MONTANA LEGISLATIVE
OFFICE OF RESEARCH & POLICY ANALYSIS

State–Tribal Consultation: Legislative Approaches

STATE-TRIBAL RELATIONS COMMITTEE
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PURPOSE

The State-Tribal Relations Committee (STRC) has previously reviewed state-tribal consultation in Montana, including existing statutes and Senate Bill 379 (2025). Testimony and prior discussion identified both the need for greater consistency and concerns related to implementation.

Montana statutes currently provide guiding principles, training, and reporting related to consultation. However, they do not establish consistent agency-level processes or a uniform framework for how consultation is carried out in practice.

The following outlines three general approaches for legislative consideration. These approaches represent different levels of action:

- Approach 1 (Refined SB 379): Establish a statewide framework

- Approach 2 (Pilot Program): Test a framework before broader implementation

- Approach 3 (Targeted Approaches): Make incremental improvements within existing statutes

APPROACH 1: STATEWIDE FRAMEWORK (REFINED SB 379)

This approach builds on SB 379 and would establish a consistent structure for consultation across executive branch agencies.

Key Elements

- Agency-level consultation policies

- Designation of tribal liaisons

- Reporting related to consultation activities

Potential Refinements

- Clarify that a liaison may be an existing employee and does not require new full-time positions

- Allow agencies flexibility to tailor policies based on their functions

- Provide additional clarity regarding when consultation is expected

Considerations

- Most comprehensive approach

- Establishes consistency across agencies

- May raise concerns regarding implementation, workload, and cost

APPROACH 2: PILOT PROGRAM (PHASED IMPLEMENTATION)

This approach would implement a structured consultation framework within a limited number of agencies on a temporary basis. (see Appendix A)

Key Elements

- Selection of 2–3 agencies with regular interaction with tribal governments

- Development of consultation policies within those agencies

- Designation of liaisons and tracking of consultation activities

- Reporting back to the legislature on outcomes and resource needs

Considerations

- Allows for testing and refinement before broader implementation

- Addresses concerns raised during consideration of SB 379

- Delays establishment of a uniform statewide framework

APPROACH 3: TARGETED APPROACHES (INCREMENTAL STEPS)

This approach focuses on specific improvements within existing statutes without establishing a full consultation framework. These options may be adopted individually or in combination and may also be incorporated into a broader framework or pilot program.

A. Agency Point of Contact

Require each agency to designate a point of contact for communication with tribal governments.

Potential Elements

- Designation of an existing staff member
- Public availability of contact information

Considerations

- Low cost and minimal implementation burden
- Improves communication and access
- Does not require development of consultation policies, training, or ongoing consultation responsibilities
- Does not establish a consultation process or requirements

B. Enhanced Reporting

Build on existing reporting requirements by providing greater clarity regarding consultation activities.

Potential Elements

- Identification of instances in which consultation occurred
- Description of the types of actions or decisions that involved consultation
- Clarification of whether engagement occurred prior to final decision-making

- Public availability of agency reports or summary information related to consultation activities

Considerations

- Increases transparency and accountability
- Does not require consultation, but makes practices more visible

C. Transparency and Public Access

Provide clear and accessible public information regarding engagement with tribal governments.

Potential Elements

- Whether and how the agency engages in consultation
- Identification of a contact person
- General description of communication practices

Considerations

- Improves accessibility and consistency
- Does not impose additional consultation requirements

APPENDIX A: SAMPLE BILL FOR PILOT PROGRAM

Section 1. State-Tribal Consultation Pilot Program

(1) A state-tribal consultation pilot program is established.

(2) The governor shall designate [2 to 3] state agencies to participate in the pilot program. Agencies selected must have regular interaction with tribal governments or programs that directly affect tribal communities.

Section 2. Agency Responsibilities

Each participating agency shall:

(a) designate a tribal liaison, which may be an existing employee;

(b) develop and adopt an agency consultation policy appropriate to the agency's functions;

(c) implement procedures for engaging with tribal governments on actions, policies, or rules that have direct tribal implications; and

(d) track consultation activities conducted under the pilot program.

Section 3. Duration

The pilot program must be implemented for a period of [2 years] from the date of implementation.

Section 4. Reporting Requirements

(1) Each participating agency shall submit an annual report to the governor and the State-Tribal Relations Committee.

(2) The report must include:

(a) a description of consultation activities conducted;

(b) the types of actions or decisions that involved consultation;

(c) feedback from tribal governments, if available;

(d) any challenges or barriers to implementation;

(e) estimated staff time and resource impacts; and

(f) recommendations for future legislative action.

Section 5. Legislative Review

Upon completion of the pilot program, the legislature shall review the reports and determine whether to:

(a) expand the consultation framework to additional agencies;

(b) adopt a statewide statutory framework; or

(c) take no further action.

Section 6. Sunset

This section terminates [X date], unless extended by the legislature.