

NEVADA INDIAN COMMISSION
POLICY TO PROMOTE COLLABORATION BETWEEN STATE AGENCIES AND INDIAN TRIBES

Section I. Background

- A. Federally recognized tribes have inherent sovereignty and maintain a government-to-government relationship with the U.S. government, based on the U.S. Constitution, federal treaties, statutes, executive orders, and policies. The U.S. government also has a trust responsibility to federally recognized tribes. Federal agencies help to fulfill the government-to-government relationship and trust responsibility to tribes through meaningful consultation with federally recognized tribes.
- B. Generally, numerous barriers have existed to effective tribal-state relations, which may be based on outdated and inaccurate perceptions of tribes by non-Indian communities, the lack of understanding of tribal governments and their sovereignty, faulty assumptions regarding tribal governmental capacity, or even tribal government hesitation to form working relationships with state governments because of the tribes' constitutional and direct relationship with the U.S. government. *See* Susan Johnson, et al., *GOVERNMENT TO GOVERNMENT: MODELS OF COOPERATION BETWEEN STATES AND TRIBES* (2nd ed. 2009). Nonetheless, there are many good reasons to strive for cooperation between tribal and state governments, including mutual interests and similar governmental goals to use resources effectively and efficiently, to provide comprehensive services and a safe environment for citizens, to protect natural environments, and to sustain healthy economics. *See id.*
- C. On June 8, 2019, the Governor of the State of Nevada ("State"), Brian Sandoval, approved Assembly Bill 264, "An ACT relating to governmental administration; requiring the Nevada Indian Commission to implement a policy that promotes collaboration between a state agency and Indian tribes; requiring the Governor to meet with the leaders of Indian tribes; requiring certain employees of state agencies to receive certain training; and providing other matters properly relating thereto" (hereinafter "AB 264") into law.
- D. Modeled after 2009 legislation passed in New Mexico, AB 264 aims to increase collaboration between Nevada's twenty-seven (27) federally recognized tribes and colonies (hereinafter, collectively, "Tribes") and state agencies (hereinafter, collectively, "State Agencies") that are often charged with developing wide-ranging policies, agreements, and procedures.
- E. AB 264 seeks to facilitate a dialogue in decision-making while respecting tribal sovereignty.
- F. AB 264 charges the Nevada Indian Commission (hereinafter "Commission") with drafting a consultation policy (hereinafter "Policy") that promotes effective communication and collaboration, positive government-to-government relations, and cultural competency. Although the Commission already serves as an intermediary for tribal-state relations, it does not speak for the Tribes.
- G. A formal policy that establishes a consultation framework would improve the relationships between the Tribes and the State Agencies because it could be utilized by both the Tribes and the State Agencies to clarify what consultation entails and to provide guidance on what types of activities require formal tribal consultation. The formal policy could also ensure that there

is appropriate training and mechanisms for maintaining relationships between the Tribes and the State Agencies.

[INSERT LANGUAGE REGARDING COMMISSION EFFORTS TO CONSULT OR TO SOLICIT FEEDBACK REGARDING THIS POLICY FROM BOTH STATE AGENCIES AND THE TRIBES.]

Section II. Purpose

Through this Policy, the Commission seeks to foster and facilitate positive government-to-government relations between the Tribes and the State Agencies. The purpose of this Policy is to develop, improve, or maintain partnerships with the Tribes by using agreed-upon processes when the State Agencies develop, change, or implement policies, programs, or services that directly affect the Tribes.

