Gary Richard Herbert

Governor

EXECUTIVE ORDER

Executive Agency Consultation
With Federally-Recognized Indian Tribes

WHEREAS, the State of Utah (the "State") is a sovereign state which acts in the public interest and for the betterment of its citizens and strives to ensure the rights of its citizens to participate in the governmental process;

WHEREAS, the federally-recognized Indian Tribes located wholly or partially in the State (the "Tribes") are sovereign nations with similar rights and duties to act for the benefit of their citizens and to act on behalf of the public welfare of their tribal nations;

WHEREAS, the State is committed to engage in regular and meaningful consultation with the Tribes when the development of State policies may or will have substantial tribal implications,

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and laws of the State of Utah, do hereby order that state agencies as defined herein establish a tribal consultation policy (the "Tribal Policy"). The tribal policy will establish processes for regular and meaningful consultation with the Tribes when there is a proposed state action with tribal implications as defined herein that affects a tribe as a sovereign or governmental entity:

1. Definitions

a. "Agency" means an executive agency or department that makes policy that has, or may have, a substantial direct effect on one or more of the Tribes. This order does not apply to independent entities as defined in Utah Code Annotated §63E-1-102(4)(a).

b. "Agency Official(s)" means an individual or individuals designated and authorized to represent an agency for the purpose of implementation of the agency's tribal policy.

c. "Consultation" means the process by which the State and the Tribes may have the opportunity to exchange views and information, in writing or in person, regarding implementation of proposed state action that has, or may have, substantial tribal implications, such as impacts on the following:

i. tribal cultural practices, tribal lands, tribal resources, or access to traditional areas of tribal cultural or religious importance; or

ii. the ability of an Indian Tribe to govern or provide services to its members; or,

iii. an Indian Tribe's formal relationship with the State; or,

iv. the consideration of the State's responsibilities to Indian Tribes.

d. Consultation between the State and the Tribes does not include matters that are:

i. applicable to an individual member of a tribe; or

ii. in litigation or settlement negotiations; or,

iii. matters for which a court order limits the State's discretion to engage in consultation; or,

iv. internal agency administration, operations, processes, and personnel matters, however, the agencies involved will consult with the Tribes when hiring a new Director of Indian Affairs; or,

v. agency action that has general applicability to industrial, commercial, agricultural, or other business activity in the State.

e. "Indian Tribe" means any federally recognized Indian Tribe listed in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 479a and located wholly or partially in the State of Utah;

f. "State Action With Tribal Implications" refers to regulations, rulemaking, and other policy statements or actions that have substantial direct effect on one or more tribes, on the relationship between the State and a tribe, or on the distribution of power and responsibilities between the State and a tribe, the status of a tribe as a sovereign or governmental entity.

g. "Tribal Official" means an elected or appointed tribal leader or individual designated by the tribe and authorized to represent the tribe in government-to-government consultations.

2. Fundamental Principles

In formulating or implementing state action with tribal implications, agencies shall be guided by the following fundamental principles:

a. The State has a government-to-government relationship with the tribal governments as set forth in the Constitution of the United States, the Utah Constitution, treaties, statutes, and court decisions.

b. The State has recognized the right of the Tribes to self-government. The State desires to work with the Tribes on a government-to-government basis.

c. When an agency intends to implement a state action with tribal implications, consultation should occur as part of a meaningful and comprehensive process that promotes effective communication between the tribe and the agency. The agency should make every effort to ensure that consultation with the tribe is conducted as early as possible, is carried out in good faith, and that honesty and integrity are maintained by the agency at all stages of the consultation process.

3. Consultation Policies

Within 180 days of the date of this order, each agency subject to this order shall submit to the Lieutenant Governor a tribal policy. Each tribal policy shall include the following:

a. A process to provide an opportunity for meaningful consultation with the Tribes which involves contact with the Tribal Official at the earliest possible time when developing or implementing state action with tribal implications.

b. A process to provide reasonable notice when engaging in consultation with the Tribal Official.

c. A process to provide active participation by the designated agency official(s).

The director of each agency subject to this order shall designate an agency official or officials with principal responsibility for the agency's implementation of this order. However, nothing in this order is intended to deny or limit the ability of a tribe, a tribal member, or a tribal representative to speak with any governmental official.

If an agency has an established consultation policy and/or process in place, the agency official(s) shall review the policy or process to ensure compliance with this order.

4. Division of Indian Affairs Director

The Director of the Division of Indian Affairs shall:

a. Prepare and submit an annual report to the Governor and Lieutenant Governor summarizing agency compliance with this order, as outlined below.

b. Serve as the Governor's representative, when requested to do so, in matters pertaining to consultation, and provide technical assistance to agencies in matters pertaining to consultation.

c. Facilitate government-to-government consultation and collaboration between the Tribes and agencies.

d. Maintain contact information for the Tribal Officials designated and authorized by the individual Tribes to represent the Tribes in government-to-government consultations.

e. Assist agencies with training for agency official(s) and employees required in this order.

5. Annual Native American Summit

The Governor's Office will host a Native American Summit (the "Summit") annually to provide a forum for discussion between elected state leaders and members of the Tribes. The Summit is intended to strengthen the government-to-government relationship between the Tribes and the State, promote economic development and education, and assist the State and the Tribes in their efforts to work together to ensure that all residents of the State live in safe and healthy communities.

In preparation for the annual Summit, each agency shall submit a report to the Director of the Division of Indian Affairs outlining all consultation activities from the prior fiscal year. The report shall be submitted one month prior to the commencement of the Summit. The Director of Indian Affairs shall compile all such reports to present to the Governor and Lieutenant Governor, and tribal leaders at the Summit. The report shall include:

a. A description of consultation efforts undertaken by the agency in the fiscal year preceding the Summit, including, but not limited to: the number of consultations conducted; the tribe the agency consulted with, Tribal Official(s), and agency official(s) or personnel who participated in the consultation; and the results of consultation efforts.

b. Contact information for the designated agency official(s).

c. Details regarding on-going consultation and planned efforts for future consultation.

6. Miscellaneous

a. Each agency shall provide reasonable training opportunities for agency officials and employees authorized to implement any state action with tribal implications. Such training shall be designed to promote awareness of the agency's tribal policy and contribute to the effective execution of the consultation process.

b. This order is not intended to prevent a tribe, the State, or an agency from taking action or adopting policies that the entity believes is in its best interest.

c. This order is not intended to unnecessarily delay an action or the adoption of a policy.

IN WITNESS WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol Building in Salt Lake City, Utah, on this, the 30th day of July 2014.

Gary R. Herbert
Governor

Attest:

Spencer J. Cox
Lieutenant Governor