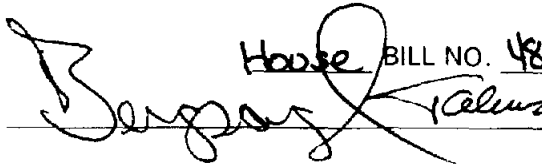


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INTRODUCED BY

House BILL NO. 485  


A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRESERVATION OF HERITAGE PROPERTY; EXPANDING THE MEMBERSHIP OF THE PRESERVATION REVIEW BOARD; PROVIDING FOR THE APPOINTMENT PROCEDURE AND SUPERVISION OF THE HISTORIC PRESERVATION OFFICER; REQUIRING NOTICE FOR CERTAIN ACTIONS OF THE HISTORIC PRESERVATION OFFICER; PROVIDING FOR TERM LIMITS FOR MEMBERS OF THE PRESERVATION REVIEW BOARD AND THE HISTORIC PRESERVATION OFFICER; REQUIRING THE DEVELOPMENT OF PROCEDURES AND GUIDELINES FOR NOMINATING PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES; PROVIDING A PROCEDURE FOR NOMINATION OF PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES; REQUIRING AVOIDANCE AND MITIGATION IN THE DEVELOPMENT OF CERTAIN PROPERTY; AMENDING SECTIONS 2-15-1512, 22-3-421, AND 22-3-423, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 2-15-1512, MCA, is amended to read:

**"2-15-1512. Boards and offices associated with state historical society.** (1) (a) There is a board of trustees of the state historical society ~~which~~ that is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of ~~nine~~ 13 members.

(b) Members ~~shall~~ must be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, architecture, or architectural history; ~~however~~ However, no more than two members may be appointed from any one of these fields;

(ii) a professional paleontologist;

(iii) the state liaison officer for the federal land and water conservation fund; and

(iv) ~~two~~ six members of the public ~~who have actively demonstrated an interest in historic~~

1 ~~preservation matters.~~ At least four of the six public members must be representatives of the following  
 2 entities or industries:

3 (A) agriculture;

4 (B) economic development;

5 (C) local government;

6 (D) state government;

7 (E) mining;

8 (F) real estate sales and development; and

9 (G) timber or wood products.

10 (c) Each member shall serve a 4-year term. A member may be reappointed, but may not serve more  
 11 than a total of 12 years.

12 (d) Members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

13 (3) (a) There is established the historic preservation office within the Montana historical society,  
 14 to consist of an historic preservation officer and a qualified professional staff.

15 (b) (i) The historic preservation officer is appointed by the governor from a list of five nominees  
 16 submitted to the governor by the preservation review board. The term of the historic preservation officer  
 17 coincides with the term of the governor.

18 (ii) An individual may not serve as the historic preservation officer for more than a total of 12  
 19 years.

20 (c) The historic preservation officer is supervised by the director of the Montana historical society."

21  
 22 **Section 2.** Section 22-3-421, MCA, is amended to read:

23 **"22-3-421. Definitions.** As used in this part, unless the context clearly indicates otherwise, the  
 24 following definitions apply:

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

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

29 ~~(2)(3)~~ (3) "Heritage property" means any district, site, building, structure, or object located upon or  
 30 beneath the earth or under water that is significant in American history, architecture, archaeology, or

1 culture.

2 ~~(3)~~(4) "Historic preservation office" means the office within the Montana historical society provided  
3 for in 2-15-1512.

4 ~~(4)~~(5) "Historic preservation officer" means the officer provided for in 2-15-1512.

5 ~~(5)~~(6) "Paleontological remains" means fossilized plants and animals of a geological nature found  
6 upon or beneath the earth or under water which are rare and critical to scientific research.

7 ~~(6)~~(7) "Preservation review board" means the board provided for in 2-15-1512.

8 ~~(7)~~(8) "Register" means the National Register of Historic Places, the official list of the nation's  
9 heritage properties worthy of preservation because of national, state, or local significance.

10 ~~(8)~~(9) "Registered property" means any heritage property listed in the register.

11 ~~(9)~~(10) "State agency" means any executive agency of the state of Montana."  
12

13 **Section 3.** Section 22-3-423, MCA, is amended to read:

14 **"22-3-423. Duties of historic preservation officer.** ~~The~~ Subject to the supervision of the director  
15 of the historical society, the historic preservation officer has the following duties and responsibilities:

16 (1) follow necessary procedures to qualify the state for money that is now or will be made available  
17 under any act of congress of the United States or otherwise for purposes of historic preservation;

18 (2) conduct an ongoing statewide survey to identify and document heritage properties and  
19 paleontological remains;

20 (3) maintain a state inventory file of heritage properties and paleontological remains and maintain  
21 a repository for all ~~such~~ inventory work done in the state;

22 (4) evaluate and formally nominate potential register properties according to the criteria established  
23 by the register;

24 (5) ~~prepare~~ and annually review the state preservation plan, register nominations, and historic  
25 preservation grant activity;

26 (6) maintain, publish, and disseminate information relating to heritage properties and paleontological  
27 remains in the state;

28 (7) cooperate with and assist local, state, and federal government agencies in comprehensive  
29 planning that allows for the preservation of heritage properties and paleontological remains;

30 (8) enter into cooperative agreements with the federal government, local governments, and other

1 governmental entities or private landowners or the owners of objects to ensure preservation and protection  
2 of registered properties;

3 (9) adopt rules outlining procedures by which a state agency that has no approved rules under  
4 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned  
5 by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that  
6 substantially alter ~~such~~ the properties;

7 (10) respond to requests for consultation under section 106 of the National Historic Preservation  
8 Act, as provided for in [section 5];

9 (11) develop procedures and guidelines for the evaluation of heritage property or paleontological  
10 remains as provided in [section 4];

11 ~~(10)(12)~~ protect from disclosure to the public any information relating to the location or character  
12 of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to ~~such~~  
13 the resources or to the area or place where the resources are located; and

14 ~~(11)(13)~~ any other necessary or appropriate activity permitted by law to carry out and enforce the  
15 provisions of this part."  
16

17 **NEW SECTION. Section 4. Heritage property -- procedures and guidelines required.** The historic  
18 preservation officer shall adopt standardized procedures and guidelines for inventorying, collecting data  
19 on, documenting, and evaluating all types of heritage property. In adopting the standardized procedures  
20 and guidelines, the historic preservation officer may consult with state and federal agencies experienced  
21 in reviewing and mitigating environmental and cultural impacts caused by development of properties.  
22

23 **NEW SECTION. Section 5. Requests for consultation -- appeal of finding to district court.** (1) If  
24 the views of the historic preservation officer concerning the eligibility for listing heritage property or  
25 paleontological remains in the register are requested by a governmental entity, including a request under  
26 section 106 of the National Historic Preservation Act, the historic preservation officer shall respond in  
27 writing to the request within 30 calendar days of receiving the request and address each property in the  
28 request with a proposed finding concerning the property's eligibility for listing in the register.

29 (2) If the proposed finding is that a heritage property is not involved or that there is no adverse  
30 impact to the property, the proposed finding must be forwarded to the director of the historical society.

1 The director of the historical society shall give the requesting agency a final finding consistent with the  
2 historic preservation officer's proposed finding.

