
ENGROSSED SUBSTITUTE HOUSE BILL 1753

State of Washington

67th Legislature

2022 Regular Session

By House Environment & Energy (originally sponsored by Representatives Lekanoff, Fitzgibbon, Valdez, Bateman, Ramel, Sullivan, Simmons, Ormsby, and Young; by request of Office of the Governor)

READ FIRST TIME 01/31/22.

1 AN ACT Relating to tribal consultation regarding the use of
2 certain funding authorized by the climate commitment act; amending
3 RCW 70A.65.250; reenacting and amending RCW 43.376.020; and adding a
4 new section to chapter 70A.65 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 70A.65
7 RCW to read as follows:

8 (1) Agencies that allocate funding or administer grant programs
9 appropriated from the climate investment account created in RCW
10 70A.65.250, the climate commitment account created in RCW 70A.65.260,
11 and the natural climate solutions account created in RCW 70A.65.270
12 must offer early, meaningful, and individual consultation with any
13 affected federally recognized tribe on all funding decisions and
14 funding programs that may impact tribal resources, including tribal
15 cultural resources, archaeological sites, sacred sites, fisheries, or
16 other rights and interests in tribal lands and lands within which a
17 tribe or tribes possess rights reserved or protected by federal
18 treaty, statute, or executive order. The consultation is independent
19 of, and in addition to, any public participation process required by
20 federal or state law, or by a federal or state agency, including the
21 requirements of Executive Order 21-02 related to archaeological and

1 cultural resources, and regardless of whether the agency receives a
2 request for consultation from a federally recognized tribe. The goal
3 of the consultation process is to identify tribal resources or rights
4 potentially affected by the funding decisions and funding programs,
5 assess their effects, and seek ways to avoid, minimize, or mitigate
6 any adverse effects on tribal resources or rights.

7 (2) At the earliest possible date prior to submittal of an
8 application, applicants for funding from the accounts created in RCW
9 70A.65.250, 70A.65.260, and 70A.65.270 shall engage in a
10 preapplication process with all affected federally recognized tribes
11 within the project area.

12 (a) The preapplication process must include the applicant
13 notifying the department of archaeology and historic preservation,
14 the department of fish and wildlife, and all affected federally
15 recognized tribes within the project area. The notification must
16 include geographical location, detailed scope of the proposed
17 project, preliminary application details available to federal, state,
18 or local governmental jurisdictions, and all publicly available
19 materials, including public funding sources.

20 (b) The applicant must also offer to discuss the project with the
21 department of archaeology and historic preservation, the department
22 of fish and wildlife, and all affected federally recognized tribes
23 within the project area. Discussions may include the project's impact
24 to tribal resources, including tribal cultural resources,
25 archaeological sites, sacred sites, fisheries, or other rights and
26 interests in tribal lands and lands within which a tribe or tribes
27 possess rights reserved or protected by federal treaty, statute, or
28 executive order.

29 (c) All affected federally recognized tribes may submit to the
30 appropriate agency or agencies a summary of tribal issues, questions,
31 concerns, or other statements regarding the project, which must
32 become part of the official application file. The summary does not
33 limit what issues affected federally recognized tribes may raise in
34 the consultation process identified in subsections (1), (3) through
35 (7), and (9) of this section.

36 (d) The notification and offer to initiate discussion must be
37 documented with the application when it is filed, and a copy of the
38 application must be delivered to the department of archaeology and
39 historic preservation, the department of fish and wildlife, and to
40 the affected federally recognized tribe or tribes. If the discussions

1 pursuant to (b) of this subsection do not occur, the applicant must
2 document the reason why the discussion or discussions did not occur.

3 (e) Nothing in this section may be interpreted to require the
4 disclosure of information that is exempt from disclosure pursuant to
5 RCW 42.56.300 or federal law, including section 304 of the national
6 historic preservation act of 1966. Any information that is exempt
7 from disclosure pursuant to RCW 42.56.300 or federal law, including
8 section 304 of the national historic preservation act of 1966, shall
9 not become part of the official application file.

