**** Bill No. **

Introduced By *******

By Request of the **

STATE-TRIBAL RELATIONS IC
SEPTEMEBER 7, 2012
Exhibit 7

A Bill for an Act entitled: "An Act requiring that the tribal office designated in a consultation protocol be consulted during the periodic review of state agency rules for the identification and preservation of heritage property and paleontological remains on lands owned by the state; requiring state agencies to seek to develop protocols with tribes on mutual consultation about state actions or actions assisted or licensed by the state that might substantially alter heritage property or paleontological remains on lands owned by the state; and amending sections 22-3-421 and 22-3-424, MCA."

WHEREAS, heritage property is a sacred matter to the Indian tribes of Montana and a sacred trust for the State of Montana; and

WHEREAS, the statutes in the Montana Code Annotated that govern the treatment of antiquities currently do not require or mention consultation with the Indian tribes of Montana; and

WHEREAS, timely, consistent, and transparent consultation helps engender mutual respect between sovereign nations; and

WHEREAS, early and structured consultation between tribes and state agencies can help avert surprises, gaps, redundancies, delays, misunderstandings, and litigation; and

WHEREAS, tribal and state agencies are at times understaffed

and overwhelmed with responsibilities, and consultation protocols can optimize and streamline their work.

Be it enacted by the Legislature of the State of Montana:

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

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

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

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

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

(4) "Consultation" means using agreed-upon protocols to seek, discuss, and consider the view of other parties and, when feasible, seeking agreement with them.

(5) "Consultation protocol" means a written set of guidelines and procedures agreed upon by a state agency and an Indian tribe that governs how they will communicate with each

other about state actions or actions assisted or licensed by the state that might substantially alter heritage property or paleontological remains on lands owned by the state.

~~(4)~~(6) "Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history or precontact history, architecture, archaeology, or culture.

~~(5)~~(7) "Historic preservation office" means the office within the Montana historical society provided for in 2-15-1512.

~~(6)~~(8) "Historic preservation officer" means the officer provided for in 2-15-1512.

~~(7)~~(9) "Paleontological remains" means fossilized plants and animals of a geological nature found upon or beneath the earth or under water which are rare and critical to scientific research.

~~(9)~~(10) "Party" means a signatory to a consultation protocol.

~~(8)~~(11) "Preservation review board" means the board provided for in 2-15-1512.

~~(9)~~(12) "Register" means the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance.

~~(10)~~(13) "Registered property" means any heritage property listed in the register.

~~(11)~~(14) "State agency" means any executive agency of the state of Montana."

{*Internal References to 22-3-421:*
2-17-107 X 22-3-435 X}

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

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

(1) in consultation with the historical society and a tribal office designated in a consultation protocol as provided in subsection (3) adopt rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state to avoid, whenever feasible, state actions or ~~state~~ actions assisted or licensed ~~actions~~ by the state that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423;

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures, including a consultation protocol as provided in subsection (3), to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state are given appropriate consideration in state agency decisionmaking;

(3) seek to establish a consultation protocol with each Indian tribe within Montana. Agencies shall, through dialogue with the tribe, seek to include the following information in a consultation protocol:

(a) the identity of the office designated by each party to

represent, after any intragovernmental discussions the party might require, the views of the party on matters pertaining to heritage property;

(b) a periodically updated addendum listing the names and contact information for the individuals leading the office designated by each party;

(c) the modes of consultation, such as mail, electronic mail, telephone, and discussion in person, that are appropriate for a given subject matter at a given time;

(d) procedures the agency will use to ensure the confidentiality of information being provided by a tribe that the tribe considers culturally sensitive;

(e) the content and relevant timeframes of consultation, such as:

(i) a description of the state actions or actions assisted or licensed by the state that might substantially alter heritage properties or paleontological remains;

(ii) a description of the properties or remains and their location;

(iii) the timeframes for evaluation and reporting that each office will adhere to;

(iv) whether the content and relevant timeframes of consultation vary from one kind of state action or heritage property to another; and

(v) any provisions, if mutually agreed upon, for flexibility or financial support when a party considers evaluation and reporting requirements overly burdensome;

(f) requisite minimum documentation of the process of consultation about state actions or actions assisted or licensed by the state that might substantially alter heritage property or paleontological remains from its inception to completion; and

(g) provisions for periodic dialogue between the parties for the purpose of reviewing and possibly revising their consultation protocol.

(4) within 1 year after [the effective date of this act] provide to the state historic preservation office provided for in 2-15-1512, the office of state director of Indian affairs provided for in 2-15-217, and the state-tribal relations committee provided for in 5-5-229, either:

(a) complete copies of any consultation protocols it has developed and agreed to with a tribe within Montana; or

(b) a report detailing its good faith effort to develop a consultation protocol with a tribe within Montana and why it has not yet been agreed to by one or both parties;

~~(3)~~(5) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains; and

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

(a) a list of the heritage properties managed by the agencies as those properties have been identified pursuant to this section;

(b) the status and condition of each heritage property;