

By Representative Fitzgibbon

E2SSB 5141 - H COMM AMD

By Committee on Appropriations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (11) "Significant agency action" means the following actions when
36 reasonably evident, at the beginning of a covered agency's
37 consideration of the significant agency action or at the time when an
38 environmental justice assessment would normally be initiated in
39 conjunction with an agency action, that the action may cause
40 environmental harm or may affect the equitable distribution of

1 environmental benefits to an overburdened community or a vulnerable
2 population:

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

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

8 (c) Transportation projects that increase the capacity of the
9 state transportation system, such as system capacity expansion
10 projects and new state highway, ferry, or freight facilities;

11 (d) Major capital projects of at least \$12,000,000;

12 (e) The submission of agency request legislation to the office of
13 the governor or the office of financial management for approval; and

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

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

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

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

30 (i) Racial or ethnic minorities;

31 (ii) Low-income populations;

32 (iii) Populations disproportionately impacted by environmental
33 harms; and

34 (iv) Populations of workers experiencing environmental harms.

35 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE OBLIGATIONS FOR ALL
36 AGENCIES. Covered agencies are required to comply with all provisions
37 of this chapter. All other state agencies should strive to apply the
38 laws of the state of Washington, and the rules and policies of the
39 agency, in accordance with the policies of this chapter including, to

1 the extent feasible, incorporating the principles of environmental
2 justice assessment processes set forth in section 14 of this act into
3 agency decisions.

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.330
29 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

4 (b) Metrics to track and measure accomplishments of the agency
5 goals and deliverables;

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

9 (d) Strategies to ensure compliance with existing federal and
10 state laws and policies relating to environmental justice, including
11 Title VI of the civil rights act of 1964, 42 U.S.C. Sec.
12 2000d-2000d-4, Title IX of the Education Amendments of 1972, 20
13 U.S.C. Sec. 1681-1683, Section 504 of the Rehabilitation Act of 1973,
14 29 U.S.C. Sec. 794, and the age discrimination act of 1975, 42 U.S.C.
15 Sec. 6101-6107;

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

18 (f) Specific plans and timelines for incorporating environmental
19 justice considerations into agency activities as required under this
20 chapter.

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

24 NEW SECTION. **Sec. 13.** **EQUITABLE COMMUNITY ENGAGEMENT AND PUBLIC**
25 **PARTICIPATION.** (1) By July 1, 2022, each covered agency must create
26 and adopt a community engagement plan that describes how it will
27 engage with overburdened communities and vulnerable populations as it
28 evaluates new and existing activities and programs. This plan must
29 describe how the agency plans to facilitate equitable participation
30 and support meaningful and direct involvement of vulnerable
31 populations and overburdened communities. The plan must include:

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

34 (b) Best practices for outreach and communication to overcome
35 barriers to engagement with overburdened communities and vulnerable
36 populations;

37 (c) Use of special screening tools that integrate environmental,
38 demographic, and health disparities data, such as the environmental
39 health disparities map, to evaluate and understand the nature and

1 needs of the people who the agency expects to be impacted by
2 significant agency actions under section 14 of this act and processes
3 under section 16 of this act to overcome barriers to participation;

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

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

10 (2) Covered agencies must regularly review their compliance with
11 existing laws and policies that guide community engagement and must
12 comply with the following:

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

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

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

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

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

27 NEW SECTION. **Sec. 14.** ENVIRONMENTAL JUSTICE ASSESSMENT. (1)
28 When considering a significant agency action initiated after July 1,
29 2023, a covered agency must conduct an environmental justice
30 assessment in accordance with this section to inform and support the
31 agency's consideration of overburdened communities and vulnerable
32 populations when making decisions and to assist the agency with the
33 equitable distribution of environmental benefits, the reduction of
34 environmental harms, and the identification and reduction of
35 environmental and health disparities.

