# SENATE BILL NO. 246

## INTRODUCED BY B. BROWN

## IN THE SENATE

| January 21, 1983  | Introduced and referred to<br>Committee on State<br>Administration.             |  |  |  |
|-------------------|---|--|--|--|
| January 24, 1983  | Rereferred to Committee on<br>Education and Cultural<br>Resources.              |  |  |  |
| February 17, 1983 | Committee recommend bill do<br>pass as amended. Report<br>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,<br>49; Noes, 0. Transmitted to<br>House.           |  |  |  |
| IN THE HOUSE      |   |  |  |  |
| February 28, 1983 | Introduced and referred to<br>Committee on Education and<br>Cultural Resources. |  |  |  |
| March 14, 1983    | Committee recommend bill be<br>concurred in as amended.<br>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.

LC 2003/01

Grate BILL NO. 246 1 INTRODUCED BY 1806 BANN 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE STATE 5 AGENCIES TO ADOPT. WITH THE CONCURRENCE OF THE MONTANA HISTORICAL SOCIETY, RULES DUTLINING PROCEDURES FOR THE 6 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: Section 1. Section 22-3-423, NCA, is amended to read: 13 #22-3-423. Duties of historic preservation officer. 14 The historic preservation officer has the following duties 15 16 and responsibilities:

(1) follow necessary procedures to qualify the state 17 for money that is now or will be made available under any 18 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:

(3) maintain a state inventory file of heritage 24 properties and paleontological remains and maintain a 25

repository for all such inventory work done in the state; 1 (4) evaluate and formally nominate potential register 2 3 properties according to the criteria established by the register; 4

5 (5) prepare and annually review the state preservation 6 plan, register nominations, and historic preservation grant 7 activity;

(6) maintain, publish, and disseminate information 8 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 paleontological remains; 14

15 (5) enter into cooperative agreements with the federal 16 government, local governments, and other governmental entities or private landowners or the owners of objects to 17 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 ---- INTRODUCED BILL

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permitted by law to carry out and enforce the provisions of 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 adopt policies rules for the identification and preservation 7 of heritage properties and paleontological remains on lands 8 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;

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

-End-

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| l  | STATEMENT OF INTENT  | 1  | Historical Society should have as common elements:           |
|----|--|----|--|
| Z  | SENATE BILL 246  | 2  | a requirement that prior to taking an action                 |
| 3  | Senate Education and Cultural Resources Committee            | 3  | affecting state land or property state agencies will check   |
| 4  |  | 4  | with the Historical Society to determine the presence or     |
| 5  | The primary purpose of the bill is to ensure that            | 5  | absence of previously identified historic or prehistoric     |
| 6  | systematic consideration of heritage properties on           | 6  | resources, the relative value of any previously identified   |
| 7  | state-owned land occurs in state agency planning and         | 7  | sites or buildings, and whether a field inventory or further |
| 8  | actions. The bill provides that agencies that do not choose  | 8  | site evaluation needs to occur to determine whether heritage |
| 9  | to prepare their own regulations to afford systematic        | 9  | proparties might be impacted.                                |
| 10 | consideration to heritage properties on state lands adhere   | 10 | a requirement that the Historical Society provide            |
| 11 | to general rules prepared by the Historical Society.         | 11 | the information requested within a specified time and in a   |
| 12 | The rules promulgated pursuant to this bill should           | 12 | precise format.  |
| 13 | ensure that (a) the decision on whether to undertake a       | 13 | a requirement that each state agency have a system           |
| 14 | professional cultural resources inventory or site evaluation | 14 | for making and documenting decisions on whether heritage     |
| 15 | prior to a potentially harmful action is made by the agency  | 15 | propertles identified as being affected by an agency         |
| 16 | in consultation with the Society; (b) any heritage           | 16 | decision or action can be afforded protection, avoidance,    |
| 17 | properties identified on state land are afforded direct      | 17 | reuse, rehabilitation, or recording prior to impact and that |
| 18 | consideration in an agency's decision on whether or how to   | 18 | the system adopted permits the Historical Society comment to |
| 19 | undertake an action; and (c) when feasible, damage to        | 19 | the agency on their decision.                                |
| 20 | neritage properties is avoided or subject to an appropriate  | 20 | a method for adjudicating differences between the            |
| 21 | form of mitigation.  | 21 | agency and the Historical Society in instances where the     |
| 22 | The rules are not intended to require a single course        | 22 | value of jeopardized sites appears to be high. Such a method |
| 23 | of action by the agency or absolute protection of all        | 23 | could involve the Governor-appointed State Historic          |
| 24 | identified heritage properties.                              | 24 | Preservation Review Board.                                   |
| 25 | The rules promulgated by either state agencies or the        | 25 | This bill would be applicable to state agencies in two       |

