with all tribes.

Eliminates the requirement that the environmental justice council make recommendations on the prioritization and phase-in of implementation priorities prior to July 1, 2023.

Indian Tribe Consultation.

Specifies that consultation requirements applicable to covered agencies pertain only to federally recognized Indian tribes.

Requires covered agency collaboration to include protocols for communication and best practice in consultation, rather than requiring covered agencies to develop a consultation framework.

Specifies that the new consultation obligations of covered agencies are in addition to requirements that apply to all state agencies with respect to Indian tribe consultation.

Other.

Specifies that agency actions, as defined in the Administrative Procedure Act (APA), that are subject to or result from the new environmental justice requirements in the bill are appealable under the APA.

Specifies that the Act does not create a new private right of action.

Clarifies that specified types of exemptions to environmental justice assessment and budget obligations of covered agencies must be determined by the head of a covered agency on a case-by-case basis.

Adds a federal funding savings clause.

Amends the intent section.

Makes numerous other clarifying and technical edits.

--- END ---