By Representative Fitzgibbon

E2SSB 5141 - H COMM AMD
By Committee on Environment & Energy

Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

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

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

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

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

(4) "Environmental benefits" means activities that:

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

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

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

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

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

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

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

(d) Health and economic impacts from climate change.

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

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

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

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

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

(11) "Significant agency action" means:

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

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

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

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

(e) The development of agency request legislation; and

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

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

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

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

(i) Racial or ethnic minorities;

(ii) Low-income populations;

(iii) Populations disproportionately impacted by environmental harms; and

(iv) Populations of workers experiencing environmental harms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Modifying substantive regulatory or policy requirements; and

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

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

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

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

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

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

distribute funding and expenditures towards overburdened communities and vulnerable populations.

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

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

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

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

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

(i) Community grants to monitor pollution;

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

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

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

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

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

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

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

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

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

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

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

(i) Environmental justice in its strategic plan;

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

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

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

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

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

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

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

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

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

(3) The department may request assistance from:

(a) The University of Washington;

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

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

(4) The department must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The department of health must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Shall provide guidance to covered agencies on developing environmental assessments for the following significant agency actions: The development and adoption of any agency grant or loan program, rule making, major capital projects, and agency request legislation;

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

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

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

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

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

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

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

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

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

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

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

(11) The council may:

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Federal law or federal program requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

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 ---