

SENATE BILL No. 329

By Committee on Transportation

1-24

*B. Pineda*  
*Sen. Joe Taylor*

*2/13/11*  
*[Signature]*

1 AN ACT concerning historic properties; relating to projects within the  
2 environs of such properties; amending K.S.A. ~~75-2729~~ and K.S.A.  
3 2011 Supp. 75-2724 and repealing the existing ~~Sections~~ Section

*Section*

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2011 Supp. 75-2724 is hereby amended to read as

6 follows: 75-2724. (a) The state or any political subdivision of the state, or  
7 any instrumentality thereof, shall not undertake any project which will  
8 encroach upon, damage or destroy any historic property included in the  
9 national register of historic places or the state register of historic places  
10 or the environs of such property until the state historic preservation officer  
11 has been given notice, as provided herein, and an opportunity to  
12 investigate and comment upon the proposed project. Except as provided in  
13 subsection (b), notice to the state historic preservation officer shall be  
14 given by the state or any political subdivision of the state when the  
15 proposed project, or any portion thereof, is located within 500 feet of the  
16 boundaries of a historic property located within the corporate limits of a  
17 city, or within 1,000 feet of the boundaries of a historic property located in  
18 the unincorporated portion of a county. Notwithstanding the notice herein  
19 required, nothing in this section shall be interpreted as limiting the  
20 authority of the state historic preservation officer to investigate, comment  
21 and make the determinations otherwise permitted by this section regardless  
22 of the proximity of any proposed project to the boundaries of a historic  
23 property. The state historic preservation officer may solicit the advice and  
24 recommendations of the historic sites board of review with respect to such  
25 project and may direct that a public hearing or hearings be held thereon.  
26 Any such public hearing or hearings held pursuant to this subsection or  
27 held pursuant to authority delegated by the state historical preservation  
28 officer under subsection (c) ~~or (d)~~ or (g) shall be held within 60 days  
29 from the date of receipt of notice by the state historical preservation officer  
30 from the state or any political subdivision of the state as provided herein.  
31 If the state historic preservation officer determines, with or without having  
32 been given notice of the proposed project, that such proposed project will  
33 encroach upon, damage or destroy any historic property included in the  
34 national register of historic places or the state register of historic places or  
35 the environs of such property, such project shall not proceed until:  
36

regarding

1 (1) The governor, in the case of a project of the state or an  
 2 instrumentality thereof, or the governing body of the political subdivision,  
 3 in the case of a project of a political subdivision or an instrumentality  
 4 thereof, has made a determination, based on a consideration of all relevant  
 5 factors, that there is no feasible and prudent alternative to the proposal and  
 6 that the program includes all possible planning to minimize harm to such  
 7 historic property resulting from such use; and

8 (2) five days notice of such determination has been given, by certified  
 9 mail, to the state historic preservation officer.

10 ~~(b) The governing body of any city following a public hearing on the~~  
 11 ~~issue may adopt an ordinance exempting itself from review according to~~  
 12 ~~the provisions of subsection (a). The city governing body shall make a~~  
 13 ~~finding: (1) That the provisions of subsection (a) will have a detrimental~~  
 14 ~~effect on economic development of the city; and (2) adopt its own~~  
 15 ~~standards to ensure the integrity of historic property included in the~~  
 16 ~~national registry of historic places or the state register of historic places.~~

17 ~~(c) Any person aggrieved by the determination of the governor~~  
 18 ~~pursuant to this section may seek review of such determination in~~  
 19 ~~accordance with the Kansas judicial review act. Any person aggrieved by~~  
 20 ~~the determination of a governing body pursuant to this section may seek~~  
 21 ~~review of such determination in accordance with K.S.A. 60-2101, and~~  
 22 ~~amendments thereto.~~

23 ~~(d) The failure of the state historic preservation officer to initiate~~  
 24 ~~an investigation of any proposed project within 30 days from the date of~~  
 25 ~~receipt of notice thereof shall constitute such officer's approval of such~~  
 26 ~~project.~~

27 ~~(e) Failure of any person or entity to apply for and obtain the~~  
 28 ~~proper or required building or demolition permit before undertaking a~~  
 29 ~~project that will encroach upon, damage or destroy any historic property~~  
 30 ~~included in the national register of historic places or the state register of~~  
 31 ~~historic places, or the environs of such property, shall be subject to a civil~~  
 32 ~~penalty not to exceed \$25,000 for each violation. The attorney general~~  
 33 ~~may seek such penalties and other relief through actions filed in district~~  
 34 ~~court.~~

35 ~~(f) (1) The state historic preservation officer may enter into an~~  
 36 ~~agreement authorizing a city or county to make recommendations or to~~  
 37 ~~perform any or all responsibilities of the state historic preservation officer~~  
 38 ~~under subsections (a), (b) and (c) and (d) if the state historic~~  
 39 ~~preservation officer determines that the city or county has enacted a~~  
 40 ~~comprehensive local historic preservation ordinance, established a local~~  
 41 ~~historic preservation board or commission and is actively engaged in a~~  
 42 ~~local historic preservation program. The agreement shall specify the~~  
 43 ~~authority delegated to the city or county by the state historic preservation~~

*(b) and (c) - remove*

1 officer, the manner in which the city or county shall report its decisions to  
 2 the state historic preservation officer, the conditions under which the city  
 3 or county can request assistance from the state historic preservation officer  
 4 in performing certain project reviews, the length of time the agreement is  
 5 to be valid and provisions for termination of the agreement. Such  
 6 agreement shall provide that the state historic preservation officer shall  
 7 retain final authority to implement the provisions of this act. The state  
 8 historic preservation officer shall adopt any rules and regulations  
 9 necessary to implement the provisions of this subsection.

