
SUBSTITUTE HOUSE BILL 2070

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68th Legislature

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By House Environment & Energy (originally sponsored by Representatives Mena, Pollet, Fitzgibbon, Berry, Simmons, Reed, Ormsby, Ramel, Fey, Street, Slatter, Ortiz-Self, Alvarado, Doglio, Cortes, Riccelli, Santos, Reeves, and Macri)

READ FIRST TIME 01/31/24.

1 AN ACT Relating to integrating environmental justice
2 considerations into certain project decisions; adding new sections to
3 chapter 43.21C RCW; and creating a new section.

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

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

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

10 The definitions in this section apply throughout sections 3
11 through 6 of this act unless the context clearly requires otherwise.

12 (1) "Adverse cumulative stressors" means that the combined
13 stressor total of the pollution burdened community is higher than the
14 pollution burdened community's geographic point of comparison or
15 would be made higher than the pollution burdened community's
16 geographic point of comparison as a result of a potentially impactful
17 project's contribution.

18 (2) "Adverse environmental and public health stressor" means a
19 stressor in the pollution burdened community that is higher than a
20 pollution burdened community's geographic point of comparison or

1 would be made higher than a pollution burdened community's geographic
2 point of comparison as a result of a potentially impactful project's
3 contribution.

4 (3) "Change in use" means a change in the type of operation of an
5 existing potentially impactful project that significantly increases
6 the potentially impactful project's contribution to any environmental
7 and public health stressor in a pollution burdened community.

8 (4) "Combined stressor total" means the sum of adverse
9 environmental and public health stressors in a pollution burdened
10 community.

11 (5) (a) "Compelling public interest" means a demonstration by a
12 proponent of a proposed new potentially impactful project that the
13 potentially impactful project primarily serves an essential
14 environmental, health, or safety need of the individuals in a
15 pollution burdened community, is necessary to serve the essential
16 environmental health or safety need, and that there are no other
17 means reasonably available to meet the essential environmental,
18 health, or safety need.

19 (b) "Compelling public interest" does not include consideration
20 of the economic benefits of a proposed new potentially impactful
21 project or the expansion of an existing potentially impactful
22 project.

23 (6) (a) "Disproportionate impact" means the potentially impactful
24 project cannot avoid either:

25 (i) Creating adverse cumulative stressors in a pollution burdened
26 community as a result of the potentially impactful project's
27 contribution; or

28 (ii) Contributing to an adverse environmental and public health
29 stressor in a pollution burdened community that is already subject to
30 adverse cumulative stressors.

31 (b) A potentially impactful project located either in whole or in
32 part in a pollution burdened community is capable of having a
33 disproportionate impact on that community.

34 (7) "Environmental justice impact statement" means a systematic,
35 interdisciplinary, and integrated assessment of environmental and
36 public health conditions in a pollution burdened community that
37 identifies and analyzes:

38 (a) Existing environmental and public health stressors;

39 (b) Any adverse environmental and public health stressors;

40 (c) The presence or absence of adverse cumulative stressors;

- 1 (d) Potential environmental and public health stressors
2 associated with a potentially impactful project;
- 3 (e) Whether the potentially impactful project can avoid causing
4 or contributing to a disproportionate impact;
- 5 (f) Alternative locations where the potentially impactful project
6 could be located;
- 7 (g) The measures the potentially impactful project proposes to
8 implement to avoid or mitigate causing or contributing to any
9 disproportionate impact; and
- 10 (h) Where applicable, how the new potentially impactful project
11 serves a compelling public interest in a pollution burdened
12 community.
- 13 (8) "Environmental or public health stressors" means sources of
14 environmental pollution or conditions that may cause potential public
15 health impacts such as, but not limited to, asthma, cancer, elevated
16 blood lead levels, cardiovascular disease, developmental problems,
17 and low birth weight in the overburdened communities, including, but
18 not limited to:
- 19 (a) Concentrated areas of air pollution and mobile sources of air
20 pollution:
- 21 (i) Criteria pollutants including particulate matter 2.5 (PM
22 2.5), particulate matter 10 (PM 10), sulfur dioxide (SO₂), nitrogen
23 dioxide (Nox), lead, carbon dioxide (CO), and ozone;
- 24 (ii) Wildfire smoke;
- 25 (iii) Ozone concentration;
- 26 (iv) Diesel exhaust PM_{2.5} emissions;
- 27 (v) Cancer risk from air toxics excluding diesel particulate
28 matter;
- 29 (vi) Noncancer risk from air toxics;
- 30 (vii) Hazardous air pollutants;
- 31 (viii) Toxic releases from facilities into air; and
- 32 (ix) Proximity to heavy traffic roadways;
- 33 (b) Water pollution:
- 34 (i) Drinking water quality;
- 35 (ii) Marine water quality;
- 36 (iii) Fish and shellfish health advisories;
- 37 (iv) Wastewater discharge;
- 38 (v) Surface water quality;
- 39 (vi) Groundwater quality; and
- 40 (vii) Combined sewer overflows;

