
SENATE BILL 5990

State of Washington 68th Legislature 2024 Regular Session

By Senators Lovelett, Saldaña, Dhingra, Frame, Hasegawa, Keiser, Kuderer, Nobles, Salomon, Stanford, Trudeau, Valdez, and C. Wilson

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

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

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

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

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

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

(2) "Adverse environmental and public health stressor" means a stressor in the pollution burdened community that is higher than a

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

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

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

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

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

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

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

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

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

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

- (a) Existing environmental and public health stressors;
- (b) Any adverse environmental and public health stressors;
- (c) The presence or absence of adverse cumulative stressors;
- (d) Potential environmental and public health stressors associated with a potentially impactful project;
- (e) Whether the potentially impactful project can avoid causing or contributing to a disproportionate impact;
- (f) Alternative locations where the potentially impactful project could be located;
- (g) The measures the potentially impactful project proposes to implement to avoid or mitigate causing or contributing to any disproportionate impact; and
- (h) Where applicable, how the new potentially impactful project serves a compelling public interest in a pollution burdened community.

(8) "Environmental or public health stressors" means sources of environmental pollution or conditions that may cause potential public health impacts such as, but not limited to, asthma, cancer, elevated blood lead levels, cardiovascular disease, developmental problems, and low birth weight in the overburdened communities, including, but not limited to:

(a) Concentrated areas of air pollution and mobile sources of air pollution:

(i) Criteria pollutants including particulate matter 2.5 (PM 2.5), particulate matter 10 (PM 10), sulfur dioxide (SO₂), nitrogen dioxide (NO_x), lead, carbon dioxide (CO), and ozone;

(ii) Wildfire smoke;

(iii) Ozone concentration;

(iv) Diesel exhaust PM_{2.5} emissions;

(v) Cancer risk from air toxics excluding diesel particulate matter;

(vi) Noncancer risk from air toxics;

(vii) Hazardous air pollutants;

(viii) Toxic releases from facilities into air; and

(ix) Proximity to heavy traffic roadways;

(b) Water pollution:

(i) Drinking water quality;

(ii) Marine water quality;

(iii) Fish and shellfish health advisories;

(iv) Wastewater discharge;

(v) Surface water quality;

(vi) Groundwater quality; and

(vii) Combined sewer overflows;

(c) Environmental hazards in communities or contaminated sites:

(i) Railways, airports, or ports;

(ii) Lead risk from housing;

(iii) Use of leaded fuels;

(iv) Density of or proximity to known contaminated sites and clean-up sites:

(A) Hazardous waste treatment, storage, and disposal sites;

(B) Superfund sites;

(C) Risk management plan sites;

- (D) Confirmed and suspected contaminated sites; and
- (E) Formerly used defense sites; and
- (v) Environmental covenants registry; and
- (d) Social determinants of health:
 - (i) Unemployment;
 - (ii) Educational attainment;
 - (iii) People living in poverty;
 - (iv) Percent of children eligible for free or reduced-priced lunch; and
 - (v) Limited English-speaking households.

(9) "Existing potentially impactful project" means a potentially impactful project, or any portion thereof, which, as of the effective date of this section, possesses a valid approved registration or permit from a lead agency for its operation or construction and is in operation.

(10) (a) "Expansion" means a modification or expansion of an existing potentially impactful project's operations or footprint where the development could increase any environmental and public health stressor in a pollution burdened community.

(b) "Expansion" does not include any activity that decreases or does not otherwise result in an increase in stressor contributions.

(11) "Geographic point of comparison" means the comparison area and value used to determine whether a pollution burdened community is subject to one or more adverse environmental and public health stressors. A geographic point of comparison is determined by selecting the lower value of the 50th percentile of the state or county in which the pollution burdened community is located, calculated excluding the values of other pollution burdened communities.

(12) "Net environmental benefit" means a reduction of baseline environmental and public health stressors in a pollution burdened

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

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

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

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

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

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

(15) (a) "Potentially impactful project" means projects that are:

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

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

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

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

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

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

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

(viii) A sewage treatment plant;

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

(x) A medical waste incinerator; or

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

(A) A construction general permit;

(B) An industrial stormwater general permit;

(C) A municipal stormwater general permit;

(D) A fresh fruit packing general permit;

(E) A boatyard general permit;

(F) An environmental protection agency vessel general permit;

(G) A winery general permit; and

(H) A bridge and ferry terminal washing permit.

