

# HOUSE BILL REPORT

## SSB 5252

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**As Passed House:**  
February 26, 2022

**Title:** An act relating to school district consultation with local tribes.

**Brief Description:** Concerning school district consultation with local tribes.

**Sponsors:** Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Wellman, Hasegawa, Conway, Das, Hunt, Kuderer, Lias, Nguyen, Nobles, Saldaña, Stanford and Wilson, C.).

**Brief History:**

**Committee Activity:**

Education: 2/18/22, 2/24/22 [DP].

**Floor Activity:**

Passed House: 2/26/22, 94-1.

### Brief Summary of Substitute Bill

- Directs the Office of the Superintendent of Public Instruction to develop and provide a tribal consultation training and schedule to assist school district boards of directors and staff in understanding how to engage in the federally required tribal consultation process.
- Requires school board directors and certain staff to complete the tribal consultation training every three years, beginning September 1, 2024.
- Directs the Washington State School Directors' Association (WSSDA) to convene annual, regional meetings and invite tribal councils from the federally recognized tribes for the purposes of establishing government-to-government relationships and dialogue between the tribal councils and school district boards of directors.
- Requires the WSSDA to submit three biennial reports to the Legislature regarding the progress made in the development of effective

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

government-to-government relationships and other topics.

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## HOUSE COMMITTEE ON EDUCATION

**Majority Report:** Do pass. Signed by 13 members: Representatives Santos, Chair; Dolan, Vice Chair; Ybarra, Ranking Minority Member; Walsh, Assistant Ranking Minority Member; Berg, Bergquist, Callan, McCaslin, McEntire, Ortiz-Self, Rude, Steele and Stonier.

**Staff:** Megan Wargacki (786-7194)

### **Background:**

#### Tribal Consultation Requirements.

Federal and state laws require local education agencies (LEAs), including school districts, to consult with tribes and tribal organizations on issues affecting Native students. Under the federal Every Student Succeeds Act (ESSA), certain LEAs must have timely and meaningful consultation with appropriate officials from federally recognized tribes or tribal organizations located in the area served by the LEA, prior to the submission of a plan or application for nine specified federal programs. This consultation requirement applies to LEAs that have a student enrollment of 50 percent or more American Indian and Alaska Native (AI/AN) students or that receive certain funding under Title VI of the ESSA.

Among other state-required tribal collaborations, school districts must collaborate with neighboring tribes to incorporate instructional materials about the tribes and to create programs of classroom and community cultural exchanges. In addition, legislation enacted in 2005 encouraged the Washington State School Directors' Association (WSSDA) to convene four annual regional meetings and invite the tribal councils from the region for the purpose of establishing government-to-government relationships and dialogue between tribal councils and school district boards of directors. Participants were encouraged to discuss issues of mutual concern and to work on specified topics. The legislation also required the WSSDA to submit three biennial reports to the Legislature regarding the progress made in the development of effective government-to-government relations and the narrowing of the achievement gap, among other things.

#### Tribal Consultation Training.

The 2020 supplemental and 2021-23 biennial operating budgets direct the WSSDA's government-to-government task force and the association of educational service districts to collaborate with the Tribal Leaders Congress on Education to develop a tribal consultation training and schedule by January 1, 2022.

#### Federally Recognized Tribes.

A federally recognized tribe is an AI/AN tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation. There are 29 federally recognized tribes in Washington. Federal recognition, which is granted by the United States Bureau of Indian Affairs, permits a tribe to receive funding and services from the federal government.

#### Office of Native Education.

Legislation was enacted in 2011 that created the Office of Native Education (ONE) within the Office of the Superintendent of Public Instruction (OSPI). To the extent funds are available, the ONE must conduct eight types of activities, for example: (1) provide assistance to school districts in meeting the educational needs of AI/AN students; (2) assist with the acquisition of funds to develop instructional materials in Native languages, culture and history, and the concept of tribal sovereignty, as well as preparation of staff to use the curricula; and (3) prepare annual reports regarding the state of Indian education and the implementation of all state laws regarding Indian education. The ONE also serves as a liaison between the OSPI and school districts, tribal governments, state-tribal compact schools, tribal schools, and Native families and communities.

#### Native American Education Advisory Committee.

The Native American Education Advisory Committee consists of 21 members nominated by federally recognized tribes and other tribal organizations to provide consultation with the OSPI on matters and issues related to the well-being and achievement of AI/AN students who attend public, state-tribal compact schools, and tribal schools in Washington.

#### Since Time Immemorial Curriculum.

The Since Time Immemorial (STI) curriculum was developed by the OSPI in partnership with the federally recognized tribes in Washington. The STI curriculum teaches elementary, middle, and high school classrooms about tribal sovereignty in Washington and is aligned to state learning standards. School districts must use the STI curriculum, which is available free of charge from the OSPI.

### **Summary of Bill:**

#### Tribal Consultation and Training.

The Office of the Superintendent of Public Instruction (OSPI), the Office of Native Education (ONE) in conjunction with the Native American Education Advisory Committee, and the Washington State School Directors' Association (WSSDA) must collaborate, at a minimum, with the Tribal Leaders Congress on Education, and other affected federally recognized tribes that express interest in participating, to develop a tribal consultation training and schedule for purposes of assisting school district boards of directors and staff in understanding how to engage in the federally required tribal consultation process.

The tribal consultation training and schedule, which must be developed and finalized by

January 1, 2023, must incorporate, at a minimum, the following issues:

- identification of Native students, including federal identification guidelines for American Indian and Alaska Native (AI/AN) students;
- data sharing from school districts to federally recognized tribes; and
- implementation of the Since Time Immemorial curriculum.

