

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5141

67th Legislature
2021 Regular Session

Passed by the Senate April 20, 2021
Yeas 27 Nays 22

President of the Senate

Passed by the House April 10, 2021
Yeas 56 Nays 41

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5141** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5141

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By Senate Ways & Means (originally sponsored by Senators Saldaña, Lovelett, Carlyle, Das, Frockt, Hasegawa, Hunt, Keiser, Kuderer, Liias, Nobles, Pedersen, Rolfes, Stanford, and Wilson, C.)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to reducing environmental and health disparities
2 and improving the health of all Washington state residents by
3 implementing the recommendations of the environmental justice task
4 force; amending RCW 43.376.020 and 34.05.030; adding new sections to
5 chapter 43.70 RCW; adding a new section to chapter 43.21A RCW; adding
6 a new section to chapter 43.23 RCW; adding a new section to chapter
7 43.30 RCW; adding a new section to chapter 43.330 RCW; adding a new
8 section to chapter 47.01 RCW; adding a new section to chapter 90.71
9 RCW; adding a new chapter to Title 70A RCW; and creating a new
10 section.

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

12 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The purpose of
13 this chapter is to reduce environmental and health disparities in
14 Washington state and improve the health of all Washington state
15 residents. This chapter implements the recommendations of the
16 environmental justice task force established in section 221(48),
17 chapter 415, Laws of 2019 entitled "Report to the Washington state
18 governor and legislature, *Environmental Justice Task Force:
19 Recommendations for Prioritizing EJ in Washington State Government*
20 (October 2020)."

1 (2) As conveyed in the task force report, Washington state
2 studies and national studies found that people of color and low-
3 income people continue to be disproportionately exposed to
4 environmental harms in their communities. As a result, there is a
5 higher risk of adverse health outcomes for those communities. This
6 risk is amplified when overlaid on communities with preexisting
7 social and economic barriers and environmental risks, and creates
8 cumulative environmental health impacts, which this act seeks to
9 prevent and mitigate.

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

17 (3) Accordingly, the state has a compelling interest in
18 preventing and addressing such environmental health disparities in
19 the administration of ongoing and new environmental programs,
20 including allocation of funds, and in administering these programs so
21 as to remedy the effects of past disparate treatment of overburdened
22 communities and vulnerable populations.

23 (4) The task force provided recommendations to state agencies for
24 measurable goals and model policies to reduce environmental health
25 inequities in Washington, equitable practices for meaningful
26 community involvement, and how to use the environmental health
27 disparities map to identify and promote the equitable distribution of
28 environmental benefits to overburdened communities. In order for all
29 communities in Washington state to be healthy and thriving, state
30 government should aim to concentrate government actions to benefit
31 communities that currently have the greatest environmental and health
32 burdens.

33 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
34 section apply throughout this chapter unless the context clearly
35 requires otherwise.

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

38 (2) "Covered agency" means the departments of ecology, health,
39 natural resources, commerce, agriculture, and transportation, the

1 Puget Sound partnership, and any agency that opts to assume all of
2 the obligations of this act pursuant to section 11 of this act.

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

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

7 (a) Prevent or reduce existing environmental harms or associated
8 risks that contribute significantly to cumulative environmental
9 health impacts;

10 (b) Prevent or mitigate impacts to overburdened communities or
11 vulnerable populations from, or support community response to, the
12 impacts of environmental harm; or

13 (c) Meet a community need formally identified to a covered agency
14 by an overburdened community or vulnerable population that is
15 consistent with the intent of this chapter.

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

19 (a) Exposure to pollution, conventional or toxic pollutants,
20 environmental hazards, or other contamination in the air, water, and
21 land;

22 (b) Adverse environmental effects, including exposure to
23 contamination, hazardous substances, or pollution that increase the
24 risk of adverse environmental health outcomes or create
25 vulnerabilities to the impacts of climate change;

26 (c) Loss or impairment of ecosystem functions or traditional food
27 resources or loss of access to gather cultural resources or harvest
28 traditional foods; or

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

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

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

35 (8) "Environmental justice" means the fair treatment and
36 meaningful involvement of all people regardless of race, color,
37 national origin, or income with respect to the development,
38 implementation, and enforcement of environmental laws, rules, and
39 policies. Environmental justice includes addressing disproportionate
40 environmental and health impacts in all laws, rules, and policies

1 with environmental impacts by prioritizing vulnerable populations and
2 overburdened communities, the equitable distribution of resources and
3 benefits, and eliminating harm.

