
HOUSE BILL 1303

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By Representatives Mena, Berry, Reeves, Reed, Ormsby, Salahuddin, Ramel, Pollet, Nance, Doglio, and Scott

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1 AN ACT Relating to increasing environmental justice by improving
2 government decisions; amending RCW 70A.15.2210; adding new sections
3 to chapter 43.21C RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The purpose of this act is to reduce the
6 disparities in cumulative environmental and health impacts in
7 Washington and improve the health of all Washington residents.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.21C
9 RCW to read as follows:

10 (1)(a) The department of ecology shall add environmental justice
11 as an element of the environment within WAC 197-11-444 and as a
12 component of the environmental checklist within WAC 197-11-960, as
13 those sections existed on the effective date of this section.

14 (b) Upon the adoption of rules by the department of ecology, a
15 lead agency must, in implementing the requirements of this chapter,
16 consider environmental justice in a manner consistent with its
17 consideration of other elements of the environment within WAC
18 197-11-444.

19 (2) For purposes of this section "environmental justice" has the
20 same meaning as in RCW 70A.02.010.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.21C
2 RCW to read as follows:

3 (1)(a) To evaluate probable adverse environmental impacts on
4 environmental justice under this chapter for a potentially impactful
5 project located or proposed to be located in whole or in part in a
6 pollution burdened community, a lead agency must complete an
7 environmental justice impact statement consistent with the
8 requirements of this section.

9 (b) The requirement to complete an environmental justice impact
10 statement does not apply to:

11 (i) Projects that are not located in whole or in part in a
12 pollution burdened community; or

13 (ii) Projects other than potentially impactful projects.

14 (c) The completion of the environmental justice impact statement
15 for potentially impactful projects under this section satisfies the
16 requirement for the analysis of probable adverse impacts on
17 environmental justice under this chapter, specified in section 2 of
18 this act.

19 (d) This section applies only to proposed actions associated with
20 a new potentially impactful project, the expansion of an existing
21 potentially impactful project, or renewal of an existing potentially
22 impactful project's permit, and for which review under this chapter
23 had not been initiated as of the effective date of this section and
24 is completed on or after January 1, 2027.

25 (2) An environmental justice impact statement prepared by a lead
26 agency under this section must assess:

27 (a) The potential environmental and public health stressors
28 associated with the proposed new or expanding potentially impactful
29 project, or with the existing potentially impactful project, as
30 applicable;

31 (b) Any adverse environmental or public health stressors that
32 cannot be avoided if the permit is granted; and

33 (c) The environmental or public health stressors already borne by
34 the pollution burdened community as a result of existing conditions
35 located in or affecting the pollution burdened community.

36 (3)(a) The lead agency must complete the environmental justice
37 impact statement at or before the time that a proposed action
38 receives a determination of significance, a determination of
39 nonsignificance, or a determination of mitigated nonsignificance. The
40 lead agency must complete the environmental justice impact statement

1 if a proposed action may cause a disproportionate impact on an
2 overburdened community and without regard to the type of threshold
3 determination under this chapter that the project receives related to
4 the environmental impacts of the proposed action other than its
5 environmental justice impacts.

6 (b) Upon completion of the environmental justice impact
7 statement, the lead agency must transmit the environmental justice
8 impact statement to the office of financial management, and the
9 office of financial management must publish the environmental justice
10 impact statement on the website established under RCW 70A.02.090. The
11 office of financial management's website list of environmental
12 justice impact statements must include a brief description of the
13 agency action undergoing review under this section, a brief summary
14 of the findings of the environmental justice impact statement, and
15 the methods for providing public comment under subsection (4) of this
16 section for lead agency consideration as part of the environmental
17 justice impact assessment. The environmental justice impact statement
18 must be published by the office of financial management at least 30
19 days in advance of the public hearing required under subsection (4)
20 of this section, and must be published in a manner that meets
21 community engagement rules adopted by the department of ecology that
22 apply: (i) Best practices for outreach and communication to overcome
23 barriers to engagement with pollution burdened communities and
24 vulnerable populations; (ii) processes that facilitate and support
25 the inclusion of members of communities affected by agency decision
26 making; and (iii) methods for outreach and communication with those
27 who face barriers, language or otherwise, to participation.

