
SENATE BILL 5141

State of Washington

67th Legislature

2021 Regular Session

By Senators Saldaña and Lovelett

1 AN ACT Relating to implementing the recommendations of the
2 environmental justice task force; adding new sections to chapter
3 43.70 RCW; adding a new section to chapter 43.21A RCW; adding a new
4 section to chapter 43.23 RCW; adding a new section to chapter 43.30
5 RCW; adding a new section to chapter 43.31 RCW; adding a new section
6 to chapter 47.01 RCW; adding a new section to chapter 90.71 RCW; and
7 adding a new chapter to Title 70A RCW.

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

9 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The purpose of
10 this act is to implement recommendations of the environmental justice
11 task force created by section 221(48), chapter 415, Laws of 2019,
12 entitled "Report to the Washington state governor and legislature,
13 *Environmental Justice Task Force: Recommendations for Prioritizing EJ*
14 *in Washington State Government* (October 2020).

15 (2) The task force provided recommendations to state agencies for
16 measurable goals and model policies to reduce environmental health
17 inequities in Washington, equitable practices for meaningful
18 community involvement, and how to use the environmental health
19 disparities map to identify overburdened communities. In order for
20 all communities in Washington state to be healthy and thriving, state

1 government must concentrate on communities that currently do not meet
2 environmental health standards.

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

6 (1) "Agency" includes the departments of ecology, health, natural
7 resources, commerce, agriculture, and transportation, the Puget Sound
8 partnership, and any agency that opts to assume the obligations of
9 this act pursuant to section 11 of this act.

10 (2) "Council" means the environmental justice council established
11 in section 12 of this act.

12 (3) "Cumulative impact" means the combined impact of multiple
13 environmental health factors on a population that includes
14 geographic, socioeconomic, historic disadvantage, public health, and
15 environmental benefits and harms.

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

17 (a) Prevent or reduce existing environmental harms, or associated
18 risks that contribute significantly to the cumulative impact;

19 (b) Meaningfully protect overburdened communities and vulnerable
20 populations from, or support community response to, the impacts of
21 environmental harm; or

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

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

28 (a) Exposure to conventional toxic hazards in the air, water, and
29 land;

30 (b) Adverse environmental effects, which are environmental
31 conditions caused or made worse by contamination or pollution or that
32 create vulnerabilities to climate impacts; and

33 (c) Impacts from climate change.

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

36 (7) "Environmental impacts" means environmental benefits or
37 environmental harms, or the combination of environmental benefits and
38 harms.

1 (8) "Environmental justice" means the fair treatment and
2 meaningful involvement of all people regardless of race, color,
3 national origin, or income with respect to the development,
4 implementation, and enforcement of environmental laws, regulations,
5 and policies. This includes using an intersectional lens to address
6 disproportionate environmental and health impacts in all laws,
7 regulations, and policies with environmental impacts by prioritizing
8 vulnerable populations and overburdened communities, equitably
9 distributing resources and benefits, and eliminating harm.

10 (9) "Overburdened community" means a community designated by the
11 council, with the assistance of the department of health, based on
12 cumulative impact analyses of environmental harms upon vulnerable
13 populations consistent with the definition of highly impacted
14 community in RCW 19.405.020, and includes, but is not limited to,
15 communities located in census tracts that are fully or partially on
16 tribal lands, rural communities, and areas with a high concentration
17 of members of a vulnerable population.

18 (10) "Significant agency action" means a decision, process, or
19 activity that creates or has potential environmental impacts that may
20 cause health or socioeconomic effects on overburdened communities or
21 may disproportionately affect overburdened communities including, but
22 not limited to, implementation of a statute, adoption or application
23 of significant legislative rules, agency budgets, resource
24 allocation, programmatic or project actions, or proposed legislation
25 concerning duties of the agency.

26 (11) "Significant impact" means potential changes to critical
27 determinants of health such as legal rights, finances, housing, and
28 safety.

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

33 (13) "Vulnerable populations" means communities that experience a
34 disproportionate, cumulative risk from environmental harms due to:
35 (a) Adverse socioeconomic factors, including unemployment, high
36 housing and transportation costs relative to income, limited access
37 to nutritious food and adequate health care, and linguistic
38 isolation; (b) sensitivity factors, such as low birth weight and high
39 rates of hospitalization; and (c) negative public health factors that
40 increase vulnerability to the effects of environmental harms.

1 "Vulnerable populations" include minority, low-income, tribal, or
2 indigenous populations or geographic locations in Washington state
3 that potentially experience disproportionate environmental harms and
4 risks.

