

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 584

HOUSE BILL NO. 1219
(Committee on State and Federal Government)
(At the request of the State Historical Board)

DUTIES OF THE STATE HISTORICAL BOARD AND SUPERINTENDENT

AN ACT to create and enact a new subsection to section 55-02-01.2 of the North Dakota Century Code, relating to duties of the superintendent of the state historical board; to amend and reenact sections 55-01-02 and 55-01-06, subsections 4, 5, and 7 of section 55-02-01.2, sections 55-02-03 and 55-02-04 of the North Dakota Century Code, relating to duties of the state historical board and duties of the superintendent; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-01-02. State historical board - Powers - Limitations. The state historical board shall be authorized to:

1. Faithfully expend and apply all money received from the state, to the uses and purposes directed by law;
2. Hold all its present and future historical collections and property for the state;
3. Sell or exchange any duplicates of any article that the board may have or obtain. Dispose of such articles in the collections as the superintendent may recommend, by any appropriate means including but not limited to sale or exchange, provided that the proceeds from sale of articles must be deposited in the state treasury in a special revolving fund. All moneys in such fund are hereby appropriated on a continuing basis for the purchase of other items for the collections. Unless other conditions are specified in a deed or gift, a reasonable attempt shall be made to return articles to the original donor prior to disposal by any other means;

4. Permit withdrawal from its collections and property of such articles as may be needed for exhibition purposes;
5. Permit the withdrawal of books and collections from the library and museum temporarily under such rules as the board may prescribe;
6. Select and appoint a superintendent to carry out the policies and directives of the board;
7. Acquire in behalf of the state of North Dakota, lands, materials, and easements for historical purposes by lease, purchase, or gift, or by the exercise of eminent domain, state monuments;
8. Set aside for monuments, historical purposes such lands as are now owned by the state and not held or acquired for some other purpose;
9. Supervise, control, care for, maintain, preserve, and develop any such state monuments lands, materials, and easements held for historical purposes as trustees for the state;
10. Administer any such state monuments lands, materials, and easements held for historical purposes as an agent of the national park service, bureau of reclamation, corps of engineers, or any other division of federal, state, or local government; and
11. Cooperate with historical societies and associations duly organized under the laws of the state of North Dakota, and to provide the same with publications, pamphlets, and other documents of historical interest technical assistance, and advice, and administer a grant system to assist with the development and operation of such societies and associations.

The secretary of the board shall have power to withdraw for temporary use such of the collections as shall be needed for the compilation and editing of the publications of the board. The board, however, shall not sell, mortgage, transfer, or dispose of any of its collections or property except as authorized by law; ~~nor shall it, without authority of law, remove from the historical rooms in the capitol any article contained therein.~~

SECTION 2. AMENDMENT. Section 55-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-01-06. Relies Historical collections - Loan to old settlers' association county historical societies - Preservation. When relies historical collections or materials are contributed or purchased by the state, they shall be placed in the custody of the state historical board, and those of a local historical nature may be

loaned to the county old settlers' associations historical societies when proper provision has been made for their care and preservation and when such county historical society is duly organized and affiliated as provided in section 11-11-53.

SECTION 3. AMENDMENT. Subsections 4, 5, and 7 of section 55-02-01.2 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Purchase books to supply deficiencies in strengthen the various departments of its collection, and especially reports on the legislation of other states, on railroads, and geological surveys and on educational and humane institutions for legislative reference, and such other books, maps, charts, microforms, photographs, and other materials as will facilitate the investigation of historic, scientific, and literary subjects. The secretary of state and all other state departments and agencies including the colleges and universities shall furnish to the superintendent for reference and exchange purposes, as many copies as requested by the superintendent of every state publication at least one copy of each state publication produced by that agency;
5. Catalog, index, or microfilm all of the collections of the board for the more convenient references of all persons who have occasion to consult the same. The state shall bind the unbound books, documents, manuscripts, and pamphlets, and especially newspaper files containing legal notices, in the possession of the board;
7. Keep its the museum exhibition rooms in the North Dakota heritage center open to visitors at all reasonable hours on business days for the reception of the citizens of this state who may wish to visit the same, without fee.

