
HOUSE BILL 2850

State of Washington

66th Legislature

2020 Regular Session

By Representatives Lekanoff, Gildon, Ortiz-Self, Wylie, Pollet, Peterson, Gregerson, Fitzgibbon, Valdez, and Tarleton

Read first time 01/27/20. Referred to Committee on State Government & Tribal Relations.

1 AN ACT Relating to protecting archaeological and cultural sites
2 by state and local governments and all recipients of state funding;
3 amending RCW 27.53.090, 43.88.030, 43.63A.125, and 43.155.075; adding
4 a new section to chapter 27.53 RCW; adding a new section to chapter
5 39.04 RCW; adding a new section to chapter 39.10 RCW; and creating a
6 new section.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that Washington has
9 a rich and diverse cultural heritage, as represented by the numerous
10 archaeological and cultural sites that have been identified and
11 located throughout our state, and that preservation of these sites is
12 of critical importance to the tribes whose lands and people live and
13 travel in this territory that became the state of Washington. In
14 addition, these important sites provide educational and cultural
15 values and lead to a better understanding between cultures of the
16 region. Many people in Washington contribute their time and efforts
17 to preserve and protect unique archaeological sites and traditional
18 cultural places, and these sites and places hold special cultural,
19 historical, and spiritual significance. The legislature therefore
20 intends to require recipients of state funds to consult with tribes

1 before engaging in any groundbreaking activity that may impact such
2 archaeological and cultural sites.`

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 27.53
4 RCW to read as follows:

5 (1) Before the commencement of a project that is funded by the
6 state, in whole or in part, that requires groundbreaking activity,
7 the project must be reviewed by the department and interested
8 federally recognized tribes to determine whether it may potentially
9 impact archaeological and cultural sites. The review should be done
10 as early in the project planning process as possible. As part of the
11 review, the agency or organization leading the project must:

12 (a) Coordinate with the governor's office of Indian affairs and
13 the department to notify the governing bodies of federally recognized
14 tribes of the proposed groundbreaking activity;

15 (b) Consult with federally recognized tribes who have responded
16 to the notification and expressed an interest in finding an agreed-
17 upon means to protect archaeological and cultural sites. The
18 consultation must occur before the project design is completed. If
19 necessary, the department may assist in arranging a meeting to
20 discuss the project;

21 (c) Work with the department and interested federally recognized
22 tribes on an appropriate archaeological survey and develop strategies
23 for the protection of archaeological and cultural sites consistent
24 with state and federal laws and with those laws of the interested
25 federally recognized tribes;

26 (d) Take reasonable action to avoid adverse impacts to the
27 archaeological and cultural sites during the consultation process;
28 and

29 (e) Notify the department and the governor's office of Indian
30 affairs, by certified letter, of the progress of the review within
31 thirty days of the first attempt to notify the governing bodies of
32 federally recognized tribes of the proposed groundbreaking activity.
33 The letter must:

34 (i) Indicate whether or not any interested federally recognized
35 tribes responded to the notification;

36 (ii) Include what meetings have occurred under (b) of this
37 subsection; and

1 (iii) Summarize the progress of the review, including whether or
2 not an agreement on how to protect archaeological and cultural sites
3 has been reached.

4 (2) This section does not apply to projects that are subject to
5 federal review for protection of historic properties under section
6 106 of the national historic preservation act of 1966 (54 U.S.C. Sec.
7 306108).

8 (3) This section is not subject to the penalties outlined under
9 RCW 27.53.090.

10 (4) State agencies must take steps to ensure that the
11 requirements in this section are incorporated into their grant and
12 loan management guidelines.

13 (5) For purposes of this section:

14 (a) "Consult" means to engage in a discussion in a face-to-face
15 meeting or another manner designated by the interested federally
16 recognized tribe.

17 (b) "Cultural site" means a place of importance to an interested
18 federally recognized tribe.

19 (c) "Groundbreaking activity" means any activity where the earth
20 is disturbed.