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

9 (10) "Evidence-based" means a process that is conducted by a
10 systematic review of available data based on a well-established and
11 widely used hierarchy of data in current use by other state and
12 national programs, selected by the departments of ecology and health.
13 The environmental justice council may provide input on the
14 development of the process.

15 (11) "Overburdened community" means a geographic area where
16 vulnerable populations face combined, multiple environmental harms
17 and health impacts, and includes, but is not limited to, highly
18 impacted communities as defined in RCW 19.405.020.

19 (12) "Significant agency action" means the following actions as
20 identified at the beginning of a covered agency's consideration of
21 the significant agency action or at the time when an environmental
22 justice assessment would normally be initiated in conjunction with an
23 agency action:

24 (a) The development and adoption of significant legislative rules
25 as defined in RCW 34.05.328;

26 (b) The development and adoption of any new grant or loan program
27 that a covered agency is explicitly authorized or required by statute
28 to carry out;

29 (c) A capital project, grant, or loan award by a covered agency
30 of at least \$12,000,000 or a transportation project, grant, or loan
31 by a covered agency of at least \$15,000,000;

32 (d) The submission of agency request legislation to the office of
33 the governor or the office of financial management for approval; and

34 (e) Any other agency actions deemed significant by a covered
35 agency consistent with section 14 of this act.

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

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

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

11 (i) Racial or ethnic minorities;

12 (ii) Low-income populations;

13 (iii) Populations disproportionately impacted by environmental
14 harms; and

15 (iv) Populations of workers experiencing environmental harms.

16 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE OBLIGATIONS FOR ALL
17 AGENCIES. Covered agencies are required to comply with all provisions
18 of this chapter. All other state agencies should strive to apply the
19 laws of the state of Washington, and the rules and policies of the
20 agency, in accordance with the policies of this chapter including, to
21 the extent feasible, incorporating the principles of environmental
22 justice assessment processes set forth in section 14 of this act into
23 agency decisions.

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

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

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

32 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF ECOLOGY.
33 The department must apply and comply with the substantive and
34 procedural requirements of chapter 70A.--- RCW (the new chapter
35 created in section 25 of this act).

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.23
2 RCW to read as follows:
3 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF
4 AGRICULTURE. The department must apply and comply with the
5 substantive and procedural requirements of chapter 70A.--- RCW (the
6 new chapter created in section 25 of this act).

7 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.30
8 RCW to read as follows:
9 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF NATURAL
10 RESOURCES. The department must apply and comply with the substantive
11 and procedural requirements of chapter 70A.--- RCW (the new chapter
12 created in section 25 of this act).

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.330
14 RCW to read as follows:
15 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF COMMERCE.
16 The department must apply and comply with the substantive and
17 procedural requirements of chapter 70A.--- RCW (the new chapter
18 created in section 25 of this act).

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 47.01
20 RCW to read as follows:
21 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF
22 TRANSPORTATION. The department must apply and comply with the
23 substantive and procedural requirements of chapter 70A.--- RCW (the
24 new chapter created in section 25 of this act).

25 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.71
26 RCW to read as follows:
27 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE PUGET SOUND PARTNERSHIP.
28 The partnership must apply and comply with the substantive and
29 procedural requirements of chapter 70A.--- RCW (the new chapter
30 created in section 25 of this act).

31 NEW SECTION. **Sec. 11.** AUTHORITY OF OTHER AGENCIES TO OPT IN TO
32 ENVIRONMENTAL JUSTICE OBLIGATIONS. (1) Any state agency, as the term
33 "agency" is defined in RCW 34.05.010, including the governor's office
34 and the office of the attorney general but excluding local
35 governmental entities, may opt in to assume all of the substantive

1 and procedural requirements of covered agencies under chapter 70A.---
2 RCW (the new chapter created in section 25 of this act) at any time
3 by notifying the council established in section 20 of this act.

4 (2) An agency that opts in to assume all of the substantive and
5 procedural requirements of chapter 70A.--- RCW (the new chapter
6 created in section 25 of this act) is not subject to the deadlines or
7 timelines established in sections 12, 13, 14, 16, and 20 of this act.