10 (2) An agreement with a city or county authorized by this subsection  
 11 shall not be construed as limiting the authority of the state historic  
 12 preservation officer to investigate, comment and make determinations  
 13 otherwise permitted by this section.

14 ~~(f)~~ (g) The state historic preservation officer may enter into  
 15 agreements with the state board of regents or any state educational  
 16 institution under the control and supervision of the state board of regents  
 17 to perform any or all responsibilities of the state historic preservation  
 18 officer under subsections (a), ~~(b) and (c)~~ and ~~(d)~~.

19 Sec. 2. K.S.A. 75-2729 is hereby amended to read as follows: 75-  
 20 2729. (a) (1) There is hereby established in the state treasury the heritage  
 21 trust fund. All moneys deposited in the heritage trust fund shall be used  
 22 for the purpose of awarding grants to assist historic preservation projects  
 23 involving property included in the national register of historic places or the  
 24 state register of historic places, excluding property owned by the state or  
 25 federal government, and shall be used by the state historical society for the  
 26 administration of the heritage trust fund program. At least 50% of the  
 27 amount awarded annually in grants shall be used for the preservation of  
 28 eligible properties owned by county and local governments, county and  
 29 local historical societies and by private nonprofit organizations. The state  
 30 historical society may also provide grant assistance from moneys in the  
 31 heritage trust fund on a matching basis and also may establish a revolving  
 32 fund loan program from moneys in such fund. The state historical society  
 33 may establish different matching fund requirements for the various types  
 34 of applicants, but the matching contributions required from for-profit  
 35 corporations shall be dollar for dollar. For-profit corporation applicants  
 36 shall be assisted only if the property's continued existence is threatened or  
 37 its rehabilitation is not economically feasible without grant assistance. The  
 38 state historical society shall ensure that such moneys are expended for the  
 39 purpose of this section, and may adopt rules and regulations as necessary  
 40 to carry out the purpose of this section.

41 (2) In evaluating grant applications involving historic preservation  
 42 projects under subsection (a)(1), the state historical society shall consider  
 43 the following factors: The level of historical significance of the property;

*all (b) and (c) removed*

1 the condition of the property; the urgency of the preservation work  
 2 proposed; whether or not the property is endangered; the type of work  
 3 proposed; a geographical distribution of assisted properties; the  
 4 administrative ability of the applicant; the potential benefit to the  
 5 community and the state; community support for the project; ineligibility  
 6 of the project for other funds; and an assessment of the need of the owner  
 7 for the grant assistance to do the project. *The fact that a city has exempted*  
 8 *itself from provisions of subsection (a) of K.S.A. 75-2724, and amendments*  
 9 *thereto, and established its own standards to project historic properties*  
 10 *shall have no effect on the evaluation of grant applications.*

11 (3) (A) The state historical society shall establish provisions to  
 12 recapture grant moneys in accordance with the following factors: If an  
 13 approved rehabilitated building is held by the grantee for longer than five  
 14 years after the completion of the grant project, there is no recapture of the  
 15 grant funds; if the owner, or designated heir, in the case of the owner's  
 16 death, disposes of the property after a holding period of less than one year  
 17 after the completion of the grant project, 100% of the grant is recaptured;  
 18 and for properties held between one and five years, the grant recapture  
 19 amount is reduced by 20% per year.

20 (B) The state historical society may inspect a rehabilitated property at  
 21 any time during the five-year period and may revoke or invalidate the  
 22 approval if work was not undertaken as presented in the grant application  
 23 or if further unapproved alterations have been made. Modifications made  
 24 during the five-year period following the completion of the grant shall be  
 25 made in accordance with standards established by the state historical  
 26 society.

27 (b) On or before the 10<sup>th</sup> of each month, the director of accounts and  
 28 reports shall transfer from the state general fund to the heritage trust fund  
 29 interest earnings based on:

- 30 (1) The average daily balance of moneys in the heritage trust fund for
- 31 the preceding month; and
- 32 (2) The net earnings rate for the pooled money investment portfolio
- 33 for the preceding month.

34 (c) Except as otherwise provided in this section, all expenditures from  
 35 the heritage trust fund shall be made in accordance with appropriation acts  
 36 upon warrants of the director of accounts and reports issued pursuant to  
 37 vouchers approved by the secretary of the state historical society or a  
 38 person designated by the secretary.

39 Sec. 3. K.S.A. 75-2729 and K.S.A. 2011 Supp. 75-2724 and hereby  
 40 repealed.

41 Sec. 4. This act shall take effect and be in force from and after its  
 42 publication in the statute book.

or county