1 (c) Environmental hazards in communities or contaminated sites:
2 (i) Railways, airports, or ports;
3 (ii) Lead risk from housing;
4 (iii) Use of leaded fuels;
5 (iv) Density of or proximity to known contaminated sites and
6 clean-up sites:
7 (A) Hazardous waste treatment, storage, and disposal sites;
8 (B) Superfund sites;
9 (C) Risk management plan sites;
10 (D) Confirmed and suspected contaminated sites; and
11 (E) Formerly used defense sites; and
12 (v) Environmental covenants registry; and
13 (d) Social determinants of health:
14 (i) Unemployment;
15 (ii) Educational attainment;
16 (iii) People living in poverty;
17 (iv) Percent of children eligible for free or reduced-priced
18 lunch; and
19 (v) Limited English-speaking households.
20 (9) "Existing potentially impactful project" means a potentially
21 impactful project, or any portion thereof, which, as of the effective
22 date of this section, possesses a valid approved registration or
23 permit from a lead agency for its operation or construction and is in
24 operation.
25 (10)(a) "Expansion" means a modification or expansion of an
26 existing potentially impactful project's operations or footprint
27 where the development could increase any environmental and public
28 health stressor in a pollution burdened community.
29 (b) "Expansion" does not include any activity that decreases or
30 does not otherwise result in an increase in stressor contributions.
31 (11) "Geographic point of comparison" means the comparison area
32 and value used to determine whether a pollution burdened community is
33 subject to one or more adverse environmental and public health
34 stressors. A geographic point of comparison is determined by
35 selecting the lower value of the 50th percentile of the state or
36 county in which the pollution burdened community is located,
37 calculated excluding the values of other pollution burdened
38 communities.
39 (12) "Net environmental benefit" means a reduction of baseline
40 environmental and public health stressors in a pollution burdened

1 community or other action that improves environmental or public
2 health stressors in a pollution burdened community, as determined by
3 the lead agency.

4 (13) "New potentially impactful project" means any potentially
5 impactful project for which review under this chapter has not been
6 initiated as of the effective date of this section or a change in use
7 of an existing potentially impactful project. For the purposes of
8 this chapter, an existing potentially impactful project that has
9 operated without a valid approved registration or permit required by
10 the department of ecology prior to the effective date of this section
11 must be considered a new potentially impactful project.

12 (14) "Pollution burdened community" means a community:

13 (a) Ranked as a seven or higher on the environmental health
14 disparities map developed under RCW 43.70.815;

15 (b) Identified as disadvantaged using the climate and economic
16 justice screening tool developed by the United States council on
17 environmental quality, as that tool existed as of January 1, 2024; or

18 (c) Identified as disadvantaged, or an analogous designation,
19 using a successor to the climate and economic justice screening tool
20 developed by the United States council on environmental quality, if
21 adopted by rule by the department of ecology under section 7(3) of
22 this act.