3 (3) If the proposed finding is that a heritage property or paleontological remains are involved or that  
4 a proposed activity will have an adverse impact on the property or remains, the proposed finding must  
5 address all properties or remains involved and describe the characteristics that illustrate the qualities that  
6 make the property or remains eligible for inclusion in the register. If the proposed finding includes a  
7 conclusion that additional information or study is needed to make an eligibility determination, the finding  
8 must specify the type and amount of information required.

9 (4) Within 5 calendar days of completion of the proposed finding, the historic preservation officer  
10 shall give the director of the historical society, the applicant, and any affected property owners notice of  
11 the proposed finding. The notice must include a copy of the proposed finding and a statement that the  
12 director of the historical society will receive written comments for 20 days following the issuance of the  
13 notice.

14 (5) Within 30 calendar days of the expiration of the time for receiving written comments, the  
15 director of the historical society shall issue a final finding to the requesting agency.

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

25

26 **NEW SECTION. Section 6. Avoidance and mitigation of impacts.** (1) Avoidance of the  
27 development of or impacts to heritage property or paleontological remains is preferred. Avoidance may  
28 not be construed to constitute neglect of the property or anticipatory demolition.

29 (2) If it is not feasible to avoid development of or impacts to heritage property or paleontological  
30 remains, a mitigation plan must be developed by the applicant to minimize adverse effects to the property

1 or remains. Mitigation must be directed at the characteristics of the property that make it eligible for listing  
2 in the register. The historic preservation officer shall identify suggested mitigation actions in writing at the  
3 time that the historic preservation officer responds to a request for consultation.

4 (3) An applicant may not be required to pay more than 0.5% of the projected cost of the activity  
5 to design and implement a mitigation plan.

6

7 NEW SECTION. **Section 7. Retroactive applicability.** (1) Section 2-15-1512(2)(c) applies  
8 retroactively, within the meaning of 1-2-109, to members of the preservation review board serving on the  
9 board on [the effective date of this act].

10 (2) Section 2-15-1512(3)(b)(ii) applies retroactively, within the meaning of 1-2-109, to the state  
11 historic preservation officer serving in that capacity on [the effective date of this act].

12 (3) A member of the preservation review board or the historic preservation officer who has served  
13 more than 12 years on [the effective date of this act] may complete the term but may not be reappointed.

14

15 NEW SECTION. **Section 8. Codification instruction.** [Sections 4 through 6] are intended to be  
16 codified as an integral part of Title 22, chapter 3, part 4, and the provisions of Title 22, chapter 3, part 4,  
17 apply to [sections 4 through 6].

18

19 NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are  
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
21 applications, the part remains in effect in all valid applications that are severable from the invalid  
22 applications.

23

24 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

25

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0485 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to preservation of heritage property; expanding the membership review board; providing for the appointment procedure and supervision of the historic preservation officer; requiring notice for certain actions of the historic preservation officer; and providing for term limits for members of the preservation review board and the historic preservation officer.

ASSUMPTIONS:

1. This bill will be effective on passage.
2. This bill limits the term of the Historic Preservation Officer to serving not more than a total of 12 years. Upon passage the current preservation officer would be dismissed in the near future.
3. This bill will add four historic preservation board members, increasing the number from 9 to 13. This will require additional operating expenses.
4. This bill changes the composition of the board members and deletes the requirement of having to demonstrate an interest in preservation matters. According to the Code of Federal Register 36CFR61.4, a majority of the board must be professionals in preservation fields and any member must have "competence, interest, or knowledge in historic preservation."
5. This bill adds more requirements of the preservation office as follows:
  - a. Conducts consultation procedures under section 106 of the National Historic Preservation Act or the Antiquities Act ordinarily handled by federal or other state agencies.
  - b. Section 5 requires additional mailings, notices and procedures for the Montana Historical Society (MHS) director, the preservation officer, and the State Historic Preservation Office (SHPO) in general. The MHS estimates at minimum this bill would require an additional 1.00 FTE grade 13 and operating expenses to cover the additional mailing and notices.
  - c. Section 6 also requires additional duties of the director of MHS and the historic preservation officer which are normally handled by federal or other state agencies. The limitation of the of money that can be spent constrains a federal or state agency from developing appropriate mitigation.
6. There is a possible loss of \$600,000 federal funds each year due to contradictions which this bill would create between federal and state requirements. If lost to Montana, the federal funds would be redistributed to other states.
7. This bill increases procedures and paperwork for federal and state agencies and their applicants.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	28,533	28,533
Operating	6,500	6,500
Equipment	<u>0</u>	<u>0</u>
Total	35,033	35,033

Funding:

General Fund	35,033	35,033
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*Dave Lewis* 2-15-95  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0485, as introduced  
**HB485**

Revenues:

(601,620)

(601,620)

Net Impact:

The Net Impact would be loss of the federal funding and loss of the preservation office and all its services.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

If federal funding is lost counties, local governments, and private citizens will lose the availability of grant funding for a total of \$250,000 each fiscal year.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Preclude Montanans in their attempt to seek National Register of Historic Places designation, federal tax credits, federal grants, signage, and assistance.
2. Loss of jobs for 7 local preservation officers and two program staff and internships for 2-4 Montana university students.
3. Federal agencies would need to conduct 3000 project reviews a year solely with the National Park Service in Washington D.C. and the federal advisory council on Historic Preservation in Denver, CO.
4. Applications to federal agencies would reflect greater delays in project reviews and hence in project approval.

TECHNICAL NOTES:

Areas in which the bill contradicts federal preservation requirements:

1. The required composition of any State Historic Preservation Review Board is spelled out in 36CFR61.4. A majority of the board must be professionals in preservation fields and any member must have "competence, interest, or knowledge in historic preservation."
2. The process by which properties are determined eligible for listing in the National Register of Historic Places is spelled out in 36CFR63 and 36CFR800.4. Those processes are initiated and concluded by federal agencies only. Final determinations of Register property value are made by the keeper of the National Register of Historic Places.
3. The process by which any federal agency complies with the Section 106 of the National Historic Preservation Act is spelled out in 36CFR800. Those regulations and a series of guidance provided by the Advisory Council on Historic Preservation, an independent federal agency, guide federal agencies in all elements of the procedures--public notice, ways to seek resolution of differences with any interested party including the SHPO's, owners, tribes, or applicants. This process is legally procedural not substantive. No federal agency can be sued for its final decision, only for failure to complete the procedures. SHPO comments to federal agencies, but never--in any element of the process--gives final authority.

Areas where the bill adds rather than subtracts onerous procedures within Montana codes:

1. The Montana Antiquities Act, 22-3-401 to 22-3-442, requires state agencies to prepare review process to consider heritage properties for state agencies on state-owned land only. Therefore, major state agencies all function by rules of their own making. All those rules are procedural only and leave final project decisions to the originating agency.
2. Several state statutes incidentally mention heritage resources (hard rock mining, subdivisions), but contain no procedures or rules. The SHPO has no officially designated role. SHPO responds only when asked.
3. City and county governments have no obligation to consider cultural resources or go through any review process--unless they seek federal funds, permits or authorities, or unless they have their own locally-approved ordinances. Hence, proposed new sections 5 and 6 duplicate or add procedures even to the state process that do not currently exist in law.



(continued)

The same addition of procedures not now required obviously occurs in federal law for federal agencies as well--if these proposed procedures could actually be added to federal regulations.