21 **Sec. 3.** RCW 27.53.090 and 1986 c 266 s 20 are each amended to
22 read as follows:

23 (~~Any~~) Except as provided in section 2 of this act, any person,
24 firm, or corporation violating any of the provisions of this chapter
25 shall be guilty of a misdemeanor. Each day of continued violation of
26 any provision of this chapter shall constitute a distinct and
27 separate offense. Offenses shall be reported to the appropriate law
28 enforcement agency or to the director.

29 **Sec. 4.** RCW 43.88.030 and 2006 c 334 s 43 are each amended to
30 read as follows:

31 (1) The director of financial management shall provide all
32 agencies with a complete set of instructions for submitting biennial
33 budget requests to the director at least three months before agency
34 budget documents are due into the office of financial management. The
35 budget document or documents shall consist of the governor's budget
36 message which shall be explanatory of the budget and shall contain an
37 outline of the proposed financial policies of the state for the
38 ensuing fiscal period, as well as an outline of the proposed six-year

1 financial policies where applicable, and shall describe in connection
2 therewith the important features of the budget. The biennial budget
3 document or documents shall also describe performance indicators that
4 demonstrate measurable progress towards priority results. The message
5 shall set forth the reasons for salient changes from the previous
6 fiscal period in expenditure and revenue items and shall explain any
7 major changes in financial policy. Attached to the budget message
8 shall be such supporting schedules, exhibits and other explanatory
9 material in respect to both current operations and capital
10 improvements as the governor shall deem to be useful to the
11 legislature. The budget document or documents shall set forth a
12 proposal for expenditures in the ensuing fiscal period, or six-year
13 period where applicable, based upon the estimated revenues and
14 caseloads as approved by the economic and revenue forecast council
15 and caseload forecast council or upon the estimated revenues and
16 caseloads of the office of financial management for those funds,
17 accounts, sources, and programs for which the forecast councils do
18 not prepare an official forecast. Revenues shall be estimated for
19 such fiscal period from the source and at the rates existing by law
20 at the time of submission of the budget document, including the
21 supplemental budgets submitted in the even-numbered years of a
22 biennium. However, the estimated revenues and caseloads for use in
23 the governor's budget document may be adjusted to reflect budgetary
24 revenue transfers and revenue and caseload estimates dependent upon
25 budgetary assumptions of enrollments, workloads, and caseloads. All
26 adjustments to the approved estimated revenues and caseloads must be
27 set forth in the budget document. The governor may additionally
28 submit, as an appendix to each supplemental, biennial, or six-year
29 agency budget or to the budget document or documents, a proposal for
30 expenditures in the ensuing fiscal period from revenue sources
31 derived from proposed changes in existing statutes.

32 The budget document or documents shall also contain:

33 (a) Revenues classified by fund and source for the immediately
34 past fiscal period, those received or anticipated for the current
35 fiscal period, and those anticipated for the ensuing biennium;

36 (b) The undesignated fund balance or deficit, by fund;

37 (c) Such additional information dealing with expenditures,
38 revenues, workload, performance, and personnel as the legislature may
39 direct by law or concurrent resolution;

1 (d) Such additional information dealing with revenues and
2 expenditures as the governor shall deem pertinent and useful to the
3 legislature;

4 (e) Tabulations showing expenditures classified by fund,
5 function, and agency;

6 (f) The expenditures that include nonbudgeted, nonappropriated
7 accounts outside the state treasury;

8 (g) Identification of all proposed direct expenditures to
9 implement the Puget Sound water quality plan under chapter 90.71 RCW,
10 shown by agency and in total; and

11 (h) Tabulations showing each postretirement adjustment by
12 retirement system established after fiscal year 1991, to include, but
13 not be limited to, estimated total payments made to the end of the
14 previous biennial period, estimated payments for the present
15 biennium, and estimated payments for the ensuing biennium.