28 (4) (a) No sooner than 60 days after the publication by the office
29 of financial management of the environmental justice impact statement
30 under subsection (3) of this section, the lead agency must organize
31 and conduct a public hearing in the pollution burdened community on
32 the environmental justice impact statement. This hearing may be held
33 coincident with other hearings required under this chapter or under
34 other applicable laws, but only if the minimum public notice and
35 community engagement requirements of this section and any similar
36 requirements applicable to the coincident hearing are individually
37 met. The notice of the public hearing published by the lead agency
38 and the office of financial management must be mailed to each
39 residence located in the pollution burdened community to notify
40 residents that their residence is located in or adjacent to a

1 pollution burdened community and must include the date, time, and
2 location of the public hearing, a description of the proposed
3 potentially impactful project, a brief summary of the environmental
4 justice impact statement including a listing of all potential
5 environmental and health stressors associated with the project,
6 information on how an interested person may review a copy of the
7 complete environmental justice impact statement, and information
8 regarding the opportunities for public comment to the lead agency on
9 the environmental justice impact assessment. The lead agency may also
10 provide notice through other methods identified by the agency to
11 ensure direct and adequate notice to individuals in the community
12 including, but not limited to, providing information directly to
13 active community groups or organizations, automated phone, voice, or
14 electronic notice, flyers, and utilization of other publications
15 utilized within the community.

16 (b) At the public hearing required in this section, the lead
17 agency must provide clear, accurate, and complete information about
18 the proposed potentially impactful project. A lead agency must
19 require participation in the hearing by the project proponent for the
20 potentially impactful project or other proponent of government action
21 related to the potentially impactful project that is the subject of
22 the environmental justice impact assessment.

23 (c) The lead agency must accept written and oral comments from
24 any interested party at the public hearing, transcribe and make
25 publicly available any oral comments given during the public hearing
26 within a reasonable period of time after the public hearing, and
27 provide an opportunity for meaningful public participation at the
28 public hearing.

29 (5)(a) Where the pollution burdened community is not subject to
30 adverse cumulative stressors and the lead agency demonstrates,
31 through an analysis of the potentially impactful project's
32 contributions to the existing environmental and public health
33 stressors in the pollution burdened community, that the potentially
34 impactful project will avoid causing a disproportionate impact that
35 would occur by creating adverse cumulative stressors as a result of
36 the potentially impactful project's contribution, only the
37 information pursuant to subsection (6) of this section is required to
38 be included in an environmental justice impact statement.

39 (b) Where the potentially impactful project cannot avoid a
40 disproportionate impact that would occur by creating adverse

1 cumulative stressors as a result of the potentially impactful
2 project's contribution, the lead agency shall include information
3 required pursuant to both subsections (6) and (7) of this section,
4 including analyzing and proposing feasible measures to, as
5 applicable, avoid or minimize contributions to environmental and
6 public health stressors, provide a net environmental benefit, and,
7 where appropriate, demonstrate how the potentially impactful project
8 serves a compelling public interest in the pollution burdened
9 community.

10 (c) Where the pollution burdened community is subject to adverse
11 cumulative stressors, the lead agency shall include information
12 required pursuant to both subsections (6) and (7) of this section.

13 (d) A lead agency that is required to provide the information
14 under subsection (7) of this section must determine whether the
15 potentially impactful project can, as applicable, first avoid a
16 disproportionate impact or, where a disproportionate impact will
17 occur, address its contributions to environmental and public health
18 stressors in the pollution burdened community.

19 (6) In its environmental justice impact statement, a lead agency
20 reviewing a potentially impactful project located, or proposed to be
21 located, in whole or in part, in a pollution burdened community must
22 require information from the proponent of the proposed action as
23 necessary, and include:

24 (a) An executive summary of the information contained in the
25 environmental justice impact statement, including any supplemental
26 information as required in subsection (7) of this section;

27 (b) A detailed written description of the municipal and
28 neighborhood setting of the potentially impactful project, including
29 the location of community and residential dwellings, hospitals,
30 nursing homes, playgrounds, parks, schools, and comprehensive
31 demographic and economic zoning. The site location must also be
32 identified by a site plan of the potentially impactful project or
33 equivalent map if no site plan exists;