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

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

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

(16) "Renewal" means the continuation of existing permitted operations at a major facility without change. A lead agency must

treat as a renewal all modifications or changes of operations that decrease or do not otherwise increase a facility's contributions to stressors.

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

(1) As a supplemental component of the analysis required under RCW 43.21C.030 for any proposed action associated with a new or expanding potentially impactful project or the renewal of an existing potentially impactful project's permit located or proposed to be located in whole or in part in a pollution burdened community, a lead agency must complete an environmental justice impact statement consistent with the requirements of this section. This section applies only to proposed actions associated with a new potentially impactful project, expansion of an existing potentially impactful project, or renewal of an existing potentially impactful project's permit for which review under this chapter had not been initiated as of the effective date of this section and is completed on or after January 1, 2027.

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

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

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

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

(3) (a) The lead agency must complete the environmental justice impact statement at or before the time that a proposed action

receives a determination of significance, a determination of nonsignificance, or a determination of mitigated nonsignificance. The lead agency must complete the environmental justice impact statement if a proposed action may cause a disproportionate impact on an overburdened community and without regard to the type of threshold determination under this chapter that the project receives related to the environmental impacts of the proposed action other than its environmental justice impacts.

(b) Upon completion of the environmental justice impact statement, the lead agency must transmit the environmental justice impact statement to the office of financial management, and the office of financial management must publish the environmental justice impact statement on the website established under RCW 70A.02.090. The office of financial management's website list of environmental justice impact statements must include a brief description of the agency action undergoing review under this section, a brief summary of the findings of the environmental justice impact statement, and the methods for providing public comment under subsection (4) of this section for lead agency consideration as part of the environmental justice impact assessment. The environmental justice impact statement must be published by the office of financial management at least 30 days in advance of the public hearing required under subsection (4) of this section, and must be published in a manner that meets community engagement rules adopted by the department of ecology that apply:

- (i) Best practices for outreach and communication to overcome barriers to engagement with highly impacted communities;
- (ii) processes that facilitate and support the inclusion of members of communities affected by agency decision making; and
- (iii) methods for outreach and communication with those who face barriers, language or otherwise, to participation.

(4) (a) No sooner than 60 days after the publication by the office of financial management of the environmental justice impact statement under subsection (3) of this section, the lead agency must organize and conduct a public hearing in the pollution burdened community on the environmental justice impact statement. This hearing may be held coincident with other hearings required under this chapter or under other applicable laws, but only if the minimum public notice and community engagement requirements of this section and any similar requirements applicable to the coincident hearing are individually met. The notice of the public hearing published by the lead agency and the office of financial management must include the date, time, and location of the public hearing, a description of the proposed potentially impactful project, a brief summary of the environmental justice impact statement including a listing of all potential environmental and health stressors associated with the project, information on how an interested person may review a copy of the complete environmental justice impact statement, and information regarding the opportunities for public comment to the lead agency on the environmental justice impact assessment. The lead agency may also provide notice through other methods identified by the agency to ensure direct and adequate notice to individuals in the overburdened community including, but not limited to, providing information directly to active community groups or organizations, automated phone, voice, or electronic notice, flyers, and utilization of other publications utilized within the overburdened community.

(b) At the public hearing required in this section, the lead agency must provide clear, accurate, and complete information about the proposed potentially impactful project. A lead agency must require participation in the hearing by the project proponent for the potentially impactful project or other proponent of government

action related to the potentially impactful project that is the subject of the environmental justice impact assessment.

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

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

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

(b) Mitigate, consistent with RCW 43.21C.060, an action associated with a new potentially impactful project or the expansion of an existing potentially impactful project in a pollution burdened community upon finding that the government action would, together with other environmental harms affecting the pollution burdened community, cause or contribute to environmental harms in the pollution burdened community that are higher than those borne by

other communities in the geographic point of comparison, if the lead agency determines that the new potentially impactful project will serve a compelling public interest in the community where it is to be located; and

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

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

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

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

(b) Where the potentially impactful project cannot avoid a disproportionate impact that would occur by creating adverse cumulative stressors as a result of the potentially impactful

project's contribution, the lead agency shall include information required pursuant to both subsections (2) and (3) of this section, including analyzing and proposing feasible measures to, as applicable, avoid or minimize contributions to environmental and public health stressors, provide a net environmental benefit and, where appropriate, demonstrate how the potentially impactful project serves a compelling public interest in the pollution burdened community.

