

1 **** BILL NO. ****

2 INTRODUCED BY ****

3 BY REQUEST OF THE ****

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO CONSULTATION BETWEEN
6 STATE AGENCIES AND TRIBAL GOVERNMENTS; REQUIRING STATE AGENCIES TO CREATE WRITTEN
7 CONSULTATION POLICIES; REQUIRING STATE AGENCIES TO DESIGNATE AN EMPLOYEE AS A
8 TRIBAL LIAISON; REVISING AGENCY REPORTING REQUIREMENTS TO THE GOVERNOR; PROVIDING
9 DEFINITIONS; AND AMENDING SECTIONS 2-15-141 AND 2-15-143, MCA."

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

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13 **Section 1.** Section 2-15-141, MCA, is amended to read:

14 **"2-15-141. Definitions.** As used in 2-15-141 through 2-15-143, the following definitions apply:

15 (1) "Consultation" means a formal, direct, interactive, and timely process of engagement carried
16 out by state agencies to seek, discuss, and consider the views of tribal governments and to seek agreement
17 regarding state proposed actions that may affect tribal interests.

18 (2) "Designate an agency employee" means choosing an individual who currently works for the
19 state agency or hiring an individual from outside the state agency.

20 (1)(3) "State agency" means a department, board, or commission of the executive branch of state
21 government.

22 (2)(4) "Tribal government" means the officially recognized government of any tribe or nation.

23 (3)(5) "Tribal officials" means the elected or appointed officials of a tribal government.

24 (4)(6) "Tribe" means an Indian tribe that is recognized by federal law or formally acknowledged by the
25 state."

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27 **Section 2.** Section 2-15-143, MCA, is amended to read:

28 **"2-15-143. ~~Training and consultation.~~ Consultation and training -- duties of tribal liaison**

(1) When establishing a government-to-government relationship with tribal governments, a state agency shall:

(a) collaborate with tribal governments in the development of policies, agreements, administrative rules, and program implementation that directly affect Indian tribes;

(b) consult with tribal governments as often as is required to address matters that:

(i) have substantial direct effects on one or more tribes;

(ii) affect the relationship between the state and one or more tribes;

(iii) affect tribal trust resources, treaty rights, or cultural resources; or

(iv) involve tribal lands or interests.

(c) ensure that consultation occurs sufficiently early in agency decision-making so that tribal input may meaningfully influence the proposed action. An agency shall document how tribal input was considered, including what transpired at a tribal consultation and what actions were either delayed, changed, or moved forward. Any reasons for an employee's departure from a tribal position must also be reported;

(d) develop one written consultation policy appropriate to the agency's functions that is used by the agency for issues involving specific Indian tribes. The policy must:

(i) include a list of the agency's programs and services that directly affect tribes;

(ii) include the methods by which funding is or may be distributed to tribes through agency programs;

(iii) document the procedures by which the agency will collaborate with tribes on policy development, rulemaking, and program implementation;

(iv) include any agency-specific protocols developed in cooperation with individual tribal governments;

(v) be created in cooperation with representatives of each federally recognized tribe in the state;

(vi) be completed by December 31, 2027; and

(vii) be updated no less than annually.

(e) provide tribal governments in the state with a copy of the agency's initial consultation policy and all subsequent updates to the policy;

(f) designate an agency employee by December 1, 2027 to act as a tribal liaison who reports

directly to the head of the state agency; and

(g) ensure that a tribal liaison receives regular trainings that assist in the liaison's job functions, including but not limited to the training described in subsection (5).

(2) The position of tribal liaison within a state agency is responsible for:

(a) assisting the state agency in developing and implementing state and agency policies that promote effective communication and collaboration between the state agency and tribal governments;

(b) serving as a contact person with tribal governments and maintaining communication between the state agency and affected tribal governments; and

(c) coordinating training of state agency employees. The tribal liaison shall maintain records of training completion, which must be included in the agency's annual report as described in subsection (9). The training must include at a minimum:

(i) effective communication and collaboration between state agencies and Indian tribes; and

(ii) cultural responsiveness in providing effective services to tribal governments and tribal members.

(3) The following personnel must complete the training described in subsection (7) or an equivalent as determined by the Office of Indian Affairs once per calendar year:

(a) the head of the state agency;

(b) the tribal liaison of the state agency;

(c) all members of any board or commission within the agency that have decision-making authority over matters with tribal implications; and

(d) all program managers whose programs have tribal implications as identified in the agency's consultation policy.

(4) Agency personnel who have not completed required training may not participate as decision-makers in matters with tribal implications until the training is completed.

(5) A state agency and tribal government should engage in consultation in good faith. Good faith requires, at a minimum:

(a) genuine willingness to consider the views of the other party;

(b) timely and complete responses to inquiries;

(c) authority of representatives to engage substantively on behalf of their governments;

(d) absence of predetermined outcomes communicated as final prior to consultation; and

(e) candor regarding constraints on the agency's discretion.

(6) A state agency and a tribal government may agree that a formal consultation is not necessary on a given matter that has tribal implications. The agency shall keep a written record of this decision, including who initiated the waiver, which personnel from the agency and the tribe authorized the waiver, and how the waiver may or may not be revoked should circumstances change.

~~(4)(7)~~ At least once a year, the governor's office and a trainer selected by the tribal governments shall provide training in Helena or a site mutually agreed on to state agency managers and key employees who have regular communication with tribes on the legal status of tribes, the legal rights of tribal members, and social, economic, and cultural issues of concern to tribes. Pursuant to 5-11-113, the state director of Indian affairs shall collaborate with the legislative services division to ensure that legislators are aware of and invited to participate in this training.

~~(2)(8)~~ At least annually, the governor shall convene in Helena a working meeting with representatives of state agencies and tribal officials, including tribal presiding officers, to discuss:

(a) tribal concerns with rules and policies that directly impact tribal government and tribal populations;

(b) other issues of concern to either the state or the tribes; and

(c) potential solutions to the concerns.

~~(3)(9)~~ By August 15 of each year, each state agency shall submit to the governor and to the state-tribal relations committee its current written consultation policy pursuant to this section, documentation of any relevant trainings completed by its tribal liaison or other agency employees, and a report for the prior fiscal year describing the activities of the state agency relating to tribal government and tribal populations. The report must include:

(a) any rule or policy changes that the state agency adopted because of discussions under subsection ~~(2)(a)~~ (8)(a);

(b) the process that the state agency has established to identify the activities of the state agency that affect tribes;

1 (c) the efforts of the state agency to promote communication and the government-to-government
2 relationship between the state agency and the tribes; and

3 (d) the efforts of the state agency to ensure tribal consultation and the use of American Indian data
4 in the development and implementation of agency programs that directly affect tribes.

5 ~~(4)(10)~~ By October 15 of each year, the governor shall provide to each tribal government a report with
6 an overview of all state and tribal activities for the prior fiscal year, including a description of the training
7 required under subsection ~~(4)(3)~~. It is the intent of the legislature that this report be prepared within existing
8 levels of funding."

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10 NEW SECTION. **Section 3. Notification to tribal governments.** The secretary of state shall send a
11 copy of [this act] to each federally recognized tribal government in Montana.

12 - END -