Section III. Principles

- A. Recognize and Respect Sovereignty. The State and Tribes are sovereign governments. The recognition and respect of sovereignty is the basis for government-to-government relations and this Policy. Sovereignty must be respected and recognized in government-to-government consultation, communication, and collaboration between the Tribes and the State Agencies. The State Agencies recognize and acknowledge the trust responsibility of the U.S. government to the Tribes.
- B. Government-to-Government Relations. The State Agencies recognize the importance of collaboration, communication, and cooperation with the Tribes. The State Agencies further recognize that the State Agencies' actions, policies, programs, and/or services (including, but not necessarily limited to, all proposed plans, policies, rulemakings, permitting actions, or other aspects of programmatic actions) (hereinafter, collectively, "State Agency Actions") may directly or indirectly affect the Tribes. Accordingly, the State Agencies recognize the value of dialogue between the Tribes and the State Agencies with specific regard to State Agency Actions.
- C. Efficiently Addressing Tribal Issues and Concerns. The State Agencies recognize the value of the Tribes' input regarding State Agency Actions. Thus, it is important that Tribes' interests are reviewed and considered by the State Agencies early on and throughout the development process of State Agency Actions.
- D. Collaboration and Mutual Resolution. The State Agencies recognize that good faith, mutual respect, and trust are fundamental to meaningful collaboration and communication policies. As they arise, the State Agencies shall strive to address and mutually resolve concerns with impacted Tribes.
- E. Communication and Positive Relations. The State Agencies shall strike to promote positive government-to-government relations with the Tribes by: (1) interacting with Tribes in a spirit of mutual respect; (2) seeking to understand each of the Tribe's perspectives, with recognition that each of the Tribes are separate unique sovereign governments; (3) facilitating and engaging in communication, understanding, and appropriate dispute resolution with the Tribes; and (4)

working through the government-to-government process to attempt to achieve a mutually-satisfactory outcome or towards a shared vision in areas of mutual interest.

- F. Informal Communication. The State Agencies recognize that formal consultation may not be required in all situations or interactions. The State Agencies may seek to communicate with and/or respond to the Tribes outside the consultation process. These communications do not negate the authority of the State Agencies and the Tribes to pursue formal consultation.
- G. Confidentiality. The State Agencies will protect and exhibit a high degree of respect and sensitivity regarding confidential information provided by the Tribes and shall ensure confidentiality to the extent provided by applicable law.
- H. Distinctive Needs of American Indians/Alaska Natives. The State Agencies shall strive to ensure, with the Tribes, the accountability of resources, including a fair and equitable allocation of resources to address health disparities. The State Agencies recognize that a community-based and culturally appropriate approach to health and human services is essential to maintain and preserve American Indian/Alaska Native cultures.
- I. Health Care Delivery and Access. The State Agencies shall work collaboratively with the Tribes to ensure adequate and quality health service delivery in the Tribes' communities, as well as with individual American Indians/Alaska Natives in urban areas or otherwise outside the Tribes' communities.
- J. Economic Development Access. The State Agencies shall inform the Tribes of opportunities related to economic development and will provide resources and assistance to enhance the development of the Tribes' communities.
- K. Establishing Partnerships. In order to maximize the use of limited resources, and in areas of mutual interests and/or concerns, the State Agencies seek partnerships with the Tribes and other interested entities, including academic institutions and Indian organizations. The State Agencies encourage the Tribes to aid in advocating for state and federal funding for tribal programs and services to benefit all of the State's American Indians/Alaska Natives.
- L. Intergovernmental Coordination and Collaboration.
 - 1. *Interacting with Federal Agencies*: The State Agencies recognize that the State and the Tribes may have issues of mutual concern where it would be beneficial to coordinate with and involve federal agencies that provide services and funding to the State Agencies and the Tribes.
 - 2. *Administration of Similar Programs*: The State Agencies recognize that under federal tribal self-governance and self-determination laws, the Tribes are authorized to administer their own programs and services which were previously administered by other entities. Although the State Agencies' or the Tribes' programs may have their own federally approved plans and mandates, the State Agencies shall strike to work in cooperation and have open communications with the Tribes through a two-way dialogue concerning these program areas.

- M. Cultural and Linguistic Competency. The State Agencies shall strive for their programmatic actions to be culturally relevant and developed and implemented with cultural and linguistic competence.

