

SENATE BILL NO. 246

INTRODUCED BY B. BROWN

IN THE SENATE

January 21, 1983	Introduced and referred to Committee on State Administration.
January 24, 1983	Rereferred to Committee on Education and Cultural Resources.
February 17, 1983	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 18, 1983	Bill printed and placed on members' desks.
February 19, 1983	Second reading, do pass.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Ayes, 49; Noes, 0. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Education and Cultural Resources.
March 14, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 18, 1983	Second reading, pass consideration.
March 19, 1983	Second reading, concurred in.
March 21, 1983	Third reading, concurred in.

IN THE SENATE

March 22, 1983

Returned to Senate with
amendments.

March 23, 1983

Second reading, amendments
concurred in.

March 24, 1983

Third reading, amendments
concurred in. Ayes, 47; Noes,
0.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *246*
 2 INTRODUCED BY *Bob Brown*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE STATE
 5 AGENCIES TO ADOPT, WITH THE CONCURRENCE OF THE MONTANA
 6 HISTORICAL SOCIETY, RULES OUTLINING PROCEDURES FOR THE
 7 IDENTIFICATION AND PRESERVATION OF HERITAGE PROPERTIES AND
 8 PALEONTOLOGICAL REMAINS OR TO FOLLOW RULES FOR THAT PURPOSE
 9 ADOPTED BY THE HISTORIC PRESERVATION OFFICER; AMENDING
 10 SECTIONS 22-3-423 AND 22-3-424, MCA."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 Section 1. Section 22-3-423, MCA, is amended to read:
 14 "22-3-423. Duties of historic preservation officer.
 15 The historic preservation officer has the following duties
 16 and responsibilities:
 17 (1) follow necessary procedures to qualify the state
 18 for money that is now or will be made available under any
 19 act of congress of the United States or otherwise for
 20 purposes of historic preservation;
 21 (2) conduct an ongoing statewide survey to identify
 22 and document heritage properties and paleontological
 23 remains;
 24 (3) maintain a state inventory file of heritage
 25 properties and paleontological remains and maintain a

1 repository for all such inventory work done in the state;
 2 (4) evaluate and formally nominate potential register
 3 properties according to the criteria established by the
 4 register;
 5 (5) prepare and annually review the state preservation
 6 plan, register nominations, and historic preservation grant
 7 activity;
 8 (6) maintain, publish, and disseminate information
 9 relating to heritage properties and paleontological remains
 10 in the state;
 11 (7) cooperate with and assist local, state, and
 12 federal government agencies in comprehensive planning that
 13 allows for the preservation of heritage properties and
 14 paleontological remains;
 15 (8) enter into cooperative agreements with the federal
 16 government, local governments, and other governmental
 17 entities or private landowners or the owners of objects to
 18 ensure preservation and protection of registered properties;
 19 ~~(9) adopt rules outlining procedures by which a state~~
 20 ~~agency that has no approved rules under 22-3-424(1) shall~~
 21 ~~consider systematically heritage properties or~~
 22 ~~paleontological remains on lands owned by the state and~~
 23 ~~avoid, whenever feasible, state actions or state assisted or~~
 24 ~~licensed actions that substantially alter such properties;~~
 25 ~~(9)(10) any other necessary or appropriate activity~~

1 permitted by law to carry out and enforce the provisions of
2 this part."

3 Section 2. Section 22-3-424, MCA, is amended to read:

4 "22-3-424. Duties of state agencies. State agencies
5 shall:

6 (1) ~~with the concurrence of the historical society~~
7 ~~adopt policies rules~~ for the identification and preservation
8 of heritage properties and paleontological remains on lands
9 owned by the state ~~and to avoid, whenever feasible, state~~
10 ~~actions or state assisted or licensed actions that~~
11 ~~substantially alter heritage properties or paleontological~~
12 ~~remains on lands owned by the state or, in the absence of~~
13 ~~such rules, act in compliance with rules adopted under~~
14 ~~22-3-423;~~

15 (2) identify and develop, in consultation with the
16 historic preservation officer, methods and procedures to
17 ensure that the identification and protection of heritage
18 properties and paleontological remains on lands owned by the
19 state is given appropriate consideration in state agency
20 decisionmaking;

21 (3) deposit in the historic preservation office all
22 inventory reports, including maps, photographs, and site
23 forms, of heritage properties and paleontological remains."

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 246

3 Senate Education and Cultural Resources Committee

4
5 The primary purpose of the bill is to ensure that
6 systematic consideration of heritage properties on
7 state-owned land occurs in state agency planning and
8 actions. The bill provides that agencies that do not choose
9 to prepare their own regulations to afford systematic
10 consideration to heritage properties on state lands adhere
11 to general rules prepared by the Historical Society.

12 The rules promulgated pursuant to this bill should
13 ensure that (a) the decision on whether to undertake a
14 professional cultural resources inventory or site evaluation
15 prior to a potentially harmful action is made by the agency
16 in consultation with the Society; (b) any heritage
17 properties identified on state land are afforded direct
18 consideration in an agency's decision on whether or how to
19 undertake an action; and (c) when feasible, damage to
20 heritage properties is avoided or subject to an appropriate
21 form of mitigation.