23 (15)(a) Except as provided in (b) of this subsection,
24 "potentially impactful project" means projects that are:

25 (i) A major source of air pollution regulated and required to
26 obtain an operating permit under chapter 70A.15 RCW;

27 (ii) A source regulated and required to obtain a notice of
28 construction permit under chapter 70A.15 RCW;

29 (iii) A source regulated and required to obtain a prevention of
30 significant deterioration permit under chapter 70A.15 RCW;

31 (iv) A source regulated and required to obtain a general order
32 permit under chapter 70A.15 RCW;

33 (v) A significant source of air pollution from transportation
34 impacts associated with the project;

35 (vi) An incinerator, as defined in RCW 70A.216.010;

36 (vii) A processing facility, combustor, or incinerator of
37 municipal sewage sludge, as defined in RCW 70A.226.010;

38 (viii) A sewage treatment plant;

1 (ix) A transfer station, landfill, scrap metal facility, or other
2 solid waste facility required to obtain a solid waste handling permit
3 under chapter 70A.205 RCW;

4 (x) A medical waste incinerator; or

5 (xi) A project covered by a permit under chapter 90.48 RCW other
6 than:

7 (A) A construction general permit;

8 (B) An industrial stormwater general permit;

9 (C) A municipal stormwater general permit;

10 (D) A fresh fruit packing general permit;

11 (E) A boatyard general permit;

12 (F) An environmental protection agency vessel general permit;

13 (G) A winery general permit; and

14 (H) A bridge and ferry terminal washing permit.

15 (b) "Potentially impactful project" does not include:

16 (i) A clean energy project, as that term is defined in RCW
17 43.158.010;

18 (ii) Projects related to facilities with North American industry
19 classification system code 92811 (national security) or similar
20 national security facilities administered by the United States
21 government;

22 (iii) Fish hatchery projects;

23 (iv) Nonproject actions of a lead agency;

24 (v) Department of transportation projects of less than
25 \$15,000,000; or

26 (vi) Project actions that propose to develop residential housing
27 units only, such as affordable housing projects.

28 (16) "Renewal" means the continuation of existing permitted
29 operations at a major facility without change. A lead agency must
30 treat as a renewal all modifications or changes of operations that
31 decrease or do not otherwise increase a facility's contributions to
32 stressors.

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

35 (1) As a supplemental component of the analysis required under
36 RCW 43.21C.030 for any proposed action associated with a new or
37 expanding potentially impactful project or the renewal of an existing
38 potentially impactful project's permit located or proposed to be
39 located in whole or in part in a pollution burdened community, a lead

1 agency must complete an environmental justice impact statement
2 consistent with the requirements of this section. This section
3 applies only to proposed actions associated with a new potentially
4 impactful project, expansion of an existing potentially impactful
5 project, or renewal of an existing potentially impactful project's
6 permit for which review under this chapter had not been initiated as
7 of the effective date of this section and is completed on or after
8 January 1, 2027.

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

11 (a) The potential environmental and public health stressors
12 associated with the proposed new or expanding potentially impactful
13 project, or with the existing potentially impactful project, as
14 applicable;

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

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

20 (3)(a) The lead agency must complete the environmental justice
21 impact statement at or before the time that a proposed action
22 receives a determination of significance, a determination of
23 nonsignificance, or a determination of mitigated nonsignificance. The
24 lead agency must complete the environmental justice impact statement
25 if a proposed action may cause a disproportionate impact on an
26 overburdened community and without regard to the type of threshold
27 determination under this chapter that the project receives related to
28 the environmental impacts of the proposed action other than its
29 environmental justice impacts.

30 (b) Upon completion of the environmental justice impact
31 statement, the lead agency must transmit the environmental justice
32 impact statement to the office of financial management, and the
33 office of financial management must publish the environmental justice
34 impact statement on the website established under RCW 70A.02.090. The
35 office of financial management's website list of environmental
36 justice impact statements must include a brief description of the
37 agency action undergoing review under this section, a brief summary
38 of the findings of the environmental justice impact statement, and
39 the methods for providing public comment under subsection (4) of this
40 section for lead agency consideration as part of the environmental

1 justice impact assessment. The environmental justice impact statement
2 must be published by the office of financial management at least 30
3 days in advance of the public hearing required under subsection (4)
4 of this section, and must be published in a manner that meets
5 community engagement rules adopted by the department of ecology that
6 apply: (i) Best practices for outreach and communication to overcome
7 barriers to engagement with highly impacted communities; (ii)
8 processes that facilitate and support the inclusion of members of
9 communities affected by agency decision making; and (iii) methods for
10 outreach and communication with those who face barriers, language or
11 otherwise, to participation.