Section IV. Definitions

The following definitions shall apply to this Policy:

- A. “American Indian/Alaska Native” shall mean individuals who are members of any Indian Tribe; individuals who would meet the definition of “Indian” pursuant to 18 U.S.C. § 1153; or individuals who have been deemed eligible for services and programs provided to American Indians/Alaska Natives by the U.S. public health service, the Bureau of Indian Affairs, or other federal programs.
- B. “Collaboration” shall mean a recursive process in which two or more parties work together to achieve a common set of goals. Collaboration may occur between the State Agencies and the Tribes, their respective agents or subdivisions, and may involve Indian organizations, if needed. Collaboration is the timely communication and joint effort that lays the groundwork for mutually beneficial relations, including identifying issues and problems, generating improvements and solutions, and providing follow-up as needed.
- C. “Communication” shall mean the verbal, electronic, or written exchange of information between the State Agencies and the Tribes.
- D. “Consensus” shall mean what is reached when a decision or outcome is mutually satisfactory to the State Agencies and the Tribes affected and adequately addresses the concerns of those affected. The State Agencies shall endeavor to conduct deliberations with the Tribes in good faith and in accordance with the processes outlined in this Policy. Within this process, it is understood that consensus, while a goal, may not always be achieved.
- E. “Consultation” shall mean that process that operates as an enhanced form of communication that emphasizes trust and respect. It is a decision-making method for reaching agreement through a participatory process that involves the State Agencies and the Tribes through their official representatives; actively solicits input and participation by the State Agencies and the Tribes; and encourages cooperation in reaching agreement on the best possible decision for those affected. It is a shared responsibility that allows an open, timely, and free exchange of information and opinion among parties that, in turn, may lead to mutual understanding and comprehension.
- F. “Cultural Competence” shall mean the ability to interact effectively with people of different cultures. Cultural competence comprises four (4) components: (1) awareness of one’s own cultural worldview; (2) appreciation of cultural differences; (3) knowledge of different cultural practices and worldviews; and (4) honing cross-cultural skills. Developing cultural competence improves one’s ability to understand, communicate with, and effectively interact with people across cultures.
- G. “Culturally Relevant” shall describe a condition where programs or services are provided according to the recipient’s cultural backgrounds.

- H. “Indian Organizations” shall mean those organizations that are predominately operated by American Indians/Alaska Natives, that represent or provide services to American Indians and/or Alaska Natives living on and/or off tribal lands and/or in urban areas.
- I. “Indian Tribe” shall mean any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the U.S. Department of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a.
- J. “Linguistic Competency” shall refer to one’s capacity to communicate effectively and convey information in a manner that is easily understood by culturally diverse audiences.
- K. “Participation” shall describe an ongoing activity that allows interested parties to engage one another through negotiation, compromise, and problem solving to reach a desired outcome.
- L. “State Agency” shall mean an agency, bureau board, commission, department, or division of the Executive Department of State Government.
- M. “State Agency Tribal Liaison” or “SATL” shall refer to the an individual designated by a State Agency that communicates with the Tribes on a regular basis, who reports directly to the office of the head of the agency. The SATL shall assist the head of the State Agency with ensuring the implementation of this Policy; serve as a contact person who shall maintain ongoing communication between the State Agency and the affected Tribes; and ensure that training is provided to the staff of the State Agency pursuant to AB 264.
- N. “Tribal Advisory Body” shall mean a duly appointed group of individuals established and organized to provide advice and recommendations on matters relative to the State Agency Actions.
- O. “Tribal Government” shall mean the governing structure of an Indian Tribe.
- P. “Tribal Implications” shall refer to State Agency Actions that directly affect American Indians/Alaska Natives, Indian Tribes, or on the relationship between the State and the Tribes.
- Q. “Tribal Officials” shall mean those elected or duly appointed or delegated officials of the Tribes or authorized intertribal organizations.
- R. “Work Groups” shall mean formal advisory bodies and task forces established through joint effort by the State Agencies and the Tribes. Work groups can be established to address or develop more technical aspects of policies or programs, separate or in conjunction with the formal consultation process. Work groups shall, to the extent possible, consist of members from the State Agencies and the participating Tribes.

