

State–Tribal Consultation in Montana Q&A

STATE-TRIBAL RELATIONS COMMITTEE
CASEY PALLISTER – DECEMBER 2025

INTRODUCTION

During the 2023-2024 interim, the State-Tribal Relations Committee (STRC) requested information regarding consultation between Montana's state agencies and tribal governments.¹ The primary questions were:

- What standards or guidelines are in place regarding tribal consultation at the federal level?
- Are Montana state agencies required to create tribal consultation policies?
- What standards or guidelines do Montana state agencies have to follow or choose to follow in relation to tribal consultation?
- What do agency policies look like? Are they universal? Are they specific to each agency? Do some agencies not have policies?
- How have other states addressed the issue of state-tribal consultation?

In the 2025 legislative session, [Senate Bill 379](#) sought to provide a framework for consultation by requiring agencies to create a consultation policy and designate an employee as a tribal liaison. Though the bill failed, it generated considerable discussion. The STRC opted to expand its research on the subject during the 2025-2026 interim.

The following questions and answers provide background, history, and potential research avenues for the STRC as it considers the past, present, and future of state-tribal consultation in Montana.

KEY QUESTIONS

[What guidance does the federal government provide on tribal consultation?](#)

[What are the tribal consultation requirements for Montana's executive agencies?](#)

[What tribal consultation policies are in place among Montana's executive agencies?](#)

[What tribal consultation policies exist in other states?](#)

[What was Senate Bill 379 and how did it impact state-tribal consultation in Montana?](#)

[What might the progression of state-tribal consultation in Montana look like over time?](#)

¹ This document is an updated and expanded version of "[State-Tribal Consultation in Montana](#)" (Casey Pallister, STRC, April 2024).

WHAT GUIDANCE DOES THE FEDERAL GOVERNMENT PROVIDE ON TRIBAL CONSULTATION?

Summary: Since 2000, presidential orders directed federal agencies to create detailed and uniform tribal consultation policies, designate personnel to carry out consultation practices, record and report on consultations, and develop staff trainings. They are not directed at state governments.

Though states are allowed to create their own consultation policies, presidential executive orders and memorandums provide a model for consultation between federal agencies and tribal governments.² Over the past twenty-five years, presidential directives across administrations emphasize the importance of Indian self-government, sovereignty, and the need for the United States to work with tribes on a government-to-government basis.

LAYING A FOUNDATION: EXECUTIVE ORDER 13175

Issued in 2000, [Executive Order 13175 \(Consultation and Coordination with Indian Tribal Governments\)](#) requires federal departments and agencies to “establish regular and meaningful consultation and collaboration with tribal officials” when considering policies that would impact tribal communities.

The order required the head of each federal agency to:

- Create a consultation process; and
- Submit “tribal summary impact statements” that outlined consultation efforts, summarized tribal concerns and agency positions, and described the extent to which tribal concerns had been met.

For more than two decades, presidents from both parties continued to emphasize the importance of Indian self-government, tribal sovereignty, and the need for the United States to work with tribes on a government-to-government basis.

² Presidential executive orders and memorandums are declarations by the President that carry the force of law. They do not require the actions of Congress or a state legislature to take effect, though they are subject to judicial review.

BUILDING A FRAMEWORK

In order to work toward more "complete and consistent implementation of Executive Order 13175," the [Presidential Memorandum of November 5, 2009 \(Tribal Consultation\)](#) required each agency to create and update a plan of action to carry out the requirements of Executive Order 13175. The plan had to be created in consultation with "Indian tribes and tribal officials." Each agency appointed an individual to implement the plan and prepare progress reports as well as any updates made to the plan.

A presidential memorandum in 2021 ([Tribal Consultation and Strengthening Nation-to-Nation Relationships](#)) reaffirmed the 2009 memorandum. All agencies subject to Executive Order 13175 submitted plans of action, including "over fifty agencies" that had not previously submitted a consultation plan.