16 (2) The budget document or documents shall include detailed
17 estimates of all anticipated revenues applicable to proposed
18 operating or capital expenditures and shall also include all proposed
19 operating or capital expenditures. The total of beginning
20 undesignated fund balance and estimated revenues less working capital
21 and other reserves shall equal or exceed the total of proposed
22 applicable expenditures. The budget document or documents shall
23 further include:

24 (a) Interest, amortization and redemption charges on the state
25 debt;

26 (b) Payments of all reliefs, judgments, and claims;

27 (c) Other statutory expenditures;

28 (d) Expenditures incident to the operation for each agency;

29 (e) Revenues derived from agency operations;

30 (f) Expenditures and revenues shall be given in comparative form
31 showing those incurred or received for the immediately past fiscal
32 period and those anticipated for the current biennium and next
33 ensuing biennium;

34 (g) A showing and explanation of amounts of general fund and
35 other funds obligations for debt service and any transfers of moneys
36 that otherwise would have been available for appropriation;

37 (h) Common school expenditures on a fiscal-year basis;

38 (i) A showing, by agency, of the value and purpose of financing
39 contracts for the lease/purchase or acquisition of personal or real
40 property for the current and ensuing fiscal periods; and

1 (j) A showing and explanation of anticipated amounts of general
2 fund and other funds required to amortize the unfunded actuarial
3 accrued liability of the retirement system specified under chapter
4 41.45 RCW, and the contributions to meet such amortization, stated in
5 total dollars and as a level percentage of total compensation.

6 (3) The governor's operating budget document or documents shall
7 reflect the statewide priorities as required by RCW 43.88.090.

8 (4) The governor's operating budget document or documents shall
9 identify activities that are not addressing the statewide priorities.

10 (5) A separate capital budget document or schedule shall be
11 submitted that will contain the following:

12 (a) A statement setting forth a long-range facilities plan for
13 the state that identifies and includes the highest priority needs
14 within affordable spending levels;

15 (b) A capital program consisting of proposed capital projects for
16 the next biennium and the two biennia succeeding the next biennium
17 consistent with the long-range facilities plan. Inasmuch as is
18 practical, and recognizing emergent needs, the capital program shall
19 reflect the priorities, projects, and spending levels proposed in
20 previously submitted capital budget documents in order to provide a
21 reliable long-range planning tool for the legislature and state
22 agencies;

23 (c) A capital plan consisting of proposed capital spending for at
24 least four biennia succeeding the next biennium;

25 (d) A strategic plan for reducing backlogs of maintenance and
26 repair projects. The plan shall include a prioritized list of
27 specific facility deficiencies and capital projects to address the
28 deficiencies for each agency, cost estimates for each project, a
29 schedule for completing projects over a reasonable period of time,
30 and identification of normal maintenance activities to reduce future
31 backlogs;

32 (e) A statement of the reason or purpose for a project;

33 (f) Verification that a project is consistent with the provisions
34 set forth in chapter 36.70A RCW;

35 (g) A statement about the proposed site, size, and estimated life
36 of the project, if applicable;

37 (h) Estimated total project cost;

38 (i) For major projects valued over five million dollars,
39 estimated costs for the following project components: Acquisition,
40 consultant services, construction, equipment, project management, and

1 other costs included as part of the project. Project component costs
2 shall be displayed in a standard format defined by the office of
3 financial management to allow comparisons between projects;

4 (j) Estimated total project cost for each phase of the project as
5 defined by the office of financial management;

6 (k) Estimated ensuing biennium costs;

7 (l) Estimated costs beyond the ensuing biennium;

8 (m) Estimated construction start and completion dates;

9 (n) Source and type of funds proposed;

10 (o) Estimated ongoing operating budget costs or savings resulting
11 from the project, including staffing and maintenance costs;

12 (p) For any capital appropriation requested for a state agency
13 for the acquisition of land or the capital improvement of land in
14 which the primary purpose of the acquisition or improvement is
15 recreation or wildlife habitat conservation, the capital budget
16 document, or an omnibus list of recreation and habitat acquisitions
17 provided with the governor's budget document, shall identify the
18 projected costs of operation and maintenance for at least the two
19 biennia succeeding the next biennium. Omnibus lists of habitat and
20 recreation land acquisitions shall include individual project cost
21 estimates for operation and maintenance as well as a total for all
22 state projects included in the list. The document shall identify the
23 source of funds from which the operation and maintenance costs are
24 proposed to be funded;

25 (q) For any capital appropriation requested for a project that
26 involves groundbreaking activity under section 2 of this act,
27 verification that the project has complied with the provisions set
28 forth in that section;

29 (r) Such other information bearing upon capital projects as the
30 governor deems to be useful;

31 (~~(r)~~) (s) Standard terms, including a standard and uniform
32 definition of normal maintenance, for all capital projects;

33 (~~(s)~~) (t) Such other information as the legislature may direct
34 by law or concurrent resolution.