22 The rules are not intended to require a single course
23 of action by the agency or absolute protection of all
24 identified heritage properties.

25 The rules promulgated by either state agencies or the

1 Historical Society should have as common elements:

2 -- a requirement that prior to taking an action
3 affecting state land or property state agencies will check
4 with the Historical Society to determine the presence or
5 absence of previously identified historic or prehistoric
6 resources, the relative value of any previously identified
7 sites or buildings, and whether a field inventory or further
8 site evaluation needs to occur to determine whether heritage
9 properties might be impacted.

10 -- a requirement that the Historical Society provide
11 the information requested within a specified time and in a
12 precise format.

13 -- a requirement that each state agency have a system
14 for making and documenting decisions on whether heritage
15 properties identified as being affected by an agency
16 decision or action can be afforded protection, avoidance,
17 reuse, rehabilitation, or recording prior to impact and that
18 the system adopted permits the Historical Society comment to
19 the agency on their decision.

20 -- a method for adjudicating differences between the
21 agency and the Historical Society in instances where the
22 value of jeopardized sites appears to be high. Such a method
23 could involve the Governor-appointed State Historic
24 Preservation Review Board.

25 This bill would be applicable to state agencies in two

1 separate contexts: decisions on remodeling or demolition of
2 historic state-owned buildings and decisions made by state
3 land managing agencies relative to leases, easements,
4 access, development.

5 In the case of the Montana University System, "rule"
6 means procedures included in the Montana University System
7 Policies and Procedures Manual through the formal and public
8 process used by the Regents for that purpose.

SENATE BILL NO. 246
INTRODUCED BY B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE STATE AGENCIES TO ADOPT, WITH THE CONCURRENCE OF THE MONTANA HISTORICAL SOCIETY, RULES OUTLINING PROCEDURES FOR THE IDENTIFICATION AND PRESERVATION OF HERITAGE PROPERTIES AND PALEONTOLOGICAL REMAINS OR TO FOLLOW RULES FOR THAT PURPOSE ADOPTED BY THE HISTORIC PRESERVATION OFFICER; AMENDING SECTIONS 22-3-423 AND 22-3-424, MCA."

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

Section 1. Section 22-3-423, MCA, is amended to read:

"22-3-423. Duties of historic preservation officer.

The historic preservation officer has the following duties and responsibilities:

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

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

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

repository for all such inventory work done in the state;

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

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

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

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

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

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

1 (9)(10) any other necessary or appropriate activity
2 permitted by law to carry out and enforce the provisions of
3 this part."

4 Section 2. Section 22-3-424, MCA, is amended to read:

5 "22-3-424. Duties of state agencies. State agencies
6 shall:

7 (1) ~~IN CONSULTATION with the concurrence of the~~
8 ~~historical society~~ adopt ~~petites~~ rules for the
9 identification and preservation of heritage properties and
10 paleontological remains on lands owned by the state and to
11 avoid, whenever feasible, state actions or state assisted or
12 licensed actions that substantially alter heritage
13 properties or paleontological remains on lands owned by the
14 state ~~or, in the absence of such rules, act in compliance~~
15 ~~with rules adopted under 22-3-423. IF THE STATE AGENCY ACTS~~
16 ~~IN CONJUNCTION WITH A FEDERAL AGENCY IN THEIR NORMAL COURSE~~
17 ~~OF GRANTING PERMITS, THE RULES ADOPTED UNDER THIS SUBSECTION~~
18 ~~MUST BE SUBSTANTIALLY THE SAME AS THE FEDERAL RULES THAT~~
19 ~~APPLY TO THE FEDERAL AGENCY.~~

20 (2) identify and develop, in consultation with the
21 historic preservation officer, methods and procedures to
22 ensure that the identification and protection of heritage
23 properties and paleontological remains on lands owned by the
24 state is given appropriate consideration in state agency
25 decisionmaking;

1 (3) deposit in the historic preservation office all
2 inventory reports, including maps, photographs, and site
3 forms, of heritage properties and paleontological remains."

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 246

3 Senate Education and Cultural Resources Committee

4
5 The primary purpose of the bill is to ensure that
6 systematic consideration of heritage properties on
7 state-owned land occurs in state agency planning and
8 actions. The bill provides that agencies that do not choose
9 to prepare their own regulations to afford systematic
10 consideration to heritage properties on state lands adhere
11 to general rules prepared by the Historical Society.

12 The rules promulgated pursuant to this bill should
13 ensure that (a) the decision on whether to undertake a
14 professional cultural resources inventory or site evaluation
15 prior to a potentially harmful action is made by the agency
16 in consultation with the Society; (b) any heritage
17 properties identified on state land are afforded direct
18 consideration in an agency's decision on whether or how to
19 undertake an action; and (c) when feasible, damage to
20 heritage properties is avoided or subject to an appropriate
21 form of mitigation.

