

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 422

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

AN ACT

RELATING TO CULTURAL PROPERTIES; REQUIRING THAT NOMINATIONS TO PLACE A CULTURAL PROPERTY ON THE OFFICIAL REGISTER BE CONSENTED TO BY A MAJORITY OF THE OWNERS OF THE LAND COMPRISING THE CULTURAL PROPERTY OR UPON WHICH THE CULTURAL PROPERTY IS LOCATED; REMOVING THE POWER OF EMINENT DOMAIN AS A MEANS FOR ACQUIRING CULTURAL PROPERTIES UNDER THE CULTURAL PROPERTIES ACT; REQUIRING THE PROMULGATION OF REGULATIONS; CLARIFYING CERTAIN EFFECTS OF A DESIGNATION AS A REGISTERED CULTURAL PROPERTY.

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

**SECTION 1.** Section 18-6-5 NMSA 1978 (being Laws 1969, Chapter 223, Section 5, as amended) is amended to read:

"18-6-5. COMMITTEE--POWERS AND DUTIES.--The primary function of the committee is to review proposals for the

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underscored material = new  
[bracketed material] = delete

1 preservation of cultural properties. The committee is  
2 authorized to take such actions as are reasonable and  
3 consistent with law to identify cultural properties and to  
4 advise on the protection and preservation of those properties.  
5 Among such actions as may be necessary and proper to the  
6 fulfillment of these responsibilities, and without being  
7 limited hereby, the committee:

8 A. shall determine what constitutes historical,  
9 archaeological, scientific, architectural and other cultural  
10 significance for the purpose of identifying cultural properties  
11 as used in the Cultural Properties Act;

12 B. shall prepare and keep up to date the official  
13 register. This official register shall be composed of  
14 properties identified by the committee as having historical or  
15 other cultural significance and integrity, being suitable for  
16 preservation and having educational significance; provided that  
17 a cultural property shall not be included in the official  
18 register unless a nomination for the inclusion has been  
19 consented to in writing by:

20 (1) at least a majority of the number of  
21 individual surface owners who own any part of the nominated  
22 property within a municipal boundary or within developed  
23 districts of unincorporated towns or buildings wherever  
24 located; or

25 (2) at least a majority of the number of

1 individual surface and mineral interest owners who own any part  
 2 of the nominated property, not consisting of a building,  
 3 outside of municipal boundaries or outside developed districts  
 4 of unincorporated towns. For the purposes of this subsection,  
 5 "mineral interest owners" are those mineral interest owners  
 6 that may be ascertained from publicly accessible land records  
 7 maintained by the county or the bureau of land management;

8 C. shall not include in the official cultural  
 9 properties register lands that contain properties that the  
 10 nominator excludes within the boundary of the nominated  
 11 district or area unless:

12 (1) the properties to be excluded are  
 13 explicitly excluded from the nomination application by a legal  
 14 description of the excluded properties; and

15 (2) the committee's decision listing the  
 16 nominated district or area explicitly acknowledges that the  
 17 Cultural Properties Act shall have no application to or effect  
 18 on the identified excluded property, including permits to use  
 19 the property as well as rights of way or other authorizations  
 20 relating to access;

21 ~~[G.]~~ D. shall prepare and maintain proper  
 22 documentation of the historic or other significance of cultural  
 23 properties. The committee is granted access to all state and  
 24 local public documents that may be necessary for the  
 25 documentation, and such state and local agencies as have

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1 custody of such documents are authorized to allow the committee  
2 to examine and reproduce those documents useful for the  
3 documentation;

4 ~~[D.]~~ E. shall inspect all registered cultural  
5 properties periodically to ~~[assure]~~ ensure proper cultural or  
6 historical integrity and proper maintenance. The inspection  
7 may be made by an authorized representative of the committee or  
8 the historic preservation division of the ~~[office of]~~ cultural  
9 affairs department. Such inspection shall be made only with  
10 the written consent of the owner or ~~[his]~~ the owner's  
11 authorized representative;

12 ~~[E.]~~ F. shall, based upon the inspection of a  
13 registered cultural property, recommend such repairs,  
14 maintenance and other measures as should be taken to maintain  
15 registered status;

16 ~~[F.]~~ G. shall issue regulations by December 31,  
17 2012 pertaining to:

18 (1) the process for nominating or removing  
19 cultural properties for placement on or removal from the  
20 official register, including requirements for notice;

21 (2) the decision process for placement of the  
22 properties on the official register; and

23 (3) the identification, preservation and  
24 maintenance of registered cultural properties in order to  
25 maintain the integrity of those properties;

1           ~~[G.]~~ H. may exclude property from nomination or  
2 delete from the official register any registered cultural  
3 property whose owner does not comply with the committee's  
4 regulations or follow its recommendations for repair and  
5 maintenance or ~~[which]~~ that, upon presentation of further  
6 evidence, does not merit continued official registry;