35 For purposes of this subsection (5), the term "capital project"
36 shall be defined subsequent to the analysis, findings, and
37 recommendations of a joint committee comprised of representatives
38 from the house capital appropriations committee, senate ways and
39 means committee, legislative evaluation and accountability program
40 committee, and office of financial management.

1 (6) No change affecting the comparability of agency or program
2 information relating to expenditures, revenues, workload, performance
3 and personnel shall be made in the format of any budget document or
4 report presented to the legislature under this section or RCW
5 43.88.160(1) relative to the format of the budget document or report
6 which was presented to the previous regular session of the
7 legislature during an odd-numbered year without prior legislative
8 concurrence. Prior legislative concurrence shall consist of (a) a
9 favorable majority vote on the proposal by the standing committees on
10 ways and means of both houses if the legislature is in session or (b)
11 a favorable majority vote on the proposal by members of the
12 legislative evaluation and accountability program committee if the
13 legislature is not in session.

14 **Sec. 5.** RCW 43.63A.125 and 2019 c 413 s 7030 are each amended to
15 read as follows:

16 (1) The department shall establish the building communities fund
17 program. Under the program, capital and technical assistance grants
18 may be made to nonprofit organizations for acquiring, constructing,
19 or rehabilitating facilities used for the delivery of nonresidential
20 community services, including social service centers and multipurpose
21 community centers, including those serving a distinct or ethnic
22 population. Such facilities must be located in a distressed community
23 or serve a substantial number of low-income or disadvantaged persons.

24 (2) The department shall establish a competitive process to
25 solicit, evaluate, and rank applications for the building communities
26 fund program as follows:

27 (a) The department shall conduct a statewide solicitation of
28 project applications from nonprofit organizations.

29 (b) The department shall evaluate and rank applications in
30 consultation with a citizen advisory committee using objective
31 criteria. To be considered qualified, applicants must demonstrate
32 that the proposed project:

33 (i) Will increase the range, efficiency, or quality of the
34 services provided to citizens;

35 (ii) Will be located in a distressed community or will serve a
36 substantial number of low-income or disadvantaged persons;

37 (iii) Will offer three or more distinct activities that meet a
38 single community service objective or offer a diverse set of
39 activities that meet multiple community service objectives, including

1 but not limited to: Providing social services; expanding employment
2 opportunities for or increasing the employability of community
3 residents; or offering educational or recreational opportunities
4 separate from the public school system or private schools, as long as
5 recreation is not the sole purpose of the facility;

6 (iv) Reflects a long-term vision for the development of the
7 community, shared by residents, businesses, leaders, and partners;

8 (v) Requires state funding to accomplish a discrete, usable phase
9 of the project;

10 (vi) Is ready to proceed and will make timely use of the funds;

11 (vii) Is sponsored by one or more entities that have the
12 organizational and financial capacity to fulfill the terms of the
13 grant agreement and to maintain the project into the future;

14 (viii) Fills an unmet need for community services;

15 (ix) Will achieve its stated objectives; ~~((and))~~

16 (x) Is a community priority as shown through tangible commitments
17 of existing or future assets made to the project by community
18 residents, leaders, businesses, and government partners; and

19 (xi) Has complied with section 2 of this act.

