

1 SENATE BILL 421

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Rod Adair

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9  
10 AN ACT

11 RELATING TO CULTURAL PROPERTIES; REQUIRING THAT NOMINATIONS TO  
12 PLACE A CULTURAL PROPERTY ON THE OFFICIAL REGISTER BE MADE BY  
13 ALL OF THE OWNERS OF THE LAND COMPRISING THE CULTURAL PROPERTY  
14 OR UPON WHICH THE CULTURAL PROPERTY IS LOCATED; REMOVING THE  
15 POWER OF EMINENT DOMAIN AS A MEANS FOR ACQUIRING CULTURAL  
16 PROPERTIES UNDER THE CULTURAL PROPERTIES ACT; REQUIRING THE  
17 PROMULGATION OF REGULATIONS; CLARIFYING CERTAIN EFFECTS OF A  
18 DESIGNATION AS A REGISTERED CULTURAL PROPERTY.

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 18-6-3 NMSA 1978 (being Laws 1969,  
22 Chapter 223, Section 3, as amended) is amended to read:

23 "18-6-3. DEFINITIONS.--As used in the Cultural Properties  
24 Act:

25 A. "committee" means the cultural properties review

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1 committee;

2 B. "cultural property" means a structure, place,  
3 site or object having historic, archaeological, scientific,  
4 architectural or other cultural significance;

5 C. "owner" includes, in the case of land in which  
6 the surface estate has been severed from the mineral estate,  
7 both the surface estate and the mineral estate owners;

8 [~~E-~~] D. "registered cultural property" means a  
9 cultural property that has been placed on the official register  
10 on either a permanent or temporary basis by the committee;

11 [~~D-~~] E. "official register" means the New Mexico  
12 register of cultural properties maintained by the committee for  
13 the purpose of recording cultural properties deemed worthy of  
14 preservation; and

15 [~~E-~~] F. "state land" means property owned,  
16 controlled or operated by a department, agency, institution or  
17 political subdivision of the state."

18 SECTION 2. Section 18-6-5 NMSA 1978 (being Laws 1969,  
19 Chapter 223, Section 5, as amended) is amended to read:

20 "18-6-5. COMMITTEE--POWERS AND DUTIES.--The primary  
21 function of the committee is to review proposals for the  
22 preservation of cultural properties. The committee is  
23 authorized to take such actions as are reasonable and  
24 consistent with law to identify cultural properties and to  
25 advise on the protection and preservation of those properties.

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1 Among such actions as may be necessary and proper to the  
2 fulfillment of these responsibilities, and without being  
3 limited hereby, the committee:

4 A. shall determine what constitutes historical,  
5 archaeological, scientific, architectural and other cultural  
6 significance for the purpose of identifying cultural properties  
7 as used in the Cultural Properties Act;

8 B. shall prepare and keep up to date the official  
9 register. This official register shall be composed of  
10 properties identified by the committee as having historical or  
11 other cultural significance and integrity, being suitable for  
12 preservation and having educational significance; provided that  
13 a cultural property shall not be included in the official  
14 register unless a nomination for the inclusion, signed by all  
15 of the owners of the land comprising the cultural property or  
16 upon which the cultural property is located, has been submitted  
17 to the committee;

18 C. shall prepare and maintain proper documentation  
19 of the historic or other significance of cultural properties.  
20 The committee is granted access to all state and local public  
21 documents that may be necessary for the documentation, and such  
22 state and local agencies as have custody of such documents are  
23 authorized to allow the committee to examine and reproduce  
24 those documents useful for the documentation;

25 D. shall inspect all registered cultural properties

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1 periodically to [~~assure~~] ensure proper cultural or historical  
2 integrity and proper maintenance. The inspection may be made  
3 by an authorized representative of the committee or the  
4 historic preservation division of the [~~office of~~] cultural  
5 affairs department. Such inspection shall be made only with  
6 the written consent of the owner or [~~his~~] the owner's  
7 authorized representative;

8 E. shall, based upon the inspection of a registered  
9 cultural property, recommend such repairs, maintenance and  
10 other measures as should be taken to maintain registered  
11 status;

12 F. shall issue regulations pertaining to:

13 (1) the process for nominating cultural  
14 properties for placement on the official register;

15 (2) the decision process for placement of the  
16 properties on the official register; and

17 (3) the identification, preservation and  
18 maintenance of registered cultural properties in order to  
19 maintain the integrity of those properties;

20 G. may delete from the official register any  
21 registered cultural property whose owner does not comply with  
22 the committee's regulations or follow its recommendations for  
23 repair and maintenance or [~~which~~] that, upon presentation of  
24 further evidence, does not merit continued official registry;

