_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE STATE TRIBAL RELATIONS COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS RELATED TO CONSULTATION BETWEEN STATE AGENCIES AND TRIBAL GOVERNMENTS; REQUIRING STATE AGENCIES TO CREATE WRITTEN CONSULTATION POLICIES; REQUIRING STATE AGENCIES TO DESIGNATE AN EMPLOYEE AS A TRIBAL LIAISON; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 2-15-141 AND 2-15-143, MCA.”

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

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

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

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

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

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

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

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

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

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

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

reporting. (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 decisionmaking so that tribal input may meaningfully influence the proposed action. A state 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 agency employee's departure from a tribal liaison 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 collaborates 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 (8).

(2) The 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 (10). The training must include at a minimum:

(i) how to effectively communicate and collaborate with Indian tribes; and

(ii) how to be culturally responsive when providing services to tribal governments and tribal members.

(3) The following personnel shall complete the training described in subsection (8) or an equivalent training as determined by the office of Indian affairs once each calendar year:

(a) the head of the state agency;

(b) the tribal liaison of the state agency;

(c) all members of a board or commission within the agency who have decisionmaking 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 required to complete training under subsection (3) may not participate as decisionmakers in matters with tribal implications until the training is completed.

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

(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) openness 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 if circumstances change.

(7) Tribal governments are encouraged to develop and update their own consultation policies and procedures and to provide those to state agencies in order to assist in carrying out the provisions of [sections 1 and 2].

~~(1)~~ (8) 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)~~ (9) 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)~~ (10) By August 15 of each year and in accordance with 5-11-210, 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)~~ (9)(a);

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

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

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

~~(4)~~ (11) By October 15 of each year, the governor shall provide to each tribal government a report with an overview of all state and tribal activities for the prior fiscal year, including a description of the training required under subsection ~~(1)~~ (8). It is the intent of the legislature that this report be prepared within existing levels of funding."

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

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