5 NEW SECTION. **Sec. 3.** ENVIRONMENTAL JUSTICE OBLIGATIONS FOR ALL
6 AGENCIES. All state agencies should strive to apply the laws of the
7 state of Washington, and the rules and policies of the agency, in
8 accordance with the policies of this act.

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

11 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF HEALTH.
12 The department must apply and comply with the environmental justice
13 obligations of section 3 of this act and the environmental justice
14 analyses, community engagement, and public participation principles
15 related to significant agency actions, implementation planning,
16 tribal consultation, and reporting requirements of sections 13
17 through 18 of this act.

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

20 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF ECOLOGY.
21 The department must apply and comply with the environmental justice
22 obligations of section 3 of this act and the environmental justice
23 analyses, community engagement, and public participation principles
24 related to significant agency actions, implementation planning,
25 tribal consultation, and reporting requirements of sections 13
26 through 18 of this act.

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

29 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF
30 AGRICULTURE. The department must apply and comply with the
31 environmental justice obligations of section 3 of this act and the
32 environmental justice analyses, community engagement, and public
33 participation principles related to significant agency actions,
34 implementation planning, tribal consultation, and reporting
35 requirements of sections 13 through 18 of this act.

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

3 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF NATURAL
4 RESOURCES. The department must apply and comply with the
5 environmental justice obligations of section 3 of this act and the
6 environmental justice analyses, community engagement, and public
7 participation principles related to significant agency actions,
8 implementation planning, tribal consultation, and reporting
9 requirements of sections 13 through 18 of this act.

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

12 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF COMMERCE.
13 The department of commerce must apply and comply with the
14 environmental justice obligations of section 3 of this act and the
15 environmental justice analyses, community engagement, and public
16 participation principles related to significant agency actions,
17 implementation planning, tribal consultation, and reporting
18 requirements of sections 13 through 18 of this act.

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

21 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE DEPARTMENT OF
22 TRANSPORTATION. The department must apply and comply with the
23 environmental justice obligations of section 3 of this act and the
24 environmental justice analyses, community engagement, and public
25 participation principles related to significant agency actions,
26 implementation planning, tribal consultation, and reporting
27 requirements of sections 13 through 18 of this act.

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

30 ENVIRONMENTAL JUSTICE OBLIGATIONS OF THE PUGET SOUND PARTNERSHIP.
31 The partnership must apply and comply with the environmental justice
32 obligations of section 3 of this act and the environmental justice
33 analyses, community engagement, and public participation principles
34 related to significant agency actions, implementation planning,
35 tribal consultation, and reporting requirements of sections 13
36 through 18 of this act.

1 NEW SECTION. **Sec. 11.** AUTHORITY OF OTHER AGENCIES TO OPT IN TO
2 ENVIRONMENTAL JUSTICE OBLIGATIONS. Any state agency, as the term
3 "agency" is defined in RCW 34.05.010, including the governor's office
4 and the office of the attorney general, may opt in to assume the
5 environmental justice obligations in sections 13 through 18 of this
6 act by notifying the environmental justice council established in
7 section 12 of this act.

8 NEW SECTION. **Sec. 12.** ENVIRONMENTAL JUSTICE COUNCIL. (1) The
9 environmental justice council is established. The council consists of
10 10 members representing the interests of community-based
11 organizations. The governor must appoint members and serve four-year
12 terms. The governor must initially appoint five members to serve two-
13 year terms, after which all positions will have four-year terms.

14 (2) Nongovernmental members of the council must be compensated
15 and reimbursed in accordance with RCW 43.03.050, 43.03.060, and
16 43.03.250.

17 (3) The council shall appoint an executive director who is the
18 administrative head of the council.

19 (4) The department of health shall provide all administrative and
20 staff support for the council. The council otherwise retains its
21 independence in exercising its powers, functions, and duties and its
22 supervisory control over nonadministrative staff support.