25 H. may recommend to the museum resources division

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1 of the [~~office of~~] cultural affairs department and other public  
2 administrators of registered cultural properties measures for  
3 the investigation, restoration and protection of such  
4 properties;

5 I. may encourage and render technical advice to  
6 private owners of registered cultural properties in order that  
7 such properties may be preserved;

8 J. may encourage and provide technical assistance  
9 to municipalities and counties in acquiring, preserving and  
10 developing cultural properties within their jurisdictions;

11 K. shall cooperate with federal, state, local and  
12 private agencies and persons engaged in the administration,  
13 development or other work relating to cultural properties  
14 within the state;

15 L. shall pursue all activities in a manner  
16 consistent with state and federal laws and regulations;

17 M. may encourage and promote public appreciation of  
18 New Mexico's historical and cultural heritage by:

19 (1) reviewing for accuracy the proposed  
20 publication of information on cultural properties; and

21 (2) reviewing the accuracy and adequacy of  
22 proposed marking of cultural properties;

23 N. may utilize the assistance of individuals, local  
24 organizations, state agencies and others interested in the  
25 identification and preservation of cultural properties;

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1           O. may issue, with the concurrence of the state  
2 archaeologist and the state historic preservation officer,  
3 permits for the examination or excavation of sites and the  
4 collection or removal of objects of antiquity or general  
5 scientific interest, where such sites or objects are located on  
6 state lands, to institutions [~~which~~] that the committee may  
7 deem to be properly qualified to conduct such examination,  
8 excavation or collection, subject to such rules and regulations  
9 as the committee may prescribe; provided that the examinations,  
10 excavations and collections are undertaken by reputable  
11 museums, universities, colleges or other historical, scientific  
12 or educational institutions or societies approved by the  
13 committee, with a view toward disseminating knowledge about  
14 cultural properties; and provided that a summary report of such  
15 investigations, containing relevant maps, documents, drawings  
16 and photographs, be submitted to the committee, which shall in  
17 turn submit the report to the appropriate agency or make other  
18 appropriate disposition of the report; and provided further  
19 that all specimens so collected shall be the property of New  
20 Mexico and that prior arrangements be made for the disposition  
21 of specimens derived from such investigations in an appropriate  
22 institution of the state or for loan of such specimens to  
23 qualified institutions in or out of the state;

24           P. shall provide advice to the state historic  
25 preservation officer [~~in~~] of the historic preservation division

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1 and to the director of the museum resources division of the  
2 [~~office of~~] cultural affairs department on cultural properties;  
3 and

4 Q. shall make, in conjunction with the historic  
5 preservation division, an annual report on its activities to  
6 the governor and the legislature. The report may contain  
7 recommendations for the more effective preservation of New  
8 Mexico's historic and cultural heritage."

9 SECTION 3. Section 18-6-6 NMSA 1978 (being Laws 1969,  
10 Chapter 223, Section 6, as amended) is amended to read:

11 "18-6-6. CULTURAL AFFAIRS DEPARTMENT--POWERS AND DUTIES  
12 RELATING TO THE CULTURAL PROPERTIES ACT.--

13 A. The cultural affairs department is responsible  
14 for administering, developing and maintaining all registered  
15 cultural properties in its ownership or custody.

16 B. Unless other locations are deemed more  
17 appropriate by the committee, in consultation with the museum  
18 of New Mexico, because of the nature of the property involved,  
19 the cultural affairs department shall be the depository for all  
20 collections made under the provisions of the Cultural  
21 Properties Act and shall make available material from such  
22 collections to museums in and out of the state on the request  
23 of the governing bodies of those museums when, in the opinion  
24 of the department, such use is appropriate and when  
25 arrangements are made for the safe custodianship and public

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1 exhibition of the material in accordance with department rules.  
2 The museum of New Mexico shall maintain a record of the  
3 location of all such collections.

4 C. The cultural affairs department may seek and  
5 accept gifts, donations and grants, subject to the provisions  
6 of Subsection B of Section 18-6-7 NMSA 1978, to be used to  
7 acquire, preserve or restore registered cultural properties.

8 D. The cultural affairs department may acquire by  
9 gift or purchase [~~or, if no other means of acquisition are~~  
10 ~~available, condemnation~~] any cultural property or interest  
11 therein sufficient to preserve such property. Cultural  
12 properties so acquired shall be administered by the department  
13 or other appropriate state agencies in accordance with  
14 Subsections A and B of this section.

15 E. The cultural affairs department may enter into  
16 agreements with the committee to provide assistance in carrying  
17 out the duties of the committee."