The tribal consultation training, which must be offered by the ONE, must be made available to all school district directors and educational service district (ESD) board members. It is encouraged that the training be included in onboarding training for all new school district directors and ESD board members.

Beginning September 1, 2024, school board directors, superintendents, and any other staff at school districts who must perform federally required tribal consultation must take and certify completion of the tribal consultation training. All individuals required to take the tribal consultation training must renew the certification of completion of the training at least every three years.

The OSPI must adopt rules to implement these requirements.

#### Regional Meetings.

Beginning in 2023, the WSSDA must convene annual meetings regionally and invite tribal councils from the federally recognized tribes in the region for the purposes of establishing government-to-government relationships and dialogue between the tribal councils and school district boards of directors. Meetings may be conducted virtually if cost or other factors impact participants' ability to travel or meet in person.

Participants are encouraged to discuss issues of mutual concern and work to:

- identify the extent and nature of the achievement gap and strategies necessary to close it;
- emphasize the importance of creating an inclusive educational environment where all Native students will receive educational resources and support required to have the opportunity to succeed in the pursuit of their educational goals; and
- ensure school boards understand the importance of identifying and adopting curriculum that includes federally recognized tribes' experiences and perspectives so that Native students are more engaged and learn more successfully, and so that all students learn about the history, culture, government, and experiences of their Indian peers and neighbors.

Meetings held regionally must include discussions of:

- tribal consultation training and training requirements;
- identification of Native students, including federal identification guidelines for AI/AN students;
- data sharing from school districts to federally recognized tribes; and
- consultations between individual school boards and local federally recognized tribes.

By December 1, 2024, and every two years thereafter through 2028, the WSSDA must report to the Legislature regarding the progress made in the development of effective government-to-government relations, the narrowing of the achievement gap, and the identification and adoption of curriculum regarding tribal history, culture, and government. The report shall include information about any obstacles encountered, and any strategies under development to overcome them. The WSSDA must, at a minimum, partner with the ONE to gather data for the purposes of this report.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The state is required by the federal government to consult with tribes, under certain circumstances. There are about 35 school districts that must consult with tribes based on the number of American Indian or Alaska Native students in the district. However, school districts are unsure what a "consultation" is and how to do it in a meaningful way. Certain tribes have led the way in developing a model consultation process to effectively work with local school districts. The Office of Native Education, with the support of tribal leaders, developed a tribal consultation toolkit with 11 different modules as a resource to support this process.

The bill sets clear expectations around the development of a tribal consultation training and will require school districts directors and superintendents to be trained in the tribal consultation process. This bill will also address a critical, ongoing need to develop government-to-government relationships by convening annual regional meetings. This will support native learners who have the highest dropout rates and some of the lowest proficiency rates according to state data.

Part of the reason for the disparity is the issues around those students are not being identified and addressed by the traditional public school system. All students are engaged when they learn about the history and culture of their regional federally recognized tribes. This bill is a necessary step to achieving better educational outcomes for all students. Data sharing from the schools to the tribes facilitates collective resolution of issues of mutual concern.

Some tribes support the bill and its language that requires inclusion of federally recognized tribes in the process of developing tribal consultation training. Nothing in the bill prevents school districts from consulting with non-federally recognized tribes, and this should

happen once meaningful tribal consultation training is available on what consultation looks like. Each tribe is a unique government organization with different management and decision-making structures. Learning about government-to-government relationships could also benefit legislators.

Annual tribal consultation is where local district partners are afforded the opportunity to learn about important issues related to federally recognized tribes, including treaty rights, sovereign nations, accurate and truthful representation of Native American history in all public schools. In addition to providing educational resources to native students, it is important that nonnative students understand the issues related to their local federally recognized tribes. Through engaging in the tribal consultation process, tribes and public schools will continuously improve their collaborative work and strengthen their partnership to help all students achieve their educational and career goals.

(Opposed) Washington has been progressive in taking a stand in educating students about the true history of the first people. Changes to this bill eliminated required consultation with local tribes and instead requires consultation with federally recognized tribes. This change does not support the intent and goal to teach the true and complete history of tribal people in the state. It would require school districts to consult with tribes that are not historically in their local area just because they are federally recognized.

The label "federally recognized" validates the government's attempt to assimilate all tribal people into an Indian reservation. More than 75 percent of the native population and the students attending school do not live on an Indian reservation. Using this government assigned label invalidates the true history of the more than 100 tribal groups that occupied this territory before Washington became a state.

Sovereignty is inherent in these tribes; the federal government does not have the authority to bestow sovereignty. Federal recognition does not include many sovereign tribal nations that signed a treaty with the federal government, but that did not have the promise for land in their territory fulfilled. Other tribes have been trying to get federal recognition. Some tribes are not recognized because they refused to leave their aboriginal lands during treaty negotiations, but continue to defend their lands and their rights to that land.

Government-to-government meetings about education are important. Tribes have worked together and survived together since before other people were in Washington. The bill should not be biased towards federally recognized tribes, but should bring together all tribes for the benefit of their children. Tribes that are not recognized have been consulting with school districts for decades. Local tribes work with their local schools and these schools are doing better today than they have done in the past. The intention of the bill is to undo the harms committed to Indigenous peoples; the bill does that for some, but not for all, because of the inclusion of the "federally recognized" term.

**Persons Testifying:** (In support) Senator Lisa Wellman, prime sponsor; Karen Condon and

Michael Moran, Confederated Tribes of the Colville Reservation; Joseph Martin, Muckleshoot Indian Tribe; and Jon Claymore, Office of the Superintendent of Public Instruction.

(Opposed) Danny Marshall, Steilacoom Indian Tribe; Charlene Nelson, Shoalwater Bay Tribe; and Rachel Cushman, Chinook Indian Nation.

**Persons Signed In To Testify But Not Testifying:** None.