8 NEW SECTION. **Sec. 12.** INCORPORATING ENVIRONMENTAL JUSTICE INTO
9 AGENCY STRATEGIC PLANS. (1) By January 1, 2023, each covered agency
10 shall include an environmental justice implementation plan within its
11 strategic plan. A covered agency may additionally incorporate an
12 environmental justice implementation plan into other significant
13 agency planning documents. The plan must describe how the covered
14 agency plans to apply the principles of environmental justice to the
15 agency's activities and must guide the agency in its implementation
16 of its obligations under this chapter.

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

19 (a) Agency-specific goals and actions to reduce environmental and
20 health disparities and for otherwise achieving environmental justice
21 in the agency's programs;

22 (b) Metrics to track and measure accomplishments of the agency
23 goals and actions;

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

27 (d) Strategies to ensure compliance with existing federal and
28 state laws and policies relating to environmental justice, including
29 Title VI of the civil rights act of 1964, 42 U.S.C. Sec.
30 2000d-2000d-4, Title IX of the Education Amendments of 1972, 20
31 U.S.C. Sec. 1681-1683, Section 504 of the Rehabilitation Act of 1973,
32 29 U.S.C. Sec. 794, and the age discrimination act of 1975, 42 U.S.C.
33 Sec. 6101-6107;

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

36 (f) Specific plans and timelines for incorporating environmental
37 justice considerations into agency activities as required under this
38 chapter.

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

4 NEW SECTION. **Sec. 13.** **EQUITABLE COMMUNITY ENGAGEMENT AND PUBLIC**
5 **PARTICIPATION.** (1) By July 1, 2022, each covered agency must create
6 and adopt a community engagement plan that describes how it will
7 engage with overburdened communities and vulnerable populations as it
8 evaluates new and existing activities and programs. This plan must
9 describe how the agency plans to facilitate equitable participation
10 and support meaningful and direct involvement of vulnerable
11 populations and overburdened communities. The plan must include:

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

14 (b) Best practices for outreach and communication to overcome
15 barriers to engagement with overburdened communities and vulnerable
16 populations;

17 (c) Use of special screening tools that integrate environmental,
18 demographic, and health disparities data, such as the environmental
19 health disparities map, to evaluate and understand the nature and
20 needs of the people who the agency expects to be impacted by
21 significant agency actions under section 14 of this act and processes
22 under section 16 of this act to overcome barriers to participation;

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

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

29 (2) Covered agencies must regularly review their compliance with
30 existing laws and policies that guide community engagement and must
31 comply with the following:

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

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

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

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

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

7 NEW SECTION. **Sec. 14.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1)(a)
8 When considering a significant agency action initiated after July 1,
9 2023, a covered agency must conduct an environmental justice
10 assessment in accordance with this section to inform and support the
11 agency's consideration of overburdened communities and vulnerable
12 populations when making decisions and to assist the agency with the
13 equitable distribution of environmental benefits, the reduction of
14 environmental harms, and the identification and reduction of
15 environmental and health disparities.

16 (b) A covered agency must aspire to complete the environmental
17 justice assessment for a significant agency action without delaying
18 the completion of the underlying agency action.

19 (2)(a) Consistent with section 2(12)(e) of this act, for the
20 purpose of preparing environmental justice assessments, a covered
21 agency may deem actions significant that are additional to the
22 significant agency actions identified in section 2(12)(a) through
23 (d) of this act, in iterative consultation with the council and
24 interagency work group established under section 20 of this act. By
25 July 1, 2025, each covered agency must consider their agency's
26 activities and identify and begin applying environmental justice
27 assessments to any actions that the agency identifies as significant
28 that are in addition to the significant agency actions identified in
29 section 2(12)(a) through (d) of this act. Significant agency actions
30 designated by a covered agency under this subsection must be actions
31 that may cause environmental harm or may affect the equitable
32 distribution of environmental benefits to an overburdened community
33 or a vulnerable population.

34 (b) In the identification of significant agency actions, covered
35 agencies shall consider guidance issued by the council established in
36 section 20 of this act. Each covered agency must periodically review
37 and update its identified types of significant agency actions for
38 which an environmental justice assessment is required under this
39 section, and the relevant factors to the agency's environmental

1 justice assessments that result from the unique mission, authorities,
2 and priorities of the agency.

