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**HOUSE BILL 1190**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Representatives Dye, Sandlin, Abbarno, Goehner, and Barnard

Prefiled 01/06/23. Read first time 01/09/23. Referred to Committee on Environment & Energy.

1 AN ACT Relating to environmental leadership through outdoor  
2 recreation and climate adaptation investments; amending RCW  
3 70A.65.250 and 70A.65.305; reenacting and amending RCW 70A.65.030,  
4 70A.65.040, and 70A.65.230; adding a new section to chapter 70A.65  
5 RCW; creating a new section; and repealing RCW 70A.65.260 and  
6 70A.65.270.

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

8 NEW SECTION. **Sec. 1.** The legislature intends for the revenue  
9 from the climate commitment act to fund outdoor recreation and  
10 climate adaptation.

11 The legislature finds that carbon dioxide is both persistent and  
12 dynamic in the earth's atmosphere. Since 1850, nearly 40 percent of  
13 the total 2,504,000,000,000 metric tons of carbon dioxide emissions  
14 released from burning of both fossil fuels and forests have been  
15 absorbed by the ocean and terrestrial biome. The legislature  
16 recognizes the reality that the impacts of legacy emissions cannot be  
17 contained by cutting emissions alone. The legislature intends to  
18 optimize the potential of Washington's natural environment to absorb  
19 and sequester carbon dioxide emissions by improving the health and  
20 resiliency of its forests and inland seas. The legislature intends  
21 for these adaptation and resilience investments to be in addition to

1 planned investments to reduce the use of fossil fuels. Combining the  
2 power of landscape scale improvements to the health of our natural  
3 environment while also incentivizing the development of new energy  
4 technologies, Washington can be a leader in effective public policy  
5 responses to climate impacts.

6 The legislature recognizes that higher concentrations of carbon  
7 dioxide in the earth's atmosphere will persist and will take over  
8 1,000 years to be incorporated into the ocean and land ecosystems.  
9 Warmer and wetter conditions on land will assist in developing more  
10 robust farming and forest ecosystems. Longer growing seasons will  
11 allow more effective adaptive measures in farming and forestry to  
12 increase the carbon capture capacity of the terrestrial environment.  
13 The legislature can provide permanent funding for the forest health  
14 initiative and invest in new and innovative mills to create a forest  
15 products industry that utilizes the small diameter trees and  
16 undergrowth that are choking our forests. These investments will  
17 provide strong, long-term incentives to manage forest health and  
18 reduce emissions from catastrophic wildfires.

19 The legislature finds that both urban heat island effect and  
20 greenhouse gas emissions are creating impacts on land surface  
21 temperatures in Washington. The impact of this new reality requires  
22 prioritized public investment to offset the detrimental environmental  
23 impacts of deep urbanization and the excess heat absorption of built  
24 spaces. Investments in wastewater and stormwater infrastructure will  
25 improve water quality in Puget Sound, which is needed to correct the  
26 hypoxic condition in Puget Sound, and will result in the reduction of  
27 methane and nitrogen oxides emissions and a reduction in greenhouse  
28 gases that are less persistent but substantially more potent.

29 Rainfall patterns will continue to change and will require  
30 investments in infrastructure to store and deliver water for  
31 irrigated agriculture. High rainfall events west of the Cascade crest  
32 will require both storage capacity and green and gray infrastructure  
33 investments to protect from catastrophic loss of life and property.  
34 These investments must be appropriately coordinated with our Canadian  
35 counterparts that share Washington state rivers.