36 (2)(a) Consistent with section 2(11)(f) of this act, for the
37 purpose of preparing environmental justice assessments, a covered
38 agency may deem actions significant that are additional to the
39 significant agency actions identified in section 2(11) (a) through

1 (e) of this act, in iterative consultation with the council and
2 interagency work group established under section 20 of this act. By
3 July 1, 2025, each covered agency must consider their agency's
4 activities and identify and begin applying environmental justice
5 assessments to any actions that the agency identifies as significant
6 that are in addition to the significant agency actions identified in
7 section 2(11) (a) through (e) of this act. Significant agency actions
8 designated by a covered agency under this subsection must be actions
9 that may cause environmental harm or may affect the equitable
10 distribution of environmental benefits to an overburdened community
11 or a vulnerable population.

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

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

23 (a) Publish on its website the types of agency actions that the
24 agency has determined are significant agency actions that require an
25 environmental justice assessment under this section, including any
26 significant agency actions identified under subsection (2)(a) of this
27 section;

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

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

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

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

38 (b) Use cumulative environmental health impact analysis, such as
39 the environmental health disparities map or other data that considers

1 the effects of a proposed action on overburdened communities and
2 vulnerable populations;

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

6 (d) Identify if the proposed action is expected to have any local
7 or regional impacts to federally reserved tribal rights and resources
8 including, but not limited to, those protected by treaty, executive
9 order, or federal law;

10 (e) Summarize community input and describe how the covered agency
11 can further involve overburdened communities, vulnerable populations,
12 affected tribes, and indigenous populations in development of the
13 proposed action; and

14 (f) Describe options and, where practicable, related cost
15 projections for the agency to reduce, mitigate, or eliminate
16 identified probable impacts on overburdened communities and
17 vulnerable populations, or provide a justification for not reducing,
18 mitigating, or eliminating identified probable impacts.

19 (5) To obtain information for the purposes of assessments, a
20 covered agency must solicit feedback from members of overburdened
21 communities and vulnerable populations to assist in the accurate
22 assessment of the potential impact of the action and in developing
23 the means to reduce or eliminate the impact on overburdened
24 communities and vulnerable populations.

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

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

36 (b) Reducing cumulative environmental health impacts on
37 overburdened communities or vulnerable populations;

38 (c) Preventing the action from adding to the cumulative
39 environmental health impacts on overburdened communities or
40 vulnerable populations;

1 (d) Providing equitable participation and meaningful engagement
2 of vulnerable populations and overburdened communities in the
3 development of the significant agency action;

4 (e) Prioritizing equitable distribution of resources and benefits
5 to overburdened communities;

6 (f) Promoting positive workforce and job outcomes for
7 overburdened communities;

8 (g) Meeting community needs identified by the affected
9 overburdened community;

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

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

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

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

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

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

34 NEW SECTION. **Sec. 16.** ENVIRONMENTAL JUSTICE OBLIGATIONS OF
35 AGENCIES RELATING TO BUDGETS AND FUNDING. (1) With consideration of
36 the guidelines issued by the council in section 20 of this act, and
37 in iterative consultation with the council, each covered agency must
38 incorporate environmental justice principles into its decision

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

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

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

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

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

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

29 (i) Community grants to monitor pollution;

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

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

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

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

1 (3) A covered agency may adopt rules or guidelines for criteria
2 and procedures applicable to incorporating environmental justice
3 principles in expenditure decisions under this section.

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

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

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

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

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

37 (b) By September 1st of each year beginning in 2024, each covered
38 agency must publish or update a dashboard report, in a uniform

1 dashboard format on the office of financial management's website,
2 describing the agency's progress on:

3 (i) Environmental justice in its strategic plan;

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

6 (iii) Its environmental justice assessments of proposed
7 significant agency actions.

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

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

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

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

34 ENVIRONMENTAL HEALTH DISPARITIES MAP. (1) In consultation with
35 the environmental justice council established in section 20 of this
36 act, the department must continue to develop and maintain an
37 environmental health disparities map with the most current available
38 information necessary to identify cumulative environmental health

1 impacts and overburdened communities. The department may also consult
2 with other interested partners, such as the University of Washington
3 department of environmental and occupational health sciences, other
4 academic partners, members of overburdened communities and vulnerable
5 populations, and other agencies. The environmental health disparities
6 map must include tools to:

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

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

12 (2) In further developing and maintaining the environmental
13 health disparities map, the department must solicit feedback by
14 representatives from overburdened communities and vulnerable
15 populations through community engagement and listening sessions in
16 all regions of the state and provide opportunities for public
17 comment.

