

By Representative Fitzgibbon

**E2SSB 5141** - H COMM AMD

By Committee on Environment & Energy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (11) "Significant agency action" means:

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

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

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

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

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

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

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

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

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

23 (i) Racial or ethnic minorities;

24 (ii) Low-income populations;

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

27 (iv) Populations of workers experiencing environmental harms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (i) Community grants to monitor pollution;

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

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

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

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

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

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

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

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

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

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

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

19 (i) Environmental justice in its strategic plan;

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

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

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

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

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

2 RCW to read as follows:

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

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

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

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

25 (3) The department may request assistance from:

26 (a) The University of Washington;

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

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

34 (4) The department must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (5) The department of health must:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (11) The council may:

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (i) Federal law or federal program requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

10        Correct the title.

**EFFECT: Covered Agencies.**

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

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

**Planning and General Obligations of Covered Agencies.**

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

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

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

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

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

**Significant Agency Actions and Environmental Justice Assessments.**

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

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

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

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

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

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

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

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

#### **Budget and Expenditure Obligations of Covered Agencies.**

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

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

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

#### **Environmental Justice Council.**

Eliminates senate confirmation of environmental justice council members.

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

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

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

#### **Indian Tribe Consultation.**

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

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

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

**Other.**

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

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

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

Adds a federal funding savings clause.

Amends the intent section.

Makes numerous other clarifying and technical edits.

--- END ---