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HOUSE BILL 1753

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State of Washington

67th Legislature

2022 Regular Session

By Representatives Lekanoff and Fitzgibbon; by request of Office of the Governor

Prefiled 01/04/22.

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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