36 By investing in our naturehood, we provide an opportunity for a  
37 significant expansion of outdoor recreation facilities, including  
38 additional camping, wildlife and waterfowl habitat viewing, and  
39 beaches and trails accessible to urban and suburban population  
40 centers.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 70A.65

2    RCW to read as follows:

3        The outdoor recreation and climate adaptation account is created  
4    in the state treasury. The account must receive moneys distributed to  
5    the account from the climate investment account created in RCW  
6    70A.65.250. Moneys in the account may be spent only after  
7    appropriation. Expenditures from the account are intended to enhance  
8    outdoor recreation and to contribute to climate change adaptation by  
9    investing in forest health, drought resilience, flood risk  
10   mitigation, and Puget Sound recovery and water quality. The criteria  
11   of RCW 70A.65.250(1)(b) apply to expenditures from the outdoor  
12   recreation and climate adaptation account. Moneys in the account must  
13   be used for the following purposes:

14        (1) Forest health investments that contribute to climate change  
15   adaptation. Funding under this subsection must be used:

16        (a) To address long-term forest health and the reduction of  
17   wildfire dangers. In recognition of the significant greenhouse gas  
18   emissions from wildfires as calculated by the department of natural  
19   resources consistent with RCW 70A.45.020, and the statewide air  
20   quality impacts associated with wildfires, the state treasurer must  
21   transfer a total of \$125,000,000 each biennium, provided such sums  
22   are available in the account, in installments of \$15,625,000 on July  
23   1st, October 1st, January 1st, and April 1st of each year, from the  
24   account created in this section into the wildfire response, forest  
25   restoration, and community resilience account established in RCW  
26   76.04.511 to carry out the purposes of chapter 298, Laws of 2021;

27        (b) For grants and loans to small forestland owners for  
28   activities that increase carbon sequestration;

29        (c) For purposes of the forestry riparian easement program. It is  
30   the intent of the legislature that not less than \$10,000,000 be  
31   expended each biennium for the forestry riparian easement program  
32   created in chapter 76.13 RCW or for riparian easement projects funded  
33   under the agricultural conservation easements program established  
34   under RCW 89.08.530, or similar riparian enhancement programs;

35        (d) For the purposes of the family forest fish passage program,  
36   created pursuant to RCW 76.13.150; or

37        (e) To provide grants under a new grant program that invests in  
38   the institutions and infrastructure that make timber and farming  
39   towns sustainable and vibrant. The new grant program must be  
40   administered by the community economic revitalization board;

1 (2) Drought resilience investments that contribute to climate  
2 change adaptation. Funding under this subsection must be transferred  
3 to the state drought preparedness and response account established in  
4 RCW 43.83B.430;

5 (3) Flood risk mitigation investments that contribute to climate  
6 change adaptation. Funding under this subsection must be used to:

7 (a) Reduce flood damage and improve aquatic species' habitat in  
8 the basins most at risk of catastrophic flooding;

9 (b) Fund established flood control authorities to improve  
10 floodplains and flood protection infrastructure; or

11 (c) Fund sustainable water supply projects that will secure the  
12 agricultural industry against the risks of a changing climate;

13 (4) Puget Sound water quality investments, including assistance  
14 to regulated entities for upgrading pollution controls required by  
15 state permits;

16 (5) Outdoor recreation enhancement and amenities, including the  
17 support and expansion of state and local outdoor recreation programs,  
18 activities, and infrastructure funded through the state parks and  
19 recreation commission, department of fish and wildlife, department of  
20 natural resources, and the recreation and conservation office;

21 (6) Grants to support marinas in compliance with the environment  
22 protecting measures in aquatic lands or water quality permits;

23 (7) Grants for the replacement or addition of buoys at locations  
24 that appropriately balance environmental protection and the needs of  
25 on-water recreation;

26 (8) Grants to improve equitable access to local trails and  
27 connectivity of local trails to parks and regional trail networks;

28 (9) Stormwater investments that are helpful to salmon survival;

29 (10) Activities to support efforts to mitigate and adapt to the  
30 effects of climate change affecting Indian tribes, including capital  
31 investments in support of the relocation of Indian tribes located in  
32 areas at heightened risk due to anticipated sea level rise, flooding,  
33 or other disturbances caused by climate change. The legislature  
34 intends to dedicate at least \$50,000,000 per biennium from the  
35 account created in this section for the purposes of this subsection;  
36 and

37 (11) Decarbonization of medium and heavy duty vehicles in a  
38 technology-neutral way. The legislature intends to dedicate at least  
39 \$50,000,000 per biennium from the account created in this section for  
40 the purposes of this subsection.