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SECOND READING

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separate contexts: decisions on remodeling or demolition of
 historic state-owned buildings and decisions made by state
 land managing agencies relative to leases, easements,
 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 Nanual through the formal and public 8 process used by the Regents for that purpose.

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#### SB 0246/02

SB 0246/02

| 1  | SENATE BILL NO. 246   | 1 repository for all such inventory work done in the state;     |
|----|---|---|
| 2  | INTRODUCED BY B. BROWN                                      | 2 (4) evaluate and formally nominate potential register         |
| 3  |   | 3 properties according to the criteria established by the       |
| 4  | A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE STATE        | 4 register;   |
| 5  | AGENCIES TO ADOPT, WITH THE CONCURRENCE OF THE MONTANA      | 5 (5) prepare and annually review the state preservation        |
| 6  | HISTORICAL SOCIETY, RULES OUTLINING PROCEDURES FOR THE      | 6 plan, register nominations, and historic preservation grant   |
| 7  | IDENTIFICATION AND PRESERVATION OF HERITAGE PROPERTIES AND  | 7 activity;   |
| 8  | PALEONTOLOGICAL REMAINS OR TO FOLLOW RULES FOR THAT PURPOSE | 8 (5) maintain, publish, and disseminate information            |
| 9  | ADOPTED BY THE HISTORIC PRESERVATION OFFICER; AMENDING      | 9 relating to heritage properties and paleontological remains   |
| 10 | SECTIONS 22-3-423 AND 22-3-424, MCA.*                       | 10 in the state;  |
| 11 |   | 11 (7) cooperate with and assist local, state, and              |
| 12 | BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:   | 12 federal government agencies in comprehensive planning that   |
| 13 | Section 1. Section 22-3-423, MCA, is amended to read:       | 13 allows for the preservation of heritage properties and       |
| 14 | "22-3-423. Duties of historic preservation officer.         | 14 paleontological remains;                                     |
| 15 | The historic preservation officer has the following duties  | 15 (8) enter into cooperative agreements with the federal       |
| 16 | and responsibilities:                                       | 16 government, local governments, and other governmental        |
| 17 | (1) follow necessary procedures to qualify the state        | 17 entities or private landowners or the owners of objects to   |
| 18 | for money that is now or will be made available under any   | 18 ensure preservation and protection of registered properties; |
| 19 | act of congress of the United States or otherwise for       | 19 (9)adopt_cules_outlining_procedures_by_which_astate          |
| 20 | purposes of historic preservation;                          | 20 agency_that_has_no_approved_rules_under_22=3=424(11_shall    |
| 21 | (2) conduct an ongoing statewide survey to identify         | 21 considercraystamotically SYSTEMATICALLY_CONSIDER beritage    |
| 22 | and document heritage properties and paleontological        | 22 properties_or_paleontological_remains_on_lands_owned_by_the  |
| 23 | remains;  | 23 state and avoid, whenever feasible, state actions or state   |
| 24 | (3) maintain a state inventory file of heritage             | 24 assisted_or_licensed_actions_tbat_substantially_alter_such   |
| 25 | properties and paleontological remains and maintain a       | 25 properties:  |
|    |   | • • • • • • • • • • • • • • • • • • •                           |
|    |   | -2- SECOND READING  |

f9f(101 any other necessary or appropriate activity
 permitted by law to carry out and enforce the provisions of
 this part.\*

