

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2249
(Senators J. Lee, Cook, Polovitz)
(Representatives DeKrey, Porter, Warner)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

Protection of public health and safety on sites having a public function. Notwithstanding any other provision of law, if the state or a political subdivision has a property interest in real property and that property has an existing public function in addition to any historical site registration or historical significance determination, the governing body of the agency or political subdivision owning the property interest may, subject to the following provisions, improve, alter, modify, or destroy that property if the agency or governing body determines that action is necessary to protect public health or safety, to provide access for disabled persons, or to ensure structural integrity. If an action is to be taken by an agency or governing body under this section, notice of intent to take the action must be given to the director at the onset of the planning process. At the director's request, the agency or governing body shall inform the director of each meeting at which planning or decisions on a project are on the agenda. At each meeting, the agency or governing body shall provide the director with an opportunity to comment or provide preservation funding for the proposed project and the agency or governing body shall consider the director's comments or offers of funding in the development and implementation of the project. If the agency or governing body and the director do not agree on the action to be taken, the differences must be submitted to a mediator selected by the governor to facilitate a consensus between the parties. The cost of the mediator must be shared equally by the parties. The mediator shall issue a report within sixty days of appointment by the governor. The report of the mediator must be published once in the official newspaper of the state and political subdivision.

Although the agency or governing body may take the action it deems necessary, the agency or governing body shall make all reasonable effort to preserve the historical characteristics of a site taking into consideration economic and technical feasibility. The decision of the agency or governing body must be published once in the official newspaper of the state and political subdivision. After mediation, if any, if the governing body of a political subdivision determines to proceed with actions that will result in completely demolishing, removing, or significantly degrading the historical characteristics of a building or real property, a resident of the political subdivision where the building or real property is located may submit a written notice to the county auditor of intention to petition for a public vote. The notice must be filed with the county auditor within fourteen days of the publication of the decision of the governing body. A petition for a public vote must contain the names of at least ten percent of the qualified electors from that governing body's jurisdiction who voted in the last general election and must be filed with the county auditor within one hundred twenty days of the governing body's publication of notice of its final action. If a petition is filed, the matter must be submitted for a vote of the qualified electors at the next special, primary, or general election held in that jurisdiction. All actions to remove, demolish, or significantly degrade the historical characteristics of a building or real property are stayed for fourteen days after the governing body's publication of notice of its final action, and if notice of intention to seek a public vote is filed, actions are stayed until either the petition fails or the public vote is held. If the political subdivision is a home rule jurisdiction with its own referendum procedures, however, the home rule referendum procedures apply to the action of the governing body.

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

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

SECTION 4. LEGISLATIVE COUNCIL STUDY OF THE PROTECTION OF HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS OR SITES. The legislative council shall consider studying, during the 2003-04 interim, issues relating to the protection of historical or archaeological artifacts or sites that are found or located upon land owned by the state or its political subdivisions or otherwise come into the custody or possession of the state or its political subdivisions and the role of the director of the state historical society of North Dakota in the protection of historical or archaeological artifacts or sites. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2249 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 38 Nays 8 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 74 Nays 18 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at ___ o'clock _____ M.

Secretary of State