Relative roles in the preservation review process:

All federal and state preservation statutes give initiation and final authority for any decision or action to the federal or state agency. This bill, in new sections 5 and 6, gives greater decision making authority in regard to both property significance and mitigation to the Preservation Office than currently exists in law.

Preservation regulations and private property owners and rights:

This bill would lead readers to believe that private property rights are violated by federal or state preservation review procedures. Private property owners have absolutely no requirement to seek review of their actions or consider cultural resource values unless except insofar as they want the benefit of federal involvement. Federal and state review processes have withstood 30 years of litigation without being advanced as takings. Only local preservation ordinances have been found to have takings potential.

Limits on the Governor's authority:

As spelled out in 36CFR61 and in 2-15-1512, MCA, the Governor currently may appoint any person at SHPO at any time. By requiring the Governor to choose only from a limited list of people and by limiting the time for any one person's appointment, the real authority and freedom are reduced.

Misunderstood role of the State Historic Preservation Review Board:

The board is principally in place to review potential actual National Register of Historic Places nominations (not determinations of eligibility). Hence, the primary meeting time for any board is devoted to detailed review of specific properties, their history, their architecture or archaeological value, or changes that have occurred over time. Board members not interested in history or archaeology would be asked to invest considerable time in areas outside their expertise or purpose.

Limits dollar amount to be invested in mitigation.

Neither federal nor state law currently spell out how much or how little a federal or state agency must invest in ways to avoid or mitigate harm to historic properties. Since both laws are procedural and not substantive this decision is ultimately agency discretion. Federal law does encourage federal agencies to consider spending 1% of their project cost for mitigation or avoidance. This language implies a requirement for dollar amounts in mitigation that does not now exist. And, in its wording it precludes Montanans from seeking federal agency investment in needed mitigation measures.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0485 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to preservation of heritage property; expanding the membership review board; providing for the appointment procedure and supervision of the historic preservation officer; requiring notice for certain actions of the historic preservation officer; and providing for term limits for members of the preservation review board and the historic preservation officer.

ASSUMPTIONS:

1. This bill will be effective on passage.
2. This bill limits the term of the Historic Preservation Officer to serving not more than a total of 12 years. Upon passage the current preservation officer would be dismissed in the near future.
3. This bill will add four historic preservation board members, increasing the number from 9 to 13. This will require additional operating expenses.
4. This bill changes the composition of the board members and deletes the requirement of having to demonstrate an interest in preservation matters.
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  - c. Section 6 also requires additional duties of the director of MHS and the historic preservation officer which are normally handled by federal or other state agencies. The limitation of the of money that can be spent constrains a federal or state agency from developing appropriate mitigation.
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<u>Expenditures:</u>	<u>FY96</u>	<u>FY97</u>
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*Dave Lewis* 2-15-95

DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

*Ernest Bergsagel*

ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0485, as introduced

**HB 485-#2**

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Some increased workload and possible delays in response.

TECHNICAL NOTES:

Areas in which the bill conflicts with federal preservation requirements:

1. The required composition of any State Historic Preservation Review Board is spelled out in 36CFR61.4. A majority of the board must be professionals in preservation fields and any member must have "competence, interest, or knowledge in historic preservation."
2. The process by which properties are determined eligible for listing in the National Register of Historic Places is spelled out in 36CFR63 and 36CFR800.4. Those processes are initiated and concluded by federal agencies only. Final determinations of Register property value are made by the keeper of the National Register of Historic Places.
3. The process by which any federal agency complies with the Section 106 of the National Historic Preservation Act is spelled out in 36CFR800. Those regulations and a series of guidance provided by the Advisory Council on Historic Preservation, an independent federal agency, guide federal agencies in all elements of the procedures--public notice, ways to seek resolution of differences with any interested party including the SHPO's, owners, tribes, or applicants. This process is legally procedural not substantive. No federal agency can be sued for its final decision, only for failure to complete the procedures. SHPO comments to federal agencies.

These three areas could impair Montana's access to National Register programs.

Areas where the bill adds rather than subtracts procedures within Montana codes:

1. The Montana Antiquities Act, 22-3-401 to 22-3-442, requires state agencies to prepare review process to consider heritage properties for state agencies on state-owned land only. Therefore, major state agencies all function by rules of their own making. All those rules are procedural only and leave final project decisions to the originating agency.
2. Several state statutes incidentally mention heritage resources (hard rock mining, subdivisions), but contain no procedures or rules. The SHPO has no officially designated role. SHPO responds only when asked.
3. City and county governments have no obligation to consider cultural resources or go through any review process--unless they seek federal funds, permits or authorities, or unless they have their own locally-approved ordinances. Hence, proposed new sections 5 and 6 duplicate or add procedures even to the state process that do not currently exist in law.

The same addition of procedures not now required obviously occurs in federal law for federal agencies as well--if these proposed procedures could actually be added to federal regulations.

Relative roles in the preservation review process:

All federal and state preservation statutes give initiation and final authority for any decision or action to the federal or state agency. This bill, in new sections 5 and 6, gives greater decision making authority in regard to both property significance and mitigation to the Preservation Office than currently exists in law.

Limits on the Governor's authority:

As spelled out in 36CFR61 and in 2-15-1512 MCA, the Governor currently may appoint any person at SHPO at any time. By requiring the Governor to choose only from a limited list of people and by limiting the time for any one person's appointment, authority is reduced.

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Dave Lewis 2-15-95  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

Ernest Bergsagel  
 ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

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REREFERRED AND APPROVED BY COM ON  
APPROPRIATIONS

HOUSE BILL NO. 485

INTRODUCED BY BERGSAGEL, TOEWS

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRESERVATION OF HERITAGE PROPERTY;  
5 ~~EXPANDING CHANGING~~ THE MEMBERSHIP OF THE PRESERVATION REVIEW BOARD; PROVIDING FOR  
6 THE APPOINTMENT PROCEDURE AND SUPERVISION OF THE HISTORIC PRESERVATION OFFICER;  
7 ~~REQUIRING NOTICE FOR CERTAIN ACTIONS OF THE HISTORIC PRESERVATION OFFICER;~~ PROVIDING  
8 ~~FOR TERM LIMITS FOR MEMBERS OF THE PRESERVATION REVIEW BOARD AND THE HISTORIC~~  
9 ~~PRESERVATION OFFICER;~~ REQUIRING THE DEVELOPMENT OF PROCEDURES AND GUIDELINES FOR  
10 ~~NOMINATING PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES~~ INVENTORYING,  
11 DOCUMENTING, AND EVALUATING HERITAGE PROPERTIES; PROVIDING A PROCEDURE FOR  
12 NOMINATION OF PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES; REQUIRING  
13 AVOIDANCE AND MITIGATION IN THE DEVELOPMENT OF CERTAIN PROPERTY; AND AMENDING  
14 SECTIONS 2-15-1512, 22-3-421, AND 22-3-423, MCA; ~~AND PROVIDING A RETROACTIVE APPLICABILITY~~  
15 ~~DATE."~~

16

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

18

19 **Section 1.** Section 2-15-1512, MCA, is amended to read:

20 **"2-15-1512. Boards and offices associated with state historical society.** (1) (a) There is a board  
21 of trustees of the state historical society ~~which~~ that is created in Title 22, chapter 3.

22 (b) The composition, method of appointment, terms of office, and qualifications of board members  
23 remain as prescribed by law.