Section V. Protocol

When working with tribal governments, it is important to understand the unique relationship between American Indians and the U.S. government. It is a political relationship, not race based. Under federal law, tribal governments are sovereign governments with recognized powers of self-government. The status of tribes as governments means that tribes possess the inherent right to develop their own forms of government, to determine their own citizenship, to make their own laws, and to be governed by their own laws in their own judicial systems. The State is home to twenty-seven (27) federally recognized tribal governments, each with its own history, culture, and language. Although there may sometimes be commonalities or similarities amongst the tribal governments, each one is a distinct sovereign government. Thus, it is important not to assume that one tribe or one leader speaks for all.

This Policy's guidelines are meant to establish uniform practices and common standards, which all the State Agencies shall use except when otherwise agreed to in writing by a State Agency and a Tribe, through an individual protocol. Such protocols shall provide efficiency and transparency in the practices of the State Agencies, and also maximize the Tribes' participation.

The State Agencies recognize the unique sovereign status of the Tribes. To promote effective communication and collaboration between the State Agencies and the Tribes relating to this Policy, the State Agencies shall endeavor to understand the protocols for interacting with each Tribe. The individual protocol between a State Agency and a Tribe shall provide the framework for maintaining a government-to-government relationship. As protocol relationships are developed, they will be reported and provided to the Commission.

An individual protocol may identify both a State Agency's and the Tribe's authorized representative(s) and/or key personnel; background and preparation required, including planning documents and/or any of the Tribe's cultural, historical, and governance information; appropriate methods of maintaining communications; activities that the Tribe wants to receive notice about; time frames for responding to communications; exchange of research and technical assistance; frequency and logistics of meetings, including meeting documentation and follow-up; dispute resolution processes; how to modify or amend an individual protocol; duration of a protocol; and any other pertinent consideration.

Section VI. General Provisions

- A. Collaboration and Communication. To promote effective collaboration and communication between the State Agencies and the Tribes relating to this Policy, and to promote cultural competence, the State Agencies will utilize, as appropriate tribal liaisons, tribal advisory bodies, work groups, and informal communication.
1. The State Agencies shall make a good-faith effort to review all State Agency Actions that may have impacts on tribal resources and determine whether tribal consultation or collaboration may assist in the State Agency Actions. If a State Agency Action may impact tribal resources, the State Agencies shall notify the relevant Tribal Government and inquire whether tribal consultation should occur. The Tribes have the discretion whether to engage in the consultation process. Consultation will be initiated by formal written notification/request.
 2. *The Role of State Agency Tribal Liaisons.* To promote tribal-state interactions, enhance communication, and resolve potential issues concerning the delivery of the State Agencies' services to American Indians/Alaska Natives, SATLs will work with the

Tribes' officials and the State Agencies' staff and their programs to develop policies or implement program changes. SATLs communicate with the Tribes' officials through both formal and informal methods of communication to assess:

- a. Issues or areas of tribal interest relating to the State Agencies' policies, programs, and/or services; and
 - b. Tribal interest in pursuing collaborative or cooperative opportunities with the State Agencies; and
 - c. The State Agencies' promotion of cultural competence in its development or maintenance of policies, programs, and/or services.
3. *The Role of Tribal Advisory Bodies.* The State Agencies may solicit advice and recommendations from duly appointed advisory organizations or committees to collaborate with the Tribes regarding matters of policy development prior to engaging in consultation, as contained in this Policy. The State Agencies may convene such advisory organizations/committees to provide advice and recommendations on departmental policies, programs, and/or service matters that have tribal impacts. Input derived from such activities is not defined as this Policy's consultation process.
 4. *The Role of Work Groups.* The State Agencies' heads, in consultation with recognized officials from the Tribes, may appoint an agency-tribal work group to develop recommendations and provide input on the State Agencies' policies, programs, and/or services as they might impact the Tribes and American Indians/Alaska Natives. The State Agencies or the work group may develop procedures for the organization and implementation of work group functions.
 5. *Informal Communication with the Tribes.* The State Agencies recognize that consultation meetings may not be required in all situations or interactions involving Tribal-State relations. The State Agencies recognize that the Tribes' officials may communicate with appropriate State Agency employees outside the consultation process, including with SATLs and program managers, in order to ensure programs and services are delivered to their constituents. While less formal mechanisms of communication may be more effective at times, this does not negate the State Agencies' or the Tribes' ability to pursue formal consultation on a particular issue or policy.
 6. *Informal Communication with the Indian Organizations.* The Tribal-State relationship is based on a government-to-government relationship. However, Indian organizations, such as those representing or providing services to urban and/or off-reservation American Indian/Alaska Natives, serve to benefit and assist the State as well. Through this Policy, the State Agencies recognize that it may solicit recommendations, or otherwise collaborate and communicate with these organizations.
- B. Consultation. Consultation shall be between the respective decisionmakers of the State Agencies and the Tribes, or their delegated representatives who possess authority to represent the respective interest during consultation.