In 2022, the President issued another memorandum ([Uniform Standards for Tribal Consultation](#)) to establish uniform minimum standards for all federal agencies involved with tribal consultations. The goal was to "improve and streamline the consultation process" and to "ensure more consistency" in the ways agencies carried out consultations.

The 2022 memorandum is still in effect and requires the head of each agency to:

- Designate at least one "primary point of contact for Tribal-consultation matters" who will advise agency staff and serve as the contact for tribal officials;
- Carry out analysis of whether tribal consultation is "required or appropriate," even if a tribal government has not requested consultation;
- Follow specific guidelines when inviting a tribe or tribes to consult;
- Prioritize tribal participation and carry out consultations with respect to tribal self-government, sovereignty, and cultural practices;
- Maintain a record of the consultation process that follows specific requirements; and
- Hold an annual training regarding tribal consultation for agency employees who work with tribal nations or on policies with tribal implications.

In addition, the 2022 memorandum charged the Secretary of Interior and Director of the Office of Personnel Management to work together with tribal nations to create training modules for agency employees. The modules are required to explain the concepts of tribal sovereignty, the nation-to-nation relationship, and tribal consultation. These modules were released in January 2025.³

In some cases, states are required to create consultation policies by federal agencies in order to receive federal funds. For example, to impose certain fees on Medicaid participants, the Centers for Medicare & Medicaid Services (CMS) [requires states to consult with tribes](#).

³ An example of one module is available at: <https://www.youtube.com/watch?v=cErV5DrZ4TY>

WHAT ARE THE TRIBAL CONSULTATION REQUIREMENTS FOR MONTANA'S EXECUTIVE AGENCIES?

Summary: *In Montana, two statutes related to tribal consultation provide guiding principles for state agencies to consider. They also require the governor to 1) provide an annual training for state employees; 2) hold an annual meeting between state agency and tribal representatives; and 3) produce an annual report describing state agency-tribal activities. State agencies must submit an annual report to the governor that describes any consultation efforts.*

GUIDING PRINCIPLES FOR STATE AGENCIES

In 2003, [House Bill 608](#), now codified as [2-15-142, MCA](#) established guiding principles for state agencies that interacted with tribes: agencies "should consider" five principles in relation to the formulation or implementation of policies or rules that had direct tribal implications. A 2013 amendment replaced "should consider" with "shall document its consideration of." The current statute states:

A state agency shall document its consideration of the following principles:

1. *A commitment to cooperation and collaboration*
2. *Mutual understanding and respect*
3. *Regular and early communication*
4. *A process of accountability for addressing issues*
5. *Preservation of the tribal-state relationship*

Montana's state agencies must annually report their efforts to ensure tribal consultation to the governor, but they are not required to create tribal consultation policies.

THREE ANNUAL REQUIREMENTS OF STATE AGENCIES AND THE GOVERNOR

House Bill 608 also established [2-15-143, MCA](#), which requires the governor to work with tribal governments to provide an annual training for certain state employees who interact with tribes. The governor is also required to hold an annual meeting between state agency and tribal government representatives and to produce a yearly report for tribal governments describing state agency-tribal activities. State agencies must provide the governor with a report on agency-tribal activities for that year.

1. Annual Training

Created with tribal governments for "state agency managers and key employees who have regular communication with tribes." The training must include:

- The legal status of tribes;
- The legal rights of tribal members; and
- Social, economic, and cultural issues of concern to tribes

2. Annual Meeting

Held in Helena between representatives of state agencies and tribal officials, including tribal presiding officers, to discuss:

- Tribal concerns with rules and policies that directly impact tribal government and tribal populations;
- Other issues of concern to either the state or the tribes; and
- Potential solutions to the concerns

3. Annual Reporting

By August 15 of each year, state agencies must submit a report to the governor "describing the activities of the state agency relating to tribal government and tribal populations." The report must include four components:

- Any rule or policy changes that the state agency adopted as a result of discussions between that agency and tribal officials at the annual governor's meeting;
- The process the state agency has adopted to identify the activities of the state agency that affect tribes;
- The efforts of the state agency to promote communication and the government-to-government relationship between the state agency and the tribes;
- The efforts of the state agency to ensure tribal consultation and the use of American Indian data in the development and implementation of agency programs that directly affect tribes.