34 (c) A description of the potentially impactful project's current
35 and proposed operations, which must include, but not be limited to,
36 the following:

37 (i) An explanation of the purpose of the permit application,
38 including how, if at all, the project serves the needs of the
39 individuals in the pollution burdened community;

1 (ii) Identification of all processes to be used, including
2 pollution or environmental control measures and monitoring
3 instrumentation, hours of operation, on-site equipment, traffic
4 routes, number of employees, and all other information relevant to
5 the potential for the new potentially impactful project to contribute
6 to environmental and public health stressors in the pollution
7 burdened community; and

8 (iii) For new or expanded facilities, a schedule for the
9 construction and operation including anticipated completion dates for
10 major phases of construction, any pollution or environmental control
11 measures and monitoring instrumentation, hours of operation, on-site
12 equipment, traffic routes, number of employees, and all other
13 information relevant to the potential for the construction to
14 contribute to environmental and public health stressors in the
15 pollution burdened community;

16 (d) Evidence of satisfaction of any local environmental justice
17 or cumulative impact analysis ordinances with which the project
18 proponent is required to comply;

19 (e) (i) A listing of the existing environmental and public health
20 stressors in the pollution burdened community and an indication of
21 the appropriate geographic point of comparison for each stressor by
22 selecting the lower of the 50th percentile of the state or county's
23 equivalent stressor, excluding other pollution burdened communities
24 from the comparison;

25 (ii) An indication of which environmental and public health
26 stressors are considered adverse by comparing the value of each
27 stressor in the pollution burdened community with the appropriate
28 geographic point of comparison;

29 (iii) A combined stressor total value to be calculated by summing
30 the number of adverse environmental and public health stressors in
31 the pollution burdened community. The lead agency shall indicate the
32 appropriate geographic point of comparison for the combined stressor
33 total by selecting the lower of the 50th percentile of the state or
34 county's combined stressor totals excluding the combined stressor
35 totals of other pollution burdened communities from the comparison;

36 (iv) A determination of whether the pollution burdened community
37 is subject to stressors by comparing the combined stressor total to
38 the appropriate geographic point of comparison. If the potentially
39 impactful project is located, or proposed to be located, in whole or
40 in part, in more than one pollution burdened community, the lead

1 agency will apply the higher combined stressor total of the
2 overburdened communities for the purposes of this analysis;

3 (f) An assessment of the impacts, both positive and negative, of
4 the potentially impactful project on each environmental and public
5 health stressor in the pollution burdened community identified as
6 affected under conditions of maximum usage or output, and a
7 correlation of such impacts with various stages of the site
8 preparation, and potentially impactful project construction and
9 operation, including the amounts, concentrations, and pathways of any
10 contaminants or pollution that will be associated with the
11 potentially impactful project;

12 (g) A public participation plan that, at a minimum, satisfies the
13 requirements of subsection (4) of this section, including all
14 proposed forms and methods of notice to the members of the pollution
15 burdened community and the proposed hearing location;

16 (h) A demonstration, including any necessary operational
17 conditions and control measures, that the potentially impactful
18 project will avoid a disproportionate impact that would occur by
19 creating adverse cumulative stressors in the pollution burdened
20 community as a result of the potentially impactful project's
21 contribution. If the project proponent cannot make such a
22 demonstration, then it is presumed that a disproportionate impact is
23 present, and the project proponent shall include the information
24 required in subsection (7) of this section; and

25 (i) As applicable, how a potentially impactful project will serve
26 a compelling public interest in the pollution burdened community.

27 (7) If the lead agency determines a potentially impactful project
28 is located, or proposed to be located, in whole or in part, in a
29 pollution burdened community that is subject to adverse cumulative
30 stressors or the project proponent cannot demonstrate that it will
31 avoid a disproportionate impact that would occur by creating adverse
32 cumulative stressors in the pollution burdened community as a result
33 of the potentially impactful project's contribution, a project
34 proponent shall provide to the lead agency, to the extent requested
35 by the lead agency, information sufficient for the lead agency to
36 include the following in the environmental justice impact statement:

37 (a) A site mapping showing:

38 (i) Topographic conditions, contour data, drainage patterns,
39 wetlands or their associated buffers, coastal zones, or other areas
40 regulated by the lead agency;