1       **Sec. 3.** RCW 70A.65.030 and 2022 c 182 s 104 and 2022 c 181 s 13  
2 are each reenacted and amended to read as follows:

3       (1) Each year or biennium, as appropriate, when allocating funds  
4 from the carbon emissions reduction account created in RCW  
5 70A.65.240, the ~~((climate commitment account created in RCW  
6 70A.65.260, the natural climate solutions account created in RCW  
7 70A.65.270))~~ outdoor recreation and climate adaptation account  
8 created in section 2 of this act, the climate investment account  
9 created in RCW 70A.65.250, the air quality and health disparities  
10 improvement account created in RCW 70A.65.280, the climate transit  
11 programs account created in RCW 46.68.500, or the climate active  
12 transportation account created in RCW 46.68.490, or administering  
13 grants or programs funded by the accounts, agencies shall conduct an  
14 environmental justice assessment consistent with the requirements of  
15 RCW 70A.02.060 and establish a minimum of not less than 35 percent  
16 and a goal of 40 percent of total investments that provide direct and  
17 meaningful benefits to vulnerable populations within the boundaries  
18 of overburdened communities through: (a) The direct reduction of  
19 environmental burdens in overburdened communities; (b) the reduction  
20 of disproportionate, cumulative risk from environmental burdens,  
21 including those associated with climate change; (c) the support of  
22 community led project development, planning, and participation costs;  
23 or (d) meeting a community need identified by the community that is  
24 consistent with the intent of this chapter or RCW 70A.02.010.

25       (2) The allocation of funding under subsection (1) of this  
26 section must adhere to the following principles, additional to the  
27 requirements of RCW 70A.02.080: (a) Benefits and programs should be  
28 directed to areas and targeted to vulnerable populations and  
29 overburdened communities to reduce statewide disparities; (b)  
30 investments and benefits should be made roughly proportional to the  
31 health disparities that a specific community experiences, with a goal  
32 of eliminating the disparities; (c) investments and programs should  
33 focus on creating environmental benefits, including eliminating  
34 health burdens, creating community and population resilience, and  
35 raising the quality of life of those in the community; and (d)  
36 efforts should be made to balance investments and benefits across the  
37 state and within counties, local jurisdictions, and unincorporated  
38 areas as appropriate to reduce disparities by location and to ensure  
39 efforts contribute to a reduction in disparities that exist based on  
40 race or ethnicity, socioeconomic status, or other factors.

1 (3) State agencies allocating funds or administering grants or  
2 programs from the carbon emissions reduction account created in RCW  
3 70A.65.240, the ~~((climate commitment account created in RCW  
4 70A.65.260, the natural climate solutions account created in RCW  
5 70A.65.270))~~ outdoor recreation and climate adaptation account  
6 created in section 2 of this act, the climate investment account  
7 created in RCW 70A.65.250, the air quality and health disparities  
8 improvement account created in RCW 70A.65.280, the climate transit  
9 programs account created in RCW 46.68.500, or the climate active  
10 transportation account created in RCW 46.68.490, must:

11 (a) Report annually to the environmental justice council created  
12 in RCW 70A.02.110 regarding progress toward meeting environmental  
13 justice and environmental health goals;

14 (b) Consider recommendations by the environmental justice  
15 council; and

16 (c)(i) If the agency is not a covered agency subject to the  
17 requirements of chapter 70A.02 RCW, create and adopt a community  
18 engagement plan to describe how it will engage with overburdened  
19 communities and vulnerable populations in allocating funds or  
20 administering grants or programs from the climate investment account.

21 (ii) The plan must include methods for outreach and communication  
22 with those who face barriers, language or otherwise, to  
23 participation.