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

6 (a) Publish on its website the types of agency actions that the
7 agency has determined are significant agency actions that require an
8 environmental justice assessment under this section, including any
9 significant agency actions identified under subsection (2)(a) of this
10 section;

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

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

16 (4) The environmental justice assessment obligation of a covered
17 agency for a significant agency action under this section is
18 satisfied by the completion by the covered agency of a checklist
19 developed by the covered agency that functions akin to the
20 environmental checklist developed by the department of ecology
21 pursuant to chapter 43.21C RCW, and that directs the covered agency
22 to at a minimum:

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

27 (b) Where applicable, use cumulative environmental health impact
28 analysis, such as the environmental health disparities map or other
29 data that considers the effects of a proposed action on overburdened
30 communities and vulnerable populations;

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

34 (d) Pursuant to the consultation process in section 18 of this
35 act, identify if the proposed action is expected to have any local or
36 regional impacts to federally reserved tribal rights and resources
37 including, but not limited to, those protected by treaty, executive
38 order, or federal law;

39 (e) Summarize community input and describe how the covered agency
40 can further involve overburdened communities, vulnerable populations,

1 affected tribes, and indigenous populations in development of the
2 proposed action; and

3 (f) Describe options for the agency to reduce, mitigate, or
4 eliminate identified probable impacts on overburdened communities and
5 vulnerable populations, or provide a justification for not reducing,
6 mitigating, or eliminating identified probable impacts.

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

13 (b) A covered agency may include items in the checklist required
14 under subsection (4) of this section that are not specified in
15 subsection (4) of this section.

16 (c) The completion of an environmental justice checklist under
17 subsection (4) of this section is not required to be a comprehensive
18 or an exhaustive examination of all potential impacts of a
19 significant agency action and does not require a covered agency to
20 conduct novel quantitative or economic analysis of the proposed
21 significant agency action.

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

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

33 (b) Reducing cumulative environmental health impacts on
34 overburdened communities or vulnerable populations;

35 (c) Preventing the action from adding to the cumulative
36 environmental health impacts on overburdened communities or
37 vulnerable populations;

38 (d) Providing equitable participation and meaningful engagement
39 of vulnerable populations and overburdened communities in the
40 development of the significant agency action;

1 (e) Prioritizing equitable distribution of resources and benefits
2 to overburdened communities;

3 (f) Promoting positive workforce and job outcomes for
4 overburdened communities;

5 (g) Meeting community needs identified by the affected
6 overburdened community;

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

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

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

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

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

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

32 NEW SECTION. **Sec. 16.** ENVIRONMENTAL JUSTICE OBLIGATIONS OF
33 AGENCIES RELATING TO BUDGETS AND FUNDING. (1) With consideration of
34 the guidelines issued by the council in section 20 of this act, and
35 in iterative consultation with the council, each covered agency must
36 incorporate environmental justice principles into its decision
37 processes for budget development, making expenditures, and granting
38 or withholding environmental benefits. Through the incorporation of

1 environmental justice principles into its decision processes,
2 including by conducting environmental justice assessments where
3 required under section 14 of this act, each covered agency, to the
4 extent allowed by law and consistent with legislative appropriations,
5 must equitably distribute funding and expenditures related to
6 programs that address or may cause environmental harms or provide
7 environmental benefits towards overburdened communities and
8 vulnerable populations.

9 (2) Beginning on or before July 1, 2023, each covered agency
10 must, where practicable, take the following actions when making
11 expenditure decisions or developing budget requests to the office of
12 financial management and the legislature for programs that address or
13 may cause environmental harms or provide environmental benefits:

14 (a) Focus applicable expenditures on creating environmental
15 benefits that are experienced by overburdened communities and
16 vulnerable populations, including reducing or eliminating
17 environmental harms, creating community and population resilience,
18 and improving the quality of life of overburdened communities and
19 vulnerable populations;

20 (b) Create opportunities for overburdened communities and
21 vulnerable populations to meaningfully participate in agency
22 expenditure decisions;

23 (c) Clearly articulate environmental justice goals and
24 performance metrics to communicate the basis for agency expenditures;

25 (d) Consider a broad scope of grants and contracting
26 opportunities that effectuate environmental justice principles,
27 including:

28 (i) Community grants to monitor pollution;

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

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

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

36 (e) Establish a goal of directing 40 percent of grants and
37 expenditures that create environmental benefits to vulnerable
38 populations and overburdened communities.

