

SENATE BILL NO. 273

INTRODUCED BY S. STEWART-PEREGOY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MONTANA'S ANTIQUITIES LAWS; PROVIDING A
5 DEFINITION OF "TRIBAL TRADITIONAL CULTURAL PROPERTY"; REQUIRING STATE AGENCIES TO
6 CONSULT WITH INDIAN TRIBES ABOUT ACTIONS POTENTIALLY AFFECTING TRIBAL TRADITIONAL
7 CULTURAL PROPERTY; CREATING PROVISIONS FOR APPEAL; AND AMENDING SECTIONS 22-3-421,
8 22-3-424, 22-3-430, 22-3-433, AND 22-3-434, MCA."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 22-3-421, MCA, is amended to read:

13 **"22-3-421. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following
14 definitions apply:

15 (1) "Affected property owner" means a person or entity whose real property will be physically affected
16 by the activity of an applicant or whose real property is proposed for incorporation into a historic district proposed
17 as eligible for listing in the National Register of Historic Places.

18 (2) "Antiquities permit" means the permit granted for excavation, removal, or restoration of heritage
19 properties or paleontological remains provided for in 22-3-432.

20 (3) "Applicant" means a person who applies to a governmental entity, including a federal, state, or local
21 governmental entity, for a permit, license, or lease on property owned by the governmental entity.

22 (4) "Consultation" means a reasonable and good faith effort to seek, discuss, and consider the views
23 of others and, when feasible, come to agreement with others, including:

24 (a) tribal historic preservation officers who have been approved by the national park service; or

25 (b) authorities designated by a tribe in accordance with a consultation protocol or memorandum of
26 understanding with a tribe.

27 ~~(4)~~(5) "Heritage property" means any district, site, building, structure, or object located upon or beneath
28 the earth or under water that is significant in American history, architecture, archaeology, or culture.

29 ~~(5)~~(6) "Historic preservation office" means the office within the Montana historical society provided for
30 in 2-15-1512.

1 ~~(6)~~(7) "Historic preservation officer" means the officer provided for in 2-15-1512.

2 ~~(7)~~(8) "Paleontological remains" means fossilized plants and animals of a geological nature found upon
3 or beneath the earth or under water which are rare and critical to scientific research.

4 ~~(8)~~(9) "Preservation review board" means the board provided for in 2-15-1512.

5 ~~(9)~~(10) "Register" means the National Register of Historic Places, the official list of the nation's heritage
6 properties worthy of preservation because of national, state, or local significance.

7 ~~(10)~~(11) "Registered property" means any heritage property listed in the register.

8 ~~(11)~~(12) "State agency" means any executive agency of the state of Montana.

9 (13) "Tribal traditional cultural property" means property within an Indian tribe's historic range or ancestral
10 homeland that is significant to the tribe because of its association with cultural practices or traditional knowledge
11 and beliefs or that is of other religious and cultural importance, including sacred sites based on tribal history,
12 cultural patrimony and heritage, and continuing cultural identity."

13

14 **Section 2.** Section 22-3-424, MCA, is amended to read:

15 **"22-3-424. Duties of state agencies.** State agencies, including the Montana university system, shall:

16 (1) in consultation with the historical society adopt rules for the identification and preservation of heritage
17 properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions
18 or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on
19 lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;

20 (2) identify and develop, in consultation with the historic preservation officer, methods and procedures
21 to ensure that the identification and protection of heritage properties and paleontological remains on lands owned
22 by the state are given appropriate consideration in state agency decisionmaking;

23 (3) consult with Indian tribes as early as possible about the potential for tribal traditional cultural property
24 to be substantially affected by state actions or state-assisted or state-licensed actions and about any related
25 concerns;

26 ~~(3)~~(4) deposit in the historic preservation office all inventory reports, including maps, photographs, and
27 site forms, of heritage properties and paleontological remains; and

28 ~~(4)~~(5) pursuant to 22-3-422(6), provide to the preservation review board on the first Tuesday in February
29 of every even-numbered year the following information:

30 (a) a list of the heritage properties managed by the agencies as those properties have been identified

- 1 pursuant to this section;
- 2 (b) the status and condition of each heritage property;
- 3 (c) the stewardship efforts in which the agencies have engaged to maintain each heritage property and
- 4 the cost of those activities;
- 5 (d) a prioritized list of the maintenance needs for the properties; and
- 6 (e) a record of the agencies' compliance with subsections (1) and (2)."