24 **Sec. 4.** RCW 70A.65.040 and 2022 c 182 s 105 and 2022 c 181 s 14  
25 are each reenacted and amended to read as follows:

26 (1) The environmental justice council created in RCW 70A.02.110  
27 must provide recommendations to the legislature, agencies, and the  
28 governor in the development and implementation of the program  
29 established in RCW 70A.65.060 through 70A.65.210, and the programs  
30 funded from the carbon emissions reduction account created in RCW  
31 70A.65.240, the ~~((climate commitment account created in RCW  
32 70A.65.260, the natural climate solutions account created in RCW  
33 70A.65.270))~~ outdoor recreation and climate adaptation account  
34 created in section 2 of this act, the climate investment account  
35 created in RCW 70A.65.250, the climate transit programs account  
36 created in RCW 46.68.500, and the climate active transportation  
37 account created in RCW 46.68.490.

1 (2) In addition to the duties and authorities granted in chapter  
2 70A.02 RCW to the environmental justice council, the environmental  
3 justice council must:

4 (a) Provide recommendations to the legislature, agencies, and the  
5 governor in the development of:

6 (i) The program established in RCW 70A.65.060 through 70A.65.210  
7 including, but not limited to, linkage with other jurisdictions,  
8 protocols for establishing offset projects and securing offset  
9 credits, designation of emissions-intensive and trade-exposed  
10 industries under RCW 70A.65.110, and administration of allowances  
11 under the program; and

12 (ii) Investment plans and funding proposals for the programs  
13 funded from the climate investment account created in RCW 70A.65.250  
14 for the purpose of providing environmental benefits and reducing  
15 environmental health disparities within overburdened communities;

16 (b) Provide a forum to analyze policies adopted under this  
17 chapter to determine if the policies lead to improvements within  
18 overburdened communities;

19 (c) Recommend procedures and criteria for evaluating programs,  
20 activities, or projects;

21 (d) Recommend copollutant emissions reduction goals in  
22 overburdened communities;

23 (e) Evaluate the level of funding provided to assist vulnerable  
24 populations, low-income individuals, and impacted workers and the  
25 funding of projects and activities located within or benefiting  
26 overburdened communities;

27 (f) Recommend environmental justice and environmental health  
28 goals for programs, activities, and projects funded from the climate  
29 investment account, and review agency annual reports on outcomes and  
30 progress toward meeting these goals;

31 (g) Provide recommendations to implementing agencies for  
32 meaningful consultation with vulnerable populations, including  
33 community engagement plans under RCW 70A.65.020 and 70A.65.030; and

34 (h) Recommend how to support public participation through  
35 capacity grants for participation.

36 (3) For the purpose of performing the duties under subsection (2)  
37 of this section, two additional tribal members are added to the  
38 council.

1       **Sec. 5.** RCW 70A.65.230 and 2022 c 182 s 426 and 2022 c 181 s 8  
2 are each reenacted and amended to read as follows:

3       (1) It is the intent of the legislature that each year the total  
4 investments made through the carbon emissions reduction account  
5 created in RCW 70A.65.240, the ~~((climate commitment account created  
6 in RCW 70A.65.260, the natural climate solutions account created in  
7 RCW 70A.65.270))~~ outdoor recreation and climate adaptation account  
8 created in section 2 of this act, the air quality and health  
9 disparities improvement account created in RCW 70A.65.280, the  
10 climate transit programs account created in RCW 46.68.500, and the  
11 climate active transportation account created in RCW 46.68.490,  
12 achieve the following:

13       (a) A minimum of not less than 35 percent and a goal of 40  
14 percent of total investments that provide direct and meaningful  
15 benefits to vulnerable populations within the boundaries of  
16 overburdened communities identified under chapter 70A.02 RCW; and

17       (b) In addition to the requirements of (a) of this subsection, a  
18 minimum of not less than 10 percent of total investments that are  
19 used for programs, activities, or projects formally supported by a  
20 resolution of an Indian tribe, with priority given to otherwise  
21 qualifying projects directly administered or proposed by an Indian  
22 tribe. An investment that meets the requirements of both this  
23 subsection (1)(b) and (a) of this subsection may count toward the  
24 minimum percentage targets for both subsections.