39 (3) A covered agency may adopt rules or guidelines for criteria
40 and procedures applicable to incorporating environmental justice

1 principles in expenditure decisions, granting or withholding
2 benefits, and processes for budget development.

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

8 (5) A covered agency may not take actions or make expenditures
9 under this section that are inconsistent with or conflict with other
10 statutes or with conditions or limitations on the agency's
11 appropriations.

12 (6) If a covered agency, due to the breadth of its programs and
13 funding opportunities, determines it is not practicable to take the
14 actions listed in subsection (2) of this section for all applicable
15 expenditure decisions and budget requests developed, the covered
16 agency is encouraged to prioritize taking the actions listed in
17 subsection (2) of this section for those budget requests and
18 expenditure decisions that are primarily directed at addressing
19 environmental impacts. By July 1, 2023, each covered agency must
20 publish on its website the types of decision processes for budget
21 development, making expenditures, and granting or withholding
22 environmental benefits for which the agency will take the actions
23 listed in subsection (2) of this section.

24 NEW SECTION. **Sec. 17.** REPORTING REQUIREMENTS. (1) By September
25 1st of each year, each covered agency must annually update the
26 council on the development and implementation of environmental
27 justice in agency strategic plans pursuant to section 12 of this act,
28 budgeting and funding criteria for making budgeting and funding
29 decisions pursuant to section 16 of this act, and community
30 engagement plans pursuant to section 13 of this act.

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

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

1 (i) Incorporating environmental justice in its strategic plan;
2 (ii) The obligations of agencies relating to budgets and funding
3 under section 16 of this act; and

4 (iii) Its environmental justice assessments of proposed
5 significant agency actions, including logistical metrics related to
6 covered agency completion of environmental justice assessments.

7 (3) Each covered agency must file a notice with the office of
8 financial management of significant agency actions for which the
9 agency is initiating an environmental justice assessment under
10 section 14 of this act. The office of financial management must
11 prepare a list of all filings received from covered agencies each
12 week and must post the list on its website and make it available to
13 any interested parties. The list of filings must include a brief
14 description of the significant agency action and the methods for
15 providing public comment for agency consideration as part of the
16 environmental justice assessment.

17 (4) Each covered agency must identify overburdened communities,
18 as required by section 13 of this act, in such a way that the
19 performance effectiveness of the duties created by this chapter can
20 be measured, including the effectiveness of environmental justice
21 assessments required by section 14 of this act. Each covered agency
22 may identify and prioritize overburdened communities as needed to
23 accomplish the purposes of this chapter.

24 NEW SECTION. **Sec. 18.** TRIBAL CONSULTATION. (1) Covered agencies
25 shall develop a consultation framework in coordination with tribal
26 governments that includes best practices, protocols for
27 communication, and collaboration with federally recognized tribes.
28 Consistent with this framework, covered agencies must offer
29 consultation with federally recognized Indian tribes on:

30 (a) The inclusion or updating of an environmental justice
31 implementation plan within the covered agency's strategic plan
32 required under section 12 of this act;

33 (b) The creation and adoption or updating of a community
34 engagement plan required under section 13 of this act; and

35 (c) Significant agency actions under section 14 of this act that
36 affect federally recognized Indian tribes' rights and interests in
37 their tribal lands.

1 (2) The department of health must offer consultation with
2 federally recognized Indian tribes on the development of the
3 environmental health disparities map under section 19 of this act.

4 (3) The consultation under subsections (1) and (2) of this
5 section must be independent of any public participation process
6 required by state law, or by a state agency, and regardless of
7 whether the agency receives a request for consultation from an Indian
8 tribe.

9 (4) Nothing in this chapter is intended to direct, authorize, or
10 encourage covered agencies to collect, maintain, or provide data
11 related to sacred sites, traditional cultural properties, burial
12 grounds, and other tribal sites protected by federal or state law.