12 (4) (a) No sooner than 60 days after the publication by the office
13 of financial management of the environmental justice impact statement
14 under subsection (3) of this section, the lead agency must organize
15 and conduct a public hearing in the pollution burdened community on
16 the environmental justice impact statement. This hearing may be held
17 coincident with other hearings required under this chapter or under
18 other applicable laws, but only if the minimum public notice and
19 community engagement requirements of this section and any similar
20 requirements applicable to the coincident hearing are individually
21 met. The notice of the public hearing published by the lead agency
22 and the office of financial management must be mailed to each
23 residence located in the pollution burdened community to notify
24 residents that their residence is located in a pollution burdened
25 community and must include the date, time, and location of the public
26 hearing, a description of the proposed potentially impactful project,
27 a brief summary of the environmental justice impact statement
28 including a listing of all potential environmental and health
29 stressors associated with the project, information on how an
30 interested person may review a copy of the complete environmental
31 justice impact statement, and information regarding the opportunities
32 for public comment to the lead agency on the environmental justice
33 impact assessment. The lead agency may also provide notice through
34 other methods identified by the agency to ensure direct and adequate
35 notice to individuals in the overburdened community including, but
36 not limited to, providing information directly to active community
37 groups or organizations, automated phone, voice, or electronic
38 notice, flyers, and utilization of other publications utilized within
39 the overburdened community.

1 (b) At the public hearing required in this section, the lead
2 agency must provide clear, accurate, and complete information about
3 the proposed potentially impactful project. A lead agency must
4 require participation in the hearing by the project proponent for the
5 potentially impactful project or other proponent of government action
6 related to the potentially impactful project that is the subject of
7 the environmental justice impact assessment.

8 (c) The lead agency must accept written and oral comments from
9 any interested party at the public hearing, transcribe and make
10 publicly available any oral comments given during the public hearing
11 within a reasonable period of time after the public hearing, and
12 provide an opportunity for meaningful public participation at the
13 public hearing.

14 (5) At least 45 days subsequent to both the publication of the
15 environmental justice impact statement and public hearing under this
16 section, and taking into consideration both the environmental justice
17 impact statement and the testimony and written comments from the
18 public hearing under this section, a lead agency must:

19 (a) Deny, consistent with RCW 43.21C.060, an action associated
20 with a new potentially impactful project or the expansion of an
21 existing potentially impactful project in a pollution burdened
22 community upon finding that the government action would, together
23 with other environmental or public health stressors affecting the
24 pollution burdened community, cause or contribute to adverse
25 cumulative environmental or public health stressors in the pollution
26 burdened community that are higher than those borne by other
27 communities in the geographic point of comparison, unless the
28 potentially impactful project or expansion would serve a compelling
29 public interest;

30 (b) Mitigate, consistent with RCW 43.21C.060, an action
31 associated with a new potentially impactful project or the expansion
32 of an existing potentially impactful project in a pollution burdened
33 community upon finding that the government action would, together
34 with other environmental harms affecting the pollution burdened
35 community, cause or contribute to environmental harms in the
36 pollution burdened community that are higher than those borne by
37 other communities in the geographic point of comparison, if the lead
38 agency determines that the new potentially impactful project will
39 serve a compelling public interest in the community where it is to be
40 located; and

1 (c) Mitigate, consistent with RCW 43.21C.060, an action
2 associated with the renewal of a permit to an existing potentially
3 impactful project in a pollution burdened community upon finding that
4 the government action would, together with other environmental harms
5 affecting the pollution burdened community, cause or contribute to
6 environmental harms in the pollution burdened community that are
7 higher than those borne by other communities in the geographic point
8 of comparison.

9 (6) The lead agency may not exercise its authority in subsection
10 (5) of this section in a manner that would compromise the reasonable
11 requirements of public health, safety, and welfare to the environment
12 in the pollution burdened community.

