

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 879 Session of
1995

INTRODUCED BY FISHER, JUBELIRER, BRIGHTBILL, GREENLEAF, KASUNIC,
HELFRICK, MADIGAN, MUSTO, PUNT, STEWART, ROBBINS, WENGER,
LEMOND AND TOMLINSON, APRIL 21, 1995

SENATE AMENDMENTS TO HOUSE AMENDMENTS, NOVEMBER 14, 1995

AN ACT

1 Amending Title 37 (Historical and Museums) of the Pennsylvania
2 Consolidated Statutes, FURTHER PROVIDING FOR MEMBERS OF THE
3 PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION; providing for
4 archaeological field investigations; and further providing
5 for cooperation by public officials with the Pennsylvania
6 Historical and Museum Commission. <—

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

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

13 § 103. Definitions.

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

19 "Archaeological field investigation." [The study of cultural

1 history at any archaeological site by professionally accepted
2 means of surveying, sampling, excavation or removal of
3 archaeological specimens.] Extensive controlled excavation of an
4 archaeological site to study the cultural history using
5 professionally accepted means of sampling, removing and
6 excavating archaeological specimens, also known as phase three
7 archaeological research or data recovery.

8 * * *

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

13 * * *

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

18 Section 2. Sections 104(A), 506(c), 507 and 508 of Title 37 <—
19 are amended to read:

20 § 104. PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION. <—

21 (A) MEMBERSHIP.--THE PENNSYLVANIA HISTORICAL AND MUSEUM
22 COMMISSION SHALL CONSIST OF THE SECRETARY OF EDUCATION, OR HIS
23 DESIGNEE; NINE RESIDENTS OF THIS COMMONWEALTH APPOINTED BY THE
24 GOVERNOR WITH THE ADVICE AND CONSENT OF A MAJORITY OF THE
25 MEMBERS ELECTED TO THE SENATE; AND FOUR MEMBERS OF THE GENERAL
26 ASSEMBLY, OR THEIR DESIGNEES, TWO FROM THE SENATE, ONE OF WHOM
27 SHALL BE APPOINTED BY THE PRESIDENT PRO TEMPORE AND ONE BY THE
28 MINORITY LEADER, AND TWO FROM THE HOUSE OF REPRESENTATIVES, ONE
29 OF WHOM SHALL BE APPOINTED BY THE SPEAKER AND ONE BY THE
30 MINORITY LEADER.

1 * * *

2 § 506. Archaeological field investigations on Commonwealth
3 land.

4 * * *

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

25 * * *

26 § 507. Cooperation by public officials with the commission.

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

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

6 (2)] (1) Notify the commission before undertaking any
7 Commonwealth or Commonwealth-assisted permitted or contracted
8 projects that may affect archaeological sites.

9 [(3)] (2) Notify the commission when they become aware
10 of any undertaking in connection with any Commonwealth or
11 Commonwealth-assisted permitted or contracted project,
12 activity or program which affects or may affect an
13 archaeological site, and provide the commission with
14 information concerning the project, program or activity.

15 (b) Survey or investigation by commission.--[Upon
16 notification or determination that an archaeological resource is
17 or may be adversely affected, the commission may, within 60 days
18 after reasonable notice to the Commonwealth agency or political
19 subdivision, conduct a survey or other investigation to recover,
20 preserve or otherwise protect information from the
21 archaeological resource, provided that this subsection shall not
22 apply if a Commonwealth agency or a political subdivision
23 notified the commission in writing of the potential effect of a
24 proposed action on an archaeological resource and the commission
25 does not advise that Commonwealth agency or political
26 subdivision within 60 days that it intends to conduct a survey
27 or investigation.]

28 (1) Upon a determination by the commission that any
29 Commonwealth or Commonwealth-assisted, permitted or
30 contracted project may adversely affect an archaeological

1 site, the commission may conduct or cause to be conducted
2 through an agent, subcontractor or other person an
3 archaeological survey only when the commission, based on
4 recorded material evidence, determines that the site is a
5 significant archaeological site. A written determination
6 shall be made by the commission within 15 days of receipt of
7 a notification by a Commonwealth agency under subsection (a)
8 provided that until January 1, 1997, such written
9 determination shall be made by the commission within 30 days
10 of receipt of such notification.

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

17 (3) No later than 15 days after completion of an
18 archaeological survey, and only in exceptional circumstances,
19 the commission may determine in writing that an
20 archaeological field investigation, also known as phase three
21 archaeological research or data recovery, is necessary to
22 recover archaeological data. The archaeological field
23 investigation shall be completed within 90 days of the
24 determination required under this ~~subsection~~ PARAGRAPH, <—
25 except that an additional 30 days may be required when the
26 determination is made during the months of December, January
27 and February.

28 (4) Failure of the commission to render a determination
29 within the period allowed in either paragraph (1) or (3)
30 shall be deemed to be a determination that a survey or

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

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

12 (i) Projects of other State agencies and
13 instrumentalities.

14 (ii) Projects on Commonwealth lands.

15 (iii) Projects of publicly regulated utilities.

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

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

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

30 (8) All determinations by the commission under this

1 section shall be subject to the provisions of Title 2
2 (relating to administrative law and procedure).

3 § 508. Interagency cooperation.

4 (a) Responsibilities of Commonwealth agencies.--Commonwealth
5 agencies shall:

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

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

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

19 (4) Institute procedures and policies to assure that
20 their plans, programs, codes, regulations and activities
21 contribute to the preservation and enhancement of all
22 historic resources in this Commonwealth. However, nothing in
23 this title shall be construed as conferring on the commission
24 the authority to delay, deny, condition or limit, or cause to
25 be delayed, denied, conditioned or limited, any permits which
26 would otherwise be issued by a Commonwealth agency beyond
27 those time frames specified in section 507 (relating to
28 cooperation by public officials with the commission), unless
29 the applicant agrees in writing to such condition, limit or
30 time extension. An applicant is prohibited from utilizing a

1 permit or license in any manner that would impair or
2 interfere with the performance of an archaeological survey or
3 field investigation until the expiration of the time frames
4 in section 507 or until receiving written notification from
5 the commission that its archaeological survey or
6 investigation is completed, whichever is sooner. Commonwealth
7 agencies likewise are, in the absence of specific statutory
8 language in their enabling or regulatory statutes, prohibited
9 from stopping the processing or denying a permit solely
10 because of the possible or actual presence of archeological
11 resources.

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

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

20 ~~Section 3. This act shall take effect in 60 days.~~ <—

21 SECTION 3. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <—

22 (1) THE AMENDMENT OF 37 PA.C.S. § 104 SHALL TAKE EFFECT
23 IMMEDIATELY.

24 (2) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

25 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
26 DAYS.