By September 15 of each year, the governor must provide a report to each tribal government that provides an overview of all state and tribal activities for the previous fiscal year, including any training. The report is published by the Governor's [Office of Indian Affairs and posted online](#).

State agency reports are used to create the final report issued by the Office of Indian Affairs.

WHAT TRIBAL CONSULTATION POLICIES ARE IN PLACE AMONG MONTANA'S EXECUTIVE AGENCIES?

Summary: *State executive agencies in Montana are not required under Montana law to create tribal-consultation policies. Some agencies have tribal consultation policies in writing and some do not. Not all agencies that interact with tribes have personnel dedicated to overseeing agency-tribal relations.*

Though state agencies are required by statute to annually document how they follow the guiding principles of cooperation and collaboration with tribes, as well as to report to the governor the ways they ensure tribal consultation, there is no requirement that state agencies create tribal consultation policies or employ tribal liaisons. As a result, approaches are diverse. Research during the 2023-2024 interim and the hearings of SB 379 in the 2025 session revealed that:

- There is no universal tribal consultation policy or template that all state agencies follow or use;
- Some agencies have written consultation policies and some do not; and
- Not all agencies employ a dedicated tribal liaison

WHAT TRIBAL CONSULTATION POLICIES EXIST IN OTHER STATES?

Summary: *Many states require agency tribal consultation policies through executive orders while others mandate them through legislative actions. Some do both. Many state policies have similar requirements: 1) requiring agencies to have tribal liaisons; 2) directing agencies to develop internal consultation policies; and 3) providing training opportunities for employees.*

Many states with significant tribal populations have consultation requirements for agencies, created by the executive orders and directives of governors as well as through legislative actions. Six examples are below.

Arizona: [Executive Order 2006-14](#) (2006) requires all executive branch agencies in Arizona to develop and implement consultation policies, designate staff to implement the policy, review the policy annually, and submit a yearly report to the governor. [The Department of Economic Security policy](#) includes designating points of contact (Tribal Relations Manager and division tribal liaisons), minimum annual consultation requirements, noticing and communication requirements, and reporting procedures.

California: [Executive Order B-10-11](#) (2011) established the position of Governor's Tribal Advisor and requires each state agency to create a tribal liaison position and tribal consultation policy. An example of a policy developed by the [Department of Consumer Affairs](#) details the role of the department and tribal liaison in the collaboration and communication process, education for employees and tribes, timely noticing and responses, and requirements for a tribal relations webpage on the department website.

Many states require agencies to employ tribal liaisons, create consultation policies, and develop trainings for their staff.

Michigan: In 2002, Michigan entered into a [Government-to-Government Accord](#), acknowledging tribal sovereignty, the right to self-governance, and a state commitment to consultation processes. A [2019 Executive Directive](#) requires each department and agency to adopt tribal consultation policies, designate tribal liaisons, and provide annual training on state-tribal relations. Liaisons must also create annual reports describing the most significant interactions, including collaborations and conflicts, between departments and the state's federally recognized tribes.

Minnesota: A [2019 executive order](#) affirmed government-to-government relationships and mandated consultation. A [2021 statute](#) required all executive branch agencies to implement tribal consultation policies in consultation with Minnesota tribal nations, designate tribal liaisons, and provide annual training on state-tribal relations. The training is developed in partnership with the eleven tribal nations in the state, the Department of Transportation, and the University of Minnesota Sovereignty Institute, which serves as the foundation for all tribal government relations training.

Washington: [Washington state](#) law requires each state agency to develop a consultation process, employ a tribal liaison, and provide employee training. It also requires an annual meeting between the governor and other elected officials and leaders of Indian tribes. In 2025, [Executive Order 25-10](#) mandated that agencies engage with tribal nations and provide training to staff. The order intends to strengthen the current law by providing a more detailed and comprehensive framework. It sets clear guidelines for consultation, enhances training for state employees, and encourages the integration of indigenous perspectives into decision-making.