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

15 (1)(a) Where the pollution burdened community is not subject to
16 adverse cumulative stressors and the lead agency demonstrates,
17 through an analysis of the potentially impactful project's
18 contributions to the existing environmental and public health
19 stressors in the pollution burdened community, that the potentially
20 impactful project will avoid causing a disproportionate impact that
21 would occur by creating adverse cumulative stressors as a result of
22 the potentially impactful project's contribution, only the
23 information pursuant to subsection (2) of this section is required to
24 be included in an environmental justice impact statement.

25 (b) Where the potentially impactful project cannot avoid a
26 disproportionate impact that would occur by creating adverse
27 cumulative stressors as a result of the potentially impactful
28 project's contribution, the lead agency shall include information
29 required pursuant to both subsections (2) and (3) of this section,
30 including analyzing and proposing feasible measures to, as
31 applicable, avoid or minimize contributions to environmental and
32 public health stressors, provide a net environmental benefit and,
33 where appropriate, demonstrate how the potentially impactful project
34 serves a compelling public interest in the pollution burdened
35 community.

36 (c) Where the pollution burdened community is subject to adverse
37 cumulative stressors, the lead agency shall include information
38 required pursuant to both subsections (2) and (3) of this section.

1 (d) A lead agency that is required to provide the information
2 under subsection (3) of this section must determine whether the
3 potentially impactful project can, as applicable, first avoid a
4 disproportionate impact or, where a disproportionate impact will
5 occur, address its contributions to environmental and public health
6 stressors in the pollution burdened community.

7 (2) In its environmental justice impact statement, a lead agency
8 reviewing a potentially impactful project located, or proposed to be
9 located, in whole or in part, in a pollution burdened community must
10 require information from the proponent of the proposed action as
11 necessary, and include:

12 (a) An executive summary of the information contained in the
13 environmental justice impact statement, including any supplemental
14 information as required in subsection (3) of this section;

15 (b) A detailed written description of the municipal and
16 neighborhood setting of the potentially impactful project, including
17 the location of community and residential dwellings, hospitals,
18 nursing homes, playgrounds, parks, schools, and comprehensive
19 demographic and economic zoning. The site location must also be
20 identified by a site plan of the potentially impactful project or
21 equivalent map if no site plan exists;

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

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

28 (ii) Identification of all processes to be used, including
29 pollution or environmental control measures and monitoring
30 instrumentation, hours of operation, on-site equipment, traffic
31 routes, number of employees, and all other information relevant to
32 the potential for the new potentially impactful project to contribute
33 to environmental and public health stressors in the pollution
34 burdened community; and

35 (iii) For new or expanded facilities, a schedule for the
36 construction and operation including anticipated completion dates for
37 major phases of construction, any pollution or environmental control
38 measures and monitoring instrumentation, hours of operation, on-site
39 equipment, traffic routes, number of employees, and all other
40 information relevant to the potential for the construction to

1 contribute to environmental and public health stressors in the
2 pollution burdened community;

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

6 (e)(i) A listing of the existing environmental and public health
7 stressors in the pollution burdened community and an indication of
8 the appropriate geographic point of comparison for each stressor by
9 selecting the lower of the 50th percentile of the state or county's
10 equivalent stressor, excluding other pollution burdened communities
11 from the comparison;

12 (ii) An indication of which environmental and public health
13 stressors are considered adverse by comparing the value of each
14 stressor in the pollution burdened community with the appropriate
15 geographic point of comparison;

16 (iii) A combined stressor total value to be calculated by summing
17 the number of adverse environmental and public health stressors in
18 the pollution burdened community. The lead agency shall indicate the
19 appropriate geographic point of comparison for the combined stressor
20 total by selecting the lower of the 50th percentile of the state or
21 county's combined stressor totals excluding the combined stressor
22 totals of other pollution burdened communities from the comparison;

23 (iv) A determination of whether the pollution burdened community
24 is subject to stressors by comparing the combined stressor total to
25 the appropriate geographic point of comparison. If the potentially
26 impactful project is located, or proposed to be located, in whole or
27 in part, in more than one pollution burdened community, the lead
28 agency will apply the higher combined stressor total of the
29 overburdened communities for the purposes of this analysis;