18 SECTION 4. Section 18-6-8.1 NMSA 1978 (being Laws 1986,  
19 Chapter 10, Section 5) is amended to read:

20 "18-6-8.1. REVIEW OF PROPOSED STATE UNDERTAKINGS.--The  
21 historic preservation division of the [~~office of~~] cultural  
22 affairs department shall periodically furnish copies of the  
23 official register or relevant sections of the official register  
24 to state agencies and departments and shall periodically advise  
25 state agencies and departments of the status of the division's

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1 program of cultural property identification and registration.  
2 The head of any state agency or department having direct or  
3 indirect jurisdiction over any land or structure modification  
4 ~~[which may affect]~~ on a registered cultural property shall  
5 afford the state historic preservation officer a reasonable and  
6 timely opportunity to ~~[participate in planning such undertaking~~  
7 ~~so as to preserve and protect, and to avoid or minimize adverse~~  
8 ~~effects on, registered cultural properties]~~ comment on the  
9 modification. Nothing in the Cultural Properties Act shall be  
10 deemed to have any effect on the use of any property:

11 A. not placed on the official register; or

12 B. that does not contribute to the historic,  
13 archaeological, scientific, architectural or other cultural  
14 significance of a registered cultural property."

15 SECTION 5. Section 18-6-10 NMSA 1978 (being Laws 1969,  
16 Chapter 223, Section 9) is amended to read:

17 "18-6-10. CULTURAL PROPERTIES ON PRIVATE LAND.--

18 A. It is the declared intent of the legislature  
19 that field ~~[archeology]~~ archaeology on privately owned lands  
20 should be discouraged except in accordance with the provisions  
21 ~~[and spirit]~~ of the Cultural Properties Act ~~[and persons having~~  
22 ~~knowledge of the location of archeological sites are encouraged~~  
23 ~~to communicate such information to the committee].~~

24 B. It shall be deemed an act of trespass and a  
25 misdemeanor for any person to remove, injure or destroy

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1 registered cultural properties situated on private lands or  
2 controlled by a private owner without the owner's prior  
3 permission. Where the owner of a registered cultural property  
4 has submitted [~~his~~] acceptance in writing to the committee's  
5 registration of that cultural property, the provisions of  
6 Section [~~8 of the Cultural Properties Act~~] 18-6-9 NMSA 1978  
7 shall apply to that registered cultural property.

8 C. Where a cultural property is on private land or  
9 is otherwise privately owned and, after receiving a nomination  
10 signed by all of the owners of the private land, the committee  
11 determines that such cultural property is worthy of  
12 preservation and inclusion on the official register, the  
13 committee may recommend the procedure best calculated to  
14 [~~insure~~] ensure preservation. Such procedures may include:

- 15 (1) providing technical assistance to the  
16 owner who is willing to restore, preserve and maintain the  
17 cultural property;
- 18 (2) acquiring the property or an easement or  
19 other right therein by gift or purchase;
- 20 (3) advising the county or municipality within  
21 which the cultural property is located on zoning the property  
22 as an historic area or district in accordance with the Historic  
23 District and Landmark Act; and
- 24 (4) advising the county or municipality within  
25 which the cultural property is located on the use of

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1 agreements, purchases or the right of eminent domain to obtain  
2 control of the cultural property in accordance with the  
3 Historic District and Landmark Act [~~and~~  
4 ~~(5) acquiring the property for the state by~~  
5 ~~use of the right of eminent domain]~~."

6 SECTION 6. Section 18-6-12 NMSA 1978 (being Laws 1969,  
7 Chapter 223, Section 10) is amended to read:

8 "18-6-12. EMERGENCY CLASSIFICATION PENDING  
9 INVESTIGATION.--A cultural property [~~which~~] that the committee  
10 thinks may be worthy of preservation may be included on the  
11 official register on a temporary basis for not more than one  
12 year, during which time the committee shall investigate the  
13 property and make a determination as to whether it may be  
14 permanently placed on the official register. If the cultural  
15 property is on private land, the temporary classification shall  
16 not be [~~considered a taking of private property, but the owner~~  
17 ~~may receive a fair rental value for the part of the land~~  
18 ~~affected if the temporary classification unduly interferes with~~  
19 ~~the owner's normal use of the land]~~ effective unless all of the  
20 owners of the private land have agreed in writing to the  
21 temporary classification. The owner shall be immediately  
22 notified of the committee's determination. If, at the  
23 expiration of one year from the time the temporary  
24 classification was imposed, the [~~owner has not been notified of~~  
25 ~~any committee action]~~ cultural property has not been

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1 permanently included on the official register pursuant to the  
2 provisions of the Cultural Properties Act, the temporary  
3 classification shall lapse, and it shall not be renewed for  
4 five years."

5 SECTION 7. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2011.