

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2353

Introduced by

Senators Marcellais, Triplett, Wardner

Representatives Boe, J. Nelson, Onstad

1 A BILL for an Act to provide for state and political subdivision consultation and coordination with
2 Indian tribal governments.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.**

5 **Definitions.**

6 In this Act, unless the context otherwise requires:

7 1. "State" includes the state and political subdivisions.

8 2. "Indian tribe" means a federally recognized Indian tribe.

9 **SECTION 2.**

10 **Policymaking criteria.**

11 In formulating policies or rules significantly or uniquely affecting Indian tribal governments,
12 agencies must be guided, to the extent permitted by law, by principles of respect for Indian tribal
13 self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that
14 arise from the unique legal relationship between the federal government, the state, and Indian
15 tribal governments.

16 **SECTION 3.**

17 **Consultation.**

18 Each state agency shall develop and implement an effective process to permit elected
19 officials and other representatives of Indian tribal governments to provide meaningful and timely
20 input in the development of regulatory policies and rules on matters that significantly or uniquely
21 affect their communities. To the extent practicable and permitted by law, an agency may not
22 adopt any rule that is not required by statute which significantly or uniquely affects the
23 communities of the Indian tribal governments and which imposes substantial direct compliance
24 costs on such communities, unless:

- 1 1. Funds necessary to pay the direct costs incurred by the Indian tribal government in
- 2 complying with the rule are provided by the federal or state government; or
- 3 2. Before formal adoption of the rule, the agency:
- 4 a. In a separately identified portion of the rule as it is to be adopted, provides to the
- 5 director of the office of management and budget a description of the extent of the
- 6 agency's prior consultation with representatives of the affected Indian tribal
- 7 governments, a summary of the nature of the Indian tribal governments'
- 8 concerns, and the agency's position supporting the need to issue the rule; and
- 9 b. Makes available to the director of the office of management and budget any
- 10 written communication submitted to the agency by the Indian tribal governments.

11 **SECTION 4.**

12 **Cooperation in developing rules.**

13 On issues relating to tribal self-government, trust resources, or treaty and other rights, each
14 agency should explore and, where appropriate, use consensual mechanisms for developing
15 rules, including negotiated rulemaking.

16 **SECTION 5.**

17 **General provisions.**

18 This Act is intended only to improve the internal management of the executive branch and is
19 not intended to, and does not, create any right, benefit, or trust responsibility, substantive or
20 procedural, enforceable by a party against the state, its agencies, its officers or employees, or
21 any other person.