10 (3) If any funding decision, program, project, or activity that
11 may impact tribal resources, including tribal cultural resources,
12 archaeological sites, sacred sites, fisheries, or other rights and
13 interests in tribal lands and lands within which a tribe or tribes
14 possess rights reserved by federal treaty, statute, or executive
15 order is funded from the accounts created in RCW 70A.65.250,
16 70A.65.260, and 70A.65.270 without such a consultation with an
17 affected federally recognized tribe, the affected federally
18 recognized tribe may request that all further action on the decision,
19 program, project, or activity cease until meaningful consultation is
20 completed. Upon receipt of such a request by an agency or agencies
21 with the authority to allocate funding or administer grant programs
22 from the accounts listed in subsection (1) of this section in support
23 of the proposed project, further action by the agency or agencies on
24 any decision, program, project, or activity that would result in
25 significant physical disturbance of the tribal resource or resources
26 described in this subsection must cease until the consultation has
27 been completed.

28 (4) Upon completion of agency and tribal consultation, an
29 affected federally recognized tribe may request a formal review of
30 the consultation by submitting a request to the governor's office of
31 Indian affairs and notifying the appropriate agencies and the
32 department of archaeology and historic preservation. The state
33 agencies and tribe must meet to initiate discussion within no more
34 than 20 days of the request. This consultation must be offered and
35 conducted separately with each affected federally recognized tribe,
36 unless the tribes agree to conduct a joint consultation with the
37 state.

38 (5) After the state agencies and tribe or tribes have conducted a
39 formal review under subsection (4) of this section, an affected
40 federally recognized tribe or state agency may request that the

1 governor and an elected tribal leader or leaders of a federally
2 recognized tribal government meet to formally consider the
3 recommendations from the parties. If requested, this meeting must
4 occur within 30 days of the request, except that a federally
5 recognized tribe may choose to opt out of the meeting. This timeline
6 may be extended by mutual agreement between the governor and the
7 tribal leaders.

8 (6) After the meeting identified in subsection (5) of this
9 section has occurred, the governor or an elected tribal leader of a
10 federally recognized tribe may call for the state and tribe or tribes
11 to enter into formal mediation, except that a federally recognized
12 tribe may choose to opt out of the mediation. If entered into, the
13 mediation must be conducted as a government-to-government proceeding,
14 with each sovereign government retaining their right to a final
15 decision that meets their separate obligations and interests.
16 Mediators must be jointly selected by the parties to the mediation.
17 An agreement between the governor and a tribal leader or leaders
18 resulting from the mediation is formally recognized and binding on
19 the signatory parties. Absent an agreement, participation in
20 mediation does not preclude any additional steps that any party can
21 initiate, including legal review, to resolve a continuing
22 disagreement.

23 (7) During the proceedings outlined in subsections (4) through
24 (6) of this section, the agency or agencies with the authority to
25 allocate funding or administer grant programs from the accounts
26 listed in subsection (1) of this section in support of the proposed
27 project may not approve or release funding, or make other formal
28 decisions, including permitting, that advance the proposed project
29 except where required by law.

30 (8) By June 30, 2023, the governor's office of Indian affairs, in
31 coordination with the department of archaeology and historic
32 preservation and federally recognized tribes, shall develop a state
33 agency tribal consultation process, including best practices for
34 early, meaningful, and effective consultation, early notification and
35 engagement by applicants with federally recognized tribes as a part
36 of the preapplication process in subsection (2) of this section, and
37 protocols for communication and collaboration with federally
38 recognized tribes. The consultation process developed under this
39 section must be periodically reviewed and updated in coordination
40 with federally recognized tribes. The governor's office of Indian

1 affairs must provide training and other technical assistance to state
2 agencies, as they implement the required consultation.
3 Notwithstanding the governor's office of Indian affairs' ongoing work
4 pursuant to this subsection, the provisions of subsections (1)
5 through (7) and (9) of this section become effective as of the
6 effective date of this section.

