

No. 1995-70

AN ACT

SB 879

Amending Title 37 (Historical and Museums) of the Pennsylvania Consolidated Statutes, further providing for members of the Pennsylvania Historical and Museum Commission; providing for archaeological field investigations; and further providing for cooperation by public officials with the Pennsylvania Historical and Museum Commission.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definition of "archaeological field investigation" in section 103 of Title 37 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding definitions to read:

§ 103. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Archaeological field investigation." [The study of cultural history at any archaeological site by professionally accepted means of surveying, sampling, excavation or removal of archaeological specimens.] *Extensive controlled excavation of an archaeological site to study the cultural history using professionally accepted means of sampling, removing and excavating archaeological specimens, also known as phase three archaeological research or data recovery.*

* * *

"Archaeological survey." *A visual inspection and limited sampling and excavation of an archaeological site to determine the characteristics and physical extent of a site, also known as phase one or phase two archaeological research.*

* * *

"Significant archaeological site." *An area of land which contains extensive evidence of previous prehistoric or historic human habitation or stratified deposits of animal or plant remains or manmade artifacts or human burials.*

Section 2. Sections 104(a), 506(c), 507 and 508 of Title 37 are amended to read:

§ 104. Pennsylvania Historical and Museum Commission.

(a) Membership.—The Pennsylvania Historical and Museum Commission shall consist of the Secretary of Education, or his designee; nine residents of this Commonwealth appointed by the Governor with the advice and consent

of a majority of the members elected to the Senate; and four members of the General Assembly, *or their designees*, two from the Senate, one of whom shall be appointed by the President pro tempore and one by the Minority Leader, and two from the House of Representatives, one of whom shall be appointed by the Speaker and one by the Minority Leader.

* * *

§ 506. Archaeological field investigations on Commonwealth land.

* * *

(c) Survey of archaeological resources.—The commission shall conduct surveys and prepare maps of archaeological resources located on lands in this Commonwealth and may make available the results of these surveys to the Federal Government, Commonwealth agencies and political subdivisions conducting activities which would affect these archaeological resources. The commission shall have and maintain proprietary rights over the maps and surveys indicating the location of archaeological resources or archaeological field investigations that have been inventoried or surveyed. These maps and surveys are excluded from the provisions of the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law. *The commission shall make available in writing, within 30 days of a request, site location information based on recorded material evidence of the commission to Commonwealth agencies, political subdivisions, owners of the site, potential buyers of the site and agents of the site owner with a demonstrated need to know. The failure of the commission to provide this written response shall release the requestor from any further duties under this act.*

* * *

§ 507. Cooperation by public officials with the commission.

(a) General rule.—Commonwealth agencies [and], political subdivisions *and municipal authorities* shall cooperate fully with the commission in the preservation, protection and investigation of archaeological resources and to that end shall:

[(1) Notify all potential permittees, contractors or other persons whose activities may affect archaeological sites that the estimated cost of archaeological surveys or archaeological field investigations is required to be included within their bid or application for a permit.

(2)] (1) Notify the commission before undertaking any Commonwealth or Commonwealth-assisted permitted or contracted projects that may affect archaeological sites.

[(3)] (2) Notify the commission when they become aware of any undertaking in connection with any Commonwealth or Commonwealth-assisted permitted or contracted project, activity or program which affects or may affect an archaeological site, and provide the commission with information concerning the project, program or activity.

(b) Survey or investigation by commission.—[Upon notification or determination that an archaeological resource is or may be adversely affected, the commission may, within 60 days after reasonable notice to

the Commonwealth agency or political subdivision, conduct a survey or other investigation to recover, preserve or otherwise protect information from the archaeological resource, provided that this subsection shall not apply if a Commonwealth agency or a political subdivision notified the commission in writing of the potential effect of a proposed action on an archaeological resource and the commission does not advise that Commonwealth agency or political subdivision within 60 days that it intends to conduct a survey or investigation.]