25       (2) The expenditure of moneys under this chapter must be  
26 consistent with applicable federal, state, and local laws, and treaty  
27 rights including, but not limited to, prohibitions on uses of funds  
28 imposed by the state Constitution.

29       (3) For the purposes of this section, "benefits" means  
30 investments or activities that:

31       (a) Reduce vulnerable population characteristics, environmental  
32 burdens, or associated risks that contribute significantly to the  
33 cumulative impact designation of overburdened communities;

34       (b) Meaningfully protect an overburdened community from, or  
35 support community response to, the impacts of air pollution or  
36 climate change; or

37       (c) Meet a community need identified by vulnerable members of the  
38 overburdened community that is consistent with the intent of this  
39 chapter.

1 (4) The state must develop a process by which to evaluate the  
2 impacts of the investments made under this chapter, work across state  
3 agencies to develop and track priorities across the different  
4 eligible funding categories, and work with the environmental justice  
5 council pursuant to RCW 70A.65.040.

6 **Sec. 6.** RCW 70A.65.250 and 2022 c 253 s 2 are each amended to  
7 read as follows:

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

13 (b) Projects or activities funded from the account must meet high  
14 labor standards, including family sustaining wages, providing  
15 benefits including health care and employer-contributed retirement  
16 plans, career development opportunities, and maximize access to  
17 economic benefits from such projects for local workers and diverse  
18 businesses. Each contracting entity's proposal must be reviewed for  
19 equity and opportunity improvement efforts, including: (i) Employer  
20 paid sick leave programs; (ii) pay practices in relation to living  
21 wage indicators such as the federal poverty level; (iii) efforts to  
22 evaluate pay equity based on gender identity, race, and other  
23 protected status under Washington law; (iv) facilitating career  
24 development opportunities, such as apprenticeship programs,  
25 internships, job-shadowing, and on-the-job training; and (v)  
26 employment assistance and employment barriers for justice affected  
27 individuals.

28 (2) Moneys in the account may be used only for projects and  
29 programs that achieve the purposes of the greenhouse gas emissions  
30 cap and invest program established under this chapter and for tribal  
31 capacity grants under RCW 70A.65.305. Moneys in the account as  
32 described in this subsection must first be appropriated for the  
33 administration of the requirements of this chapter, in an amount not  
34 to exceed five percent of the total receipt of funds from allowance  
35 auction proceeds under this chapter. Beginning July 1, 2024, and  
36 annually thereafter, the state treasurer shall distribute funds in  
37 the account that exceed the amounts appropriated for the purposes of  
38 this subsection (2) (~~as follows:~~

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

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

5 ~~(3) The allocations specified in subsection (2) (a) and (b) of~~  
6 ~~this section must be reviewed by the legislature on a biennial basis~~  
7 ~~based on the changing needs of the state in meeting its clean economy~~  
8 ~~and greenhouse gas reduction goals in a timely, economically~~  
9 ~~advantageous, and equitable manner)) to the outdoor recreation and~~  
10 ~~climate adaptation account created in section 2 of this act.~~

11 **Sec. 7.** RCW 70A.65.305 and 2022 c 253 s 1 are each amended to  
12 read as follows:

13 (1) Agencies that allocate funding or administer grant programs  
14 appropriated from the climate investment account created in RCW  
15 70A.65.250 (~~(, the climate commitment account created in RCW~~  
16 ~~70A.65.260, and the natural climate solutions account created in RCW~~  
17 ~~70A.65.270)) and the outdoor recreation and climate adaptation  
18 account created in section 2 of this act must offer early,  
19 meaningful, and individual consultation with any affected federally  
20 recognized tribe on all funding decisions and funding programs that  
21 may impact tribal resources, including tribal cultural resources,  
22 archaeological sites, sacred sites, fisheries, or other rights and  
23 interests in tribal lands and lands within which a tribe or tribes  
24 possess rights reserved or protected by federal treaty, statute, or  
25 executive order. The consultation is independent of, and in addition  
26 to, any public participation process required by federal or state  
27 law, or by a federal or state agency, including the requirements of  
28 Executive Order 21-02 related to archaeological and cultural  
29 resources, and regardless of whether the agency receives a request  
30 for consultation from a federally recognized tribe. The goal of the  
31 consultation process is to identify tribal resources or rights  
32 potentially affected by the funding decisions and funding programs,  
33 assess their effects, and seek ways to avoid, minimize, or mitigate  
34 any adverse effects on tribal resources or rights.~~