30 (f) An assessment of the impacts, both positive and negative, of
31 the potentially impactful project on each environmental and public
32 health stressor in the pollution burdened community identified as
33 affected under conditions of maximum usage or output, and a
34 correlation of such impacts with various stages of the site
35 preparation, and potentially impactful project construction and
36 operation, including the amounts, concentrations, and pathways of any
37 contaminants or pollution that will be associated with the
38 potentially impactful project;

39 (g) A public participation plan that, at a minimum, satisfies the
40 requirements of section 2 of this act, including all proposed forms

1 and methods of notice to the members of the pollution burdened
2 community and the proposed hearing location;

3 (h) A demonstration, including any necessary operational
4 conditions and control measures, that the potentially impactful
5 project will avoid a disproportionate impact that would occur by
6 creating adverse cumulative stressors in the pollution burdened
7 community as a result of the potentially impactful project's
8 contribution. If the project proponent cannot make such a
9 demonstration, then it is presumed that a disproportionate impact is
10 present and the project proponent shall include the information
11 required in subsection (3) of this section; and

12 (i) As applicable, how a proposed new potentially impactful
13 project will serve a compelling public interest in the pollution
14 burdened community.

15 (3) If the lead agency determines a potentially impactful project
16 is located, or proposed to be located, in whole or in part, in a
17 pollution burdened community that is subject to adverse cumulative
18 stressors or the project proponent cannot demonstrate that it will
19 avoid a disproportionate impact that would occur by creating adverse
20 cumulative stressors in the pollution burdened community as a result
21 of the potentially impactful project's contribution, a project
22 proponent shall provide to the lead agency, to the extent requested
23 by the lead agency, information sufficient for the lead agency to
24 include the following in the environmental justice impact statement:

25 (a) A site mapping showing:

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

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

31 (iii) All existing water classifications, designated uses, and
32 limitations of the surface water bodies that are immediately adjacent
33 to the site, exist on the site, or drain directly onto or off the
34 site, upstream tributaries of bodies of water that flow onto the
35 site, and downstream tributaries of bodies of water which flow from
36 the site; and

37 (iv) Any existing on-site public scenic attributes or outdoor
38 recreation and conservation opportunities in the pollution burdened
39 community, such as any federal, state, county, or municipal parks,
40 forests, wildlife management areas and natural areas, any areas

1 acquired for recreation and conservation purposes, any lands
2 preserved as open space by a nonprofit conservation organization, or
3 other public access features;

4 (b) Information pertaining to the existence or absence of
5 contamination on site, which may include the existence of known or
6 suspected contaminants, historical uses of the site, and any
7 remediation activities that have occurred on the site;

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

14 (d) A description of the subsurface hydrology that presents
15 groundwater quantity and quality data for the aquifers located
16 beneath the site including, but not limited to, depth to groundwater
17 during seasonal high and low flow, flow direction, existing uses, and
18 future supply capabilities. In addition, a description of the soils
19 that identifies major soil types and their characteristics including,
20 but not limited to, drainage, erosion potential, and sedimentation
21 potential;

22 (e) A description of the localized climate and flooding impacts
23 through the presentation of site-specific data for average annual and
24 monthly precipitation, flooding, and temperature. Meteorological data
25 may be obtained from the nearest national oceanographic and
26 atmospheric administration sanctioned station. At a minimum, the
27 description must use data and tools from the department of health's
28 Washington tracking network, which must be referenced in the prepared
29 document, and address:

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

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

35 (iii) Proposed resilience measures; and

36 (iv) A list of measures to mitigate risks from flooding and
37 inundation;

38 (f) A traffic study that describes the transportation routes that
39 will service the new potentially impactful project, site access
40 capability, and existing traffic flow patterns expressed in terms of

1 daily peak hour volumes, off peak hour volumes, levels of service,
2 and average daily round trips, and the potentially impactful
3 project's current and proposed contributions thereto for all vehicles
4 associated with the potentially impactful project's operations;

5 (g) A description of the sewage facilities that identifies the
6 type of treatment system available, existing treatment capacity,
7 collection system capacity, average and peak flow data, and current
8 committed capacity for the treatment and collection system;

9 (h) A description of the stormwater management system that
10 identifies the type of collection and treatment system available, and
11 current collection and treatment capacity and utilization, including
12 the presence or absence of combined sewer overflows;