SECTION 4. A new subsection to section 55-02-01.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Organize, develop, and present educational materials and programs concerning the history of North Dakota for the use, information, and benefit of the public.

SECTION 5. AMENDMENT. Section 55-02-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-02-03. Rules and regulations to protect state monuments property administered by the board. The superintendent of the state historical board, when so authorized by the board, shall have the power to make and enforce suitable rules and regulations relating to the protection, care, and use of any state monument property

administered by the board and the violation of any such regulation shall constitute an infraction.

SECTION 6. AMENDMENT. Section 55-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-02-04. Fees for use of facilities - Concession agreements - Duration. The superintendent of the state historical board when so authorized by the state historical board shall:

1. Fix and collect such fees as it may deem reasonable for the use of the facilities of any ~~state, monument~~ property administered by the board; and
2. Enter into concession agreements or leases with private persons, firms, or corporations for the operation of any services, including without limitation motels, cabins or other lodging places, within the areas of any ~~such state monument~~ property administered by the board but no such concession agreement or lease shall run for more than twenty years.

All moneys collected as fees, compensation for concession agreements, or otherwise, shall be placed in the general fund for the purpose of reimbursing such fund for appropriations made to the state historical board, except that funds received in the normal course of business from concession operations actually carried on by the state as a proprietor shall be deposited in the state treasury in a special revolving fund, and all moneys in such fund are hereby appropriated on a continuing basis for expenditure in the course of carrying on the business activities of such concession operations. If at the end of any fiscal year the balance in the special fund shall exceed fifty thousand dollars, the state treasurer upon order of the director of ~~accounts and purchases~~ the office of management and budget, shall transfer such portion of the balance of the special fund as exceeds fifty thousand dollars to the general fund.

Approved March 10, 1983

CHAPTER 585

SENATE BILL NO. 2293
(Senators Todd, Kilander)
(Representative Retzer)

PREHISTORIC OR HISTORIC ARTIFACT PROTECTION

AN ACT to amend and reenact section 55-02-07 of the North Dakota Century Code, relating to the handling and protection of prehistoric or historic artifacts or sites.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-02-07. Protection of prehistoric or historic artifacts or sites. Any historical, archaeological, or paleontological artifact or site that is found or located upon any land owned by the state of North Dakota or its political subdivisions or otherwise comes into its custody or possession and which is, in the opinion of the superintendent, significant in understanding and interpreting the history and prehistory of the state, shall be cared for, handled, protected, excavated, or stored under the direction of or in the manner prescribed by the superintendent of the state historical society board.

Approved March 10, 1983

CHAPTER 586

HOUSE BILL NO. 1220
(Committee on State and Federal Government)
(At the request of the State Historical Board)

CULTURAL RESOURCES PROTECTION

AN ACT to create and enact two new sections to chapter 55-03 of the North Dakota Century Code, relating to the protection of cultural resources; and to amend and reenact sections 55-03-01, 55-03-02, 55-03-03, 55-03-04, and 55-03-05 of the North Dakota Century Code, relating to the protection of cultural resources.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 55-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions.

1. Cultural resources includes prehistoric or historic archeological sites; burial mounds; unregistered graves; paleontological sites and materials.
2. Mitigate adverse effect includes:
 - a. The process of making and preserving a record of the existence and scientific, historical, architectural, engineering, educational, or aesthetic value of a cultural resource, historic building, structure, or object.
 - b. The process of restoring, rehabilitating, reconstructing, stabilizing, or preserving through some other means, a cultural resource, historic building, structure, or object.

SECTION 2. AMENDMENT. Section 55-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-01. Permit to explore prehistoric or historic sites and deposits required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or

objects - Application - Fee. Any person, before making any investigation, exploration, or excavation of any prehistoric or historic ruins, Indian mounds, graves or villages, or other sites for archaeological or paleontological material, individual, organization, institution, or company engaged on their own behalf or on behalf of another in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, North Dakota Century Code section 38-14.1-21, or North Dakota Administrative Code sections 69-05.2-08-03, 69-05.2-09-08, 69-06-08-01, or 69-06-08-02, first shall obtain an annual permit or annual license from the superintendent of the state historical board of North Dakota. Such permit or license may be issued when an application in such form and including such information as prescribed by the superintendent has been filed with such officer setting forth

- 1- The location of the site where applicant proposes to explore or excavate for such archaeological or paleontological material, and
- 2- The qualifications and scientific fitness of the applicant to make such investigation, exploration, or excavation.

