
**State Government & Tribal Relations
Committee**

HB 2850

Brief Description: Protecting archaeological and cultural sites by state and local governments and all recipients of state funding.

Sponsors: Representatives Lekanoff, Gildon, Ortiz-Self, Wylie, Pollet, Peterson, Gregerson, Fitzgibbon, Valdez and Tarleton.

Brief Summary of Bill

- Requires state-funded projects that include groundbreaking activity to be reviewed by the Department of Archaeology and Historic Preservation to determine whether the project may impact archaeological or cultural sites of a federally recognized tribe.
- Sets requirements for the review process, including consultation with interested federally recognized tribes.
- Requires Capital Budget requests submitted by a state agency, applications for Building Communities Fund Program grants, and public works contracts with the state to demonstrate that this review process has occurred.

Hearing Date: 2/4/20

Staff: Jason Zolle (786-7124).

Background:

The Department of Archaeology and Historic Preservation.

The Department of Archaeology and Historic Preservation (DAHP) is responsible for providing information to state and federal agencies and private construction companies regarding the possible impact of construction activities on the state's archaeological resources. The Director of DAHP may issue a written permit to a person or organization to dig into or excavate historic or prehistoric archeological sites. Archaeological sites are locations within Washington that contain objects that are physical evidence of an indigenous and subsequent culture, including material

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remains of past human life such as monuments, symbols, tools, facilities, and technological by-products. The DAHP must annually publish and update a list of areas in which permits are required to protect archaeological sites on aquatic lands

The Director must consult with affected tribes to develop guidelines for the issuance and processing of permits. Knowingly engaging in such activities without a permit is a class C felony and may result in civil penalties as well. Violations of other requirements overseen by the DAHP is a misdemeanor, with each day of violation being considered a distinct and separate offense.

Federally Recognized Tribes.

There are 29 federally recognized tribes in Washington state. Federal recognition is granted by the United States Bureau of Indian Affairs (BIA), and recognition bestows the right of self-government to a tribe. Recognition also permits a tribe to receive funding and services from the federal government and the BIA. There are currently 573 federally recognized tribes nationwide.

Executive Order 05-05.

Governor Gregoire signed Executive Order 05-05 (the Order) in November of 2005 to address potential impacts of state capital projects on cultural and historic places. The Order requires state agencies that are using funds appropriated in the state's Capital Budget to consider how proposed projects may impact significant cultural and historic places. Agencies must notify the DAHP and the Governor's Office of Indian Affairs (GOIA), as well as concerned tribes, and offer the opportunity to review the projects and provide comments about potential impacts.

The review process may start with a face-to-face meeting with the DAHP or filling out forms created by the DAHP. The DAHP review includes discussion of the project location, proposed ground disturbance (if any), and whether there has been any contact with interested tribes. Consultation with affected tribes is required as part of the review process.

An agency must conduct the DAHP review under the Order before submitting a request to the Office of Financial Management (OFM) for state funding of a capital construction project. Capital Budget requests must include a letter from the DAHP confirming that review occurred.

If federal funding is also involved, the review process under the Order is not required; instead, review is done under the National Historic Preservation Act, discussed below.

The National Historic Preservation Act.

In 1966 Congress passed the National Historic Preservation Act (Act) to require federal agencies to consider whether projects they carry out, assist, fund, permit, or approve have an effect on a historic property. Section 106 of the Act permits interested parties and the public to participate in decisions about whether such a project will commence. First, the federal agency identifies who should participate in the review; this may include federally recognized tribes. Next, the agency considers whether any properties that may be affected are listed or eligible for listing on the National Register of Historic Places. If such a property may be affected, the agency considers whether those effects are adverse. Finally, if adverse impacts are anticipated, the agency must consider methods to avoid or mitigate such adverse effects and work to reach agreement with affected parties such as a tribe. If the parties reach an agreement, it is memorialized in writing. If no agreement is possible, the agency must obtain formal advisory

comments from the Advisory Council on Historic Preservation and decide whether the project will proceed.

State Funding.

As mentioned above, requests for state funding from the Capital Budget are submitted to OFM. The request must include information such as the purpose of the project and its cost and verification that the project is consistent with the Growth Management Act.

The Department of Community, Trade, and Economic Development has established the Building Communities Fund Program to give capital and technical assistance grants to nonprofit organizations to acquire, construct, or rehabilitate facilities for nonresidential community services. To be considered, grant applicants must demonstrate that the project will increase the quality of services provided to citizens and will fill an unmet need for community services, among other things.

The Public Works Board (Board) provides loans and grants to public works projects. Applications for project grants must discuss the environmental benefits of the projects, which the Board uses in its selection of grantees. State contracts for public works under the Public Works chapter and the Alternative Public Works chapter also must meet certain requirements.

Summary of Bill:

Before the commencement of a project that is funded by the state, in whole or in part, that requires groundbreaking activity, the project must be reviewed by the Department of Archaeology and Historic Preservation (DAHP) and any interested federally recognized tribes to determine whether it may potentially impact archaeological and cultural sites. This review should occur as early in the project planning process as possible.

The review must include the following:

- notifying the governing bodies of federally recognized tribes of the proposed groundbreaking activity, with the help of Governor's Office of Indian Affairs (GOIA);
- consulting with federally recognized tribes that have responded to the notification;
- working with the DAHP and those tribes to develop strategies to protect archaeological and cultural sites; and
- to notify the DAHP and GOIA of the progress of the review within 30 days after the initial notice was sent to tribes.

These requirements must be incorporated into state agency grant and loan management guidelines. However, projects subject to the National Historic Preservation Act are not required to go through this review process.

Violations of the review process in this section are exempt from civil penalties typically imposed for violations of requirements under the DAHP's authority.

Capital Budget requests submitted by a state agency to Office of Financial Management must include verification that the project has undergone this review process. Applicants for grants from the Building Communities Fund Program must also demonstrate compliance with this

review process. Public works contracts under the Public Works Board, the Public Works chapter, and the Alternative Public Works chapter are also subject to this review process.

Appropriation: None.

Fiscal Note: Requested on February 2, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.