13 (i) A description of the water supply that identifies the water
14 supply system, water sources, level and type of existing
15 pretreatment, capacity of the distribution system, current commitment
16 of capacity, availability of additional supply, and peak and average
17 demands;

18 (j) A description of the energy supply system on-site or
19 immediately available to the site by identifying existing power lines
20 or pipelines, current commitment of capacity, the capability of
21 supplying energy to the proposed potentially impactful project or
22 activity, and conveying, if applicable, any energy products generated
23 by the proposed potentially impactful project and activity from the
24 site. This analysis must include an evaluation of the feasibility of
25 the utilization of on-site or off-site renewable energy resources to
26 meet, fully or partially, the energy demand of the potentially
27 impactful project;

28 (k) For new or expanded facilities, a sufficiently detailed
29 comparison of reasonable design alternatives that would permit
30 independent and comparative evaluation, including siting changes or
31 process alternatives that could reduce some or all of the proposed
32 potentially impactful project's contributions to environmental and
33 public health stressors in the overburdened community, including:

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

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

1 (iii) A comparison, in matrix or other appropriate format, of
2 both the chosen alternative and the set of alternatives considered;
3 and

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

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

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

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

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

18 (m) An analysis and proposal of control measures to address the
19 potentially impactful project's contribution to environmental and
20 public health stressors in accordance with this section and section 5
21 of this act.

22 (4) A project proponent may elect to submit the information
23 specified in this section to a lead agency independent of whether the
24 potentially impactful project:

25 (a) Is located, or proposed to be located, in whole or in part,
26 in a pollution burdened community that is subject to adverse
27 cumulative stressors; or

28 (b) Cannot demonstrate that it will avoid a disproportionate
29 impact that would occur by creating adverse cumulative stressors in
30 the pollution burdened community as a result of the potentially
31 impactful project's contribution.

32 (5) Following the completion of the public participation process
33 detailed in section 2 of this act, the lead agency shall consider the
34 environmental justice impact statement, and any supplemental
35 information, testimony, written comments, the project proponent's
36 response to comments, and any other information deemed relevant by
37 the lead agency to determine whether the potentially impactful
38 project can avoid a disproportionate impact, determine whether to
39 deny or approve the proposed action, and evaluate whether and how to
40 impose conditions concerning the construction and operation of the

1 potentially impactful project to address its contributions to
2 environmental and public health stressors affecting the pollution
3 burdened community.

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

6 (1) A project proponent for a new potentially impactful project
7 or the expansion of an existing potentially impactful project that is
8 proposed to be located, in whole or in part, in a pollution burdened
9 community that is subject to adverse cumulative stressors shall
10 analyze and propose all control measures necessary to avoid
11 potentially impactful project contributions to all adverse
12 environmental and public health stressors in the pollution burdened
13 community. Where the control measures proposed by the project
14 proponent will prevent a disproportionate impact by avoiding the
15 potentially impactful project's contributions to all adverse
16 environmental and public health stressors in the overburdened
17 community, the lead agency may condition the proposed action
18 consistent with RCW 43.21C.060.

19 (2) Where the control measures proposed by the project proponent
20 cannot avoid a disproportionate impact, the lead agency shall deny
21 the proposed action pursuant to RCW 43.21C.060, unless the applicant
22 demonstrates that the proposed potentially impactful project will
23 serve a compelling public interest in the pollution burdened
24 community, in accordance with subsections (3) and (4) of this
25 section.

26 (3) (a) A proponent of a proposed action that seeks approval for a
27 proposed new potentially impactful project or the expansion of an
28 existing potentially impactful project that will serve a compelling
29 public interest in the pollution burdened community where it is to be
30 located must demonstrate that:

31 (i) The proposed new potentially impactful project will primarily
32 serve essential environmental, health, or safety needs of the
33 individuals in a pollution burdened community;

34 (ii) The proposed new potentially impactful project is necessary
35 to serve the essential environmental, health, or safety needs of the
36 individuals in a pollution burdened community; and

37 (iii) There are no reasonable alternatives that can be sited
38 outside the pollution burdened community to serve the essential

1 environmental, health, or safety needs of the individuals in the
2 pollution burdened community.

