

## No. 1978-273

## AN ACT

## HB 1249

Imposing powers and duties on the Pennsylvania Historical and Museum Commission with respect to historical preservation; establishing the Historic Preservation Board and prescribing its powers and duties; providing for archeological field investigations on public land; requiring notice before certain property can be transferred; providing for inter-agency cooperation and providing penalties.

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

Section 1. Short title.

This act shall be known and may be cited as the "Historic Preservation Act."

Section 2. Findings and declaration of policy.

It is hereby determined and declared as a matter of legislative finding and policy that:

(1) Section 27 of Article I of the Constitution of Pennsylvania makes the Commonwealth trustee for the preservation of the historic values of the environment.

(2) The conservation of Pennsylvania's historic heritage and the preservation of public records, historic documents and objects of historic interest, and the identification, restoration and preservation of architecturally and historically significant sites and structures are duties vested primarily in the Pennsylvania Historical and Museum Commission.

(3) The irreplaceable historical, architectural, archeological and cultural heritage of the Commonwealth should be preserved and protected for the benefit of all of the people, including future generations.

(4) The preservation and protection of historic resources within the Commonwealth promotes the public health, prosperity and general welfare.

(5) The rapid social and economic development of our contemporary society threatens to destroy the remaining vestiges of our historic heritage.

(6) It is in the public interest for the Commonwealth, its citizens and its political subdivisions to engage in comprehensive programs of historic preservation for the enjoyment, education and inspiration of all the people, including future generations.

Section 3. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Archeological field investigation.” The study of human culture at any archeological site by means of surveying, digging, sampling, excavation or removing archeological specimens.

“Archeological specimens.” All artifacts, remains, objects or any other evidence of historic, prehistoric, or anthropological value, whether found above or below the surface of the earth.

“Commission.” The Pennsylvania Historical and Museum Commission.

“Historic preservation.” The research, restoration, rehabilitation and other activities furthering the protection, enhancement, continued existence or enjoyment of historic resources.

“Historic resources.” Any building, structure, object, district, place, site or area significant in the history, architecture, archeology or culture of the Commonwealth, its communities or the Nation.

“Pennsylvania Register of Historic Places.” A selected inventory of historic resources determined by the commission to be significant in the history, architecture, archeology or culture of the Commonwealth, its communities or the Nation.

“Private organizations.” Any organization constituted to engage in historic preservation.

“Public officials.” Officers, agents and employees of the Federal Government, Commonwealth of Pennsylvania, its counties, townships, municipalities and other political subdivisions.

Section 4. The Pennsylvania Historical and Museum Commission.

The commission shall be the agency primarily responsible for the initiation, encouragement, support and coordination of historic preservation efforts in the Commonwealth.

Section 5. Powers and duties of the commission.

(a) The commission shall have the following powers and duties:

(1) Initiate and coordinate a Statewide survey to identify and document the historic resources in the Commonwealth, whether publicly or privately owned.

(2) Compile, maintain, continually revise and publish a selected inventory of significant historic resources in the Commonwealth, to be known as the Pennsylvania Register of Historic Places, pursuant to a criteria of significance approved by the commission.

(3) Conduct research and compile documentation regarding historic resources.

(4) Prepare a comprehensive plan for the preservation of the historic resources within the Commonwealth, including suggested priorities for the allocation of public and private financial resources.

(5) Undertake the activities necessary to qualify the Commonwealth for participation in programs and sources of Federal assistance for historic preservation purposes.

(6) Provide information and advice on historic resources and

historic preservation to public officials, private individuals and organizations.

(7) Advise public officials regarding the planning and implementation of undertakings affecting historic resources.

(8) Provide technical and financial assistance to public officials, private individuals and organizations engaged in historic preservation activities.

(9) Undertake activities to stimulate public interest in historic preservation, including publications, newsletters and conferences.

(10) Coordinate and comment upon activities of public officials affecting historic resources and preservation activities.

(11) Solicit, receive and utilize funds from any public or private source for historic preservation purposes.

(12) Acquire easements in historic resources and associated properties by gift, purchase, devise, bequest or any other lawful transfer when acquisition is necessary for the preservation of the historic resource.

(13) Rent or lease historic resources and associated properties for historic preservation purposes.

(14) Contract with public officials, agents or other states, private individuals and organizations for historic preservation purposes.

(15) Develop a comprehensive plan and program for the protection and investigation of archeological resources within the Commonwealth.

(16) Issue appropriate regulations for the implementation of this section.

(b) Notwithstanding any other provisions of this act, a historical resource shall be placed on the Pennsylvania Register of Historic Places only with the approval of the owner.

#### Section 6. Historic Preservation Board.

There is hereby established a Historic Preservation Board, composed of no less than nine citizens designated by the commission, pursuant to recommendations by the State Historic Preservation Officer. The membership shall include at least one member with demonstrated competence in each of the following disciplines: architecture, archeology, architectural history, history and historic preservation.