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

24 (a) To adopt guidelines for agencies:

25 (i) Preparing environmental justice implementation plans pursuant
26 to section 16 of this act;

27 (ii) Developing budgeting and funding criteria and making
28 budgeting and funding decisions pursuant to section 17 of this act;
29 and

30 (iii) Preparing and using environmental justice analyses pursuant
31 to section 13 of this act;

32 (b) To provide technical assistance to support agency compliance
33 with environmental justice analyses and enterprise equity
34 implementation;

35 (c) To provide information, as appropriate, to community members,
36 the ombuds, and members of the legislature, concerning agency
37 compliance with the requirements of this act;

1 (d) To hold a portion of council meetings for the ombuds to
2 jointly receive stakeholder input into the ombuds activities and
3 priorities;

4 (e) To evaluate annually the performance of agencies in their
5 preparation and adherence to their environmental justice
6 implementation plans and in the preparation and use of environmental
7 justice analyses;

8 (f) To make recommendations for additional legislation to further
9 the environmental justice goals of the state;

10 (g) To review existing environmental laws and make
11 recommendations for amendments that will further environmental
12 justice;

13 (h) To recommend to specific agencies that they create
14 environmental justice-focused agency-request legislation;

15 (i) To hold hearings and conduct other proceedings to receive
16 relevant information from state agencies and the public to assist in
17 performance of the duties described in (a) through (c) of this
18 subsection; and

19 (j) To prepare and submit to the governor and legislature by
20 November 1st of each year a report on the progress of the state and
21 its agencies in meeting the state's environmental justice goals,
22 progress in implementing this act, and summarizing the work of the
23 council pursuant to (a) through (i) of this subsection.

24 NEW SECTION. **Sec. 13.** ENVIRONMENTAL JUSTICE ANALYSES. (1) When
25 considering the adoption of a significant agency action, an agency
26 must conduct an environmental justice analysis as described in this
27 section to better inform the agency in making its decision and to
28 assist the agency with the equitable distribution of environmental
29 investments, reduction of environmental harms, and the identification
30 and reduction of racial and economic disparities.

31 (2) In conducting an environmental justice analysis, an agency
32 must:

33 (a) Utilize cumulative impact analysis, such as the environmental
34 health disparities map, in conjunction with other qualitative
35 assessments and evaluation of other factors, including both
36 environmental and socioeconomic stressors that may cumulatively
37 affect health and the environment and contribute to persistent
38 environmental health disparities;

1 (b) Identify overburdened communities and vulnerable populations
2 that may be affected by the proposed action and the cumulative
3 positive and negative impacts and how those impacts may be
4 distributed across communities;

5 (c) Identify any local and regional impacts to tribal treaty
6 reserved rights and resources;

7 (d) Summarize community input and describe how overburdened
8 communities and affected tribes may be further involved in
9 development of the proposed action; and

10 (e) Describe options for the agency to reduce the
11 disproportionate impact on overburdened communities, or a reasonable
12 justification for not doing so.

13 (3) To obtain information for purposes of this section, an agency
14 may survey a representative sample of members from the overburdened
15 community and should, whenever possible, consult with representatives
16 of overburdened communities to assist in the accurate assessment of
17 the impact of the action and in developing the means to reduce or
18 eliminate the impact on overburdened communities.

19 (4) Based on the environmental justice analysis, the agency must
20 reduce or eliminate the impacts imposed by the action on overburdened
21 communities' vulnerable populations. The agency must consider,
22 without limitation, each of the following methods for reducing such
23 an impact:

24 (a) Eliminating disparities and the unequal effect of
25 environmental harms on overburdened communities;

26 (b) Reducing or ensuring the action does not add to the
27 cumulative impact on overburdened communities;

28 (c) Providing equitable participation and meaningful engagement
29 of overburdened communities in the development of the agency action;

30 (d) Prioritizing equitable distribution of resources and benefits
31 to overburdened communities;

32 (e) Ensuring positive workforce and job outcomes for overburdened
33 communities;

34 (f) Meeting a community need identified by an overburdened
35 community;

36 (g) Modifying substantive regulatory or policy requirements; and

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

1 (5) If the agency determines it cannot reduce the impact of the
2 action on overburdened communities and vulnerable populations, the
3 agency must provide a clear explanation of why it has made that
4 determination, make that explanation part of the record of the
5 decision, and provide notice of that explanation to members of the
6 public who participated in the process.

7 (6) An agency may develop rules for criteria and procedures
8 applicable to environmental justice analyses and its decisions based
9 on those analyses.