Each such application shall be accompanied by a filing fee of five fifty dollars. The superintendent may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical society of North Dakota payment in the amount of twenty-five dollars with every cultural resources identification, evaluation, and mitigation report submitted to the superintendent in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapters 10-24 through 10-28 does not have to pay the fee for filing the report.

SECTION 3. A new section to chapter 55-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Permit required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state of North Dakota. Any individual, organization, institution, or company engaged in the investigation, excavation, or other recording of cultural resources on land owned by an instrumentality of the state of North Dakota for any purposes other than those identified in section 55-03-01 first shall obtain a permit from the superintendent. Such permit may be issued when an application in such form and including such information as prescribed by the superintendent has been filed with such officer. Any such permit shall be granted only for the investigation, excavation, or other

recording of cultural resources at the locations described in the application for permit. Each such application shall be accompanied by a fee of one hundred dollars.

SECTION 4. AMENDMENT. Section 55-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-02. Contents of permit to explore prehistoric or historic sites and deposits. Each Any permit or license issued pursuant to an application made as is provided by section 55-03-01 for in this Act shall clearly describe accurately the location and site of the ruins, mounds, graves or deposits where the exploration or excavation is to be conducted and shall authorize or permit explorations or excavations only at the described location. A supplementary permit or license shall be granted for any other location upon the payment of a fee of two dollars and fifty cents, but no purpose of the permit and shall be in such form as prescribed by the superintendent. No permit shall be granted for investigation, exploration, or excavation on any land until the superintendent shall be satisfied that the applicant has the scientific training and fitness is professionally qualified to make such investigation, exploration, or excavation conduct that work for which a permit is required as provided for in this Act. When the prehistoric or historic sites or deposits cultural resources are on land owned by an instrumentality of the state of North Dakota, such permit will not be granted until the applicant has agreed to deliver to the state historical society superintendent all the articles, fossil remains, and archaeological, paleontological, or historical materials of a useful nature found and removed from such land. In all cases, a permit will shall not be granted until the applicant has agreed to deliver to the superintendent copies of all maps, notes, photographs, and any other records and reports as determined by the superintendent to be pertinent to the explorations, as well as a final report work performed. This shall be done according to terms agreed upon by the superintendent and the applicant previous to issuance of the permit.

SECTION 5. AMENDMENT. Section 55-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-03. Period for which permit granted - Renewal-- Revocation. Each permit or license issued as is provided pursuant to an application made as required by section 55-03-01 shall terminate on December thirty-first of the year in which it is issued but may be renewed within thirty days after the expiration thereof upon payment of two dollars. Any permit or license to explore or excavate on any land belonging to the state of North Dakota, or any county or municipality, issued pursuant to the provisions of this Act may be revoked by the superintendent of the state historical board at any time, if it appears to such officer that explorations or excavations authorized by the permit or license any identification, evaluation, or mitigation of adverse effects on cultural resources, historic buildings, structures, or objects performed by the permittee are being conducted negligently or improperly, and or without regard for

the careful preservation and conservation of the ~~archaeological, paleontological, or historical material contained in such location, site, or deposit~~ artifacts and materials they contain.

SECTION 6. AMENDMENT. Section 55-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-04. Fees deposited in revolving fund - Use. All fees collected by the superintendent ~~of the state historical board~~ under the provisions of this ~~chapter~~ Act shall be deposited in the revolving fund of the state historical board and shall be used by the superintendent ~~in~~ for making investigations of permit applicants ~~for such permits or licenses and of the sites or locations sought to be explored by such applicants~~ for the management and analysis of records and artifacts submitted to the superintendent under the provisions of this Act.