Wisconsin: [Executive Order 39](#) (2004) established the [State-Tribal Consultation Initiative](#). Multiple agencies developed policies following a uniform template. Each department's policy is [essentially the same](#), providing guiding principles and methods that include establishing agency tribal liaisons, meeting structures, workplan requirements prior to consultation meetings, and training opportunities.

WHAT WAS SENATE BILL 379 AND HOW DID IT IMPACT STATE-TRIBAL CONSULTATION IN MONTANA?

Summary: *In the 2025 session, SB 379 intended to: 1) Require 15 executive agencies to draft a single tribal consultation policy in coordination with each of Montana's federally recognized tribes; and 2) Require each of those 15 agencies to designate an employee to serve as a tribal liaison who would provide a point of contact for tribes, promote effective communication, and coordinate agency trainings as needed. The bill passed the Senate but died in the House.*

During the 2025 session, [Senate Bill 379](#) sought to mandate consultation policies and liaisons for fifteen state agencies. It required each agency to designate an employee to serve as a tribal liaison and to create one consultation policy applicable to all tribes (though more could be created if desired). The liaison, who could be an existing employee, would develop policies for collaboration, serve as a contact point for tribes, and coordinate training for employees as needed. The fiscal note for the bill was nearly \$1.25 million. Almost all of that funding was directed toward the hiring of one or more employees by agencies, though the bill did not require additional hirings. SB 379 passed the Senate State Administration Committee, Second Reading on the Senate Floor (twice), and the Senate Finance and Claims Committee. It died in process in the House. The journey of SB 379 was useful in stimulating discussion as well as in revealing key points of cooperation and contention between proponents and opponents.

Key Points of Proponents of SB 379

- State agency-tribal cooperation is essential
- The bill does not contain specific consultation requirements and allows agencies and tribes to agree not to consult.
- The fiscal note is inaccurate as the bill does not require the hiring of new staff
- Tribal governments visited by the STRC in 2023-2024 described communication difficulties with agencies that did not have liaisons

Key Points of Opponents of SB 379

- State agency-tribal cooperation is essential
- Each agency has unique needs – some would need to do dozens of consultations if this passed
- Hiring of additional employees to serve as liaisons or consultants results in a large fiscal impact
- The Office of Indian Affairs already exists, serving as the executive branch liaison

WHAT MIGHT THE PROGRESSION OF STATE-TRIBAL CONSULTATION IN MONTANA LOOK LIKE OVER TIME?



1. **Basic Awareness:** The initial recognition of tribal sovereignty and the need for consultation. This includes basic policies or guidelines that acknowledge the importance of engaging with tribes. In Montana, MCA 2-15-141 through 2-15-143, passed in 2003, provide examples of basic awareness.
2. **Formal Policies:** The implementation of formal policies and frameworks that mandate consultation, such as state laws or executive orders that set clear expectations for engagement. Montana does not currently have mandated consultation through state laws or executive orders.

Training and Capacity Building: Initial and ongoing efforts to educate state employees and build the capacity of both state and tribal governments to engage effectively. This might include training programs, workshops, and resources.

Collaborative Decision-Making: Tribes and state agencies working together, co-developing policies and solutions, sharing information, and making joint decisions. Both perspectives shape outcomes. This might involve joint working groups and committees with representatives from both tribes and state agencies.

3. **Continuous Improvement:** An ongoing commitment from tribes and state agencies to refine and improve the consultation process, incorporate feedback, and adapt to new challenges and opportunities.

Advanced Partnership: State and tribal governments not only consult but also actively share decision-making authority through joint policy development, co-management of resources, and collaborative oversight committees. This might involve the creation of joint initiatives that address complex issues like economic development, environmental stewardship, and cultural preservation. This would reflect a mature partnership where both parties are equally invested in achieving long-term goals.

4. **Innovative Collaboration:** State and tribal governments work together to pilot new initiatives, leverage technology, or create innovative solutions that set new standards for collaboration. This could highlight the forward-thinking aspect of the partnership and demonstrate how both parties consistently explore new possibilities.