35 (2) At the earliest possible date prior to submittal of an  
36 application, applicants for funding from the accounts created in RCW  
37 70A.65.250 (~~(, 70A.65.260, and 70A.65.270)) and section 2 of this act~~  
38 shall engage in a preapplication process with all affected federally  
39 recognized tribes within the project area.

1 (a) The preapplication process must include the applicant  
2 notifying the department of archaeology and historic preservation,  
3 the department of fish and wildlife, and all affected federally  
4 recognized tribes within the project area. The notification must  
5 include geographical location, detailed scope of the proposed  
6 project, preliminary application details available to federal, state,  
7 or local governmental jurisdictions, and all publicly available  
8 materials, including public funding sources.

9 (b) The applicant must also offer to discuss the project with the  
10 department of archaeology and historic preservation, the department  
11 of fish and wildlife, and all affected federally recognized tribes  
12 within the project area. Discussions may include the project's impact  
13 to tribal resources, including tribal cultural resources,  
14 archaeological sites, sacred sites, fisheries, or other rights and  
15 interests in tribal lands and lands within which a tribe or tribes  
16 possess rights reserved or protected by federal treaty, statute, or  
17 executive order.

18 (c) All affected federally recognized tribes may submit to the  
19 appropriate agency or agencies a summary of tribal issues, questions,  
20 concerns, or other statements regarding the project, which must  
21 become part of the official application file. The summary does not  
22 limit what issues affected federally recognized tribes may raise in  
23 the consultation process identified in subsections (1), (3) through  
24 (7), and (9) of this section.

25 (d) The notification and offer to initiate discussion must be  
26 documented with the application when it is filed, and a copy of the  
27 application must be delivered to the department of archaeology and  
28 historic preservation, the department of fish and wildlife, and to  
29 the affected federally recognized tribe or tribes. If the discussions  
30 pursuant to (b) of this subsection do not occur, the applicant must  
31 document the reason why the discussion or discussions did not occur.

32 (e) Nothing in this section may be interpreted to require the  
33 disclosure of information that is exempt from disclosure pursuant to  
34 RCW 42.56.300 or federal law, including section 304 of the national  
35 historic preservation act of 1966. Any information that is exempt  
36 from disclosure pursuant to RCW 42.56.300 or federal law, including  
37 section 304 of the national historic preservation act of 1966, shall  
38 not become part of the official application file.

39 (3) If any funding decision, program, project, or activity that  
40 may impact tribal resources, including tribal cultural resources,

1 archaeological sites, sacred sites, fisheries, or other rights and  
2 interests in tribal lands and lands within which a tribe or tribes  
3 possess rights reserved by federal treaty, statute, or executive  
4 order is funded from the accounts created in RCW 70A.65.250(~~7~~  
5 ~~70A.65.260, and 70A.65.270~~) and section 2 of this act without such a  
6 consultation with an affected federally recognized tribe, the  
7 affected federally recognized tribe may request that all further  
8 action on the decision, program, project, or activity cease until  
9 meaningful consultation is completed. Upon receipt of such a request  
10 by an agency or agencies with the authority to allocate funding or  
11 administer grant programs from the accounts listed in subsection (1)  
12 of this section in support of the proposed project, further action by  
13 the agency or agencies on any decision, program, project, or activity  
14 that would result in significant physical disturbance of the tribal  
15 resource or resources described in this subsection must cease until  
16 the consultation has been completed.

