
HOUSE BILL 1753

State of Washington

67th Legislature

2022 Regular Session

By Representatives Lekanoff, Fitzgibbon, Valdez, Bateman, Ramel, Sullivan, Simmons, Ormsby, and Young; by request of Office of the Governor

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

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

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

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

1 from a federally recognized tribe. The purpose of the consultation
2 process is to determine whether a proposed action will, or could
3 potentially, impact tribal resources or rights, with a goal of
4 avoiding or mitigating the impacts.

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

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

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

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

32 (d) The notification and offer to initiate discussion must be
33 documented with the application when it is filed, and a copy of the
34 application must be delivered to the department of archaeology and
35 historic preservation and to the affected federally recognized
36 tribes. Alternatively, the applicant must document the reason why a
37 discussion has not occurred.

38 (3) If any funding decision, program, project, or activity that
39 impacts lands or fisheries within which a federally recognized tribe
40 or tribes possess rights reserved by federal treaty, statute, or

1 executive order is funded from the accounts created in RCW
2 70A.65.250, 70A.65.260, and 70A.65.270 without such a consultation
3 with an affected federally recognized tribe, the affected federally
4 recognized tribe may request that all further action on the decision,
5 program, project, or activity cease until meaningful consultation is
6 completed.

7 (4) Upon completion of agency and tribal consultation, an
8 affected federally recognized tribe may request a formal review of
9 the consultation by submitting a request to the governor's office of
10 Indian affairs and notifying the action agencies and the department
11 of archaeology and historic preservation. The state agencies and
12 tribe must meet to initiate discussion within no more than 20 days of
13 the request. This consultation must be offered and conducted
14 separately with each affected federally recognized tribe, unless the
15 tribes agree to conduct a joint consultation with the state.

16 (5) After the state agencies and tribe or tribes have conducted a
17 formal review under subsection (4) of this section, an affected
18 federally recognized tribe or state agency may request that the
19 governor and an elected tribal leader or leaders of a federally
20 recognized tribal government meet to formally consider the
21 recommendations from the parties. If requested, this meeting must
22 occur within 30 days of the request. This timeline may be extended by
23 mutual agreement between the governor and the tribal leaders.

24 (6) After the meeting identified in subsection (5) of this
25 section has occurred, the governor or an elected tribal leader of a
26 federally recognized tribal government may call for the state and
27 tribe or tribes to enter into formal mediation. The mediation must be
28 conducted as a government-to-government proceeding, with each
29 sovereign government retaining their right to a final decision that
30 meets their separate obligations and interests. Mediators must be
31 jointly selected by the parties to the mediation. An agreement
32 between the governor and a tribal leader or leaders resulting from
33 the mediation is formally recognized and binding on the parties.
34 Participation in mediation does not preclude any additional steps
35 that any party can initiate, including legal review, to resolve a
36 continuing disagreement.

37 (7) During the proceedings outlined in subsections (4) through
38 (6) of this section, the action agency may not approve or release
39 funding, or make other formal decisions, including permitting, that
40 advance the proposed project except where required by law.

1 (8) The governor's office of Indian affairs, in coordination with
2 the department of archaeology and historic preservation and federally
3 recognized tribes, shall develop a state agency tribal consultation
4 process, including best practices for early, meaningful, and
5 effective consultation, early notification and engagement by
6 applicants with federally recognized tribes as a part of the
7 preapplication process in subsection (2) of this section, and
8 protocols for communication and collaboration with federally
9 recognized tribes. The consultation process must be periodically
10 reviewed and updated. The governor's office of Indian affairs must
11 provide training and other technical assistance to state agencies, as
12 they implement the required consultation. Notwithstanding the
13 governor's office of Indian affairs' ongoing work pursuant to this
14 subsection, the provisions of subsections (1) through (7) and (9) of
15 this section become effective as of the effective date of this
16 section.

17 (9) The requirements of this section apply to local governments
18 that receive funding from the accounts created in RCW 70A.65.250,
19 70A.65.260, and 70A.65.270, where that funding is disbursed to
20 project and program applicants. Where requested, the governor's
21 office of Indian affairs must provide training and other technical
22 assistance to local government agencies as they implement the
23 consultation requirements of this section.

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