18 (3) The department may request assistance from:

19 (a) The University of Washington;

20 (b) Other academic researchers to perform modeling and create
21 evidence-based indicators and with conducting sensitivity analyses to
22 assess the impact of new indicators on communities and determination
23 of an overburdened community; and

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

27 (4) The department must:

28 (a) Document and publish a summary of the regular updates and
29 revisions to the environmental health disparities map that happen
30 over time as the new data becomes available, in order to help the
31 public understand different versions of the map as they are
32 published;

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

38 (c) Develop technical guidance for agencies that includes an
39 online training video detailing a description of how to use the

1 environmental health disparities map's features, access source data,
2 and explanation of map and indicator limitations; and

3 (d) Provide support and consultation to agencies on the use of
4 the environmental health disparities map by Washington tracking
5 network staff.

6 NEW SECTION. **Sec. 20.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The
7 environmental justice council is established to advise covered
8 agencies on incorporating environmental justice into agency
9 activities.

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

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

23 (i) The youth representative must be between the ages of 18 and
24 25 at the time of appointment;

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

30 (b) Two members representing tribal communities, one from eastern
31 Washington and one from western Washington, appointed by the
32 governor. The governor shall solicit and consider nominees from each
33 of the federally recognized tribes in Washington state. The governor
34 shall collaborate with federally recognized tribes on the selection
35 of tribal representatives. The tribal representatives serve four-year
36 terms. One representative must be initially appointed for a four-year
37 term. The other representative must be initially appointed for a two-
38 year term, after which, that representative must be appointed for a
39 four-year term;

1 (c) Two representatives who are environmental justice
2 practitioners or academics to serve as environmental justice experts,
3 the nominations of which are based upon applied and demonstrated work
4 and focus on environmental justice; and

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

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

12 (4) Nongovernmental members of the council must be compensated
13 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and
14 43.03.220.

15 (5) The department of health must:

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

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

19 (6) In collaboration with the office of equity, the office of
20 financial management, the council, and covered agencies, the
21 department of health must:

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

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

27 (i) Using outcome-based methodology to determine the
28 effectiveness of agency programs and services on reducing
29 environmental disparities; and

30 (ii) Taking into consideration community feedback from the
31 council on whether the performance measures established accurately
32 measure the effectiveness of covered agency programs and services in
33 the communities served; and

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

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

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

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

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

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

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

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

18 (i) Providing technical assistance to support agency compliance
19 with the implementation of environmental justice into their strategic
20 plans, environmental justice obligations for budgeting and funding
21 criteria and decisions, environmental justice assessments, and
22 community engagement plans;

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

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

29 (iv) Identifying goals and metrics that the council may use to
30 assess agency performance in meeting the requirements of this act for
31 purposes of communicating progress to the public, the governor, and
32 the legislature; and

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

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

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

37 (i) Provide written or oral testimony on their environmental
38 justice concerns;

1 (ii) Assist the council in understanding environmental justice
2 priorities across the state in order to develop council
3 recommendations to agencies for issues to prioritize; and

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

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

13 (ii) The council and interagency work group shall regularly
14 update its guidance;

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

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

19 (ii) Shall make recommendations to covered agencies on which
20 agency actions may cause environmental harm or may affect the
21 equitable distribution of environmental benefits to an overburdened
22 community or a vulnerable population and therefore should be
23 considered significant agency actions that require an environmental
24 justice assessment under section 14 of this act;

25 (iii) Shall make recommendations to covered agencies on the
26 identification and prioritization of overburdened communities under
27 this chapter, and related to the use by covered agencies of the
28 environmental and health disparities map in agency efforts to
29 identify and prioritize overburdened communities;

30 (iv) May make recommendations to a covered agency on the timing
31 and sequencing of a covered agencies' efforts to implement sections
32 12 through 16 of this act; and

33 (v) May make recommendations to the governor and the legislature
34 regarding ways to improve agency compliance with the requirements of
35 this chapter;

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

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

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

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

13 (a) The council's recommendations to covered agencies on the
14 identification of significant agency actions requiring an
15 environmental justice assessment under subsection (9)(c)(ii) of this
16 section;

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

21 (c) Guidance for environmental justice implementation into
22 covered agency strategic plans, environmental justice assessments,
23 budgeting and funding criteria, and community engagement plans under
24 subsection (9)(c)(i) of this section.