20 (c) The evaluation and ranking process shall also include an
21 examination of existing assets that applicants may apply to projects.
22 Grant assistance under this section shall not exceed twenty-five
23 percent of the total cost of the project, except, under exceptional
24 circumstances, the department may reduce the amount of nonstate match
25 required. However, during the 2019-2021 biennium, the legislature may
26 waive the match required for the projects specified in section 1009,
27 chapter 413, Laws of 2019. No more than ten percent of the total
28 granted amount may be awarded to qualified eligible projects that
29 meet the definition of exceptional circumstances defined in this
30 subsection. For purposes of this subsection, exceptional
31 circumstances include but are not limited to: Natural disasters
32 affecting projects; emergencies beyond an applicant's control, such
33 as a fire or an unanticipated loss of a lease where services are
34 currently provided; or a delay that could result in a threat to
35 public health or safety. The nonstate portion of the total project
36 cost may include cash, the value of real property when acquired
37 solely for the purpose of the project, and in-kind contributions.

38 (d) The department may not set a monetary limit to funding
39 requests.

1 (3) The department shall submit biennially to the governor and
2 the legislature in the department's capital budget request a ranked
3 list of the qualified eligible projects for which applications were
4 received. The list must include a description of each project, its
5 total cost, and the amount of state funding requested. The
6 appropriate fiscal committees of the legislature shall use this list
7 to determine building communities fund projects that may receive
8 funding in the capital budget. The total amount of state capital
9 funding available for all projects on the biennial list shall be
10 determined by the capital budget beginning with the 2009-2011
11 biennium and thereafter. In addition, if cash funds have been
12 appropriated, up to three million dollars may be used for technical
13 assistance grants. The department shall not sign contracts or
14 otherwise financially obligate funds under this section until the
15 legislature has approved a specific list of projects.

16 (4) In addition to the list of ranked qualified eligible
17 projects, the department shall submit to the appropriate fiscal
18 committees of the legislature a summary report that describes the
19 solicitation and evaluation processes, including but not limited to
20 the number of applications received, the total amount of funding
21 requested, issues encountered, if any, and any recommendations for
22 process improvements.

23 (5) After the legislature has approved a specific list of
24 projects in law, the department shall develop and manage appropriate
25 contracts with the selected applicants; monitor project expenditures
26 and grantee performance; report project and contract information; and
27 exercise due diligence and other contract management responsibilities
28 as required.

29 (6) In contracts for grants authorized under this section the
30 department shall include provisions which require that capital
31 improvements shall be held by the grantee for a specified period of
32 time appropriate to the amount of the grant and that facilities shall
33 be used for the express purpose of the grant. If the grantee is found
34 to be out of compliance with provisions of the contract, the grantee
35 shall repay to the state general fund the principal amount of the
36 grant plus interest calculated at the rate of interest on state of
37 Washington general obligation bonds issued most closely to the date
38 of authorization of the grant.

1 **Sec. 6.** RCW 43.155.075 and 2017 3rd sp.s. c 10 s 10 are each
2 amended to read as follows:

3 In providing loans and grants for public works projects, the
4 board shall require recipients to incorporate the environmental
5 benefits of the project into their applications, and the board shall
6 utilize the statement of environmental benefits in its prioritization
7 and selection process, when applicable. The board shall also require
8 recipients to comply with section 2 of this act. For projects funded
9 under this chapter, the board may require a local government to have
10 sustainable asset management best practices in place; provide a long-
11 term financial plan to demonstrate a sound maintenance program; have
12 a long-term financial plan for loan repayments in place; and undergo
13 value planning at the predesign project stage, where the greatest
14 productivity gains and cost savings can be found. The board shall
15 also develop appropriate outcome-focused performance measures to be
16 used both for management and performance assessment of the loan and
17 grant program. To the extent possible, the department should
18 coordinate its performance measure system with other natural
19 resource-related agencies as defined in RCW 43.41.270. The board
20 shall consult with affected interest groups in implementing this
21 section.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 39.04
23 RCW to read as follows:

24 All contracts entered into under this chapter by the state on or
25 after the effective date of this section are subject to the
26 requirements established under section 2 of this act.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 39.10
28 RCW to read as follows:

29 All contracts entered into under this chapter on or after the
30 effective date of this section are subject to the requirements
31 established under section 2 of this act.

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