1. *Applicability.* Tribal consultation is most effective and meaningful when conducted before taking action that impacts the Tribes and American Indians/Alaska Natives. The State Agencies acknowledge that a best-case scenario may not always exist, and that the State Agencies and the Tribes may not have sufficient time or resources to fully consult on a relevant issue. If a process appropriate for consultation has not already begun, through this Policy, the State Agencies shall seek to initiate consultation as soon as possible thereafter.
2. *Focus.* The principle focus for government-to-government consultation is with the Tribes through their authorized officials. Nothing herein shall restrict or prohibit the ability or willingness of the Tribes' officials and the State Agencies' decisionmakers to meet directly on matters that require direct consultation. The State Agencies recognize that the principle of intergovernmental collaboration, communication, and cooperation is a first step in government-to-government consultation and is in accordance with this Policy.
3. *Areas of Consultation.* The State Agencies, through reviewing proposed State Agency Action(s), recognize the need to assess whether such actions may impact the Tribes and/or American Indians/Alaska Natives, as well as whether consultation should be implemented prior to making its decision or implementing its action. To such ends, the State Agencies shall strive to notify relevant officials from the Tribes and pursue government-to-government consultation, provided that the Tribes' officials also have the discretion to decide whether to pursue and/or engage in the consultation process. The State Agencies will work with each other, where appropriate, to avoid duplicative consultations.
4. *Initiation.*
 - a. When considering a State Agency Action that may have tribal implications, the State Agency shall notify the appropriate Tribe of the opportunity to consult pursuant to this Policy. The State Agency shall strive to ensure that a notice is given at least thirty (30)-days prior to scheduling a consultation. If exceptional circumstances prevent notice within the thirty (30)-days of the consultation, an explanation for the abbreviated notification shall be provided in the invitation letter. A Tribe may request an extension for timeliness associated with this Policy.
 - b. Adequate notice entails providing a description of the topic(s) to be discussed, a timeline of the process, and possible outcomes. Notification of a consultation should include sufficient detail of the topic to be discussed to allow the Tribes an opportunity to fully engage in the consultation. The notice shall also give the Tribes the opportunity to provide feedback prior to the consultation, including any request for technical assistance or request for clarification of how the consultation process conforms to this Policy.
 - c. A Tribe may request that a State Agency initiate consultation when the Tribe believes that the State Agency is considering a State Agency Action with tribal

implications. Requests should be made in writing to the State Agency and should describe the specific State Agency Action with tribal implications.

- d. If a State Agency initiates consultation with a Tribe but does not receive a response, the State Agency shall make reasonable and periodic efforts to repeat the invitation and, whenever feasible, should allow a Tribe to join an ongoing consultation. These efforts of engagement shall be appropriately documented.