#### Section 7. Powers and duties of the Historic Preservation Board.

The Historic Preservation Board shall have the following powers and duties:

(1) Advise the commission on criteria of significance for inclusion of historic resources in the Pennsylvania Register of Historic Places.

(2) Review and recommend nominations of historic resources within the Commonwealth to the National Register of Historic Places.

(3) Review and comment upon the commission's comprehensive preservation plan for historic resources within the Commonwealth.

(4) Undertake such other activities determined by the commission to

be necessary or desirable for the preservation of historic resources within the Commonwealth.

**Section 8. Term and compensation of Historic Preservation Board members.**

Members of the State Historic Preservation Board shall serve for a term of two years without compensation, other than reimbursement for actual and necessary expenses incurred in the performance of their duties.

**Section 9. Archeological field investigation on public land.**

(a) The Commonwealth reserves to itself the exclusive right to conduct archeological field investigations on archeological sites owned or controlled by it, its agencies, departments and institutions in order to protect and preserve archeological specimens and information, which shall remain the property of the Commonwealth and shall be utilized for scientific and public educational purposes.

(b) The commission shall be the agency responsible for the preservation, protection and proper investigation of archeological sites located on land owned or controlled by the Commonwealth's agencies, departments and institutions.

(c) The commission shall conduct a survey of archeological sites located within the Commonwealth, and may make available the results of such a survey to all agencies of the Commonwealth and its political subdivisions that, in the opinion of the commission, may conduct activities which would affect such archeological sites.

(d) The commission may issue permits for archeological field investigations, subject to such restraints and conditions as it may prescribe; provided that such activity is undertaken with a view toward disseminating the knowledge gained through such undertakings; and provided that a summary written report of such undertakings, containing relevant maps, documents, drawings, and photographs be submitted to the commission; and further provided that all archeological specimens collected pursuant to such permit shall be the exclusive property of the Commonwealth, which through the commission shall make appropriate arrangements for their appreciation and study.

**Section 10. Cooperation with the commission.**

All public officials shall cooperate fully with the commission in the preservation, protection and investigation of archeological sites and to that end:

(1) Notify the commission before undertaking (1) any Commonwealth, Commonwealth assisted, licensed or contracted project that may affect archeological sites.

(2) When any public official is aware that any undertaking in connection with any Commonwealth, Commonwealth assisted, Commonwealth licensed or contracted project, activity or program affects or may affect archeological sites, the official shall notify the commission and shall provide the commission with information concerning the project, program or activity. The provision of this section

shall be known to all contractors and other agents whose activities may affect archeological sites.

(3) The commission, upon notification or determination that archeological sites are or may be adversely affected, may within 60 days after reasonable notice to the responsible public official conduct or cause to be conducted a survey or other investigations to recover, preserve or otherwise protect information from the archeological site.

**Section 11. Criminal penalties.**

Any person who shall conduct field investigation activities on any land owned or controlled by the Commonwealth, without first obtaining a permit therefore from the commission or any person who shall appropriate, deface, destroy or otherwise alter any archeological site or specimen located upon lands owned or controlled by the Commonwealth, except in the course of activities pursued under the authority of a permit granted by the commission, shall be guilty of a misdemeanor punishable by a fine not exceeding \$500 or by imprisonment for a period not to exceed six months or both, and in addition, shall forfeit to the Commonwealth all archeological specimens, collected or excavated together with any photographs and records relating to such specimens.

**Section 12. Transfer of Commonwealth owned land involving historic resources.**

(a) The Commonwealth, its agencies, departments, bureaus, instrumentalities, officials, agents or employees shall give the commission timely notice of proposed transfers of Commonwealth owned or controlled real property under their jurisdiction.

(b) The Commonwealth, its agencies, departments, bureaus, instrumentalities, officials, agents or employees may, upon recommendation of the commission, condition the transfer and may execute such covenants, deed restrictions or other contractual arrangements as will most likely result in the preservation of any historic resources located on or under the property to be transferred.

**Section 13. Inter-agency cooperation.**

All agencies, departments, bureaus, commissions, instrumentalities, agents and employees of the Commonwealth shall:

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

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

(3) Initiate measures and procedures to provide for the maintenance, through 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 the Commonwealth.

(5) Submit the procedures and policies described in paragraphs (2) and (3) to the commission for review and comment.

**Section 14. Enforcement of historic preservation laws and policies.**

The Attorney General, the commission, any political subdivision of the Commonwealth, any person, partnership, corporation, association or other legal entity may maintain an action in any administrative tribunal or court of competent jurisdiction for the protection or preservation of any historic resource in the Commonwealth.

**Section 15. Constitutional construction.**

The provisions of this act shall be severable and, if any of the provisions thereof shall be held unconstitutional, such decisions shall not affect the validity of any of the remaining provisions of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein.

**Section 16. Effective date.**

This act shall take effect immediately.

APPROVED—The 22nd day of November, A. D. 1978.

MILTON J. SHAPP