(1) Upon a determination by the commission that any Commonwealth or Commonwealth-assisted permitted or contracted project may adversely affect an archaeological site, the commission may conduct or cause to be conducted through an agent, subcontractor or other person an archaeological survey only when the commission, based on recorded material evidence, determines that the site is a significant archaeological site. A written determination shall be made by the commission within 15 days of receipt of a notification by a Commonwealth agency under subsection (a), provided that until January 1, 1997, such written determination shall be made by the commission within 30 days of receipt of such notification.

(2) If an archaeological survey is determined necessary by the commission, it shall be completed within 60 days of the determination, except that the commission may notify the project applicant that an additional 30 days may be required when the determination is made during the months of December, January and February.

(3) No later than 15 days after completion of an archaeological survey and only in exceptional circumstances, the commission may determine in writing that an archaeological field investigation, also known as phase three archaeological research or data recovery, is necessary to recover archaeological data. The archaeological field investigation shall be completed within 90 days of the determination required under this paragraph, except that an additional 30 days may be required when the determination is made during the months of December, January and February.

(4) Failure of the commission to render a determination within the period allowed in either paragraph (1) or (3) shall be deemed to be a determination that a survey or investigation is not necessary. The failure of the commission to complete an archaeological survey or field investigation within the time limits specified in paragraphs (2) and (3) shall release the project applicant from any further duties under this title, unless the applicant agrees in writing to a specific time extension.

(5) The commission shall conduct or cause to be conducted through an agent, subcontractor or other person and pay any costs associated with an archaeological survey or field investigation determined necessary by the commission under this section, except for the following:

(i) Projects of other State agencies and instrumentalities.

(ii) Projects on Commonwealth lands.

(iii) Projects of publicly regulated utilities.

(iv) Archaeological surveys and field investigations required under Federal law.

(6) The commission shall pay the political subdivision's and municipal authority's share of any costs associated with any archaeological survey or field investigation conducted or required by the commission on locally owned highways and bridge projects if the project is being undertaken solely with State or local funds.

(7) The commission under no circumstances shall require, conduct or cause to be conducted through an agent, subcontractor or other person an archaeological survey or field investigation on private property without the consent of the property owner and only under the notice and deadline procedures established under this section.

(8) All determinations by the commission under this section shall be subject to the provisions of Title 2 (relating to administrative law and procedure).

§ 508. Interagency cooperation.

(a) Responsibilities of Commonwealth agencies.—Commonwealth agencies shall:

(1) Consult the commission before demolishing, altering or transferring any property under their ownership or control that is or may be of historical, architectural or archaeological significance.

(2) Seek the advice of the commission on possible alternatives to the demolition, alteration or transfer of property under their ownership or control that is on or may be eligible for the Pennsylvania Register of Historic Places.

(3) Initiate measures and procedures to provide for the maintenance by means of preservation, rehabilitation or restoration of historic resources under their ownership or control that are listed on or are eligible for the Pennsylvania Register of Historic Places.

(4) Institute procedures and policies to assure that their plans, programs, codes, regulations and activities contribute to the preservation and enhancement of all historic resources in this Commonwealth. *However, nothing in this title shall be construed as conferring on the commission the authority to delay, deny, condition or limit or cause to be delayed, denied, conditioned or limited any permits which would otherwise be issued by a Commonwealth agency beyond those time frames specified in section 507 (relating to cooperation by public officials with the commission), unless the applicant agrees in writing to such condition, limit or time extension. An applicant is prohibited from utilizing a permit or license in any manner that would impair or interfere with the performance of an archaeological survey or field investigation until the expiration of the time frames in section 507 or until receiving written notification from the commission that its*

archaeological survey or investigation is completed, whichever is sooner. Commonwealth agencies likewise are, in the absence of specific statutory language in their enabling or regulatory statutes, prohibited from stopping the processing or denying a permit solely because of the possible or actual presence of archaeological resources.

(5) Submit the procedures and policies described in paragraphs (3) and (4) to the commission for review and comment.

(b) Limitation.—Nothing under this act shall confer power upon a political subdivision or municipal authority to delay, deny, condition or limit or cause to be delayed, denied, conditioned or limited any permit or approval because of failure to comply with this act.

Section 3. This act shall take effect as follows:

- (1) The amendment of 37 Pa.C.S. § 104 shall take effect immediately.
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 28th day of November, A.D. 1995.

THOMAS J. RIDGE