Section 2. Section 22-3-424, MCA, is amended to read:
#22-3-424. Duties of state agencies. State agencies
shall:

7 (1) IN CONSULIATION with the scorecessof the 8 historical society adopt policies rules for the identification and preservation of heritage properties and 9 paleontological remains on lands owned by the state and to 10 avoid, whenever feasible, state actions or state assisted or 11 licensed actions that substantially alter heritage 12 13 properties or paleontological remains on lands owned by the 14 state grain the absence of such rules act in compliance with\_rules\_adopted\_under\_22=3=423\_\_IE\_THE\_SIATE\_AGENCY\_ACIS 15 16 IN CONJUNCTION WITH A FEDERAL AGENCY IN THEIR NORMAL COURSE DE\_GRANTING\_PERMITS. THE\_BULES\_ADOPTED\_UNDER\_THIS\_SUBSECTION 17 18 MUST\_\_BE\_\_SUBSTANTIALLY\_\_THE\_\_SAME\_AS\_THE\_FEDERAL\_RULES\_THAT 19 APPLY\_IQ\_IHE\_EEDERAL\_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;

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

-End-

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STATEMENT OF INTENT SENATE BILL 246 Senate Education and Cultural Resources Committee The primary purpose of the bill is to ensure that systematic consideration of heritage properties on state-owned land occurs in state agency planning and actions. The bill provides that agencies that do not choose to prepare their own regulations to afford systematic consideration to heritage properties on state lands adhere to general rules prepared by the Mistorical Society.

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

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:

z -- 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 resources, the relative value of any previously identified 6 7 sites or buildings, and whether a field inventory or further site evaluation needs to occur to determine whether heritage 8 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.

This bill would be applicable to state agencies in two

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THIRD READING SB246 separate contexts: decisions on remodeling or demolition of
 historic state-owned buildings and decisions made by state
 land managing agencies relative to leases, easements,
 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 Nanual through the formal and public 8 process used by the Regents for that purpose.

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SB 0246/02

SENATE BILL NO. 246 1 repository for all such inventory work done in the state; 1 2 (4) evaluate and formally nominate potential register INTRODUCED BY B. BROWN 2 3 properties according to the criteria established by the 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE STATE 4 register; 4 AGENCIES TO ADOPT, WITH THE CONCURRENCE OF THE MONTANA 5 (5) prepare and annually review the state preservation 5 HISTORICAL SUCIETY, RULES OUTLINING PROCEOURES FOR THE 6 plan, register nominations, and historic preservation grant 6 7 activity; IDENTIFICATION AND PRESERVATION OF HERITAGE PROPERTIES AND 7 PALEONTOLOGICAL REMAINS OR TO FOLLOW RULES FOR THAT PURPOSE 8 (5) maintain, publish, and disseminate information 8 9 relating to heritage properties and paleontological remains ADOPTED BY THE HISTORIC PRESERVATION OFFICER: AMENDING 9 10 in the state; SECTIONS 22-3-423 AND 22-3-424, MCA.\* 10 11 (7) cooperate with and assist local, state, and 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: federal government agencies in comprehensive planning that 12 12 Section 1. Section 22-3-423, MCA, is amended to read: 13 13 allows for the preservation of heritage properties and #22-3-423. Duties of historic preservation officer. 14 14 paleontological remainst The historic preservation officer has the following duties 15 15 (3) enter into cooperative agreements with the federal 16 and responsibilities: 16 government, local governments, and other governmental 17 (1) follow necessary procedures to qualify the state 17 entities or private landowners or the owners of objects to for money that is now or will be made available under any 18 ensure preservation and protection of registered properties; 18 act of congress of the United States or otherwise for 19 19 121\_adopt\_rules\_outlining\_procedures\_by\_which\_a\_\_state 20 purposes of historic preservation; 20 agency\_\_that\_\_has\_\_no\_approved\_rules\_under\_22=3=424(1)\_shall 21 (2) conduct an ongoing statewide survey to identify 21 consider==systematically SYSIEMAIICALLY\_\_CONSIDER beritage and document heritage properties and paleontological 22 properties\_or\_paleontological\_remains\_on\_lands\_owned\_by\_the 22 23 remains: 23 state\_and\_avoids\_whenever\_feasibles\_state\_actions\_.or\_state (3) maintain a state inventory file of heritage 24 24 assisted\_or\_licensed\_actions\_that\_substantially\_alter\_such properties and paleontological remains and maintain a 25 properties: 25