13 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.70
14 RCW to read as follows:

15 ENVIRONMENTAL HEALTH DISPARITIES MAP. (1) In consultation with
16 the environmental justice council established in section 20 of this
17 act, the department must continue to develop and maintain an
18 environmental health disparities map with the most current available
19 information necessary to identify cumulative environmental health
20 impacts and overburdened communities. The department may also consult
21 with other interested partners, such as the University of Washington
22 department of environmental and occupational health sciences, other
23 academic partners, members of overburdened communities and vulnerable
24 populations, and other agencies. The environmental health disparities
25 map must include tools to:

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

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

31 (2) In further developing and maintaining the environmental
32 health disparities map, the department must:

33 (a) Solicit feedback from representatives from overburdened
34 communities and vulnerable populations through community engagement
35 and listening sessions in all regions of the state and provide
36 opportunities for public comment; and

37 (b) Request assistance from:

38 (i) State universities;

1 (ii) Other academic researchers, such as the Washington state
2 institute for public policy, to perform modeling and create evidence-
3 based indicators and to conduct sensitivity analyses to assess the
4 impact of new indicators on communities and determinations of
5 overburdened communities; and

6 (iii) Other state agencies to provide applicable statewide
7 environmental and sampling data for air, water, soil, polluted sites,
8 toxic waste, pesticides, toxic chemicals, and other applicable media.

9 (3) The department must:

10 (a) Document and publish a summary of the regular updates and
11 revisions to the environmental health disparities map that happen
12 over time as the new data becomes available, in order to help the
13 public understand different versions of the map as they are
14 published;

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

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

24 (d) Provide support and consultation to agencies on the use of
25 the environmental health disparities map by Washington tracking
26 network staff.

27 (4)(a) By November 1, 2022, the Washington state institute for
28 public policy must conduct a technical review of the measures and
29 methods used in the environmental health disparities map. The review
30 must, to the extent possible, address the following:

31 (i) Identify how the measures used in the map compare to measures
32 used in other similar tools that aim to identify communities that are
33 disproportionately impacted as a result of environmental justice
34 issues;

35 (ii) Compare characteristics such as the reliability, validity,
36 and clinical importance of individual and composite measures included
37 in the map and other similar tools; and

38 (iii) Compare methodologies used in the map to statistical
39 methodologies used in other similar tools.

1 (b) The department of health and the University of Washington
2 must provide technical documentation regarding current methods to the
3 Washington state institute for public policy and must consult with
4 the institute as needed to ensure that the institute has adequate
5 information to complete the technical review.

6 (c) By November 1, 2022, the Washington state institute for
7 public policy must submit a report on their findings to the office of
8 the governor, the appropriate committees of the legislature, and the
9 environmental justice council.

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

14 (2) The council consists of 14 members appointed by the governor.
15 The councilmembers must be persons who are well-informed regarding
16 and committed to the principles of environmental justice and who, to
17 the greatest extent practicable, represent diversity in race,
18 ethnicity, age, and gender, urban and rural areas, and different
19 regions of the state. The members of the council shall elect two
20 members to serve as cochairs for two-year terms. The council must
21 include:

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

27 (i) The youth representative must be between the ages of 18 and
28 25 at the time of appointment;

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

34 (b) Two members representing tribal communities, one from eastern
35 Washington and one from western Washington, appointed by the
36 governor. The governor shall solicit and consider nominees from each
37 of the federally recognized tribes in Washington state. The governor
38 shall collaborate with federally recognized tribes on the selection
39 of tribal representatives. The tribal representatives serve four-year

1 terms. One representative must be initially appointed for a four-year
2 term. The other representative must be initially appointed for a two-
3 year term, after which, that representative must be appointed for a
4 four-year term;

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

9 (d) (i) One representative of a business that is regulated by a
10 covered agency and whose ordinary business conditions are
11 significantly affected by the actions of at least one other covered
12 agency; and

13 (ii) One representative who is a member or officer of a union
14 representing workers in the building and construction trades; and

15 (e) One representative at large, the nomination of which is based
16 upon applied and demonstrated work and focus on environmental
17 justice.

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

22 (4) Nongovernmental members of the council must be compensated
23 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and
24 43.03.220.