7           ~~[H.]~~ I. may recommend to the museum resources  
8 division of the ~~[office of]~~ cultural affairs department and  
9 other public administrators of registered cultural properties  
10 measures for the investigation, restoration and protection of  
11 such properties;

12           ~~[I.]~~ J. may encourage and render technical advice  
13 to private owners of registered cultural properties in order  
14 that such properties may be preserved;

15           ~~[J.]~~ K. may encourage and provide technical  
16 assistance to municipalities and counties in acquiring,  
17 preserving and developing cultural properties within their  
18 jurisdictions;

19           ~~[K.]~~ L. shall cooperate with federal, state, tribal  
20 or pueblo, local and private agencies and persons engaged in  
21 the administration, development or other work relating to  
22 cultural properties within the state;

23           ~~[L.]~~ M. shall pursue all activities in a manner  
24 consistent with state and federal laws and regulations;

25           ~~[M.]~~ N. may encourage and promote public

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1 appreciation of New Mexico's historical and cultural heritage  
2 by:

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

5 (2) reviewing the accuracy and adequacy of  
6 proposed marking of cultural properties;

7 [~~N.~~] O. may utilize the assistance of individuals,  
8 local organizations, state agencies and others interested in  
9 the identification and preservation of cultural properties;

10 [~~Q.~~] P. may issue, with the concurrence of the  
11 state archaeologist and the state historic preservation  
12 officer, permits for the examination or excavation of sites and  
13 the collection or removal of objects of antiquity or general  
14 scientific interest, where such sites or objects are located on  
15 state lands, to institutions [~~which~~] that the committee may  
16 deem to be properly qualified to conduct such examination,  
17 excavation or collection, subject to such rules and regulations  
18 as the committee may prescribe; provided that the examinations,  
19 excavations and collections are undertaken by reputable  
20 museums, universities, colleges or other historical, scientific  
21 or educational institutions or societies approved by the  
22 committee, with a view toward disseminating knowledge about  
23 cultural properties; and provided that a summary report of such  
24 investigations, containing relevant maps, documents, drawings  
25 and photographs, be submitted to the committee, which shall in

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1 turn submit the report to the appropriate agency or make other  
 2 appropriate disposition of the report; and provided further  
 3 that all specimens so collected shall be the property of New  
 4 Mexico and that prior arrangements be made for the disposition  
 5 of specimens derived from such investigations in an appropriate  
 6 institution of the state or for loan of such specimens to  
 7 qualified institutions in or out of the state;

8 [P-] Q. shall provide advice to the state historic  
 9 preservation officer [~~it~~] of the historic preservation division  
 10 and to the director of the museum resources division of the  
 11 [~~office of~~] cultural affairs department on cultural properties;  
 12 and

13 [Q-] R. shall make, in conjunction with the  
 14 historic preservation division, an annual report on its  
 15 activities to the governor and the legislature. The report may  
 16 contain recommendations for the more effective preservation of  
 17 New Mexico's historic and cultural heritage."

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

20 "18-6-6. CULTURAL AFFAIRS DEPARTMENT--POWERS AND DUTIES  
 21 RELATING TO THE CULTURAL PROPERTIES ACT.--

22 A. The cultural affairs department is responsible  
 23 for administering, developing and maintaining all registered  
 24 cultural properties in its ownership or custody.

25 B. Unless other locations are deemed more

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1 appropriate by the committee, in consultation with the museum  
2 of New Mexico, because of the nature of the property involved,  
3 the cultural affairs department shall be the depository for all  
4 collections made under the provisions of the Cultural  
5 Properties Act and shall make available material from such  
6 collections to museums in and out of the state on the request  
7 of the governing bodies of those museums when, in the opinion  
8 of the department, such use is appropriate and when  
9 arrangements are made for the safe custodianship and public  
10 exhibition of the material in accordance with department rules.  
11 The museum of New Mexico shall maintain a record of the  
12 location of all such collections.

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

17 D. The cultural affairs department may acquire by  
18 gift or purchase [~~or, if no other means of acquisition are~~  
19 ~~available, condemnation~~] any cultural property or interest  
20 therein sufficient to preserve such property. Cultural  
21 properties so acquired shall be administered by the department  
22 or other appropriate state agencies in accordance with  
23 Subsections A and B of this section.

24 E. The cultural affairs department may enter into  
25 agreements with the committee to provide assistance in carrying



1 out the duties of the committee."