24 (2) (a) There is a preservation review board within the Montana historical society consisting of ~~nine~~  
25 13 NINE members.

26 (b) Members ~~shall~~ must be appointed by the governor in the following manner:

27 (i) five professional persons recognized in the fields of archaeology, history, PALEONTOLOGY,  
28 HISTORIC PROPERTY ADMINISTRATION, CURATION, PLANNING, LANDSCAPE ARCHITECTURE,  
29 CONSERVATION, FOLKLORE, CULTURAL ANTHROPOLOGY, TRADITIONAL CULTURAL PROPERTY  
30 EXPERTISE, architecture, or architectural history; ~~however~~ However, no more than two members may be

1 appointed from any one of these fields; AND

2 ~~(iii) a professional paleontologist;~~

3 ~~(iii) the state liaison officer for the federal land and water conservation fund; and~~

4 ~~(iv)(ii) two ~~six~~ FOUR members of the public who have actively demonstrated an interest in historic~~  
5 ~~preservation matters. At least four of the six public members must be representatives of the following~~  
6 ~~entities or industries:~~

7 ~~(A) agriculture;~~

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9 ~~(C) local government;~~

10 ~~(D) state government;~~

11 ~~(E) mining;~~

12 ~~(F) real estate sales and development; and~~

13 ~~(G) timber or wood products~~ WHO REPRESENT A BROAD SPECTRUM OF MONTANA SOCIETY,  
14 WHO HAVE DEMONSTRATED AN INTEREST IN HISTORIC PRESERVATION, AND WHOSE VIEWS REFLECT  
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16 (c) Each member shall serve a 4-year term. A member may be reappointed, ~~but may not serve more~~  
17 ~~than a total of 12 years.~~

18 (d) Members ~~shall~~ must be compensated and receive travel expenses as provided for in 2-15-124.

19 (3) (a) There is established the historic preservation office within the Montana historical society,  
20 to consist of an historic preservation officer and a qualified professional staff.

21 (b) ~~(i)~~ The historic preservation officer is appointed by the governor from a list of ~~five~~ THREE  
22 nominees submitted to the governor by the preservation review board. The term of the historic preservation  
23 officer coincides with the term of the governor DIRECTOR OF THE MONTANA HISTORICAL SOCIETY WITH  
24 THE APPROVAL OF THE MONTANA HISTORICAL SOCIETY BOARD OF TRUSTEES.

25 ~~(ii) An individual may not serve as the historic preservation officer for more than a total of 12~~  
26 ~~years.~~

27 (c) The historic preservation officer is supervised by the director of the Montana historical society."

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29 **Section 2.** Section 22-3-421, MCA, is amended to read:

30 **"22-3-421. Definitions.** As used in this part, unless the context clearly indicates otherwise, the

1 following definitions apply:

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3 WILL BE PHYSICALLY AFFECTED BY THE ACTIVITY OF AN APPLICANT OR WHOSE REAL PROPERTY IS  
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6 ~~(1)(2)~~ "Antiquities permit" means the permit granted for excavation, removal, or restoration of  
7 heritage properties or paleontological remains provided for in 22-3-432.

8 ~~(2)(3)~~ "Applicant" means a person who applies to a governmental entity, including a federal, state,  
9 or local governmental entity, for a permit, license, or lease on property owned by the governmental entity.

10 ~~(2)(3)(4)~~ "Heritage property" means any district, site, building, structure, or object located upon  
11 or beneath the earth or under water that is significant in American history, architecture, archaeology, or  
12 culture.

13 ~~(3)(4)(5)~~ "Historic preservation office" means the office within the Montana historical society  
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15 ~~(4)(5)(6)~~ "Historic preservation officer" means the officer provided for in 2-15-1512.

16 ~~(5)(6)(7)~~ "Paleontological remains" means fossilized plants and animals of a geological nature found  
17 upon or beneath the earth or under water which are rare and critical to scientific research.

18 ~~(6)(7)(8)~~ "Preservation review board" means the board provided for in 2-15-1512.

19 ~~(7)(8)(9)~~ "Register" means the National Register of Historic Places, the official list of the nation's  
20 heritage properties worthy of preservation because of national, state, or local significance.

21 ~~(8)(9)(10)~~ "Registered property" means any heritage property listed in the register.

22 ~~(9)(10)(11)~~ "State agency" means any executive agency of the state of Montana."  
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24 **Section 3.** Section 22-3-423, MCA, is amended to read:

25 **"22-3-423. Duties of historic preservation officer.** ~~The~~ Subject to the supervision of the director  
26 of the historical society, the historic preservation officer has the following duties and responsibilities:

27 (1) follow necessary procedures to qualify the state for money that is now or will be made available  
28 under any act of congress of the United States or otherwise for purposes of historic preservation;

29 (2) conduct an ongoing statewide survey to identify and document heritage properties and  
30 paleontological remains;



1 (3) maintain a state inventory file of heritage properties and paleontological remains and maintain  
2 a repository for all ~~such~~ inventory work done in the state;

3 (4) evaluate and formally nominate potential register properties according to the criteria established  
4 by the register;

5 (5) prepare and annually review the state preservation plan, register nominations, and historic  
6 preservation grant activity;

7 (6) maintain, publish, and disseminate information relating to heritage properties and paleontological  
8 remains in the state;

9 (7) cooperate with and assist local, state, and federal government agencies in comprehensive  
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11 (8) enter into cooperative agreements with the federal government, local governments, and other  
12 governmental entities or private landowners or the owners of objects to ensure preservation and protection  
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14 (9) adopt rules outlining procedures by which a state agency that has no approved rules under  
15 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned  
16 by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that  
17 substantially alter ~~such~~ the properties;

18 (10) respond to requests for consultation under section 106 of the National Historic Preservation  
19 Act, as provided for in [section 5];

20 (11) develop procedures and guidelines for the evaluation of heritage property or paleontological  
21 remains as provided in [section 4];

22 ~~(10)~~(12) protect from disclosure to the public any information relating to the location or character  
23 of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to ~~such~~  
24 the resources or to the area or place where the resources are located; and

25 ~~(11)~~(13) any other necessary or appropriate activity permitted by law to carry out and enforce the  
26 provisions of this part."  
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28 **NEW SECTION. Section 4. Heritage property -- procedures and guidelines required.** The historic  
29 preservation officer shall adopt standardized procedures and guidelines for inventorying, collecting data  
30 on, documenting, and evaluating all types of heritage property. In adopting the standardized procedures

1 and guidelines, the historic preservation officer may consult with state and federal agencies experienced  
 2 in reviewing and mitigating environmental and cultural impacts caused by development of properties.