1 (ii) Areas of known plant or animal species on the federal and
2 state endangered, threatened, or rare plant or animal species list;

3 (iii) All existing water classifications, designated uses, and
4 limitations of the surface water bodies that are immediately adjacent
5 to the site, exist on the site, or drain directly onto or off the
6 site, upstream tributaries of bodies of water that flow onto the
7 site, and downstream tributaries of bodies of water that flow from
8 the site; and

9 (iv) Any existing on-site public scenic attributes or outdoor
10 recreation and conservation opportunities in the pollution burdened
11 community, such as any federal, state, county, or municipal parks,
12 forests, wildlife management areas and natural areas, any areas
13 acquired for recreation and conservation purposes, any lands
14 preserved as open space by a nonprofit conservation organization, or
15 other public access features;

16 (b) Information pertaining to the existence or absence of
17 contamination on site, which may include the existence of known or
18 suspected contaminants, historical uses of the site, and any
19 remediation activities that have occurred on the site;

20 (c) A description of the ambient air quality data for existing
21 concentrations of the national ambient air quality standard
22 pollutants as identified at 42 U.S.C. Sec. 7401 et seq., and a
23 discussion of how the potentially impactful project will comply with
24 the requirements of rules adopted by the department of ecology
25 pursuant to chapter 70A.15 RCW;

26 (d) A description of the subsurface hydrology that presents
27 groundwater quantity and quality data for the aquifers located
28 beneath the site including, but not limited to, depth to groundwater
29 during seasonal high and low flow, flow direction, existing uses, and
30 future supply capabilities. In addition, a description of the soils
31 that identifies major soil types and their characteristics including,
32 but not limited to, drainage, erosion potential, and sedimentation
33 potential;

34 (e) A description of the localized climate and flooding impacts
35 through the presentation of site-specific data for average annual and
36 monthly precipitation, flooding, and temperature. Meteorological data
37 may be obtained from the nearest national oceanographic and
38 atmospheric administration sanctioned station. At a minimum, the
39 description must use data and tools from the department of health's

1 Washington tracking network, which must be referenced in the prepared
2 document, and address:

3 (i) Whether the potentially impactful project is located within a
4 flood hazard area;

5 (ii) The expected impacts of flooding on the potentially
6 impactful project from the 100-year storm event or potential
7 inundation due to sea level rise;

8 (iii) Proposed resilience measures; and

9 (iv) A list of measures to mitigate risks from flooding and
10 inundation;

11 (f) A traffic study that describes the transportation routes that
12 will service the new potentially impactful project, site access
13 capability, and existing traffic flow patterns expressed in terms of
14 daily peak hour volumes, off peak hour volumes, levels of service,
15 and average daily round trips, and the potentially impactful
16 project's current and proposed contributions thereto for all vehicles
17 associated with the potentially impactful project's operations;

18 (g) A description of the sewage facilities that identifies the
19 type of treatment system available, existing treatment capacity,
20 collection system capacity, average and peak flow data, and current
21 committed capacity for the treatment and collection system;

22 (h) A description of the stormwater management system that
23 identifies the type of collection and treatment system available, and
24 current collection and treatment capacity and utilization, including
25 the presence or absence of combined sewer overflows;

26 (i) A description of the water supply that identifies the water
27 supply system, water sources, level and type of existing
28 pretreatment, capacity of the distribution system, current commitment
29 of capacity, availability of additional supply, and peak and average
30 demands;

31 (j) A description of the energy supply system on-site or
32 immediately available to the site by identifying existing power lines
33 or pipelines, current commitment of capacity, the capability of
34 supplying energy to the proposed potentially impactful project or
35 activity, and conveying, if applicable, any energy products generated
36 by the proposed potentially impactful project and activity from the
37 site. This analysis must include an evaluation of the feasibility of
38 the utilization of on-site or off-site renewable energy resources to
39 meet, fully or partially, the energy demand of the potentially
40 impactful project;

1 (k) For new or expanded facilities, a sufficiently detailed
2 comparison of reasonable design alternatives that would permit
3 independent and comparative evaluation, including siting changes or
4 process alternatives that could reduce some or all of the proposed
5 potentially impactful project's contributions to environmental and
6 public health stressors in the pollution burdened community,
7 including:

