

2012 Kansas Statutes

75-2724. Government projects; existence of threat to historic property, procedure for determining; determination of whether to proceed, factors; judicial review; penalty, failure to follow procedures; delegation to cities, counties or state board of regents or institutions. (a) The state or any political subdivision of the state, or any instrumentality thereof, shall not undertake any project which will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places or the environs of such property until the state historic preservation officer has been given notice, as provided herein, and an opportunity to investigate and comment upon the proposed project. Notice to the state historic preservation officer shall be given by the state or any political subdivision of the state when the proposed project, or any portion thereof, is located within 500 feet of the boundaries of a historic property located within the corporate limits of a city, or within 1,000 feet of the boundaries of a historic property located in the unincorporated portion of a county. Notwithstanding the notice herein required, nothing in this section shall be interpreted as limiting the authority of the state historic preservation officer to investigate, comment and make the determinations otherwise permitted by this section regardless of the proximity of any proposed project to the boundaries of a historic property. The state historic preservation officer may solicit the advice and recommendations of the historic sites board of review with respect to such project and may direct that a public hearing or hearings be held thereon. Any such public hearing or hearings held pursuant to this subsection or held pursuant to authority delegated by the state historical preservation officer under subsection (e) or (f) shall be held within 60 days from the date of receipt of notice by the state historical preservation officer from the state or any political subdivision of the state as provided herein. If the state historic preservation officer determines, with or without having been given notice of the proposed project, that such proposed project will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places or the environs of such property, such project shall not proceed until:

(1) The governor, in the case of a project of the state or an instrumentality thereof, or the governing body of the political subdivision, in the case of a project of a political subdivision or an instrumentality thereof, has made a determination, based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use; and

(2) five days notice of such determination has been given, by certified mail, to the state historic preservation officer.

(b) Any person aggrieved by the determination of the governor pursuant to this section may seek review of such determination in accordance with the Kansas judicial review act. Any person aggrieved by the determination of a governing body pursuant to this section may seek review of such determination in accordance with K.S.A. 60-2101, and amendments thereto.

(c) The failure of the state historic preservation officer to initiate an investigation of any proposed project within 30 days from the date of receipt of notice thereof shall constitute such officer's approval of such project.

(d) Failure of any person or entity to apply for and obtain the proper or required building or demolition permit before undertaking a project that will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places, or the environs of such property, shall be subject to a civil penalty not to exceed \$25,000 for each violation. The attorney general may seek such penalties and other relief through actions filed in district court.

(e) (1) The state historic preservation officer may enter into an agreement authorizing a city or county to make recommendations or to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c) if the state historic preservation officer determines that the city or county has enacted a comprehensive local historic preservation ordinance, established a local historic preservation board or commission and is actively engaged in a local historic preservation program. The agreement shall specify the authority delegated to the city or county by the state historic preservation officer, the manner in which the city or county shall report its decisions to the state historic preservation officer, the conditions under which the city or county can request assistance from the state historic preservation officer in performing certain project reviews, the length of time the agreement is to be valid and provisions for termination of the agreement. Such agreement shall provide that the state historic preservation officer shall retain final authority to implement the provisions of this act. The state historic preservation officer shall adopt any rules and regulations necessary to implement the provisions of this subsection.

(2) An agreement with a city or county authorized by this subsection shall not be construed as limiting the authority of the state historic preservation officer to investigate, comment and make determinations otherwise permitted by this section.

(f) The state historic preservation officer may enter into agreements with the state board of regents or any state educational institution under the control and supervision of the state board of regents to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c).

History: L. 1977, ch. 284, § 10; L. 1981, ch. 332, § 2; L. 1986, ch. 318, § 136; L. 1988, ch. 336, § 2; L. 1988, ch. 337, § 2; L. 1993, ch. 201, § 1; L. 1996, ch. 204, § 1; L. 1999, ch. 33, § 6; L. 2010, ch. 17, § 195; July 1.