25 (5) The department of health must:

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

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

29 (6) In collaboration with the office of equity, the office of
30 financial management, the council, and covered agencies, the
31 department of health must:

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

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

37 (i) Using outcome-based methodology to determine the
38 effectiveness of agency programs and services on reducing
39 environmental disparities; and

1 (ii) Taking into consideration community feedback from the
2 council on whether the performance measures established accurately
3 measure the effectiveness of covered agency programs and services in
4 the communities served; and

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

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

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

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

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

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

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

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

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

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

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

39 (iv) Identifying goals and metrics that the council may use to
40 assess agency performance in meeting the requirements of this act for

1 purposes of communicating progress to the public, the governor, and
2 the legislature; and

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

5 (9) The council has the following powers and duties:

6 (a) To provide a forum for the public to:

7 (i) Provide written or oral testimony on their environmental
8 justice concerns;

9 (ii) Assist the council in understanding environmental justice
10 priorities across the state in order to develop council
11 recommendations to agencies for issues to prioritize; and

12 (iii) Identify which agencies to contact with their specific
13 environmental justice concerns and questions;

14 (b)(i) The council shall work in an iterative fashion with the
15 interagency work group to develop guidance for environmental justice
16 implementation into covered agency strategic plans pursuant to
17 section 12 of this act, environmental justice assessments pursuant to
18 section 14 of this act, budgeting and funding criteria for making
19 budgeting and funding decisions pursuant to section 16 of this act,
20 and community engagement plans pursuant to section 13 of this act;

21 (ii) The council and interagency work group shall regularly
22 update its guidance;

23 (c) In consultation with the interagency work group, the council:

24 (i) Shall provide guidance to covered agencies on developing
25 environmental justice assessments pursuant to section 14 of this act
26 for significant agency actions;

27 (ii) Shall make recommendations to covered agencies on which
28 agency actions may cause environmental harm or may affect the
29 equitable distribution of environmental benefits to an overburdened
30 community or a vulnerable population and therefore should be
31 considered significant agency actions that require an environmental
32 justice assessment under section 14 of this act;

33 (iii) Shall make recommendations to covered agencies:

34 (A) On the identification and prioritization of overburdened
35 communities under this chapter; and

36 (B) Related to the use by covered agencies of the environmental
37 and health disparities map in agency efforts to identify and
38 prioritize overburdened communities;

1 (iv) May make recommendations to a covered agency on the timing
2 and sequencing of a covered agencies' efforts to implement sections
3 12 through 16 of this act; and

4 (v) May make recommendations to the governor and the legislature
5 regarding ways to improve agency compliance with the requirements of
6 this chapter;

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

11 (i) Evaluate the progress of each agency in applying council
12 guidance, and update guidance as needed; and

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

20 (10) By November 30, 2023, and in compliance with RCW 43.01.036,
21 the council must submit a report to the governor and the appropriate
22 committees of the house of representatives and the senate on:

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

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

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

35 (11) The council may:

36 (a) Review incorporation of environmental justice implementation
37 plans into covered agency strategic plans pursuant to section 12 of
38 this act, environmental justice assessments pursuant to section 14 of
39 this act, budgeting and funding criteria for making budgeting and

1 funding decisions pursuant to section 16 of this act, and community
2 engagement plans pursuant to section 13 of this act;

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

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

8 (d) Recommend to specific agencies that they create environmental
9 justice-focused, agency-requested legislation;

10 (e) Provide requested assistance to state agencies other than
11 covered agencies that wish to incorporate environmental justice
12 principles into agency activities; and

13 (f) Recommend funding strategies and allocations to build
14 capacity in vulnerable populations and overburdened communities to
15 address environmental justice.

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

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

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

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

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

30 (a) Any delay in the significant agency action poses a
31 potentially significant threat to human health or the environment, or
32 is likely to cause serious harm to the public interest;

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

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

39 (i) Federal law or federal program requirements;

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

3 (iii) Constitutional limitations or fiduciary obligations,
4 including those applicable to the management of state lands and state
5 forestlands as defined in RCW 79.02.010.

6 (3) A covered agency may not, for the purposes of implementing
7 any of its responsibilities under this chapter, contract with an
8 entity that employs a lobbyist registered under RCW 42.17A.600 that
9 is lobbying on behalf of that entity.

10 NEW SECTION. **Sec. 22.** APPEALS. (1) Except as specified in
11 subsection (2) of this section, the actions and duties set forth in
12 this act are not subject to appeal.

13 (2)(a) Only the following agency actions undertaken pursuant to
14 this act are subject to appeal:

15 (i) Decisions related to the designation of significant agency
16 actions pursuant to section 14(3)(a) of this act; and

17 (ii) Environmental justice assessments prepared pursuant to
18 section 14 of this act, only for environmental justice assessments
19 for which there is an associated agency action that is appealable.

