

## 1 HOUSE BILL NO. 523

2 INTRODUCED BY C. KNUDSEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A STATE AGENCY MAY NOT REQUIRE A  
5 HISTORICAL OR ARCHAEOLOGICAL SURVEY FOR CERTAIN IRRIGATION PROJECTS; PROVIDING THAT  
6 A SURVEY MAY NOT BE REQUIRED AS A CONDITION OF APPLICATION FOR OR APPROVAL OF A  
7 PERMIT, LICENSE, LEASE, OR FUNDING FOR RECONSTRUCTION OR MAINTENANCE OF CERTAIN  
8 IRRIGATION DITCHES OR APPURTENANCES; AND AMENDING SECTION 22-3-429, MCA."

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

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12 **Section 1.** Section 22-3-429, MCA, is amended to read:

13 **"22-3-429. Requests for consultation -- public notice -- appeal of findings.** (1) A federal or state  
14 entity that acts upon a proposed federal or state action or an application for a federal, state, or local permit,  
15 license, lease, or funding may request the views of the historic preservation officer concerning:

16 (a) the recommended eligibility for a register listing of any heritage property or paleontological remains;

17 (b) the effects of a proposed action, activity, or undertaking on heritage property or remains that are  
18 found to be eligible for register listing; and

19 (c) the appropriateness of a proposed plan for the avoidance or mitigation of effects.

20 (2) A request for comment pursuant to 16 U.S.C. 470f may be made simultaneously with a request  
21 pursuant to subsection (1). The historic preservation officer shall respond in writing to a request within 30  
22 calendar days of receiving the request and shall address each property in the request and each topic of the  
23 request. In the event that an agency requests simultaneous consultation for two or more criteria under this  
24 section, the agency and historic preservation officer may extend the 30-day review period by mutual agreement.  
25 If the historic preservation officer fails to comment within that time, that failure is construed as concurrence with  
26 the agency's recommendation. In the event of failure to comment on a specific undertaking, the historic  
27 preservation officer may not change a finding for a heritage property at a later date.

28 (3) If the proposed finding is that a heritage property or paleontological remains are involved and that  
29 a proposed activity will have an adverse impact on the property or remains, the proposed finding must address  
30 all properties or remains involved and describe the characteristics that illustrate the qualities that make the

1 property or remains eligible for inclusion in the register. If the proposed finding includes a conclusion that a  
2 property or remains may be eligible but additional information or study is needed to reach an eligibility finding,  
3 the finding must specify the type and amount of information required in accordance with standards and guidelines  
4 as provided in 22-3-428.

5 (4) At the time that the state or federal agency requests the views of the historic preservation officer as  
6 provided in subsection (1), the agency shall provide notice to the applicant, affected property owners, and other  
7 interested persons of the request for consultation and shall identify locations where the submitted materials may  
8 be reviewed.

9 (5) The applicant and any affected property owners have 20 days in which to appeal the historic  
10 preservation officer's finding to the director. The appeal notice must include a written statement of reasons for  
11 the appeal and any additional supporting information.

12 (6) The director of the historical society shall issue a final finding within 30 days of the expiration of the  
13 20-day appeal period provided for under subsection (5). The issuance of this finding does not limit the rights of  
14 any applicant or affected property owner to challenge a finding under an existing federal law, regulation, or  
15 regulatory or administrative process.

16 (7) If the applicant or an affected property owner is not satisfied with the finding of the director of the  
17 historical society concerning the eligibility of the property or remains for listing in the register or a finding of  
18 adverse effect to the property, the entity or property owner may appeal the finding to the district court in either  
19 Lewis and Clark County or a county in which affected property is located. Appeal may be taken by filing a petition  
20 with the district court citing the decision by the director of the historical society and the evidence upon which the  
21 director relied. On appeal, the district court may consider any documents supporting or not supporting the finding,  
22 the written comments received by the director of the historical society, and any additional evidence that may be  
23 submitted to the court. The district court may substitute its judgment for the judgment of the director of the  
24 historical society as to the weight of the evidence.

25 (8) A state agency may not require a historical or archaeological survey as a condition of applying for  
26 or receiving a state or local permit, license, lease, or funding for a project to reconstruct or maintain an irrigation  
27 ditch or appurtenant structures or equipment when the ditch or appurtenant structures or equipment are in use  
28 or have been in use within the past 10 years, if the reconstruction or maintenance will occur within the existing  
29 ditch easement and if the project is not on land owned by the state."

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