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 4 NEW SECTION. Section 5. Requests for consultation -- PUBLIC NOTICE -- appeal of finding to  
 5 district court FINDINGS. (1) ~~If the views of the historic preservation officer concerning the eligibility for~~  
 6 ~~listing heritage property or paleontological remains in the register are requested by a governmental entity,~~  
 7 ~~including a request under section 106 of the National Historic Preservation Act, the historic preservation~~  
 8 ~~officer shall respond in writing to the request within 30 calendar days of receiving the request and address~~  
 9 ~~each property in the request with a proposed finding concerning the property's eligibility for listing in the~~  
 10 ~~register.~~

11 ~~(2) If the proposed finding is that a heritage property is not involved or that A HERITAGE~~  
 12 ~~PROPERTY IS INVOLVED BUT there is no adverse impact to the property, the proposed finding MUST~~  
 13 ~~ADDRESS ALL PROPERTIES OR REMAINS REVIEWED AND must be forwarded to the director of the~~  
 14 ~~historical society. The director of the historical society shall give the requesting agency a final finding~~  
 15 ~~consistent with the historic preservation officer's proposed finding.~~

16 (1) A FEDERAL OR STATE ENTITY THAT ACTS UPON A PROPOSED FEDERAL OR STATE ACTION  
 17 OR AN APPLICATION FOR A FEDERAL, STATE, OR LOCAL PERMIT, LICENSE, LEASE, OR FUNDING MAY  
 18 REQUEST THE VIEWS OF THE HISTORIC PRESERVATION OFFICER CONCERNING:

19 (A) THE RECOMMENDED ELIGIBILITY FOR A REGISTER LISTING OF ANY HERITAGE PROPERTY  
 20 OR PALEONTOLOGICAL REMAINS;

21 (B) THE EFFECTS OF A PROPOSED ACTION, ACTIVITY, OR UNDERTAKING ON HERITAGE  
 22 PROPERTY OR REMAINS THAT ARE FOUND TO BE ELIGIBLE FOR REGISTER LISTING; AND

23 (C) THE APPROPRIATENESS OF A PROPOSED PLAN FOR THE AVOIDANCE OR MITIGATION OF  
 24 EFFECTS.

25 (2) A REQUEST FOR COMMENT PURSUANT TO 16 U.S.C. 470(F) MAY BE MADE  
 26 SIMULTANEOUSLY WITH A REQUEST PURSUANT TO SUBSECTION (1). THE HISTORIC PRESERVATION  
 27 OFFICER SHALL RESPOND IN WRITING TO A REQUEST WITHIN 30 CALENDAR DAYS OF RECEIVING THE  
 28 REQUEST AND SHALL ADDRESS EACH PROPERTY IN THE REQUEST AND EACH TOPIC OF THE  
 29 REQUEST. IN THE EVENT THAT AN AGENCY REQUESTS SIMULTANEOUS CONSULTATION FOR TWO OR  
 30 MORE CRITERIA UNDER THIS SECTION, THE AGENCY AND HISTORIC PRESERVATION OFFICER MAY

1 EXTEND THE 30-DAY REVIEW PERIOD BY MUTUAL AGREEMENT. IF THE HISTORIC PRESERVATION  
 2 OFFICER FAILS TO COMMENT WITHIN THAT TIME, THAT FAILURE IS CONSTRUED AS CONCURRENCE  
 3 WITH THE AGENCY'S RECOMMENDATION. IN THE EVENT OF FAILURE TO COMMENT ON A SPECIFIC  
 4 UNDERTAKING, THE HISTORIC PRESERVATION OFFICER MAY NOT CHANGE A FINDING FOR A  
 5 HERITAGE PROPERTY AT A LATER DATE.

6 (3) If the proposed finding is that a heritage property or paleontological remains are involved ~~or~~  
 7 AND that a proposed activity will have an adverse impact on the property or remains, the proposed finding  
 8 must address all properties or remains involved and describe the characteristics that illustrate the qualities  
 9 that make the property or remains eligible for inclusion in the register. If the proposed finding includes a  
 10 conclusion that A PROPERTY OR REMAINS MAY BE ELIGIBLE BUT additional information or study is needed  
 11 to ~~make~~ REACH an eligibility ~~determination~~ FINDING, the finding must specify the type and amount of  
 12 information required IN ACCORDANCE WITH STANDARDS AND GUIDELINES AS PROVIDED IN [SECTION  
 13 4].

14 ~~(4) Within 5 calendar days of completion of the proposed A finding OF ADVERSE EFFECT, the~~  
 15 ~~historic preservation officer shall give the director of the historical society, the applicant, and any affected~~  
 16 ~~property owners notice of the proposed finding. The notice must include a copy of the proposed finding~~  
 17 ~~and a statement that the director of the historical society will receive written comments for 20 days~~  
 18 ~~following the issuance of the notice.~~

19 ~~(5) Within 30 calendar days of the expiration of the time for receiving written comments, the~~  
 20 ~~director of the historical society shall issue a final finding to the requesting agency.~~

21 (4) AT THE TIME THAT THE STATE OR FEDERAL AGENCY REQUESTS THE VIEWS OF THE  
 22 HISTORIC PRESERVATION OFFICER AS PROVIDED IN SUBSECTION (1), THE AGENCY SHALL PROVIDE  
 23 NOTICE TO THE APPLICANT, AFFECTED PROPERTY OWNERS, AND OTHER INTERESTED PERSONS OF  
 24 THE REQUEST FOR CONSULTATION AND SHALL IDENTIFY LOCATIONS WHERE THE SUBMITTED  
 25 MATERIALS MAY BE REVIEWED.

26 (5) THE APPLICANT AND ANY AFFECTED PROPERTY OWNERS HAVE 20 DAYS IN WHICH TO  
 27 APPEAL THE HISTORIC PRESERVATION OFFICER'S FINDING TO THE DIRECTOR. THE APPEAL NOTICE  
 28 MUST INCLUDE A WRITTEN STATEMENT OF REASONS FOR THE APPEAL AND ANY ADDITIONAL  
 29 SUPPORTING INFORMATION.

30 (6) THE DIRECTOR OF THE HISTORICAL SOCIETY SHALL ISSUE A FINAL FINDING WITHIN 30

1 DAYS OF THE EXPIRATION OF THE 20-DAY APPEAL PERIOD PROVIDED FOR UNDER SUBSECTION (5).  
 2 THE ISSUANCE OF THIS FINDING DOES NOT LIMIT THE RIGHTS OF ANY APPLICANT OR AFFECTED  
 3 PROPERTY OWNER TO CHALLENGE A FINDING UNDER AN EXISTING FEDERAL LAW, REGULATION, OR  
 4 REGULATORY OR ADMINISTRATIVE PROCESS.

5 ~~(6)(7)~~ If the applicant or an affected property owner is not satisfied with the finding of the director  
 6 of the historical society concerning the eligibility of the property or remains for listing in the register OR A  
 7 FINDING OF ADVERSE EFFECT TO THE PROPERTY, the entity or property owner may appeal the finding  
 8 to the district court in either Lewis and Clark County or a county in which affected property is located.  
 9 Appeal may be taken by filing a petition with the district court citing the decision by the director of the  
 10 historical society and the evidence upon which the director relied. On appeal, the district court may  
 11 consider any documents supporting or not supporting the finding, the written comments received by the  
 12 director of the historical society, and any additional evidence that may be submitted to the court. The  
 13 district court may substitute its judgment for the judgment of the director of the historical society as to the  
 14 weight of the evidence.

15  
 16 NEW SECTION. Section 6. Avoidance and mitigation of impacts. (1) Avoidance of the  
 17 ~~development of or~~ impacts to heritage property or paleontological remains is preferred. Avoidance may  
 18 not be construed to constitute neglect of the property or anticipatory demolition.

