

SHB 1753 - H AMD 893

By Representative Lekanoff

ADOPTED 02/10/2022

1 Strike everything after the enacting clause and insert the
2 following:

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

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

25 (2) At the earliest possible date prior to submittal of an
26 application, applicants for funding from the accounts created in RCW
27 70A.65.250, 70A.65.260, and 70A.65.270 shall engage in a
28 preapplication process with all affected federally recognized tribes
29 within the project area.

30 (a) The preapplication process must include the applicant
31 notifying the department of archaeology and historic preservation,
32 the department of fish and wildlife, and all affected federally

1 recognized tribes within the project area. The notification must
2 include geographical location, detailed scope of the proposed
3 project, preliminary application details available to federal, state,
4 or local governmental jurisdictions, and all publicly available
5 materials, including public funding sources.

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

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

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

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

36 (3) If any funding decision, program, project, or activity that
37 may impact tribal resources, including tribal cultural resources,
38 archaeological sites, sacred sites, fisheries, or other rights and
39 interests in tribal lands and lands within which a tribe or tribes
40 possess rights reserved by federal treaty, statute, or executive

1 order is funded from the accounts created in RCW 70A.65.250,
2 70A.65.260, and 70A.65.270 without such a consultation with an
3 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. Upon receipt of such a request by an agency or agencies
7 with the authority to allocate funding or administer grant programs
8 from the accounts listed in subsection (1) of this section in support
9 of the proposed project, further action by the agency or agencies on
10 any decision, program, project, or activity that would result in
11 significant physical disturbance of the tribal resource or resources
12 described in this subsection must cease until the consultation has
13 been completed.

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

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

34 (6) After the meeting identified in subsection (5) of this
35 section has occurred, the governor or an elected tribal leader of a
36 federally recognized tribe may call for the state and tribe or tribes
37 to enter into formal mediation, except that a federally recognized
38 tribe may choose to opt out of the mediation. If entered into, the
39 mediation must be conducted as a government-to-government proceeding,
40 with each sovereign government retaining their right to a final

1 decision that meets their separate obligations and interests.
2 Mediators must be jointly selected by the parties to the mediation.
3 An agreement between the governor and a tribal leader or leaders
4 resulting from the mediation is formally recognized and binding on
5 the signatory parties. Absent an agreement, participation in
6 mediation does not preclude any additional steps that any party can
7 initiate, including legal review, to resolve a continuing
8 disagreement.

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

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

33 (9) The requirements of this section apply to local governments
34 that receive funding from the accounts created in RCW 70A.65.250,
35 70A.65.260, and 70A.65.270, where that funding is disbursed to
36 project and program applicants. Where requested, the governor's
37 office of Indian affairs must provide training and other technical
38 assistance to local government agencies as they implement the
39 consultation requirements of this section.

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

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

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

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

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

29 (2) Moneys in the account may be used only for projects and
30 programs that achieve the purposes of the greenhouse gas emissions
31 cap and invest program established under this chapter and for tribal
32 capacity grants under section 1 of this act. Moneys in the account as
33 described in this subsection must first be appropriated for the
34 administration of the requirements of this chapter, in an amount not
35 to exceed five percent of the total receipt of funds from allowance
36 auction proceeds under this chapter. Beginning July 1, 2024, and
37 annually thereafter, the state treasurer shall distribute funds in
38 the account that exceed the amounts appropriated for the purposes of
39 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.

10 **Sec. 3.** RCW 43.376.020 and 2021 c 316 s 40 and 2021 c 314 s 23
11 are each reenacted and amended to 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 consultation process
17 that is used by the agency for issues involving specific Indian
18 tribes. Covered agencies, as defined in RCW 70A.02.010, subject to
19 the requirements of chapter 70A.02 RCW, must offer consultation with
20 Indian tribes on the actions specified in RCW 70A.02.100. State
21 agencies described in (~~section 6 of this act~~) section 1 of this act
22 must offer consultation with Indian tribes on the actions specified
23 in (~~section 6 of this act~~) section 1 of this act;

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

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

29 (4) Submit an annual report to the governor on activities of the
30 state agency involving Indian tribes and on implementation of this
31 chapter."

32 Correct the title.

EFFECT: Provides that the tribal consultation process established
in the bill is independent of any process required by federal law or
by a federal agency.

Provides that nothing in the bill may require disclosure of
sensitive archaeological information exempted from disclosure under
state or federal law, and that such information does not become part
of the official application file.

Requires that, if a tribe requests that action cease because the tribal consultation process has not occurred, a funding agency must cease all agency action that results in significant physical disturbance to affected tribal resources.

Provides that federally recognized tribes may choose to opt out of certain stages of the tribal consultation process, to include meeting with the Governor and mediation.

Requires the Governor's Office of Indian Affairs to develop the tribal consultation process no later than June 30, 2023, and to periodically update the process in consultation with federally recognized tribes.

Authorizes state agencies to adopt rules to carry out their duties under the bill.

Requires the Department of Ecology to establish a tribal capacity grant program in connection with the tribal consultation process.

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