

# MINNESOTA TRIBAL NATIONS CONSULTATION POLICY

## 1. Who needs to know this policy?

All bureau employees.

## 2. Policy statement.

The Minnesota Bureau of Mediation Services seeks to foster and facilitate positive government-to-government relations with all federally recognized Minnesota Tribal Nations. A first step is recognizing the individual autonomy of Tribal nations:

Indian Nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil, . . . . The very term ‘nation,’ so generally applied to them, means ‘a people distinct from others.’

\* Chief Justice John Marshall, US Supreme Court; *Worcester v. Georgia*, 31 U.S. 515, 519 (1832).

We will follow several guiding principles to promote successful consultation and collaboration between Tribal governments and the state:

### 2.1 Consulting with Tribal Nations.

When requested by Minnesota Tribal Nations, we commit to meet with them to identify priority issues for consultation:

- When Tribal officials request consultation, we will honor the request while considering the nature of the activity, past consultation efforts, available resources, timing considerations, and all other relevant factors.
- We will consult in face-to-face meetings between the appropriate Tribal staff to increase understandings of any proposed Bureau actions and enhance collaborative efforts to develop effective outcomes and solutions.
- We will respect and understand the backgrounds of people with Tribal relationships who are involved in all proceedings before the Bureau.
- We will build on established and on-going relationships between Tribal and state officials.
- We will consult with honesty, integrity, and transparency. Mutual respect and trust are fundamental elements in establishing an effective relationship.

- We will be open with information that may be beneficial or critical to making a decision or developing a position.
- Together with Tribal nations, we will remain flexible to achieve practical and progressive solutions.

### **2.2 Labor-relations training.**

We will provide labor-relations training to Tribal governments if requested and work with other state agencies who are consulting with Tribal governments.

### **3. Reasons for the policy.**

The purpose of this policy is to develop, improve, and maintain collaborative relationships between the Bureau and Minnesota Tribal Nations by:

- implementing agreed-on processes when we develop, change, or approve policies, programs, or services with Tribal implications; and
- aligning with all state, federal, and Tribal laws.

This policy is prepared in accordance with state and federal law. We will, together with Tribal nations, address issues and opportunities in context with the law and remain flexible to achieve practical and progressive solutions.

#### **3.1 Minnesota Statutes.**

Minnesota Statutes, section 10.65,<sup>1</sup> requires that all executive-branch agencies recognize the unique legal relationship between the state and Minnesota Tribal Nations. Cabinet-level agencies must coordinate, as needed, with the Tribal liaison in the Governor's Office to consult with Minnesota Tribal Nations.

#### **3.2 Tribal-specific law.**

In addition, federal Tribal consultation law, policy, and guidance must be taken into consideration in government-to-government relationship with Tribal Nations to ensure consistent compliance.

### **4. Procedures.**

To the fullest extent possible, we will develop and use a comprehensive view of Tribal-related issues to promote and successfully implement government-to-government relations between us and Tribal nations. We will concentrate on these focus areas to fulfill the spirit and intent of state and federal law.

Consultation requires meaningful communication and coordination between us and Tribal officials before taking actions or implementing decisions that may

<sup>1</sup> <https://www.revisor.mn.gov/statutes/cite/10.65>

affect Tribes or Tribal interests. As a process, consultation includes several methods of interaction that may occur at different levels in our agency.

This policy seeks to strike a balance between providing enough direction to achieve consistency and predictability. In addition, the policy allows for and encourages us to develop consultative approaches to reflect the circumstances of each situation and to accommodate the preferences of Tribal governments.

#### **4.1 Focus Area 1: employee outreach and training.**

Consistent with our training guidelines, Bureau employees must coordinate with their supervisors to receive training on American Indian Tribal governments, histories, cultures, and traditions to:

- empower Bureau employees to work effectively with Tribal nations; and
- promote authentic and respectful relationships between state agencies and American Indian Tribes.

Bureau employees can find additional training resources accordingly:

- Minnesota Self-Service
- Tribal-State Relations Training<sup>2</sup>
- Why Treaties Matter<sup>3</sup>
- MnDOT Tribal Map<sup>4</sup>
- Tribal Nations and the United States (in BMS I-Drive).

#### **4.2 Focus Area 2: resources for Tribal members.**

Several web-based resources are available to Tribal members for who to contact and how to find out more information about the Bureau. Three web pages provide several resources:

- Agency Performance and Goals<sup>5</sup>
- Contact BMS<sup>6</sup>
- Legislation, Rules, and Policies.<sup>7</sup>

Unless otherwise provided, the Tribal Liaison is the main contact person.