17 (4) Upon completion of agency and tribal consultation, an  
18 affected federally recognized tribe may request a formal review of  
19 the consultation by submitting a request to the governor's office of  
20 Indian affairs and notifying the appropriate agencies and the  
21 department of archaeology and historic preservation. The state  
22 agencies and tribe must meet to initiate discussion within no more  
23 than 20 days of the request. This consultation must be offered and  
24 conducted separately with each affected federally recognized tribe,  
25 unless the tribes agree to conduct a joint consultation with the  
26 state.

27 (5) After the state agencies and tribe or tribes have conducted a  
28 formal review under subsection (4) of this section, an affected  
29 federally recognized tribe or state agency may request that the  
30 governor and an elected tribal leader or leaders of a federally  
31 recognized tribal government meet to formally consider the  
32 recommendations from the parties. If requested, this meeting must  
33 occur within 30 days of the request, except that a federally  
34 recognized tribe may choose to opt out of the meeting. This timeline  
35 may be extended by mutual agreement between the governor and the  
36 tribal leaders.

37 (6) After the meeting identified in subsection (5) of this  
38 section has occurred, the governor or an elected tribal leader of a  
39 federally recognized tribe may call for the state and tribe or tribes  
40 to enter into formal mediation, except that a federally recognized

1 tribe may choose to opt out of the mediation. If entered into, the  
2 mediation must be conducted as a government-to-government proceeding,  
3 with each sovereign government retaining their right to a final  
4 decision that meets their separate obligations and interests.  
5 Mediators must be jointly selected by the parties to the mediation.  
6 An agreement between the governor and a tribal leader or leaders  
7 resulting from the mediation is formally recognized and binding on  
8 the signatory parties. Absent an agreement, participation in  
9 mediation does not preclude any additional steps that any party can  
10 initiate, including legal review, to resolve a continuing  
11 disagreement.

12 (7) During the proceedings outlined in subsections (4) through  
13 (6) of this section, the agency or agencies with the authority to  
14 allocate funding or administer grant programs from the accounts  
15 listed in subsection (1) of this section in support of the proposed  
16 project may not approve or release funding, or make other formal  
17 decisions, including permitting, that advance the proposed project  
18 except where required by law.

19 (8) By June 30, 2023, the governor's office of Indian affairs, in  
20 coordination with the department of archaeology and historic  
21 preservation and federally recognized tribes, shall develop a state  
22 agency tribal consultation process, including best practices for  
23 early, meaningful, and effective consultation, early notification and  
24 engagement by applicants with federally recognized tribes as a part  
25 of the preapplication process in subsection (2) of this section, and  
26 protocols for communication and collaboration with federally  
27 recognized tribes. The consultation process developed under this  
28 section must be periodically reviewed and updated in coordination  
29 with federally recognized tribes. The governor's office of Indian  
30 affairs must provide training and other technical assistance to state  
31 agencies, as they implement the required consultation.  
32 Notwithstanding the governor's office of Indian affairs' ongoing work  
33 pursuant to this subsection, the provisions of subsections (1)  
34 through (7) and (9) of this section become effective as of June 9,  
35 2022.

36 (9) The requirements of this section apply to local governments  
37 that receive funding from the accounts created in RCW 70A.65.250(~~(7~~  
38 ~~70A.65.260, and 70A.65.270,)~~) and section 2 of this act where that  
39 funding is disbursed to project and program applicants. Where  
40 requested, the governor's office of Indian affairs must provide

1 training and other technical assistance to local government agencies  
2 as they implement the consultation requirements of this section.

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

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

9 NEW SECTION. **Sec. 8.** The following acts or parts of acts are  
10 each repealed:

11 (1) RCW 70A.65.260 (Climate commitment account) and 2022 c 179 s  
12 17 & 2021 c 316 s 29; and

13 (2) RCW 70A.65.270 (Natural climate solutions account) and 2021 c  
14 316 s 30.

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