20 (b) Appeals of environmental justice assessments allowed under
21 (a)(ii) of this subsection must be of the environmental justice
22 assessment together with the accompanying agency action, as defined
23 in RCW 34.05.010.

24 (3) Nothing in this act may be construed to create a new private
25 right of action, other than as described in this section, on the part
26 of any individual, entity, or agency against any state agency.

27 (4) Nothing in this act may be construed to expand, contract, or
28 otherwise modify any rights of appeal, or procedures for appeal,
29 under other laws other than the availability of the appeal process
30 described in this section.

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

33 In establishing a government-to-government relationship with
34 Indian tribes, state agencies must:

35 (1) Make reasonable efforts to collaborate with Indian tribes in
36 the development of policies, agreements, and program implementation
37 that directly affect Indian tribes and develop a consultation process
38 that is used by the agency for issues involving specific Indian

1 tribes. Covered agencies, as defined in section 2 of this act,
2 subject to the requirements of chapter 70A.--- RCW (the new chapter
3 created in section 25 of this act), must offer consultation with
4 Indian tribes on the actions specified in section 18 of this act;

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

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

10 (4) Submit an annual report to the governor on activities of the
11 state agency involving Indian tribes and on implementation of this
12 chapter.

13 **Sec. 24.** RCW 34.05.030 and 2015 3rd sp.s. c 1 s 309 are each
14 amended to read as follows:

15 (1) This chapter shall not apply to:

16 (a) The state militia, or

17 (b) The board of clemency and pardons, or

18 (c) The department of corrections or the indeterminate sentencing
19 review board with respect to persons who are in their custody or are
20 subject to the jurisdiction of those agencies.

21 (2) The provisions of RCW 34.05.410 through 34.05.598 shall not
22 apply:

23 (a) To adjudicative proceedings of the board of industrial
24 insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

25 (b) Except for actions pursuant to chapter 46.29 RCW, to the
26 denial, suspension, or revocation of a driver's license by the
27 department of licensing;

28 (c) To the department of labor and industries where another
29 statute expressly provides for review of adjudicative proceedings of
30 a department action, order, decision, or award before the board of
31 industrial insurance appeals;

32 (d) To actions of the Washington personnel resources board, the
33 director of financial management, and the department of enterprise
34 services when carrying out their duties under chapter 41.06 RCW;

35 (e) To adjustments by the department of revenue of the amount of
36 the surcharge imposed under RCW 82.04.261; (~~(e)~~)

37 (f) To actions to implement the provisions of chapter 70A.--- RCW
38 (the new chapter created in section 25 of this act), except as
39 specified in section 22 of this act; or

1 (g) To the extent they are inconsistent with any provisions of
2 chapter 43.43 RCW.

3 (3) Unless a party makes an election for a formal hearing
4 pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through
5 34.05.598 do not apply to a review hearing conducted by the board of
6 tax appeals.

7 (4) The rule-making provisions of this chapter do not apply to:

8 (a) Reimbursement unit values, fee schedules, arithmetic
9 conversion factors, and similar arithmetic factors used to determine
10 payment rates that apply to goods and services purchased under
11 contract for clients eligible under chapter 74.09 RCW; and

12 (b) Adjustments by the department of revenue of the amount of the
13 surcharge imposed under RCW 82.04.261.

14 (5) All other agencies, whether or not formerly specifically
15 excluded from the provisions of all or any part of the administrative
16 procedure act, shall be subject to the entire act.

17 NEW SECTION. **Sec. 25.** Sections 1 through 3, 11 through 18, and
18 20 through 22 of this act constitute a new chapter in Title 70A RCW.

19 NEW SECTION. **Sec. 26.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 27.** If any part of this act is found to be in
24 conflict with federal requirements that are a prescribed condition to
25 the allocation of federal funds to the state, the conflicting part of
26 this act is inoperative solely to the extent of the conflict and with
27 respect to the agencies directly affected, and this finding does not
28 affect the operation of the remainder of this act in its application
29 to the agencies concerned. Rules adopted under this act must meet
30 federal requirements that are a necessary condition to the receipt of
31 federal funds by the state.

--- END ---