8 (i) Identification of any significant differences in
9 contributions to environmental and public health stressors that would
10 reasonably result from the alternatives considered;

11 (ii) A discussion of the alternative of no action or no project,
12 including the major foreseeable consequences of such a choice;

13 (iii) A comparison, in matrix or other appropriate format, of
14 both the chosen alternative and the set of alternatives considered;
15 and

16 (iv) A justification of selection of the preferred alternative;

17 (l) An odor, dust, and noise mitigation or management plan, if:

18 (i) The potentially impactful project has the potential to cause
19 odor, dust, or noise off-site;

20 (ii) The potentially impactful project has had a confirmed odor,
21 dust, or noise complaint submitted through the Washington state
22 environmental report tracking system, regional air agency, or the
23 local health agency for the five years preceding the date of the
24 permit application; or

25 (iii) A detailed compliance history for the potentially impactful
26 project, if applicable, including any existing federal, state, or
27 local permits and copies of any enforcement actions issued to the
28 potentially impactful project for the five years preceding the date
29 of the initiation of the environmental justice impact statement; and

30 (m) An analysis and proposal of control measures to address the
31 potentially impactful project's contribution to environmental and
32 public health stressors in accordance with this section.

33 (8) A project proponent may elect to submit the information
34 specified in this section to a lead agency independent of whether the
35 potentially impactful project:

36 (a) Is located, or proposed to be located, in whole or in part,
37 in a pollution burdened community that is subject to adverse
38 cumulative stressors; or

39 (b) Cannot demonstrate that it will avoid a disproportionate
40 impact that would occur by creating adverse cumulative stressors in

1 the pollution burdened community as a result of the potentially
2 impactful project's contribution.

3 (9) Following the completion of the public participation process
4 detailed in subsection (4) of this section, the lead agency shall
5 consider the environmental justice impact statement, and any
6 supplemental information, testimony, written comments, the project
7 proponent's response to comments, and any other information deemed
8 relevant by the lead agency to determine whether the potentially
9 impactful project can avoid a disproportionate impact, determine
10 whether to deny or approve the proposed action, and evaluate whether
11 and how to impose conditions concerning the construction and
12 operation of the potentially impactful project to address its
13 contributions to environmental and public health stressors affecting
14 the pollution burdened community. The lead agency may not consider
15 the economic benefits of a potentially impactful project in
16 determining whether to deny, approve, or require mitigation of a
17 potentially impactful project.

18 (10)(a) At least 45 days subsequent to both the publication of
19 the environmental justice impact statement and public hearing under
20 this section, and taking into consideration both the environmental
21 justice impact statement and the testimony and written comments from
22 the public hearing under this section, a lead agency must, consistent
23 with RCW 43.21C.060, deny or mitigate an action associated with a
24 potentially impactful project in a pollution burdened community.
25 Mitigation imposed under this section must address each adverse
26 impact on an environmental or public health stressor in the
27 community.

28 (b) The lead agency may not exercise its authority in subsection
29 (9) of this section in a manner that would compromise the reasonable
30 requirements of public health, safety, and welfare to the environment
31 in the pollution burdened community.

32 (11) For purposes of this section, the following definitions
33 apply unless the context clearly requires otherwise:

34 (a) "Adverse cumulative stressor" means a stressor in the
35 pollution burdened community that is higher than a pollution burdened
36 community's geographic point of comparison or would be made higher
37 than a pollution burdened community's geographic point of comparison
38 as a result of a potentially impactful project's contribution.

39 (b)(i) "Compelling public interest" means a demonstration that
40 the potentially impactful project primarily services an essential

1 environmental, health, or safety need of the individuals in a
2 pollution burdened community, is necessary to serve the essential
3 environmental health or safety need, and that there are no other
4 means reasonably available to meet the essential environmental,
5 health, or safety need.

6 (ii) "Compelling public interest" does not include consideration
7 of the economic benefits of a proposed new potentially impactful
8 project or the expansion of an existing potentially impactful
9 project.

10 (c) (i) "Disproportionate impact" means the potentially impactful
11 project cannot avoid either:

12 (A) Creating adverse cumulative stressors in a pollution burdened
13 community as a result of the potentially impactful project's
14 contribution; or

15 (B) Contributing to an adverse environmental or public health
16 stressor in a pollution burdened community that is already subject to
17 adverse cumulative stressors.