2 SECTION 3. Section 18-6-8.1 NMSA 1978 (being Laws 1986,  
3 Chapter 10, Section 5) is amended to read:

4 "18-6-8.1. REVIEW OF PROPOSED STATE UNDERTAKINGS.--The  
5 historic preservation division of the [~~office of~~] cultural  
6 affairs department shall periodically furnish copies of the  
7 official register or relevant sections of the official register  
8 to state agencies and departments and shall periodically advise  
9 state agencies and departments of the status of the division's  
10 program of cultural property identification and registration.  
11 The head of any state agency or department having direct or  
12 indirect jurisdiction over any land or structure modification  
13 [~~which may affect~~] on a registered cultural property shall  
14 afford the state historic preservation officer a reasonable and  
15 timely opportunity, within ninety days, to [~~participate in~~  
16 ~~planning such undertaking so as to preserve and protect, and to~~  
17 ~~avoid or minimize adverse effects on, registered cultural~~  
18 ~~properties~~] provide comment and consultation to those with  
19 jurisdiction on how the proponents of the modification might be  
20 able to preserve, protect and avoid or minimize adverse effects  
21 on registered cultural properties. Nothing in the Cultural  
22 Properties Act shall be deemed to have any effect on the use of  
23 any property or permitting or access for the use of that  
24 property:

25 A. not placed on the official register; or

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1           B. explicitly excluded from the nomination  
2 application or deemed by the committee to be noncontributing  
3 property because it does not contribute to the historic,  
4 archaeological, scientific, architectural or other cultural  
5 significance of a registered cultural property."

6           SECTION 4. Section 18-6-10 NMSA 1978 (being Laws 1969,  
7 Chapter 223, Section 9) is amended to read:

8           "18-6-10. CULTURAL PROPERTIES ON PRIVATE LAND.--

9           A. It is the declared intent of the legislature  
10 that field [~~archeology~~] archaeology on privately owned lands  
11 should be discouraged except in accordance with the provisions  
12 [~~and spirit~~] of the Cultural Properties Act and [~~persons~~]  
13 property owners having knowledge of the location of  
14 [~~archeological~~] archaeological sites on their property are  
15 encouraged to communicate such information to the [~~committee~~]  
16 archaeological records management section of the laboratory of  
17 anthropology.

18           B. It shall be deemed an act of trespass and a  
19 misdemeanor for any person to remove, injure or destroy  
20 registered cultural properties situated on private lands or  
21 controlled by a private owner without the owner's prior  
22 permission. Where the owner of a registered cultural property  
23 has submitted [~~his~~] acceptance in writing to the committee's  
24 registration of that cultural property, the provisions of  
25 Section [~~8 of the Cultural Properties Act~~] 18-6-9 NMSA 1978

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1 shall apply to that registered cultural property.

2 C. Where a cultural property is on private land or  
3 is otherwise privately owned, and after receiving a nomination  
4 consented to in writing by a majority of the owners of the  
5 private property pursuant to Section 18-6-5 NMSA 1978, the  
6 committee determines that such cultural property is worthy of  
7 preservation and inclusion on the official register, the  
8 committee may recommend the procedure best calculated to  
9 [~~insure~~] ensure preservation. Such procedures may include:

10 (1) providing technical assistance to the  
11 owner who is willing to restore, preserve and maintain the  
12 cultural property;

13 (2) acquiring the property or an easement or  
14 other right therein by gift or purchase; and

15 (3) advising the county or municipality within  
16 which the cultural property is located on zoning the property  
17 as an historic area or district in accordance with the Historic  
18 District Act

19 [~~(4) advising the county or municipality~~  
20 ~~within which the cultural property is located on the use of~~  
21 ~~agreements, purchases or the right of eminent domain to obtain~~  
22 ~~control of the cultural property in accordance with the~~  
23 ~~Historic District Act; and~~

24 (5) ~~acquiring the property for the state by~~  
25 ~~use of the right of eminent domain]."~~

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1           SECTION 5. Section 18-6-12 NMSA 1978 (being Laws 1969,  
2 Chapter 223, Section 10) is amended to read:

3           "18-6-12. EMERGENCY CLASSIFICATION PENDING  
4 INVESTIGATION.--A cultural property [~~which~~] that the committee  
5 thinks may be worthy of preservation may be included on the  
6 official register on a temporary basis for not more than one  
7 year, during which time the committee shall investigate the  
8 property and make a determination as to whether it may be  
9 permanently placed on the official register. [~~If the cultural~~  
10 ~~property is on private land~~] The temporary classification shall  
11 not be [~~considered a taking of private property, but the owner~~  
12 ~~may receive a fair rental value for the part of the land~~  
13 ~~affected if the temporary classification unduly interferes with~~  
14 ~~the owner's normal use of the land~~] effective unless the owners  
15 of the property have consented in writing to the temporary  
16 classification as required by Section 18-6-5 NMSA 1978. The  
17 owner shall be immediately notified of the committee's  
18 determination. If, at the expiration of one year from the time  
19 the temporary classification was imposed, the [~~owner has not~~  
20 ~~been notified of any committee action~~] cultural property has  
21 not been permanently included on the official register pursuant  
22 to the provisions of the Cultural Properties Act, the temporary  
23 classification shall lapse, and it shall not be renewed for  
24 five years."

25           SECTION 6. [NEW MATERIAL] TRIBAL-STATE COLLABORATION.--

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1 Nothing in this 2011 act shall be construed to modify  
2 provisions of the State-Tribal Collaboration Act.

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

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underscoring material = new  
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