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SB 246 READING

THIRD

1 (97(10) any other necessary or appropriate activity 2 permitted by law to carry out and enforce the provisions of 3 this part.\*

Section 2. Section 22-3-424, MCA, is amended to read:
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(2) identify and develop: In consultation with the
historic preservation officer: methods and procedures to
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properties and paleontological remains on lands owned by the
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 inventory reports, including maps, photographs, and site

3 forms, of heritage properties and paleontological remains."

-End-

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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

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2 SENATE BILL 246 Senate Education and Cultural Resources Committee 3 4 The primary purpose of the bill is to ensure that 5 6 systematic consideration of heritage properties on 7 state-owned land occurs in state agency planning and actions. The bill provides that agencies that do not choose 8 9 to prepare their own regulations to afford systematic 10 consideration to heritage properties on state lands adhere to general rules prepared by the Historical Society. 11 12 The rules promulgated pursuant to this bill should 13 ensure that (a) the decision on whether to undertake a professional cultural resources inventory or site evaluation 14 prior to a potentially harmful action is made by the agency 15 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

STATEMENT OF INTENT

1 Historical Society should have as common elements:

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-2- REFERENCE BILL SB 246 separate contexts: decisions on remodeling or demolition of
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SENATE BILL NO. 246 1 2 INTRODUCED BY B. BROWN 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE STATE 4 AGENCIES TO ADOPT, WITH-THE-EBNEWRRENCE-OF IN\_CONSULIATION 5 6 WITH THE MONTANA HISTORICAL SUCIETY. RULES DUTLINING PROCEDURES FOR THE IDENTIFICATION AND PRESERVATION OF 7 8 HERITAGE PROPERTIES AND PALEONTOLOGICAL REMAINS OR TO FOLLOW 9 RULES FOR THAT PURPOSE ADOPTED BY THE HISTORIC PRESERVATION OFFICER: AMENDING SECTIONS 22-3-423 AND 22-3-424, MCA." 10 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MUNTANA: 12 Section 1. Section 22-3-423, MCA, is amended to read: 13 #22-3-423. Duties of historic preservation officer. 14 15 The historic preservation officer has the following duties 16 and responsibilities: 17 (1) follow necessary procedures to qualify the state 19 for money that is now or will be made available under any act of congress of the United States or otherwise for 19

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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) prepare and annually review the state preservation 5 6 plan, register nominations, and historic preservation grant activity; 7 8 (5) 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 allows for the preservation of heritage properties and 13 paleontological remains: 14 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; 19 191\_\_adopt\_\_rules\_outlining\_procedures\_by\_which\_a\_state 20 agency\_tbat\_bas\_no\_approved\_rules\_\_under\_\_22=3=424411\_\_shall 21 segarderctaratemotically SYSTEMATICALLY\_CONSIDER beritage properties\_or\_paleontological\_remains\_on\_lands\_owned\_by\_the 22 23 state\_and\_\_avoids\_whenever\_feasibles\_state\_actions\_or\_state 24 assisted\_or\_licensed\_actions\_that\_substantially\_alter\_\_such 25 properties:

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1 (3) deposit in the historic preservation office all

2 inventory reports, including maps, photographs, and site

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-End-

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