10 NEW SECTION. **Sec. 14.** **EQUITABLE COMMUNITY ENGAGEMENT AND PUBLIC**
11 **PARTICIPATION.** An agency must adopt a community engagement plan to
12 evaluate new and existing services and programs for equitable
13 participation and to support meaningful and direct involvement of
14 vulnerable populations and overburdened communities. The plan must
15 include:

16 (1) Best practices for outreach and communication to overcome
17 barriers to engagement that are typical of agency work and address
18 and mitigate barriers to engagement from vulnerable populations,
19 overburdened communities, and others historically or currently
20 marginalized groups;

21 (2) Use of screening tools that integrate spatial, demographic,
22 and health disparities data to evaluate and understand the nature and
23 needs of the people who may be impacted by agency decisions, such as
24 the environmental health disparities map, as well as further research
25 with community members and organizations as needed;

26 (3) Processes to include members of the affected communities
27 including, but not limited to, child care and other expenses; and

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

30 NEW SECTION. **Sec. 15.** **TRIBAL CONSULTATION.** An agency must
31 consult with Indian tribes on all significant agency actions,
32 programs, and distribution of state funds decisions that affect
33 Indian tribes' rights and interests in their tribal lands. The
34 consultation must occur pursuant to chapter 43.376 RCW and must be
35 independent of and in addition to the equitable engagement and public
36 participation processes required under section 14 of this act, or by
37 an agency, and regardless of whether the agency receives a request
38 for consultation from an Indian tribe. A consultation framework must

1 be developed in coordination with tribal governments that includes
2 best practices, protocols for communication, and collaboration with
3 Indian tribes.

4 NEW SECTION. **Sec. 16.** ENVIRONMENTAL JUSTICE IMPLEMENTATION
5 PLANS. (1) Each agency shall by September 1, 2022, prepare and
6 annually update an environmental justice implementation plan. The
7 plan must provide a framework for applying the principles of
8 environmental justice to the agency's activities and guide the agency
9 in its implementation of its obligations under this act.

10 (2) The plan must include:

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

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

16 (c) Methods to equitably solicit and receive information and
17 opinions from members of the public across Washington state;

18 (d) Strategies to ensure compliance with existing federal and
19 state laws and policies relating to environmental justice, including
20 Title VI of the Americans with disabilities act and other
21 nondiscrimination requirements; and

22 (e) A plan for community engagement as described in section 14 of
23 this act.

24 (3) In developing its plan, the agency must give substantial
25 weight to the guidelines developed by the council pursuant to section
26 12 of this act.

27 NEW SECTION. **Sec. 17.** ENVIRONMENTAL JUSTICE OBLIGATIONS OF
28 AGENCIES RELATING TO BUDGETS AND FUNDING. (1) An agency must
29 incorporate environmental justice principles into its decision
30 processes for budget development, making investments, granting or
31 withholding benefits, and distributing funding in order to direct
32 funding and investments towards communities highly impacted by
33 pollution and climate change.

34 (2) In making such decisions relating to budget development,
35 making investments, granting or withholding benefits, and
36 distributing funding, an agency must:

37 (a) Direct benefits to vulnerable populations and overburdened
38 communities to reduce statewide disparities;

1 (b) Make investments proportional to the health disparities that
2 a specific community experiences to eliminate the disparities;

3 (c) Focus investments on creating environmental benefits,
4 including eliminating health burdens, creating community and
5 population resilience, and raising the quality of life of those in
6 the community;

7 (d) Ensure that investment priorities are self-determined by
8 overburdened communities and vulnerable populations in the affected
9 community through equitable participation;

10 (e) Ensure geographic, racial, and ethnic equity by balancing
11 investments across the state and within counties, local
12 jurisdictions, and unincorporated areas as appropriate to reduce
13 disparities by location and to ensure efforts contribute to a
14 reduction in disparities that exist based on race and ethnicity;

15 (f) Promote transparency by clearly articulating goals and
16 assessment metrics to communicate where, why, and how funds are to be
17 distributed;

18 (g) Consider a broad scope of grants so that funds may be applied
19 to a variety of purposes, including grants, hiring, and contracting
20 opportunities, including:

21 (i) Community grants to monitor pollution and grants focused on
22 building capacity and training for community scientists and other
23 staff;

24 (ii) Technical assistance for communities that may be new to
25 receiving agency grant funding; and

26 (iii) Education and work-readiness youth programs focused on
27 infrastructure or utility-related internships to develop career paths
28 for youth and, eventually, community leaders; and

29 (h) Establish a goal of 40 percent and no less than 35 percent of
30 investments that create environmental benefits directed to vulnerable
31 populations in overburdened communities.

32 (3) An agency may develop rules for criteria and procedures
33 applicable to incorporating environmental justice principles in
34 investment decisions under this section.