19 (2) If it is not feasible to avoid ~~development of or~~ impacts to heritage property or paleontological  
 20 remains, a mitigation plan must be developed by the applicant AGENCY, IN CONSULTATION WITH THE  
 21 APPLICANT, to minimize adverse effects to the property or remains. Mitigation must be directed at the  
 22 characteristics of the property that make it eligible for listing in the register. ~~The~~ IF REQUESTED BY THE  
 23 AGENCY, THE historic preservation officer shall identify suggested mitigation actions in writing at the time  
 24 that the historic preservation officer ~~responds to a request for consultation~~ SUBMITS A PROPOSED  
 25 FINDING UNDER [SECTION 5(3)].

26 ~~(3) An applicant may not be required to pay more than 0.5% of the projected cost of the activity~~  
 27 ~~to design and implement a mitigation plan.~~

28  
 29 ~~NEW SECTION. Section 7. Retroactive applicability. (1) Section 2-15-1512(2)(c) applies~~  
 30 ~~retroactively, within the meaning of 1-2-109, to members of the preservation review board serving on the~~

1 ~~board on [the effective date of this act].~~

2 ~~(2) Section 2-15-1512(3)(b)(iii) applies retroactively, within the meaning of 1-2-109, to the state~~  
3 ~~historic preservation officer serving in that capacity on [the effective date of this act].~~

4 ~~(3) A member of the preservation review board or the historic preservation officer who has served~~  
5 ~~more than 12 years on [the effective date of this act] may complete the term but may not be reappointed.~~

6

7 NEW SECTION. **Section 7. Codification instruction.** [Sections 4 through 6] are intended to be  
8 codified as an integral part of Title 22, chapter 3, part 4, and the provisions of Title 22, chapter 3, part 4,  
9 apply to [sections 4 through 6].

10

11 NEW SECTION. **Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

15

16 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

17

-END-

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7 ~~including a request under section 106 of the National Historic Preservation Act, the historic preservation~~  
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13 ~~ADDRESS ALL PROPERTIES OR REMAINS REVIEWED AND must be forwarded to the director of the~~  
14 ~~historical society. The director of the historical society shall give the requesting agency a final finding~~  
15 ~~consistent with the historic preservation officer's proposed finding.~~

16 (1) A FEDERAL OR STATE ENTITY THAT ACTS UPON A PROPOSED FEDERAL OR STATE ACTION  
17 OR AN APPLICATION FOR A FEDERAL, STATE, OR LOCAL PERMIT, LICENSE, LEASE, OR FUNDING MAY  
18 REQUEST THE VIEWS OF THE HISTORIC PRESERVATION OFFICER CONCERNING:

19 (A) THE RECOMMENDED ELIGIBILITY FOR A REGISTER LISTING OF ANY HERITAGE PROPERTY  
20 OR PALEONTOLOGICAL REMAINS;

21 (B) THE EFFECTS OF A PROPOSED ACTION, ACTIVITY, OR UNDERTAKING ON HERITAGE  
22 PROPERTY OR REMAINS THAT ARE FOUND TO BE ELIGIBLE FOR REGISTER LISTING; AND

23 (C) THE APPROPRIATENESS OF A PROPOSED PLAN FOR THE AVOIDANCE OR MITIGATION OF  
24 EFFECTS.

25 (2) A REQUEST FOR COMMENT PURSUANT TO 16 U.S.C. 470(F) MAY BE MADE  
26 SIMULTANEOUSLY WITH A REQUEST PURSUANT TO SUBSECTION (1). THE HISTORIC PRESERVATION  
27 OFFICER SHALL RESPOND IN WRITING TO A REQUEST WITHIN 30 CALENDAR DAYS OF RECEIVING THE  
28 REQUEST AND SHALL ADDRESS EACH PROPERTY IN THE REQUEST AND EACH TOPIC OF THE  
29 REQUEST. IN THE EVENT THAT AN AGENCY REQUESTS SIMULTANEOUS CONSULTATION FOR TWO OR  
30 MORE CRITERIA UNDER THIS SECTION, THE AGENCY AND HISTORIC PRESERVATION OFFICER MAY

1 EXTEND THE 30-DAY REVIEW PERIOD BY MUTUAL AGREEMENT. IF THE HISTORIC PRESERVATION  
 2 OFFICER FAILS TO COMMENT WITHIN THAT TIME, THAT FAILURE IS CONSTRUED AS CONCURRENCE  
 3 WITH THE AGENCY'S RECOMMENDATION. IN THE EVENT OF FAILURE TO COMMENT ON A SPECIFIC  
 4 UNDERTAKING, THE HISTORIC PRESERVATION OFFICER MAY NOT CHANGE A FINDING FOR A  
 5 HERITAGE PROPERTY AT A LATER DATE.

6 (3) If the proposed finding is that a heritage property or paleontological remains are involved ~~or~~  
 7 AND that a proposed activity will have an adverse impact on the property or remains, the proposed finding  
 8 must address all properties or remains involved and describe the characteristics that illustrate the qualities  
 9 that make the property or remains eligible for inclusion in the register. If the proposed finding includes a  
 10 conclusion that A PROPERTY OR REMAINS MAY BE ELIGIBLE BUT additional information or study is needed  
 11 to ~~make~~ REACH an eligibility ~~determination~~ FINDING, the finding must specify the type and amount of  
 12 information required IN ACCORDANCE WITH STANDARDS AND GUIDELINES AS PROVIDED IN [SECTION  
 13 4].

14 ~~(4) Within 5 calendar days of completion of the proposed A finding OF ADVERSE EFFECT, the~~  
 15 ~~historic preservation officer shall give the director of the historical society, the applicant, and any affected~~  
 16 ~~property owners notice of the proposed finding. The notice must include a copy of the proposed finding~~  
 17 ~~and a statement that the director of the historical society will receive written comments for 20 days~~  
 18 ~~following the issuance of the notice.~~

19 ~~(5) Within 30 calendar days of the expiration of the time for receiving written comments, the~~  
 20 ~~director of the historical society shall issue a final finding to the requesting agency.~~

21 (4) AT THE TIME THAT THE STATE OR FEDERAL AGENCY REQUESTS THE VIEWS OF THE  
 22 HISTORIC PRESERVATION OFFICER AS PROVIDED IN SUBSECTION (1), THE AGENCY SHALL PROVIDE  
 23 NOTICE TO THE APPLICANT, AFFECTED PROPERTY OWNERS, AND OTHER INTERESTED PERSONS OF  
 24 THE REQUEST FOR CONSULTATION AND SHALL IDENTIFY LOCATIONS WHERE THE SUBMITTED  
 25 MATERIALS MAY BE REVIEWED.

26 (5) THE APPLICANT AND ANY AFFECTED PROPERTY OWNERS HAVE 20 DAYS IN WHICH TO  
 27 APPEAL THE HISTORIC PRESERVATION OFFICER'S FINDING TO THE DIRECTOR. THE APPEAL NOTICE  
 28 MUST INCLUDE A WRITTEN STATEMENT OF REASONS FOR THE APPEAL AND ANY ADDITIONAL  
 29 SUPPORTING INFORMATION.

30 (6) THE DIRECTOR OF THE HISTORICAL SOCIETY SHALL ISSUE A FINAL FINDING WITHIN 30

1 DAYS OF THE EXPIRATION OF THE 20-DAY APPEAL PERIOD PROVIDED FOR UNDER SUBSECTION (5).  
 2 THE ISSUANCE OF THIS FINDING DOES NOT LIMIT THE RIGHTS OF ANY APPLICANT OR AFFECTED  
 3 PROPERTY OWNER TO CHALLENGE A FINDING UNDER AN EXISTING FEDERAL LAW, REGULATION, OR  
 4 REGULATORY OR ADMINISTRATIVE PROCESS.

