
HOUSE BILL 2281

State of Washington

69th Legislature

2026 Regular Session

By Representatives Stearns, Mena, Salahuddin, Leavitt, Wylie, Pollet, Reeves, Peterson, Berry, Farivar, Reed, Obras, Santos, Cortes, Parshley, Zahn, Nance, Street, Duerr, Ormsby, Berg, Callan, Lekanoff, Goodman, Macri, Fosse, Hill, and Bernbaum

Prefiled 01/06/26. Read first time 01/12/26. Referred to Committee on State Government & Tribal Relations.

1 AN ACT Relating to the state and tribal government-to-government
2 relationship; amending RCW 43.376.010, 43.376.020, and 43.376.060;
3 and adding a new section to chapter 43.376 RCW.

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

5 **Sec. 1.** RCW 43.376.010 and 2012 c 122 s 1 are each amended to
6 read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Agency actions" include the development of policies,
10 agreements, and program implementation, the implementation or
11 enforcement of a statute, the adoption or application of an agency
12 rule or order, permitting, licensing, certification, approval, or
13 other granting authority exercised by a state agency.

14 (2) "Indian tribe" means any federally recognized Indian tribe
15 (~~whose~~) with contemporary or traditional lands and territories
16 (~~included parts of~~) in Washington.

17 (2) "State agency" means an agency, department, office, or the
18 office of a statewide elected official, of the state of Washington.

19 (3) "Traditional" refers to those beliefs, customs, and practices
20 of an Indian tribe that have been passed down through generations and
21 the places associated with those beliefs, customs, and practices.

1 (4) "Tribal traditional cultural place" is any geophysical or
2 geographical place, area, or feature, associated with the cultural
3 practices, traditions, beliefs, lifeways, arts, crafts, or social
4 institutions of an Indian tribe.

5 (5) "Undue burden" means any material, significant, or sustained
6 impairment, disruption, restriction, or diminishment of a tribal
7 traditional cultural practice, or of the integrity, continuity,
8 condition, or accessibility of a tribal cultural place, including
9 direct or cumulative impacts.

10 **Sec. 2.** RCW 43.376.020 and 2022 c 253 s 3 are each amended to
11 read as follows:

12 In establishing a government-to-government relationship with
13 Indian tribes, state agencies must:

14 (1) Make reasonable efforts to collaborate with Indian tribes in
15 the development of policies, agreements, and program implementation
16 that directly affect Indian tribes and develop a mutually agreed upon
17 consultation process that is used by the agency for issues involving
18 specific Indian tribes. Covered agencies, as defined in RCW
19 70A.02.010, subject to the requirements of chapter 70A.02 RCW, must
20 offer consultation with Indian tribes on the actions specified in RCW
21 70A.02.100. State agencies described in RCW 70A.65.305 must offer
22 consultation with Indian tribes on the actions specified in RCW
23 70A.65.305;

24 (2) Before taking any agency action that may affect a tribal
25 traditional cultural place, provide timely written notice to affected
26 tribes describing the proposed action and reasonably foreseeable
27 impacts and allowing adequate time for consultation before any final
28 decision. The state agency shall engage in early, meaningful, and
29 consent-based consultation with each affected Indian tribe for any
30 agency action that may affect a tribal traditional cultural place or
31 practice. Consultation must begin at the earliest stage of planning,
32 continue through the decision-making process of the agency, and seek
33 to reach consent from the affected tribe. Tribal nations and their
34 people are the subject matter experts on their own traditional
35 cultural places and practices. The consultation process must reflect
36 the consultation standards of the affected tribe and provide the
37 tribe with the information and time needed to fully evaluate
38 potential impacts;

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

3 (~~(3)~~) (4) Ensure that tribal liaisons who interact with Indian
4 tribes and the executive directors of state agencies receive training
5 as described in RCW 43.376.040; and

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

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.376
10 RCW to read as follows:

11 (1) A state agency may not impose an undue burden or interfere
12 with an Indian tribe's exercise of traditional cultural practices on
13 a tribal traditional cultural place unless it is in furtherance of a
14 compelling governmental interest and is the least restrictive means
15 of furthering that compelling governmental interest.

16 (2) An Indian tribe whose traditional cultural practices have
17 been burdened in violation of this section may assert that violation
18 as a claim in a judicial proceeding and obtain appropriate relief
19 against a state agency. Actions shall be brought in superior court in
20 accordance with chapter 4.92 RCW.

21 (3) (a) The aggrieved party shall have the burden of proving that
22 the agency action having an impact upon the management, use, or
23 preservation of a tribal traditional cultural place, is posing or
24 will pose an undue burden on any aspect of a tribal traditional
25 cultural practice.

26 (b) If the aggrieved party meets its burden of proof under (a) of
27 this subsection, the agency shall have the burden of proving that the
28 governmental interest in the state action is compelling and that the
29 agency chose the least intrusive means for satisfying that
30 governmental interest.

31 (4) In the case of any proceeding involving a tribal traditional
32 cultural place or associated traditional cultural practice of a tribe
33 whose traditional cultural tenets prohibit disclosure of information
34 concerning their traditional cultural places or traditional cultural
35 beliefs or practices, and mandate secrecy and internal sanctions to
36 enforce those prohibitions, and where the tribal government of the
37 affected tribe so certifies, the agency shall have the burden of
38 proving that:

1 (a) It has a compelling governmental interest in pursuing the
2 action as originally proposed;

3 (b) It is essential that the agency's compelling governmental
4 interest be furthered as originally proposed; and

5 (c) None of the less intrusive alternatives identified adequately
6 advance that compelling governmental interest.

7 (5) If an agency does not meet its burden of proof under this
8 section, it shall not proceed with the proposed action.

9 **Sec. 4.** RCW 43.376.060 and 2012 c 122 s 6 are each amended to
10 read as follows:

11 (~~Nothing~~) Except as provided in section 3 of this act, nothing
12 in this chapter creates a right of action against a state agency or a
13 right of review of an action by a state agency.

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