SECTION 7. AMENDMENT. Section 55-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-05. Landowner may explore on his own land. Nothing contained in this chapter shall be construed to limit or prohibit any person owning land in this state from exploring or excavating for ~~archaeological or paleontological material~~ cultural resources on his own land or by written consent to any other person.

Approved March 10, 1983

CHAPTER 587

HOUSE BILL NO. 1361
(Olafson)**PARKS AND RECREATION PERSONNEL AS
PEACE OFFICERS**

AN ACT to amend and reenact section 55-08-04 of the North Dakota Century Code, relating to employees as peace officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-04. Employees as peace officers. All supervisors, guards, custodians, rangers, keepers, and caretakers, of state parks, state campgrounds, state recreation areas or reserves shall have and possess the authority and powers of peace officers while in their employment, provided, however, that the police powers shall only be on the park grounds. The director shall have the power to appoint department personnel to peace officer status while they are in the employment of the department, provided, however, that the police powers shall be limited only to the lands or waters administered by the department.

Approved March 4, 1983

CHAPTER 588

HOUSE BILL NO. 1121
(Committee on State and Federal Government)
(At the request of the Department of Parks and Recreation)

PARK AND RECREATION LAWS ENFORCEMENT

AN ACT to create and enact four new sections to chapter 55-08 of the North Dakota Century Code, relating to enforcement of park and recreation laws; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Four new sections to chapter 55-08 of the North Dakota Century Code are hereby created and enacted to read as follows:

General penalty. Any person violating a provision of this chapter for which a penalty is not specifically provided is guilty of an infraction.

Attorney general, state's attorneys, sheriffs, constables, and peace officers to enforce park and recreation laws. The attorney general, and all state's attorneys, sheriffs, constables, and other peace officers shall enforce this chapter.

Writs served and executed by department peace officers - Others to aid department peace officers - When. The director and all other department peace officers may serve and execute, in the same manner as any sheriff or constable, all warrants and legal process issued by the court in enforcing this chapter. Such officers of the department may call to their aid any sheriff, deputy sheriff, constable, police officer, or other person to enforce this chapter. All such peace officers or other persons, when called upon thereof, shall enforce and aid in enforcing this chapter.

Uniform complaint and summons - Promise to appear. There is hereby established a uniform complaint and summons which may be used in cases involving violations of this chapter. Whenever the complaint and summons established by this section is used, the provisions of the North Dakota Rules of Criminal Procedures relating to arrests without warrants do not apply, and the magistrates or state's attorneys shall not be required to make another complaint of the offense charged in the uniform complaint and summons. The uniform

complaint and summons must be of a form prescribed by the parks and recreation director and approved by the attorney general. The time of court appearance to be specified in the summons must be at least five days after the issuance of such summons unless the defendant demands an earlier hearing. Upon receipt from the defendant of written promise to appear at the time and place specified in the summons, the defendant shall be released from custody. After signing a promise to appear, defendant must be given a copy of the uniform complaint and summons. Any person refusing to give such written promise to appear may be arrested if proper cause exists, or proceeded against by complaint and warrant of arrest issued as provided in the North Dakota Rules of Criminal Procedure. Defendant's failure to appear at the time and place designated after signing a promise to appear is a class B misdemeanor. The uniform summons and complaint may not be used if the officer, acting within the officer's discretion, has reason to believe the defendant will not be subject to arrest upon a warrant issued by a magistrate. The halting officer shall immediately take any person not released upon his promise to appear before the nearest or most accessible magistrate.

Approved March 8, 1983

CHAPTER 589

HOUSE BILL NO. 1645
(Lang, Schindler, Martinson, Conmy)