5. *Process.*

- a. The State Agencies shall develop an individual protocol with the Tribes that maximizes the opportunity for timely input from the Tribes and is consistent with both the State Agencies' and the Tribes' schedules. The State Agencies shall solicit the views of the affected Tribes regarding the process timeline to consult on a State Agency Action with tribal implications. The State Agencies shall work with the Tribe to structure a process, to the extent feasible, that considers specific tribal structures, traditional needs, and schedules of the Tribes. The State Agencies shall make all reasonable efforts to comply with the expressed views of the affected Tribes regarding the process timelines, taking into account the level of impact, the scope, and the complexity of the issues involved in the State Agency Action with tribal implications, along with other factors driving the schedule. The process will be open and transparent. When the matter under consultation involves confidential or culturally sensitive information, the State Agencies shall work with the Tribes to develop a consultation process that addresses the sensitivity of the information to the extent permitted by applicable law. If litigation or legal requirements impact a State Agency's schedule for conducting consultation, the State Agency shall explain these constraints to the Tribe. If the State Agencies determine that an applicable law expressly prohibits continued discussion at a specified point in the decision-making process, the State Agencies shall so inform the Tribes at the earliest opportunity in the process.
- b. The State Agencies, in order to engage in consultation, may utilize duly appointed work groups or the State Agency decisionmaker or a duly appointed representative may meet directly with the Tribes' officials, or set forth other means of consulting with impacted Tribes as the situation warrants.
- c. The State Agencies shall make a good faith effort to invite for consultation all perceived impacted Tribes. If multiple Tribes are impacted, the State Agencies shall have a duty to consult with each Tribe individually, unless the Tribes agree to consult together. Nor shall any public meeting constitute consultation with a Tribe unless that Tribe consents to such as part of a written executed protocol between the State Agency and the Tribe.

6. *Implementation of Final State Agency Action.* The State Agencies may consider implementing a post-consultation review process where it is consistent with law. The State Agencies may invite feedback from the Tribes of the consultation process and

shall also consider the need for training or technical assistance concerning the final State Agency Action.

7. *Limitations on Consultation.*

- a. This Policy shall not diminish any administrative or legal remedies otherwise available by law to the State Agencies or the Tribes.
- b. This Policy does not prevent the State Agencies and the Tribes from entering into memoranda of understanding, intergovernmental agreements, joint powers agreements, professional services contracts, or other established administrative procedures and practices mandated by federal, state, or tribal laws and regulations.
- c. The State Agencies retain final decision-making authority with respect to actions undertaken by the State Agencies and within the State Agencies' respective jurisdiction. In no way should this Policy impede the State Agencies' ability to manage their operations.
- d. Consultation with the Tribes is uniquely a government-to-government process with two main goals: (1) to reach consensus in decision-making; and (2) whether or not consensus is reached, to afford any party the opportunity to issue a dissenting opinion for the record, and more importantly to have honored each other's sovereignty.

Section VII. Reporting

On or before July 1st of each year, each State Agency that communicates with a Tribe on a regular basis shall submit a report to the Commission on the activities of the State Agency pursuant to AB 264 and this Policy. A report shall include, at a minimum:

- A. The name and contact information of each person in the State Agency who is responsible for development and implementing programs of the State Agency that directly affect the Tribes;
- B. Any actions taken or planned by the State Agency to carry out this Policy;
- C. A certification by the Division of Human Resource Management of the Department of Administration of the number of managers and employees of the State Agency who have completed the training required pursuant to AB 264;
- D. A description of current and planned programs and services provided to or directly affecting the Tribes and the amount of funding for each program; and
- E. A description of the method the State Agency established for notifying employees of the State Agency of the provisions of AB 264.

Section VIII. Dissemination of Policy

Upon adopting of this Policy, the Commission shall determine the appropriate method to distribute the Policy to all the State Agencies and the Tribes.

Section IX. Amendments and Review of Policy

The Commission will meet periodically with the State Agencies and the Tribes to evaluate the effectiveness of this Policy, including the State Agencies' promotion of cultural competence. This Policy is a working document and may be revised as needed.

Section X. Effective Date

This Policy shall become effective upon the date signed by the Commission.

Section XI. Sovereign Immunity

This Policy shall not be construed to waive the sovereign immunity of the State of Nevada or any Tribe, or to create a right of action by or against the State of Nevada or any Tribe, or any State or Tribal official, for failing to comply with this Policy.

Section XI. Closing Statement/Signatures

The Commission hereby adopts this Policy.