18 (ii) A potentially impactful project located either in whole or
19 in part, in a pollution burdened community, is capable of having a
20 disproportionate impact on that community.

21 (d) "Environmental justice impact statement" means a systematic,
22 interdisciplinary, and integrated assessment of environmental and
23 public health conditions in a pollution burdened community that
24 identifies and analyzes:

25 (i) Existing environmental and public health stressors;

26 (ii) Any adverse environmental and public health stressors;

27 (iii) The presence or absence of adverse cumulative stressors;

28 (iv) Potential environmental and public health stressors
29 associated with a potentially impactful project;

30 (v) Whether the potentially impactful project can avoid causing
31 or contributing to a disproportionate impact;

32 (vi) Alternative locations where the potentially impactful
33 project could be located;

34 (vii) The measures the potentially impactful project proposes to
35 implement to avoid or mitigate causing or contributing to any
36 disproportionate impact; and

37 (viii) Where applicable, how the new potentially impactful
38 project serves a compelling public interest in a pollution burdened
39 community.

1 (e) "Environmental or public health stressors" means sources of
2 environmental pollution or conditions that may cause potential public
3 health impacts such as, but not limited to, asthma, cancer, elevated
4 blood lead levels, cardiovascular disease, developmental problems,
5 and low birth weight in the overburdened communities, including, but
6 not limited to:

7 (i) Concentrated areas of air pollution and mobile sources of air
8 pollution:

9 (A) Criteria pollutants including particulate matter 2.5 (PM
10 2.5), particulate matter 10 (PM 10), sulfur dioxide (SO₂), nitrogen
11 dioxide (NO₂), lead, carbon dioxide (CO₂), and ozone;

12 (B) Wildfire smoke;

13 (C) Ozone concentration;

14 (D) Diesel exhaust PM_{2.5} emissions;

15 (E) Cancer risk from air toxics excluding diesel particulate
16 matter;

17 (F) Noncancer risk from air toxics;

18 (G) Hazardous air pollutants;

19 (H) Toxic releases from facilities into air; and

20 (I) Proximity to heavy traffic roadways;

21 (ii) Water pollution:

22 (A) Drinking water quality;

23 (B) Marine water quality;

24 (C) Fish and shellfish health advisories;

25 (D) Wastewater discharge;

26 (E) Surface water quality;

27 (F) Groundwater quality; and

28 (G) Combined sewer overflows;

29 (iii) Environmental hazards in communities or contaminated sites:

30 (A) Railways, airports, or ports;

31 (B) Lead risk from housing;

32 (C) Use of leaded fuels;

33 (D) Density of or proximity to known contaminated sites and
34 clean-up sites:

35 (I) Hazardous waste treatment, storage, and disposal sites;

36 (II) Superfund sites;

37 (III) Risk management plan sites;

38 (IV) Confirmed and suspected contaminated sites;

39 (V) Formerly used defense sites; and

40 (VI) Environmental covenants registry; and

1 (iv) Social determinants of health:
2 (A) Unemployment;
3 (B) Educational attainment;
4 (C) People living in poverty;
5 (D) Percent of children eligible for free or reduced-price lunch;
6 and
7 (E) Limited English-speaking households.
8 (f) "Pollution burdened community" means a community ranked as a
9 seven or higher on the environmental health disparities map developed
10 under RCW 43.70.815, in a community immediately geographically
11 adjacent to such a community, or identified using a similar
12 environmental or public health screening tool, as adopted by rule by
13 the department of ecology.
14 (g)(i) Except as provided in (ii) of this subsection,
15 "potentially impactful project" means projects that are:
16 (A) A major source of air pollution regulated and required to
17 obtain an operating permit under chapter 70A.15 RCW;
18 (B) A source regulated and required to obtain a notice of
19 construction permit under chapter 70A.15 RCW;
20 (C) A source regulated and required to obtain a prevention of
21 significant deterioration permit under chapter 70A.15 RCW;
22 (D) A source regulated and required to obtain a general order
23 permit under chapter 70A.15 RCW;
24 (E) A significant source of air pollution from transportation
25 impacts associated with the project;
26 (F) An incinerator, as defined in RCW 70A.216.010;
27 (G) A processing facility, combustor, or incinerator of municipal
28 sewage sludge, as defined in RCW 70A.226.010;
29 (H) A sewage treatment plant;
30 (I) A transfer station, landfill, scrap metal facility, or other
31 solid waste facility required to obtain a solid waste handling permit
32 under chapter 70A.205 RCW;
33 (J) A medical waste incinerator; or
34 (K) A project covered by a permit under chapter 90.48 RCW other
35 than:
36 (I) A construction general permit;
37 (II) A municipal stormwater general permit;
38 (III) A fresh fruit packing general permit;
39 (IV) A boatyard general permit;
40 (V) An environmental protection agency vessel general permit;