HISTORIC EASEMENTS AND TAX INCREMENT FINANCING

AN ACT to create and enact three new subsections to section 55-10-08, relating to the acquisition of state historic sites and historic easements with respect thereto; and to amend and reenact subsection 8 of section 40-58-20 and section 47-05-02 of the North Dakota Century Code, relating to the expenditure of public funds including the proceeds of municipal bonds and tax increments to finance in whole or in part the restoration, reconstruction, and improvement of such sites and buildings and structures thereon; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 40-58-20 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. The cost of renewal subject to reimbursement from the tax increment fund for each urban renewal area shall include all expenditures incident to carrying out the urban renewal plan for the area and any modifications thereof, not otherwise reimbursed in one of the ways referred to below; including but not limited to all expenses of the clearance, redevelopment, rehabilitation, and conservation of the area as defined in section 40-58-19, and all interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality or urban renewal agency to provide funds for payment of such expenses. From the total cost to be reimbursed there shall be deducted, except as provided below, all amounts received from the federal government or others, and all special assessments, revenues, and other receipts except property taxes, which are actually collected and applied to the payment of such cost or such bonds, notes, or other obligations, at the times when such payments are due. However, if the proceeds of tax increments or of bonds, notes, or other obligations are loaned to finance part or all of the cost of a project comprising the restoration, reconstruction, and improvement of a privately owned state

historical site situated within the urban renewal area or any buildings or structures thereon, as contemplated in section 55-10-08, or of a property listed in the national register of historic places, as contemplated in section 55-10-11, in consideration of the grant to the city of a historic easement with respect thereto, repayments of the loan shall not be deducted from the cost of renewal subject to reimbursement.

SECTION 2. AMENDMENT. Section 47-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-05-02. Servitudes not attached to land. The following land burdens or servitudes upon land may be granted and held, though not attached to land:

1. The right to pasture, and of fishing and taking game.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking water, wood, minerals, or other things.
7. A historic easement granted with respect to a state historic site and buildings and structures thereon, or property listed in the national register of historic places, in accordance with the provisions of section 55-10-08.

SECTION 3. Three new subsections to section 55-10-08 of the 1981 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

The state or any of the instrumentalities of government enumerated in subsection 1 may acquire fee title to a state historic site, or property listed in the national register of historic places, or may acquire a historic easement with respect to a privately owned state historic site, or property listed in the national register of historic places, and buildings and structures thereon when restored, reconstructed, or improved in accordance with plans approved by the superintendent of the state historical board. A historic easement shall be:

- a. A nonpossessory interest in the real property, imposing limitations or affirmative obligations the purposes of which include preserving the historic

- aspects of the property as so restored, reconstructed, or improved;
- b. Created and capable of being conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except as otherwise provided in this subsection; provided that no right or duty in favor of or against a holder or another party having a right of enforcement shall arise under a historic easement before it is accepted by the holder and the acceptance is recorded;
 - c. Held by the grantee for the benefit of its citizens and the people of the state generally;
 - d. Specifically enforceable by the grantee or, if so provided by the grant, by the state or another instrumentality of government enumerated in subsection 1;
 - e. Binding upon the holder of the servient tenement and his successors and assigns;
 - f. Limited to a term of years provided in the grant and approved by the superintendent of the state historical board, not exceeding the estimated useful life of the real property as restored, reconstructed, or improved, and not less than the term of any loan made by the holder to finance in whole or in part the cost of the restoration, reconstruction, or improvement;
 - g. Subject to no other legal limitation upon the duration of estates or of restraint on the alienation thereof, except the limitation contained in section 47-05-02.1; and
 - h. Subordinate to any interest existing when the easement is created, in the real property affected thereby, unless the owner of the interest is the grantor of the easement or consents to it.

A historic easement is valid even though:

- a. It is not appurtenant to an interest in real property;
- b. It can be or has been assigned to another holder;
- c. It is not of a character that has been recognized traditionally at common law;
- d. It imposes a negative burden;

- e. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- f. The benefit does not touch or concern real property;
or
- g. There is no privity of estate or of contract.

A project comprising the acquisition of a state historic site or of a historic easement with reference thereto, and the restoration, reconstruction, and improvement of the site and buildings and structures thereon to preserve physical characteristics of historic importance, is declared to be a proper and necessary purpose for the expenditure of public funds. The proceeds of tax increments or bonds or both may be expended by a city for such a project within an urban renewal area, when determined by the governing body to be desirable for the redevelopment, rehabilitation, and conservation of the area in accordance with the provisions of chapter 40-58.

SECTION 4. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 10, 1983