7 (9) The requirements of this section apply to local governments
8 that receive funding from the accounts created in RCW 70A.65.250,
9 70A.65.260, and 70A.65.270, where that funding is disbursed to
10 project and program applicants. Where requested, the governor's
11 office of Indian affairs must provide training and other technical
12 assistance to local government agencies as they implement the
13 consultation requirements of this section.

14 (10) Any agency subject to or implementing this section may adopt
15 rules in furtherance of its duties under this section.

16 (11) Subject to the availability of amounts appropriated for this
17 specific purpose, the department must establish a tribal capacity
18 grant program to provide funding to federally recognized tribes for
19 the costs of implementing this section.

20 **Sec. 2.** RCW 70A.65.250 and 2021 c 316 s 28 are each amended to
21 read as follows:

22 (1)(a) The climate investment account is created in the state
23 treasury. Except as otherwise provided in chapter 316, Laws of 2021,
24 all receipts from the auction of allowances authorized in this
25 chapter must be deposited into the account. Moneys in the account may
26 be spent only after appropriation.

27 (b) Projects or activities funded from the account must meet high
28 labor standards, including family sustaining wages, providing
29 benefits including health care and employer-contributed retirement
30 plans, career development opportunities, and maximize access to
31 economic benefits from such projects for local workers and diverse
32 businesses. Each contracting entity's proposal must be reviewed for
33 equity and opportunity improvement efforts, including: (i) Employer
34 paid sick leave programs; (ii) pay practices in relation to living
35 wage indicators such as the federal poverty level; (iii) efforts to
36 evaluate pay equity based on gender identity, race, and other
37 protected status under Washington law; (iv) facilitating career
38 development opportunities, such as apprenticeship programs,
39 internships, job-shadowing, and on-the-job training; and (v)

1 employment assistance and employment barriers for justice affected
2 individuals.

3 (2) Moneys in the account may be used only for projects and
4 programs that achieve the purposes of the greenhouse gas emissions
5 cap and invest program established under this chapter and for tribal
6 capacity grants under section 1 of this act. Moneys in the account as
7 described in this subsection must first be appropriated for the
8 administration of the requirements of this chapter, in an amount not
9 to exceed five percent of the total receipt of funds from allowance
10 auction proceeds under this chapter. Beginning July 1, 2024, and
11 annually thereafter, the state treasurer shall distribute funds in
12 the account that exceed the amounts appropriated for the purposes of
13 this subsection (2) as follows:

14 (a) Seventy-five percent of the moneys to the climate commitment
15 account created in RCW 70A.65.260; and

16 (b) Twenty-five percent of the moneys to the natural climate
17 solutions account created in RCW 70A.65.270.

18 (3) The allocations specified in subsection (2)(a) and (b) of
19 this section must be reviewed by the legislature on a biennial basis
20 based on the changing needs of the state in meeting its clean economy
21 and greenhouse gas reduction goals in a timely, economically
22 advantageous, and equitable manner.

23 **Sec. 3.** RCW 43.376.020 and 2021 c 316 s 40 and 2021 c 314 s 23
24 are each reenacted and amended to read as follows:

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

27 (1) Make reasonable efforts to collaborate with Indian tribes in
28 the development of policies, agreements, and program implementation
29 that directly affect Indian tribes and develop a consultation process
30 that is used by the agency for issues involving specific Indian
31 tribes. Covered agencies, as defined in RCW 70A.02.010, subject to
32 the requirements of chapter 70A.02 RCW, must offer consultation with
33 Indian tribes on the actions specified in RCW 70A.02.100. State
34 agencies described in (~~section 6 of this act~~) section 1 of this act
35 must offer consultation with Indian tribes on the actions specified
36 in (~~section 6 of this act~~) section 1 of this act;

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

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

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

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