- 1 (VI) A winery general permit; and
- 2 (VII) A bridge and ferry terminal washing permit.
- 3 (ii) "Potentially impactful project" does not include:

4 (A) A clean energy project, as that term is defined in RCW
5 43.158.010;

6 (B) Projects related to facilities with North American industry
7 classification system code 92811 (national security) or similar
8 national security facilities administered by the United States
9 government;

10 (C) Fish hatchery projects;

11 (D) Nonproject actions of a lead agency;

12 (E) Department of transportation projects of less than
13 \$15,000,000; or

14 (F) Project actions that propose to develop residential housing
15 units only, such as affordable housing projects.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.21C
17 RCW to read as follows:

18 (1)(a) The obligations applicable to lead agencies under sections
19 2 and 3 of this act are in addition to and do not limit or amend the
20 obligations of covered agencies under chapter 70A.02 RCW.

21 (b) A covered agency under chapter 70A.02 RCW may adopt any
22 environmental justice assessment prepared under that chapter or apply
23 other analyses or processes under that chapter to satisfy the
24 requirements of sections 2 or 3 of this act, to the extent that such
25 an environmental justice assessment and other analyses or processes
26 under that chapter are sufficient to satisfy the requirements of
27 sections 2 or 3 of this act.

28 (2) A lead agency may require a proponent of a proposed action to
29 reimburse the agency for demonstrated costs to carry out an
30 environmental justice impact statement carried out under section 3 of
31 this act.

32 **Sec. 5.** RCW 70A.15.2210 and 2020 c 20 s 1091 are each amended to
33 read as follows:

34 (1) The department of ecology or board of any authority may
35 require notice of the establishment of any proposed new sources
36 except single-family and duplex dwellings or de minimis new sources
37 as defined in rules adopted under subsection (11) of this section.
38 The department of ecology or board may require such notice to be

1 accompanied by a fee and determine the amount of such fee: PROVIDED,
2 That the amount of the fee may not exceed the cost of reviewing the
3 plans, specifications, and other information and administering such
4 notice: PROVIDED FURTHER, That any such notice given or notice of
5 construction application submitted to either the board or to the
6 department of ecology shall preclude a further submittal of a
7 duplicate application to any board or to the department of ecology.

8 (2) The department shall, after opportunity for public review and
9 comment, adopt rules that establish a workload-driven process for
10 determination and review of the fee covering the direct and indirect
11 costs of processing a notice of construction application and a
12 methodology for tracking revenues and expenditures. All new source
13 fees collected by the delegated local air authorities from sources
14 shall be deposited in the dedicated accounts of their respective
15 treasuries. All new source fees collected by the department from
16 sources shall be deposited in the air pollution control account.

17 (3) Within thirty days of receipt of a notice of construction
18 application, the department of ecology or board may require, as a
19 condition precedent to the establishment of the new source or sources
20 covered thereby, the submission of plans, specifications, and such
21 other information as it deems necessary to determine whether the
22 proposed new source will be in accord with applicable rules and
23 regulations in force under this chapter. If on the basis of plans,
24 specifications, or other information required under this section the
25 department of ecology or board determines that the proposed new
26 source will not be in accord with this chapter or the applicable
27 ordinances, resolutions, rules, and regulations adopted under this
28 chapter, it shall issue an order denying permission to establish the
29 new source. If on the basis of plans, specifications, or other
30 information required under this section, the department of ecology or
31 board determines that the proposed new source will be in accord with
32 this chapter, and the applicable rules and regulations adopted under
33 this chapter, it shall issue an order of approval for the
34 establishment of the new source or sources, which order may provide
35 such conditions as are reasonably necessary to assure the maintenance
36 of compliance with this chapter and the applicable rules and
37 regulations adopted under this chapter. Every order of approval under
38 this chapter must be reviewed prior to issuance by a professional
39 engineer or staff under the supervision of a professional engineer in
40 the employ of the department of ecology or board.