<sup>2</sup> <https://www.dot.state.mn.us/tribaltraining/index.html>

<sup>3</sup> <http://treatiesmatter.org/exhibit/welcome/>

<sup>4</sup> [tinyurl.com/muk6et5f](http://tinyurl.com/muk6et5f)

<sup>5</sup> <https://mn.gov/bms/about/goals/>

<sup>6</sup> <https://mn.gov/bms/about/contact/>

<sup>7</sup> <https://mn.gov/bms/legislationrulespolicies/index/>

## **5. Bureau responsibilities.**

### **5.1 Commissioner.**

- Creates the “tone at the top” by recognizing the unique legal relationships between the Bureau and Minnesota Tribal Nations and ensures that the Bureau accords Tribal governments the same respect accorded to other governments.
- Fulfills the spirit and intent of state law on Tribal consultation. Maintains positive relationships with Tribal Nations.
- Serves as a standing member on the Minnesota Indian Affairs Council.
- Actively supports and ensures that this policy and its underlying principals and procedures are integrated into the Bureau’s vision, mission, and core values so that Bureau programs, projects, and planning reflect the policy’s objectives and requirements.
- Ensures that Bureau senior leadership understands and implements the requirements of this policy.

### **5.2 Tribal liaison.**

- Represents the Bureau by establishing and maintaining positive relationships with Tribal nations and groups; serves as a key contact on the policy to ensure that the policy is understood and integrated with Bureau programs, projects, and planning.
- Serves as the designated Bureau policy representative by providing leadership, direction, policy development, and meaningful Tribal consultation.
- Serves as the designated Bureau representative on the Minnesota Indian Affairs Council when the Commissioner cannot attend.
- Establishes and promotes effective working partnerships between Bureau leadership and Tribal governments.
- Works collaboratively with state and Tribal entities to ensure that the policy is effectively implemented.
- Removes roadblocks and resolves issues that may impede the Bureau from successfully implementing the policy.
- Develops and implements timely and office-wide training.

### **5.3 Employees.**

- Read, understand, and follow the policy.

- Support Bureau efforts and strategies to integrate this policy into programs, projects, and planning as applicable.

## **6. Frequently Asked Questions.**

**Q.** What is the relationship between the recognized Tribes and the United States?

**A.** The relationship between federally recognized Tribes and the United States is one between sovereigns—that is, between a government and a government. This government-to-government principle, in the United States Constitution, has helped to shape the long history of relations between the federal government and Tribal nations.

**Q.** What is the relationship between the Tribes and individual states?

**A.** Because the Constitution vested the federal legislative branch with absolute power over Indian affairs, states have no authority over Tribal governments unless expressly authorized by Congress. While federally recognized Tribes generally aren't subordinate to states, they can still have a government-to-government relationship with them.

Federally recognized Tribes possess both the right and authority to regulate activities on their lands independently from state government control. They can enact and enforce stricter or more-lenient laws than those of the surrounding or neighboring states in which they are located. Yet tribes frequently collaborate and cooperate with states through compacts or other agreements on matters of mutual concern such as environmental protection and law enforcement.

**Q.** What is Public Law 280 and where does it apply?

**A.** In 1953, Congress enacted Public Law 83-280 (codified as amended at 18 U.S.C. § 1162 and

28 U.S.C. § 1360). The law expressly granted to Minnesota and five other states jurisdiction over criminal matters committed by or against American Indians on reservations and jurisdiction to allow state courts to handle civil litigation involving American Indians that had previously come under Tribal or federal court jurisdiction.

Public Law 280 doesn't apply to the Red Lake Nation, and the law didn't grant states civil regulatory power on the following:

- Tribes or lands held in trust by the United States;
- federally guaranteed Tribal hunting, trapping, and fishing rights;
- basic Tribal governmental functions such as enrollment and domestic relations; and

- imposing state taxes.

The states under Public Law 280 also may not regulate matters such as environmental control, land use, gambling, and licenses on federal Indian reservations.

## **7. Definitions.**

**Consultation.** Timely government-to-government communication about a proposed or contemplated decision to:

- secure meaningful Tribal input in decision-making; and
- advise the Tribe of the final decision and explain how the decision was reached.

**Collaboration.** All parties involved in planning and developing a project work together to achieve a common goal or objective.

**Coordination.** Each party:

- shares and compares its plans, programs, projects, and schedules with the other party; and
- adjusts its plans, programs, projects, and schedules to ensure that projects and services are efficiently and consistently delivered.

**Minnesota Tribal Nations.** In Minnesota, the federally recognized tribes are:

- Bois Forte Band of Chippewa;
- Fond du Lac Band of Lake Superior Chippewa;
- Grand Portage Band of Lake Superior Chippewa;
- Leech Lake Band of Ojibwe;
- Lower Sioux Indian Community;
- Mille Lacs Band of Ojibwe;
- Prairie Island Indian Community;
- Red Lake Nation;
- Shakopee Mdewakanton Sioux Community;
- Upper Sioux Community; and
- White Earth Nation.

**Tribal sovereignty.** It is the right of American Indian Tribes to determine their own future. Tribal Nations possess all of the inherent powers of any sovereign government, except those powers that have been limited or qualified by treaties, agreements, or an act of Congress. American Indian Tribes, through elected Tribal governments, have the right to operate as self-governing nations.

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