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8 **Section 3.** Section 22-3-430, MCA, is amended to read:

9 **"22-3-430. Avoidance and mitigation of impacts.** (1) Avoidance of impacts to heritage property or

10 paleontological remains or tribal traditional cultural property is preferred. Avoidance may not be construed to

11 constitute neglect of the property or anticipatory demolition.

12 (2) If it is not feasible to avoid impacts to heritage property or paleontological remains, a mitigation plan

13 must be developed by the agency, in consultation with the applicant, to minimize adverse effects to the property

14 or remains. Mitigation must be directed at the characteristics of the property that make it eligible for listing in the

15 register. If requested by the agency, the historic preservation officer shall identify suggested mitigation actions

16 in writing at the time that the historic preservation officer submits a proposed finding under 22-3-429.

17 (3) If it is not feasible to avoid impacts to tribal traditional cultural property, a mitigation plan must be

18 developed by the agency in consultation with the tribe whose property is affected. If requested by the agency or

19 the tribe, the historic preservation officer shall identify suggested mitigation actions in writing."

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21 **Section 4.** Section 22-3-433, MCA, is amended to read:

22 **"22-3-433. Environmental review process.** (1) Each state agency responsible for the preparation of

23 an environmental impact statement in accordance with the Montana Environmental Policy Act shall, as a part of

24 its evaluation and study process, consult with and obtain the comments of:

25 (a) the historic preservation officer concerning the identification and location of heritage properties and

26 paleontological remains on lands owned by the state that may be adversely impacted by the proposed action;

27 and

28 (b) Indian tribes concerning the identification and location of tribal traditional cultural property that may

29 be adversely impacted by the proposed action.

30 (2) ~~However, where~~ When the grant of an interest in state land requires the preparation of an

1 environmental impact statement under the Montana Environmental Policy Act, the environmental impact
 2 statement ~~shall~~ must be limited to an evaluation of the heritage properties and paleontological remains located
 3 in, on, under, and within only the affected state land or tribal traditional cultural property.

4 ~~(2)~~(3) When heritage properties and paleontological remains are located and identified as described in
 5 subsection (1), the responsible state agency, in consultation with the historic preservation officer and the
 6 preservation review board, shall include as part of its environmental impact statement a plan for the avoidance
 7 or mitigation of damage to heritage properties and paleontological remains to the greatest extent practicable.
 8 Whenever necessary or appropriate, the state agency may require an applicant for a lease, permit, license, or
 9 other approval for use of land owned by the state to develop an avoidance or mitigation plan in consultation with
 10 the historic preservation officer and the preservation review board."
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12 **Section 5.** Section 22-3-434, MCA, is amended to read:

13 **"22-3-434. Denial of applications.** State agencies may deny or approve with conditions any application
 14 for an easement, lease, permit, contract, license, or certificate in order to protect heritage properties and
 15 paleontological remains or tribal traditional cultural property that cannot be properly mitigated; provided that this
 16 section is limited only to heritage properties and paleontological remains ~~which~~ or tribal traditional cultural
 17 property that have been located as a part of the environmental impact statement ~~reviews~~ review process as
 18 described in 22-3-433."
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20 NEW SECTION. **Section 6. Appeal.** (1) The head of a state agency violating a provision of 22-3-424,
 21 22-3-430, or 22-3-433 shall explain in writing to the tribe whose tribal traditional cultural property is affected, to
 22 the state office of the director of Indian affairs, and to the office of the governor the circumstances of the agency's
 23 violation and describe the agency's systematic efforts toward a solution.

24 (2) A tribe seeking remedy may appeal an agency finding in any court of competent jurisdiction in the
 25 county where the tribal traditional cultural property is located.
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27 NEW SECTION. **Section 7. Consultation protocol or memorandum of understanding.** State
 28 agencies are encouraged to develop a consultation protocol or memorandum of understanding with Indian tribes
 29 that specifies the proper authority and procedure for consultation on state actions or state-assisted or
 30 state-licensed actions that might impact tribal traditional cultural property.