35 NEW SECTION. **Sec. 18.** REPORTING REQUIREMENTS. Each agency shall
36 by September 1st of each year, in a format developed by the council,
37 report to the council its progress on implementing its environmental
38 justice implementation plan and its environmental justice analyses of
39 proposed significant agency actions.

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

3 ENVIRONMENTAL HEALTH DISPARITIES MAP. (1) In consultation with
4 the environmental justice council established in section 12 of this
5 act, the department of health must further develop and maintain the
6 environmental health disparities map with the most current available
7 information necessary to identify cumulative impacts and overburdened
8 communities. The environmental health disparities map must include
9 tools to:

10 (a) Visually display environmental disparities over time to track
11 agency progress in an interactive, regularly updated dashboard; and

12 (b) Measure the link between environmental quality and human
13 health, disaggregated by race.

14 (2) In further developing and maintaining the environmental
15 health disparities map, the department must encourage participation
16 by representatives from community organizations representing
17 overburdened communities through community engagement and listening
18 sessions in all regions of the state, and provide opportunities for
19 public comment.

20 (3) The department may request assistance from:

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

25 (b) Other state agencies to provide applicable environmental and
26 sampling data for air, water, soil, and other applicable media.

27 (4) The department of health must, at least every three years,
28 evaluate environmental harms and benefits, as well as socioeconomic
29 indicators that may cumulatively impact health and the environment
30 and contribute to persistent environmental health disparities for the
31 most current modeling and methods when developing and updating the
32 environmental health disparities map.

33 (5) The department of health must include in its reports required
34 under section 18 of this act a summary of revisions to the
35 environmental health disparities map and tools.

36 NEW SECTION. **Sec. 20.** OMBUDS AUTHORIZATION. Subject to the
37 availability of amounts appropriated for this specific purpose, there
38 is created an office of environmental justice ombuds within the
39 office of the governor for the purpose of: Providing information to

1 overburdened communities and the council; promoting public awareness
2 and understanding of environmental justice for overburdened
3 communities; identifying system issues and responses for the governor
4 and the legislature to act upon; and ensuring agency compliance with
5 the provisions of this act.

6 The person appointed environmental justice ombuds in section 21
7 of this act reports directly to the governor and the council.

8 NEW SECTION. **Sec. 21.** OMBUDS APPOINTMENT. (1) The governor
9 shall appoint an environmental justice ombuds who must be a person of
10 recognized judgment, independence, objectivity, and integrity, and be
11 qualified by training or experience in environmental justice
12 policies. Prior to the appointment, the governor shall consult with,
13 and may receive recommendations from the council, appropriate
14 committees of the legislature, representatives of overburdened
15 communities, and other relevant stakeholders, regarding the selection
16 of the ombuds.

17 (2) The person appointed environmental ombuds holds office for a
18 term of three years and continues to hold office until reappointed or
19 until their successor is appointed. The governor may remove the
20 ombuds only for neglect of duty, misconduct, or the inability to
21 perform duties. Any vacancy must be filled by similar appointment for
22 the remainder of the unexpired term.

23 (3) The office of the governor shall provide all administrative
24 and staff support for the office. The ombuds office has supervisory
25 authority over the staff of the office and shall employ such
26 personnel as are necessary to implement this chapter. Not more than
27 two such employees may be exempt from chapter 41.06 RCW. The office
28 shall otherwise retain its independence in exercising its powers,
29 functions, and duties and its supervisory control over
30 nonadministrative staff support.

31 NEW SECTION. **Sec. 22.** OMBUDS DUTIES. (1) The environmental
32 justice ombuds appointed in section 21 of this act shall:

33 (a) Establish priorities for use of the limited resources
34 available to the ombuds;

35 (b) Maintain a statewide toll-free telephone number, a collect
36 telephone number, a website, and a mailing address for the receipt of
37 complaints and inquiries;

1 (c) Monitor agency compliance with environmental justice analyses
2 and enterprise equity provisions of sections 13 through 18 of this
3 act;

4 (d) Establish a statewide uniform reporting system to collect and
5 analyze data related to complaints received by the ombuds regarding
6 agencies;

7 (e) Establish procedures to receive, investigate, and resolve
8 complaints;

9 (f) Establish procedures to gather stakeholder input into the
10 ombuds' activities and priorities, including attending council
11 meetings and other public meetings;

12 (g) Submit, by September 1st of each year, to the governor's
13 office, the legislature, and the council, a report that includes, at
14 a minimum, the following information:

15 (i) The budget and expenditures of the ombuds;

16 (ii) Agency compliance with environmental justice analyses and
17 enterprise equity provisions of sections 13 through 18 of this act;

18 (iii) The number of complaints received and resolved by the
19 ombuds;

20 (iv) A description of significant systemic or individual
21 investigations or outcomes achieved by the ombuds during the prior
22 year;

23 (v) Any outstanding or unresolved concerns or recommendations of
24 the ombuds; and

25 (vi) Input and comments from stakeholders, including
26 representatives of overburdened communities, regarding the ombuds'
27 activities during the prior year; and

28 (h) Adopt and comply with rules, policies, and procedures
29 necessary to implement this act.

