

Testimony to Senate Committee on Local Government
Senate Bill 329
February 7, 2012

Thank you for the opportunity to appear before you this morning on Senate Bill 329. The State Historic Preservation Office is part of the Kansas State Historical Society. It is our responsibility to facilitate the state and federal statutes for historic preservation as they relate to the state of Kansas. Each year the state receives an annual allocation of federal dollars, matched 60%-40% by state funds to administer these programs. I am here today to provide the committee with information on the state preservation law as it now functions, clarify misconceptions about the current law that is inherent in this bill, and answer any questions you may have about the process.

Background

The Kansas Preservation Act was originally enacted in 1977. The initial legislation declared historic preservation the policy of the state and required the activities of governmental entities which encroached on national or state register properties to be reviewed by the State Historic Preservation Office (SHPO).

In 1981, lawmakers widened the law to require review of all projects involving state and National Register properties and their environs which are directly undertaken by a governmental entity or supported by a governmental entity, typically through local building permits or other authorizations. Thus, projects undertaken by individuals, firms, associations, organizations, partnerships, businesses, trusts, corporations or companies became subject to review if (and only if) they required permits.

A 1988 amendment further defined the "environs" of historic properties, requiring that the SHPO receive notice of any proposed project within 500 feet of a listed historic property located within the corporate limits of a city or within 1000 feet of a listed historic property located in the unincorporated portion of a county.

How the Process Works

If a project requires a building permit for a property listed in the National Register of Historic Places and/or the Register of Historic Kansas Places (the state register) or within the environs of a listed property, either the State Historic Preservation Office (SHPO) or a Certified Local Government (CLG) is notified. Nine of the state's fifteen CLGs conduct their own state law review including Abilene, Garden City, Hutchinson, Lawrence, Leavenworth, Newton/North Newton, Salina, Topeka, and Wichita. In addition, the University of Kansas has an agreement with the SHPO to review projects affecting their listed buildings.

The state statute allows for the SHPO or the CLG to comment on the project. Our staff evaluates each project based on the Secretary of Interior's *Standards for the Treatment of Historic Properties* for listed properties or the *Standards and Guidelines for Evaluating the Effect of Projects on Environs* for projects within the environs of listed properties. The law limits our comments to either:

- No adverse effect, or
- A determination that the project “encroaches upon, damages, or destroys a listed property or its environs.

The SHPO or the CLG only comments on the project. We do not have the authority to formally approve or disapprove a project. Approval or disapproval of the project is the authority of the local governing authority (usually city councils or county commissioners).

By law, the local governing authority is to take the SHPO or the CLG comments into consideration when granting permits. However, even if it is determined that a project will encroach upon, damage, or destroy a listed building or its environs, the local governing authority may determine that there is no feasible or prudent alternative to the proposed project and grant the permit. **Therefore, the state preservation statute as it currently stands gives each county and city government local control over their resident’s projects.**

In the vast majority of cases, the SHPO and the CLGs return a “no adverse effect” comment when reviewing projects. In general, the SHPO staff issues comments within four days of receiving notification of a project. We are sensitive to the short timetables that face many property owners starting a construction project.

FY 2011 State Law Reviews – SHPO Office

Total Projects Reviewed for Comment	Projects Involving Listed Properties		Projects Involving Environs Reviews	
	No adverse effect	Encroaches upon, damages, or destroys	No adverse effect	Encroaches upon, damages, or destroys
272	149	9	103	11

FY 2011 State Law Reviews - CLGs

Total Projects Reviewed for Comment	Projects Involving Listed Properties		Projects Involving Environs Reviews	
	No adverse effect	Encroaches upon, damages, or destroys	No adverse effect	Encroaches upon, damages, or destroys
641	142	6	484	6

Conclusion

The changes proposed in Senate Bill 329 would create a law difficult to administer by having to track which cities opted out of the law. Presumably, rural listed properties will still be subject to review by the SHPO. In addition, the bill does not specify the local standards that would “ensure the integrity” of listed properties. If a community does not define historic integrity consistent with the state and federal-agreed Secretary of Interior’s *Standards*, then the properties will not be eligible for grants and tax credits despite this bill’s proposed amendment to the Heritage Trust Fund statute.

The current law already provides for everything this bill intends to do:

- **Local governing authority has the final determination in a state law review.**
- **Local governments can conduct their own state law review.**

Finally, I want to address the misperception of this bill that states the preservation law has a detrimental effect on economic development of the city. We are unaware of any statistics that show the state preservation law has had a negative impact on economic development. We do know that this past fiscal year over \$46.2 million was invested in Kansas through federal and state preservation tax credit projects creating 1979 jobs and over \$96 million in Gross Domestic Product in the process. Some of these projects were for buildings not initially listed in either register, but were determined eligible through the environs review process. Many developers have told us that they decided to invest in a particular rehabilitation project because they were reassured that a review process was in place for projects that could potentially affect their investment. Historic preservation in Kansas means business opportunities and jobs for Kansans.

It is my intent today to provide you with practical data as you discuss Senate Bill 329. I am happy to answer any of your questions either today or in the future.

Patrick Zollner
Director, Cultural Resources Division
Deputy State Historic Preservation Officer
(785) 272-8681 ext. 217
pzollner@kshs.org