5 ~~(6)~~(7) If the applicant or an affected property owner is not satisfied with the finding of the director  
 6 of the historical society concerning the eligibility of the property or remains for listing in the register OR A  
 7 FINDING OF ADVERSE EFFECT TO THE PROPERTY, the entity or property owner may appeal the finding  
 8 to the district court in either Lewis and Clark County or a county in which affected property is located.  
 9 Appeal may be taken by filing a petition with the district court citing the decision by the director of the  
 10 historical society and the evidence upon which the director relied. On appeal, the district court may  
 11 consider any documents supporting or not supporting the finding, the written comments received by the  
 12 director of the historical society, and any additional evidence that may be submitted to the court. The  
 13 district court may substitute its judgment for the judgment of the director of the historical society as to the  
 14 weight of the evidence.

15  
 16 NEW SECTION. Section 6. Avoidance and mitigation of impacts. (1) Avoidance of the  
 17 ~~development of or~~ impacts to heritage property or paleontological remains is preferred. Avoidance may  
 18 not be construed to constitute neglect of the property or anticipatory demolition.

19 (2) If it is not feasible to avoid ~~development of or~~ impacts to heritage property or paleontological  
 20 remains, a mitigation plan must be developed by the applicant AGENCY, IN CONSULTATION WITH THE  
 21 APPLICANT, to minimize adverse effects to the property or remains. Mitigation must be directed at the  
 22 characteristics of the property that make it eligible for listing in the register. ~~The~~ IF REQUESTED BY THE  
 23 AGENCY, THE historic preservation officer shall identify suggested mitigation actions in writing at the time  
 24 that the historic preservation officer ~~responds to a request for consultation~~ SUBMITS A PROPOSED  
 25 FINDING UNDER [SECTION 5(3)].

26 ~~(3) An applicant may not be required to pay more than 0.5% of the projected cost of the activity~~  
 27 ~~to design and implement a mitigation plan.~~

28  
 29 NEW SECTION. Section 7. Retroactive applicability. (1) ~~Section 2-15-1512(2)(e) applies~~  
 30 ~~retroactively, within the meaning of 1-2-109, to members of the preservation review board serving on the~~

1 ~~board on [the effective date of this act].~~

2 ~~(2) Section 2-15-1512(3)(b)(iii) applies retroactively, within the meaning of 1-2-109, to the state~~  
3 ~~historic preservation officer serving in that capacity on [the effective date of this act].~~

4 ~~(3) A member of the preservation review board or the historic preservation officer who has served~~  
5 ~~more than 12 years on [the effective date of this act] may complete the term but may not be reappointed.~~

6

7 **NEW SECTION. Section 7. Codification instruction.** [Sections 4 through 6] are intended to be  
8 codified as an integral part of Title 22, chapter 3, part 4, and the provisions of Title 22, chapter 3, part 4,  
9 apply to [sections 4 through 6].

10

11 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

15

16 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

17

-END-

## 1 HOUSE BILL NO. 485

2 INTRODUCED BY BERGSAGEL, TOEWS

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRESERVATION OF HERITAGE PROPERTY;  
 5 ~~EXPANDING~~ CHANGING THE MEMBERSHIP OF THE PRESERVATION REVIEW BOARD; PROVIDING FOR  
 6 THE APPOINTMENT PROCEDURE AND SUPERVISION OF THE HISTORIC PRESERVATION OFFICER;  
 7 ~~REQUIRING NOTICE FOR CERTAIN ACTIONS OF THE HISTORIC PRESERVATION OFFICER;~~ PROVIDING  
 8 ~~FOR TERM LIMITS FOR MEMBERS OF THE PRESERVATION REVIEW BOARD AND THE HISTORIC~~  
 9 ~~PRESERVATION OFFICER;~~ REQUIRING THE DEVELOPMENT OF PROCEDURES AND GUIDELINES FOR  
 10 ~~NOMINATING PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES~~ INVENTORYING,  
 11 DOCUMENTING, AND EVALUATING HERITAGE PROPERTIES; PROVIDING A PROCEDURE FOR  
 12 NOMINATION OF PROPERTY TO THE NATIONAL REGISTER OF HISTORIC PLACES; REQUIRING  
 13 AVOIDANCE AND MITIGATION IN THE DEVELOPMENT OF CERTAIN PROPERTY; AND AMENDING  
 14 SECTIONS 2-15-1512, 22-3-421, AND 22-3-423, MCA; ~~AND PROVIDING A RETROACTIVE APPLICABILITY~~  
 15 DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16

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

18

19 Section 1. Section 2-15-1512, MCA, is amended to read:

20 "2-15-1512. Boards and offices associated with state historical society. (1) (a) There is a board  
 21 of trustees of the state historical society ~~which~~ that is created in Title 22, chapter 3.

22 (b) The composition, method of appointment, terms of office, and qualifications of board members  
 23 remain as prescribed by law.

24 (2) (a) There is a preservation review board within the Montana historical society consisting of ~~nine~~  
 25 13 NINE members.

26 (b) Members ~~shall~~ must be appointed by the governor in the following manner:

27 (i) five professional persons recognized in the fields of archaeology, history, PALEONTOLOGY,  
 28 HISTORIC PROPERTY ADMINISTRATION, CURATION, PLANNING, LANDSCAPE ARCHITECTURE,  
 29 CONSERVATION, FOLKLORE, CULTURAL ANTHROPOLOGY, TRADITIONAL CULTURAL PROPERTY  
 30 EXPERTISE, architecture, or architectural history; ~~however.~~ However, no more than two members may be

1 appointed from any one of these fields; AND

2 ~~(ii) a professional paleontologist;~~

3 ~~(iii) the state liaison officer for the federal land and water conservation fund; and~~

4 ~~(iv)(III) two six FOUR members of the public who have actively demonstrated an interest in historic~~  
 5 ~~preservation matters. At least four of the six public members must be representatives of the following~~  
 6 ~~entities or industries:~~

7 ~~(A) agriculture;~~

8 ~~(B) economic development;~~

9 ~~(C) local government;~~

10 ~~(D) state government;~~

11 ~~(E) mining;~~

12 ~~(F) real estate sales and development; and~~

13 ~~(G) timber or wood products~~ WHO REPRESENT A BROAD SPECTRUM OF MONTANA SOCIETY,  
 14 WHO HAVE DEMONSTRATED AN INTEREST IN HISTORIC PRESERVATION, AND WHOSE VIEWS REFLECT  
 15 THE RICH CULTURAL HERITAGE OF THE PAST AS WELL AS THE OPPORTUNITIES OF THE FUTURE.

16 (c) Each member shall serve a 4-year term. A member may be reappointed, ~~but may not serve more~~  
 17 ~~than a total of 12 years.~~

18 (d) Members shall must be compensated and receive travel expenses as provided for in 2-15-124.

19 (3) (a) There is established the historic preservation office within the Montana historical society,  
 20 to consist of an historic preservation officer and a qualified professional staff.