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

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

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

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

(b) A detailed written description of the municipal and neighborhood setting of the potentially impactful project, including the location of community and residential dwellings, hospitals, nursing homes, playgrounds, parks, schools, and comprehensive demographic and economic zoning. The site location must also be

identified by a site plan of the potentially impactful project or equivalent map if no site plan exists;

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

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

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

(iii) For new or expanded facilities, a schedule for the construction and operation including anticipated completion dates for major phases of construction, any pollution or environmental control measures and monitoring instrumentation, hours of operation, on-site equipment, traffic routes, number of employees, and all other information relevant to the potential for the construction to contribute to environmental and public health stressors in the pollution burdened community;

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

(e) (i) A listing of the existing environmental and public health stressors in the pollution burdened community and an indication of the appropriate geographic point of comparison for each stressor by selecting the lower of the 50th percentile of the state or county's

equivalent stressor, excluding other pollution burdened communities from the comparison;

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

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

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

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

(g) A public participation plan that, at a minimum, satisfies the requirements of section 2 of this act, including all proposed forms and methods of notice to the members of the pollution burdened community and the proposed hearing location;

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

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

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

(a) A site mapping showing:

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

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

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

(iv) Any existing on-site public scenic attributes or outdoor recreation and conservation opportunities in the pollution burdened community, such as any federal, state, county, or municipal parks, forests, wildlife management areas and natural areas, any areas acquired for recreation and conservation purposes, any lands preserved as open space by a nonprofit conservation organization, or other public access features;

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

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

(d) A description of the subsurface hydrology that presents groundwater quantity and quality data for the aquifers located beneath the site including, but not limited to, depth to groundwater during seasonal high and low flow, flow direction, existing uses, and future supply capabilities. In addition, a description of the soils that identifies major soil types and their characteristics

including, but not limited to, drainage, erosion potential, and sedimentation potential;

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

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

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

(iii) Proposed resilience measures; and

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

(f) A traffic study that describes the transportation routes that will service the new potentially impactful project, site access capability, and existing traffic flow patterns expressed in terms of daily peak hour volumes, off peak hour volumes, levels of service, and average daily round trips, and the potentially impactful project's current and proposed contributions thereto for all vehicles associated with the potentially impactful project's operations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Cannot demonstrate that it will avoid a disproportionate impact that would occur by creating adverse cumulative stressors in

the pollution burdened community as a result of the potentially impactful project's contribution.

(5) Following the completion of the public participation process detailed in section 2 of this act, the lead agency shall consider the environmental justice impact statement, and any supplemental information, testimony, written comments, the project proponent's response to comments, and any other information deemed relevant by the lead agency to determine whether the potentially impactful project can avoid a disproportionate impact, determine whether to deny or approve the proposed action, and evaluate whether and how to impose conditions concerning the construction and operation of the potentially impactful project to address its contributions to environmental and public health stressors affecting the pollution burdened community.

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

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

(2) Where the control measures proposed by the project proponent cannot avoid a disproportionate impact, the lead agency shall deny

the proposed action pursuant to RCW 43.21C.060, unless the applicant demonstrates that the proposed potentially impactful project will serve a compelling public interest in the pollution burdened community, in accordance with subsections (3) and (4) of this section.

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

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

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

(iii) There are no reasonable alternatives that can be sited outside the pollution burdened community to serve the essential environmental, health, or safety needs of the individuals in the pollution burdened community.

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

(c) The lead agency may consider, as relevant, public input as to whether a compelling public interest is demonstrated if there is a significant degree of public interest in favor of or against an application from individuals residing in the pollution burdened community. In addition to any other public comment provided pursuant to this chapter, the lead agency may seek input from the public

whenever it determines that such comments may clarify whether the compelling public interest standard is met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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