

**FIRST ENGROSSMENT
with House Amendments**Fifty-eighth
Legislative Assembly
of North Dakota**ENGROSSED SENATE BILL NO. 2249**

Introduced by

Senators J. Lee, Cook, Polovitz

Representatives DeKrey, Porter, Warner

1 A BILL for an Act to create and enact a new section to chapter 55-02 of the North Dakota
2 Century Code, relating to protection of historical sites; to amend and reenact section 55-02-07
3 and subsection 2 of section 55-10-08 of the North Dakota Century Code, relating to the powers
4 of the state historical board; to provide for a legislative council study of the protection of
5 historical or archaeological artifacts or sites; to provide for application; and to declare an
6 emergency.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 55-02-07 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **55-02-07. Protection of historical or archaeological artifacts or sites.** Any
11 historical or archaeological artifact or site that is found or located upon any land owned by the
12 state or its political subdivisions or otherwise comes into its custody or possession and which
13 is, in the opinion of the director of the state historical society, significant in understanding and
14 interpreting the history and prehistory of the state, may not be destroyed, defaced, altered,
15 removed, or otherwise disposed of in any manner without the approval of the state historical
16 board, unless section 2 of this Act applies to the site. Notification of the director's opinion of
17 significance must be communicated to the appropriate governing official. The state historical
18 board through the director ~~shall~~, within sixty days of written notification to it by the appropriate
19 governing official of the state or political subdivision's desire, need, or intent to destroy, alter,
20 remove, or otherwise dispose of a significant artifact or site, shall provide the governing official
21 written direction for the care, protection, excavation, storage, destruction, or other disposition of
22 the significant artifact or site. The state and its political subdivisions shall cooperate with the
23 director in identifying and implementing any reasonable alternative to destruction or alteration
24 of any historical or archaeological artifact or site significant in understanding and interpreting

1 the history and prehistory of the state before the state historical board may approve the
2 demolition or alteration.

3 **SECTION 2.** A new section to chapter 55-02 of the North Dakota Century Code is
4 created and enacted as follows:

5 **Protection of public health and safety on sites having a public function.**

6 Notwithstanding any other provision of law, if the state or a political subdivision has a property
7 interest in real property and that property has an existing public function in addition to any
8 historical site registration or historical significance determination, the governing body of the
9 agency or political subdivision owning the property interest may, subject to the following
10 provisions, improve, alter, modify, or destroy that property if the agency or governing body
11 determines that action is necessary to protect public health or safety, to provide access for
12 disabled persons, or to ensure structural integrity. If an action is to be taken by an agency or
13 governing body under this section, notice of intent to take the action must be given to the
14 director at the onset of the planning process. At the director's request, the agency or governing
15 body shall inform the director of each meeting at which planning or decisions on a project are
16 on the agenda. At each meeting, the agency or governing body shall provide the director with
17 an opportunity to comment or provide preservation funding for the proposed project and the
18 agency or governing body shall consider the director's comments or offers of funding in the
19 development and implementation of the project. If the agency or governing body and the
20 director do not agree on the action to be taken, the differences must be submitted to a mediator
21 selected by the governor to facilitate a consensus between the parties. The cost of the
22 mediator must be shared equally by the parties. The mediator shall issue a report within sixty
23 days of appointment by the governor. The report of the mediator must be published once in the
24 official newspaper of the state and political subdivision. Although the agency or governing body
25 may take the action it deems necessary, the agency or governing body shall make all
26 reasonable effort to preserve the historical characteristics of a site taking into consideration
27 economic and technical feasibility. The decision of the agency or governing body must be
28 published once in the official newspaper of the state and political subdivision. After mediation,
29 if any, if the governing body of a political subdivision determines to proceed with actions that
30 will result in completely demolishing, removing, or significantly degrading the historical
31 characteristics of a building or real property, a resident of the political subdivision where the

1 building or real property is located may submit a written notice to the county auditor of intention
2 to petition for a public vote. The notice must be filed with the county auditor within fourteen
3 days of the publication of the decision of the governing body. A petition for a public vote must
4 contain the names of at least ten percent of the qualified electors from that governing body's
5 jurisdiction who voted in the last general election and must be filed with the county auditor
6 within one hundred twenty days of the governing body's publication of notice of its final action.
7 If a petition is filed, the matter must be submitted for a vote of the qualified electors at the next
8 special, primary, or general election held in that jurisdiction. All actions to remove, demolish, or
9 significantly degrade the historical characteristics of a building or real property are stayed for
10 fourteen days after the governing body's publication of notice of its final action, and if notice of
11 intention to seek a public vote is filed, actions are stayed until either the petition fails or the
12 public vote is held. If the political subdivision is a home rule jurisdiction with its own referendum
13 procedures, however, the home rule referendum procedures apply to the action of the
14 governing body.

15 **SECTION 3. AMENDMENT.** Subsection 2 of section 55-10-08 of the North Dakota
16 Century Code is amended and reenacted as follows:

17 2. The state or a political subdivision may not demolish or cause to alter the physical
18 features or historic character of any site listed in the state historic sites registry as
19 a state historic site without first obtaining the prior approval from the director of the
20 state historical society upon authorization of the state historical board, unless
21 section 2 of this Act applies to the site. The state and political subdivisions shall
22 cooperate with the director of the state historical society in identifying and
23 implementing any reasonable alternative to demolition or alteration of any state
24 historic site before the board approves the demolition or alteration.

25 **SECTION 4. LEGISLATIVE COUNCIL STUDY OF THE PROTECTION OF**
26 **HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS OR SITES.** The legislative council shall
27 consider studying, during the 2003-04 interim, issues relating to the protection of historical or
28 archaeological artifacts or sites that are found or located upon land owned by the state or its
29 political subdivisions or otherwise comes into the custody or possession of the state or its
30 political subdivisions and the role of the director of the state historical society of North Dakota in
31 the protection of historical or archaeological artifacts or sites. The legislative council shall

1 report its findings and recommendations, together with any legislation required to implement
2 the recommendations, to the fifty-ninth legislative assembly.

3 **SECTION 5. APPLICATION OF ACT.** This Act applies to any proceeding or
4 determination not finalized before the effective date of this Act.

5 **SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.