21 (b) ~~(i)~~ The historic preservation officer is appointed by the governor from a list of ~~five~~ THREE  
 22 nominees submitted to the governor by the preservation review board. ~~The term of the historic preservation~~  
 23 officer coincides with the term of the governor DIRECTOR OF THE MONTANA HISTORICAL SOCIETY WITH  
 24 THE APPROVAL OF THE MONTANA HISTORICAL SOCIETY BOARD OF TRUSTEES.

25 ~~(iii) An individual may not serve as the historic preservation officer for more than a total of 12 years.~~

26 (c) The historic preservation officer is supervised by the director of the Montana historical society."

27  
 28 **Section 2.** Section 22-3-421, MCA, is amended to read:

29 **"22-3-421. Definitions.** As used in this part, unless the context clearly indicates otherwise, the  
 30 following definitions apply:



1           (1) "AFFECTED PROPERTY OWNER" MEANS A PERSON OR ENTITY WHOSE REAL PROPERTY  
 2 WILL BE PHYSICALLY AFFECTED BY THE ACTIVITY OF AN APPLICANT OR WHOSE REAL PROPERTY IS  
 3 PROPOSED FOR INCORPORATION INTO A HISTORIC DISTRICT PROPOSED AS ELIGIBLE FOR LISTING IN  
 4 THE NATIONAL REGISTER OF HISTORIC PLACES.

5           ~~(1)(2)~~ "Antiquities permit" means the permit granted for excavation, removal, or restoration of  
 6 heritage properties or paleontological remains provided for in 22-3-432.

7           ~~(2)(3)~~ "Applicant" means a person who applies to a governmental entity, including a federal, state,  
 8 or local governmental entity, for a permit, license, or lease on property owned by the governmental entity.

9           ~~(2)(3)(4)~~ "Heritage property" means any district, site, building, structure, or object located upon  
 10 or beneath the earth or under water that is significant in American history, architecture, archaeology, or  
 11 culture.

12           ~~(3)(4)(5)~~ "Historic preservation office" means the office within the Montana historical society  
 13 provided for in 2-15-1512.

14           ~~(4)(5)(6)~~ "Historic preservation officer" means the officer provided for in 2-15-1512.

15           ~~(5)(6)(7)~~ "Paleontological remains" means fossilized plants and animals of a geological nature found  
 16 upon or beneath the earth or under water which are rare and critical to scientific research.

17           ~~(6)(7)(8)~~ "Preservation review board" means the board provided for in 2-15-1512.

18           ~~(7)(8)(9)~~ "Register" means the National Register of Historic Places, the official list of the nation's  
 19 heritage properties worthy of preservation because of national, state, or local significance.

20           ~~(8)(9)(10)~~ "Registered property" means any heritage property listed in the register.

21           ~~(9)(10)(11)~~ "State agency" means any executive agency of the state of Montana."

22  
 23           **Section 3.** Section 22-3-423, MCA, is amended to read:

24           **"22-3-423. Duties of historic preservation officer.** ~~The~~ Subject to the supervision of the director  
 25 of the historical society, the historic preservation officer has the following duties and responsibilities:

26           (1) follow necessary procedures to qualify the state for money that is now or will be made available  
 27 under any act of congress of the United States or otherwise for purposes of historic preservation;

28           (2) conduct an ongoing statewide survey to identify and document heritage properties and  
 29 paleontological remains;

30           (3) maintain a state inventory file of heritage properties and paleontological remains and maintain

1 a repository for all ~~such~~ inventory work done in the state;

2 (4) evaluate and formally nominate potential register properties according to the criteria established  
3 by the register;

4 (5) prepare and annually review the state preservation plan, register nominations, and historic  
5 preservation grant activity;

6 (6) maintain, publish, and disseminate information relating to heritage properties and paleontological  
7 remains in the state;

8 (7) cooperate with and assist local, state, and federal government agencies in comprehensive  
9 planning that allows for the preservation of heritage properties and paleontological remains;

10 (8) enter into cooperative agreements with the federal government, local governments, and other  
11 governmental entities or private landowners or the owners of objects to ensure preservation and protection  
12 of registered properties;

13 (9) adopt rules outlining procedures by which a state agency that has no approved rules under  
14 22-3-424(1) shall systematically consider heritage properties or paleontological remains on lands owned  
15 by the state and avoid, whenever feasible, state actions or state assisted or licensed actions that  
16 substantially alter ~~such~~ the properties;

17 (10) respond to requests for consultation under section 106 of the National Historic Preservation  
18 Act, as provided for in [section 5];

19 (11) develop procedures and guidelines for the evaluation of heritage property or paleontological  
20 remains as provided in [section 4];

21 ~~(10)~~(12) protect from disclosure to the public any information relating to the location or character  
22 of heritage properties when disclosure would create a substantial risk of harm, theft, or destruction to ~~such~~  
23 the resources or to the area or place where the resources are located; and

24 ~~(11)~~(13) any other necessary or appropriate activity permitted by law to carry out and enforce the  
25 provisions of this part."  
26

27 **NEW SECTION. Section 4. Heritage property -- procedures and guidelines required.** The historic  
28 preservation officer shall adopt standardized procedures and guidelines for inventorying, collecting data  
29 on, documenting, and evaluating all types of heritage property. In adopting the standardized procedures  
30 and guidelines, the historic preservation officer may consult with state and federal agencies experienced

1 in reviewing and mitigating environmental and cultural impacts caused by development of properties.

2  
 3 NEW SECTION. Section 5. Requests for consultation -- PUBLIC NOTICE -- appeal of finding to  
 4 district court FINDINGS. ~~(1) If the views of the historic preservation officer concerning the eligibility for~~  
 5 ~~listing heritage property or paleontological remains in the register are requested by a governmental entity,~~  
 6 ~~including a request under section 106 of the National Historic Preservation Act, the historic preservation~~  
 7 ~~officer shall respond in writing to the request within 30 calendar days of receiving the request and address~~  
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 13 ~~historical society. The director of the historical society shall give the requesting agency a final finding~~  
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22 (C) THE APPROPRIATENESS OF A PROPOSED PLAN FOR THE AVOIDANCE OR MITIGATION OF  
 23 EFFECTS.

24 (2) A REQUEST FOR COMMENT PURSUANT TO 16 U.S.C. 470(F) MAY BE MADE  
 25 SIMULTANEOUSLY WITH A REQUEST PURSUANT TO SUBSECTION (1). THE HISTORIC PRESERVATION  
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 27 REQUEST AND SHALL ADDRESS EACH PROPERTY IN THE REQUEST AND EACH TOPIC OF THE  
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 29 OR MORE CRITERIA UNDER THIS SECTION, THE AGENCY AND HISTORIC PRESERVATION OFFICER MAY  
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 21 HISTORIC PRESERVATION OFFICER AS PROVIDED IN SUBSECTION (1), THE AGENCY SHALL PROVIDE  
 22 NOTICE TO THE APPLICANT, AFFECTED PROPERTY OWNERS, AND OTHER INTERESTED PERSONS OF  
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 27 MUST INCLUDE A WRITTEN STATEMENT OF REASONS FOR THE APPEAL AND ANY ADDITIONAL  
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 2 PROPERTY OWNER TO CHALLENGE A FINDING UNDER AN EXISTING FEDERAL LAW, REGULATION, OR  
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 29 ~~retroactively, within the meaning of 1-2-109, to members of the preservation review board serving on the~~  
 30 ~~board on [the effective date of this act].~~