30 (2)(a) The ombuds may initiate and attempt to resolve an
31 investigation upon the ombuds' own initiative, or upon receipt of a
32 complaint from a representative or member of an overburdened
33 community, the council, or others, regarding any of the following
34 that may create environmental harms or benefits for overburdened
35 communities:

36 (i) Significant legislative rules;

37 (ii) Agency budgets, investments, or funding distribution;

38 (iii) Resource allocation;

39 (iv) Programmatic or project actions;

40 (v) Policies, rules, or procedures; or

1 (vi) Proposed legislation.

2 (b) The ombuds may not levy any fees for the submission or
3 investigation of complaints.

4 (c) The ombuds must remain neutral and impartial and may not act
5 as an advocate for the complainant or agencies.

6 (d) At the conclusion of an investigation of a complaint, the
7 ombuds must render a public decision on the merits of each complaint.
8 The ombuds must communicate the decision to the complainant and to
9 the agency. The ombuds must state its recommendations and reasoning
10 if, in the ombuds' opinion, the agency should:

11 (i) Consider the matter further;

12 (ii) Modify or cancel any action;

13 (iii) Alter a rule, practice, or ruling;

14 (iv) Explain in detail the administrative action in question; or

15 (v) Rectify an omission.

16 (e) If the ombuds so requests, the agency must, within the time
17 specified, inform the ombuds about any action taken on the
18 recommendations or the reasons for not complying with the
19 recommendations.

20 (f) If the ombuds believes, based on the investigation, that
21 there has been or continues to be significant noncompliance with the
22 environmental justice analyses and enterprise equity requirements of
23 sections 13 through 18 of this act, the ombuds must report the
24 finding to the governor, the council, and the appropriate committees
25 of the legislature.

26 (g) Before announcing a conclusion or recommendation that
27 expressly, or by implication, criticizes a person or agency, the
28 ombuds shall consult with that person or agency. The ombuds may
29 request to be notified by the agency, within a specified time, of any
30 action taken on any recommendation presented. The ombuds must notify
31 the complainant of the actions taken by the agency in response to the
32 ombuds' recommendations.

33 NEW SECTION. **Sec. 23.** OMBUDS ACCESS TO AGENCIES. (1) The
34 environmental justice ombuds appointed in section 21 of this act must
35 have reasonable access to agency facilities at all times necessary to
36 conduct a full investigation. This authority includes the opportunity
37 to interview an agency employee who might be reasonably believed to
38 have knowledge of the matter under investigation. This access must be
39 afforded, upon request by the ombuds, when:

1 (a) A complaint is made to the ombuds; or

2 (b) The ombuds determines there is cause to believe that an
3 agency has failed to comply with the environmental justice and
4 enterprise equity requirements of sections 13 through 18 of this act.

5 (2) The ombuds has the right to access, inspect, and copy all
6 relevant information, records, or documents in the possession or
7 control of the agency that the ombuds considers necessary in an
8 investigation of a complaint filed under this act, and the agency
9 must assist the ombuds in obtaining the necessary releases for those
10 documents that are specifically restricted or privileged for use by
11 the ombuds.

12 (3) Following notification from the ombuds with a written demand
13 for access to agency records, the delegated agency staff must provide
14 the ombuds with access to the requested documentation no later than
15 20 business days after the ombuds' written request for the records.

16 NEW SECTION. **Sec. 24.** AGENCY EMPLOYEE WHISTLEBLOWER PROTECTION.
17 No discriminatory, disciplinary, or retaliatory action may be taken
18 against an agency employee for any communication made, or information
19 given or disclosed, to aid the office of environmental justice ombuds
20 created in section 20 of his act in carrying out its
21 responsibilities, unless the communication or information is made,
22 given, or disclosed maliciously or without good faith.

23 NEW SECTION. **Sec. 25.** Sections 1 through 3, 11 through 18, and
24 20 through 24 of this act constitute a new chapter in Title 70A RCW.

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