25 (11) The council may:

26 (a) Review incorporation of environmental justice implementation
27 plans into covered agency strategic plans pursuant to section 12 of
28 this act, environmental justice assessments pursuant to section 14 of
29 this act, budgeting and funding criteria for making budgeting and
30 funding decisions pursuant to section 16 of this act, and community
31 engagement plans pursuant to section 13 of this act;

32 (b) Make recommendations for amendments to this chapter or other
33 legislation to promote and achieve the environmental justice goals of
34 the state;

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

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

1 (e) Recommend funding strategies and allocations to build
2 capacity in vulnerable populations and overburdened communities to
3 address environmental justice.

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

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

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

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

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

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

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

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

27 (i) Federal law or federal program requirements;

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

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

33 NEW SECTION. **Sec. 22.** APPEALS. (1) Agency actions, as defined
34 in chapter 34.05 RCW, that are subject to or result from the
35 requirements of this chapter may be appealed as provided in chapter
36 34.05 RCW.

37 (2) Appeals of significant agency actions under this chapter must
38 be of the environmental justice assessment together with the

1 accompanying agency action, as defined in RCW 34.05.010, for all
2 environmental justice assessments for which there is an associated
3 agency action that is appealable under chapter 34.05 RCW.

4 (3) Nothing in this act may be construed to create a new private
5 right of action, other than as provided in the appeal process set
6 forth in chapter 34.05 RCW, on the part of any individual, entity, or
7 agency against any state agency.

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

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

14 In establishing a government-to-government relationship with
15 Indian tribes, state agencies must:

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

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

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

31 (4) Submit an annual report to the governor on activities of the
32 state agency involving Indian tribes and on implementation of this
33 chapter.

34 NEW SECTION. **Sec. 24.** Sections 1 through 3, 11 through 18, and
35 20 through 22 of this act constitute a new chapter in Title 70A RCW.

36 NEW SECTION. **Sec. 25.** If any provision of this act or its
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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

12 Correct the title.

EFFECT: Makes the following changes to the Engrossed Second Substitute Bill (as passed by the Senate):

Covered Agencies.

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

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

Planning and General Obligations of Covered Agencies.

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

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

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

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

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

Significant Agency Actions and Environmental Justice Assessments.

Narrows the definition of "significant agency actions" for which covered agencies must conduct an environmental justice assessment to the following five categories and to apply only in those instances when an action may cause environmental harm or may affect equitable distribution of benefits: (1) Significant legislative rules; (2) new statutory grant or loan program development and adoption; (3) transportation projects that increase state transportation system capacity; (4) major capital of at least \$5 million; and (5) the submission of agency request legislation to the office of the governor or the office of financial management for approval.

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

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

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

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

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

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

Requires covered agencies to file a notice with the office of financial management for significant agency actions for which the agency is initiating an environmental justice assessment, and for the office of financial management to post covered agency filings on its website and make it available to interested parties.

Budget and Expenditure Obligations of Covered Agencies.

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

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

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

Authorizes covered agencies to determine that it is not practicable to take specified actions to integrate environmental

justice principles into expenditure decisions or budget requests for all applicable expenditure decisions and budget requests developed by a covered agency. Requires each covered agency, by July 1, 2023, to publish on its website the types of decision processes for budget development, making expenditures, and granting or withholding environmental benefits that will be subject to specified actions to integrate environmental justice principles into expenditure decisions.

Environmental Justice Council.

Eliminates senate confirmation of environmental justice council members.

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

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

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

Indian Tribe Consultation.

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

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

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

Other.

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

Specifies that the Act does not create a new private right of action other than the APA appeal process.

Specifies that appeals of significant agency actions must be of the environmental justice assessment together with the accompanying agency action that is appealable under the APA, for agency actions that are appealable under the APA.

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

Adds a federal funding savings clause.

Amends the intent section.

Makes numerous other clarifying and technical edits.

--- END ---