22 The rules are not intended to require a single course
23 of action by the agency or absolute protection of all
24 identified heritage properties.

25 The rules promulgated by either state agencies or the

1 Historical Society should have as common elements:

2 -- a requirement that prior to taking an action
3 affecting state land or property state agencies will check
4 with the Historical Society to determine the presence or
5 absence of previously identified historic or prehistoric
6 resources, the relative value of any previously identified
7 sites or buildings, and whether a field inventory or further
8 site evaluation needs to occur to determine whether heritage
9 properties might be impacted.

10 -- a requirement that the Historical Society provide
11 the information requested within a specified time and in a
12 precise format.

13 -- a requirement that each state agency have a system
14 for making and documenting decisions on whether heritage
15 properties identified as being affected by an agency
16 decision or action can be afforded protection, avoidance,
17 reuse, rehabilitation, or recording prior to impact and that
18 the system adopted permits the Historical Society comment to
19 the agency on their decision.

20 -- a method for adjudicating differences between the
21 agency and the Historical Society in instances where the
22 value of jeopardized sites appears to be high. Such a method
23 could involve the Governor-appointed State Historic
24 Preservation Review Board.

25 This bill would be applicable to state agencies in two

1 separate contexts: decisions on remodeling or demolition of
2 historic state-owned buildings and decisions made by state
3 land managing agencies relative to leases, easements,
4 access, development.

5 In the case of the Montana University System, "rule"
6 means procedures included in the Montana University System
7 Policies and Procedures Manual through the formal and public
8 process used by the Regents for that purpose.

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The historic preservation officer has the following duties and responsibilities:

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

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

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

repository for all such inventory work done in the state;

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

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

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

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

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

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

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14 state or, in the absence of such rules, act in compliance
15 with rules adopted under 22-3-423. IF THE STATE AGENCY ACTS
16 IN CONJUNCTION WITH A FEDERAL AGENCY IN THEIR NORMAL COURSE
17 OF GRANTING PERMITS, THE RULES ADOPTED UNDER THIS SUBSECTION
18 MUST BE SUBSTANTIALLY THE SAME AS THE FEDERAL RULES THAT
19 APPLY TO THE FEDERAL AGENCY.

20 (2) identify and develop, in consultation with the
21 historic preservation officer, methods and procedures to
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25 decisionmaking;

1 (3) deposit in the historic preservation office all
2 inventory reports, including maps, photographs, and site
3 forms, of heritage properties and paleontological remains."

-End-

EDUCATION AND CULTURAL RESOURCES COMMITTEE

MARCH 14

SENATE BILL 246

be amended as follows:

1. Title, line 5.

Strike: "WITH THE CONCURRENCE OF"

Insert: "IN CONSULTATION WITH"

2. Page 3, lines 15 through 19.

Following: "22-3-423."

Strike: lines 15 through line 19 in their entirety

EDUCATION AND CULTURAL RESOURCES COMMITTEE

MARCH 14

SENATE BILL 246--STATEMENT OF INTENT

be amended as follows:

1. Page 2, lines 20 and 21.

Following: "differences"

Strike: line 20 through "society" on line 21

2. Page 2, lines 22 through 24.

Following: "high."

Strike: lines 22 through line 24 in their entirety

1 STATEMENT OF INTENT

2 SENATE BILL 246

3 Senate Education and Cultural Resources Committee

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21 agency--and--the--Historical--Society in instances where the
22 value of jeopardized sites appears to be high. Such-a-method
23 could--involve---the---Governor-appointed---State---Historic
24 Preservation-Review-Boards

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

repository for all such inventory work done in the state;

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

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

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

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

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

~~(9) adopt rules outlining procedures by which a state agency that has approved rules under 22-3-424(1) shall consider systematically~~ SYSTEMATICALLY CONSIDER heritage properties or paleontological remains on lands owned by the state and avoid whenever feasible state actions or state assisted or licensed actions that substantially alter such properties;

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Section 2. Section 22-3-424, MCA, is amended to read:

"22-3-424. Duties of state agencies. State agencies shall:

(1) ~~IN CONSULTATION with the concurrence of the historical society adopt policies rules for the identification and preservation of heritage properties and paleontological remains on lands owned by the state and to avoid, whenever feasible, state actions or state assisted or licensed actions that substantially alter heritage properties or paleontological remains on lands owned by the state or, in the absence of such rules, act in compliance with rules adopted under 22-3-423 if the state agency acts in conjunction with a federal agency in their normal course of granting permits. The rules adopted under this subsection must be substantially the same as the federal rules that apply to the federal agency.~~

(2) identify and develop, in consultation with the historic preservation officer, methods and procedures to ensure that the identification and protection of heritage properties and paleontological remains on lands owned by the state is given appropriate consideration in state agency decisionmaking;

(3) deposit in the historic preservation office all inventory reports, including maps, photographs, and site forms, of heritage properties and paleontological remains."

-End-