1 (4) The determination required under subsection (3) of this
2 section shall include a determination of whether the operation of the
3 new air contaminant source at the location proposed will cause any
4 ambient air quality standard to be exceeded.

5 (5) New source review of a modification shall be limited to the
6 emission unit or units proposed to be modified and the air
7 contaminants whose emissions would increase as a result of the
8 modification.

9 (6) Nothing in this section shall be construed to authorize the
10 department of ecology or board to require the use of emission control
11 equipment or other equipment, machinery, or devices of any particular
12 type, from any particular supplier, or produced by any particular
13 manufacturer.

14 (7) Any features, machines, and devices constituting parts of or
15 called for by plans, specifications, or other information submitted
16 pursuant to subsection (1) or (3) of this section shall be maintained
17 and operate in good working order.

18 (8) The absence of an ordinance, resolution, rule, or regulation,
19 or the failure to issue an order pursuant to this section shall not
20 relieve any person from his or her obligation to comply with
21 applicable emission control requirements or with any other provision
22 of law.

23 (9) Within thirty days of receipt of a notice of construction
24 application the department of ecology or board shall either notify
25 the applicant in writing that the application is complete or notify
26 the applicant in writing of all additional information necessary to
27 complete the application. Within sixty days of receipt of a complete
28 application the department or board shall either (a) issue a final
29 decision on the application, or (b) for those projects subject to
30 public notice, initiate notice and comment on a proposed decision,
31 followed as promptly as possible by a final decision. A person
32 seeking approval to construct or modify a source that requires an
33 operating permit may elect to integrate review of the operating
34 permit application or amendment required by RCW 70A.15.2260 and the
35 notice of construction application required by this section. A notice
36 of construction application designated for integrated review shall be
37 processed in accordance with operating permit program procedures and
38 deadlines.

39 (10) A notice of construction approval required under subsection
40 (3) of this section shall include a determination that the new source

1 will achieve best available control technology. If more stringent
2 controls are required under federal law, the notice of construction
3 shall include a determination that the new source will achieve the
4 more stringent federal requirements. Nothing in this subsection is
5 intended to diminish other state authorities under this chapter.

6 (11) No person is required to submit a notice of construction or
7 receive approval for a new source that is deemed by the department of
8 ecology or board to have de minimis impact on air quality. The
9 department of ecology shall adopt and periodically update rules
10 identifying categories of de minimis new sources. The department of
11 ecology may identify de minimis new sources by category, size, or
12 emission thresholds.

13 (12)(a) Except as provided in (c) of this subsection, the
14 department of ecology or board may not issue a notice of construction
15 order of approval to any of the following types of new air
16 contaminant sources that are located in a census tract that is ranked
17 as a nine or a 10 for environmental exposures in the environmental
18 health disparities map maintained by the department of health under
19 RCW 43.70.815, as the methodology for ranking environmental exposures
20 existed as of the effective date of this section:

21 (i) A major source of air pollution regulated and required to
22 obtain a permit under this chapter;

23 (ii) A source regulated and required to obtain a prevention of
24 significant deterioration permit under this chapter;

25 (iii) An incinerator, as defined in RCW 70A.216.010; or

26 (iv) A medical waste incinerator.

27 (b) By rule, the department may adopt an alternative methodology
28 for identifying the census tracts specified in (a) of this subsection
29 in the event that the department of health substantively amends the
30 methodology used to identify or rank environmental exposures under
31 RCW 43.70.815.

32 (c) The provisions of this subsection (12) do not apply to:

33 (i) Projects related to facilities with North American industry
34 classification system code 92811 (national security) or similar
35 national security facilities administered by the United States
36 government; or

37 (ii) Clean energy projects, as that term is defined in RCW
38 43.158.010.

1 (13) For purposes of this section, "de minimis new sources" means
2 new sources with trivial levels of emissions that do not pose a
3 threat to human health or the environment.

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