3 (b) Facilities that directly reduce adverse environmental and
4 public health stressors in the pollution burdened community may be
5 considered as serving an essential environmental, health, or safety
6 need of the individuals in an overburdened community.

7 (c) The lead agency may consider, as relevant, public input as to
8 whether a compelling public interest is demonstrated if there is a
9 significant degree of public interest in favor of or against an
10 application from individuals residing in the pollution burdened
11 community. In addition to any other public comment provided pursuant
12 to this chapter, the lead agency may seek input from the public
13 whenever it determines that such comments may clarify whether the
14 compelling public interest standard is met.

15 (4)(a) A proponent for a proposed new potentially impactful
16 project that seeks to demonstrate a compelling public interest, shall
17 propose control measures.

18 (b) For any aspects of a new potentially impactful project's
19 operations not addressed in (a) of this subsection, the project
20 proponent shall propose control measures in the following order:

21 (i) All feasible measures to avoid potentially impactful project
22 contributions to environmental and public health stressors;

23 (ii) For any contribution that cannot feasibly be avoided, all
24 feasible on-site measures to minimize potentially impactful project
25 contributions to environmental and public health stressors;

26 (iii) All feasible off-site measures within the overburdened
27 community to reduce environmental and public health stressors to
28 which the potentially impactful project will contribute;

29 (iv) All feasible off-site measures within the pollution burdened
30 community to reduce adverse environmental and public health stressors
31 to which the potentially impactful project will not contribute, with
32 preference for the reduction of stressors from highest to lowest
33 percentile in relation to the geographic point of comparison; and

34 (v) All feasible off-site measures within the pollution burdened
35 community to provide a net environmental benefit in the overburdened
36 community.

37 (5) Where the applicant can demonstrate that the proposed
38 potentially impactful project will serve a compelling public interest
39 in the pollution burdened community, the department of ecology shall
40 impose conditions in accordance with RCW 43.21C.060.

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

3 (1)(a) In addition to the analysis and measures required in
4 sections 3 and 4 of this act, a project proponent for the renewal of
5 an existing permit that is to be located, in whole or in part, in a
6 pollution burdened community that is subject to adverse cumulative
7 stressors shall analyze and propose feasible control measures
8 necessary to avoid potentially impactful project contributions to all
9 adverse environmental and public health stressors in the pollution
10 burdened community. Where the control measures proposed by the
11 project proponent will prevent a disproportionate impact by avoiding
12 potentially impactful project contributions to all adverse
13 environmental and public health stressors in the pollution burdened
14 community, the lead agency may approve the proposed action in
15 accordance with RCW 43.21C.060.

16 (b) Where the control measures proposed by the project proponent
17 cannot avoid a disproportionate impact, the department of ecology may
18 impose conditions in accordance with RCW 43.21C.060.

19 (2) As part of its environmental justice impact statement, a
20 proponent of a potentially impactful project's permit renewal subject
21 to this section shall submit a potentially impactful project-wide
22 risk assessment that evaluates existing source operations.

23 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.21C
24 RCW to read as follows:

25 (1)(a) The obligations applicable to lead agencies under sections
26 2 through 5 of this act are in addition to and do not limit or amend
27 the obligations of covered agencies under chapter 70A.02 RCW.

28 (b) A covered agency under chapter 70A.02 RCW may adopt any
29 environmental justice assessment prepared under that chapter or apply
30 other analyses or processes under that chapter to satisfy the
31 requirements of sections 2 through 5 of this act, to the extent that
32 such an environmental justice assessment and other analyses or
33 processes under that chapter are sufficient to satisfy the
34 requirements of sections 2 through 5 of this act.

35 (2) A lead agency may require a proponent of a proposed action to
36 reimburse the agency for demonstrated costs to carry out an
37 environmental justice impact statement carried out under sections 3
38 through 6 of this act.

1 (3) By rule, the department of ecology may update the definition
2 of pollution burdened community under this section by referencing a
3 similar successor to the United States council on environmental
4 quality's climate and economic justice screening tool developed or
5 published after January 1, 2024.

--- **END** ---