CHAPTER 12

Protection of State‑Owned or Leased Historic Properties

**SECTION 60‑12‑10.** Definitions.

 As used in this chapter:

 (1) “Adverse effect” means an effect on a historic property, including alteration, destruction, or demolition, that diminishes the property’s historic integrity.

 (2) “Agency” means the state agency, department, foundation, or institution that is responsible for or has jurisdiction over the project or that has ownership or jurisdiction over the historic property.

 (3) “Department” means the Department of Archives and History.

 (4) “Historic properties” means those buildings, sites, objects, structures, and districts that are listed in the National Register of Historic Places.

 (5) “Building” means a construction that was created to shelter any form of human activity, including a house, barn, church, or hotel.

 (6) “Site” means a location of a significant event or a prehistoric or historic occupation or activity, including cemeteries, prehistoric village sites, and battlefields.

 (7) “Object” means a construction that is primarily artistic in nature or is relatively small in scale compared to a building or structure. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment, such as statuary in a designed landscape, including sculpture, monuments, and fountains.

 (8) “Structure” means those functional constructions made usually for purposes other than creating shelter, including firetowers, canals, bridges, palisade fortifications, and prehistoric mounds.

 (9) “Historic district” means a significant concentration of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development and designated as such by law or regulation of the department.

 (10) “Minimize” means to lessen the adverse effect of a project on a historic property. In the case of alterations, this may include identifying and undertaking minimal change to the defining characteristics of a historic property. In the case of destruction or demolition of a historic property, this may include recording a historic building, structure, or object, or excavation of an archaeological site.

 (11) “Qualified preservation professionals” means staff with training, experience, and expertise in managing historic properties. The requirement for training can be satisfied by an undergraduate degree in architectural preservation or graduate study in architectural preservation for staff with responsibility for managing nonarchaeological properties or a graduate degree in anthropology or archaeology for staff managing archaeological sites. The requirement for training also can be satisfied by specialized historic preservation training provided by the department combined with a state certification of registration to practice architecture, or a degree in architecture, architectural history, history, or a related field. The department may certify an individual who does not possess the educational requirements specified by this item as a qualified preservation professional where such individual has developed expertise in managing historic properties through the practice of a craft or art.

 (12) “State Board of Review” means the existing advisory group that reviews nominations to the National Register of Historic Places and which includes professionals representing the fields of archaeology, architecture, architectural history, and history.

 (13) “State Properties Committee” means a committee of the State Board of Review, which will include at least three members with at least one member representing the fields of architecture, architectural history, archaeology, or related fields as appropriate.

HISTORY: 1992 Act No. 503, Section 1.

**SECTION 60‑12‑20.** Application of chapter.

 This chapter applies to any agency that owns or leases historic properties except as otherwise provided in this chapter.

HISTORY: 1992 Act No. 503, Section 1.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

**SECTION 60‑12‑30.** Consultation with department required for projects affecting historic properties.

 Agencies shall consult with the department when planning projects that might adversely affect those properties listed in the National Register of Historic Places at the time of consultation. Consultation may be accomplished in one of three ways:

 (1) The department shall negotiate a programmatic agreement with each agency that has qualified preservation professionals in charge of management of historic properties. The agency shall agree to avoid or, when appropriate, minimize adverse effects to historic properties under its jurisdiction. The agency shall then assume responsibility for administering its own historic preservation program. The agency’s qualified preservation professionals shall participate in continuing education provided by the department at no charge.

 (2) An agency that does not have qualified preservation professionals in charge of the management of historic properties may negotiate a programmatic agreement with the department for covered projects that are similar and repetitive, projects involving routine maintenance, or projects that will not significantly alter the historical integrity of a property. The agency shall then assume responsibility for carrying out the projects or types of projects included in the programmatic agreement without having to notify the department on a project‑by‑project basis.

 (3)(a) Before an agency plans a project not covered by a programmatic agreement, the agency shall submit documentation describing the proposed project to the department. If the effect will be adverse, the agency also must describe alternatives that were considered to avoid or minimize adverse effects and the reasons why any rejected alternatives were considered not to be feasible or prudent.

 (b) Within thirty days after receipt of the documentation described above, the department shall review the documentation and provide a written response to the agency. Before sending a response recommending changes, the department shall confer with the agency and attempt to negotiate a solution acceptable to both parties.

 (c) If the agency and the department cannot agree on the effect of a project or measures that would avoid or minimize the adverse effect of a project on historic properties, the agency may request the recommendation of the State Properties Committee.

 (d) The State Properties Committee shall review the documentation provided by the agency and the written opinion of the department. The committee shall provide its written response to the agency within thirty days after receipt of the request for comment.

 (e) If the agency does not accept the recommendations made by the State Properties Committee, the agency may petition the State Board of Review to review the documentation on the project. The board shall provide its written decision to the agency within thirty days after receipt of the petition for review.

 (f) Proceedings under this chapter, including the certification of individuals as qualified preservation professionals, are subject to the provisions of Chapter 23 of Title 1 (Administrative Procedures Act).

HISTORY: 1992 Act No. 503, Section 1.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

**SECTION 60‑12‑40.** Agencies to receive lists of historic properties owned or leased by them.

 Before implementation of this chapter, the department shall provide each agency with a list of properties owned or leased by the agency that are listed in the National Register of Historic Places.

HISTORY: 1992 Act No. 503, Section 1.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

**SECTION 60‑12‑50.** Technical historic preservation training for agency staff.

 The department shall provide technical historic preservation training sessions at no cost for agency staff involved with management of historic properties.

HISTORY: 1992 Act No. 503, Section 1.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

**SECTION 60‑12‑60.** Reports of compliance.

 The department shall provide periodic reports of agencies’ compliance with the intent and provisions of this chapter to the Joint Legislative Committee on Cultural Affairs.

HISTORY: 1992 Act No. 503, Section 1.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

**SECTION 60‑12‑70.** Agency agreement required prior to nomination of agency property to National Register of Historic Places.

 The department shall not initiate additional nominations of state‑owned or leased properties to the National Register of Historic Places from passage of this chapter until after June 30, 1995, without the written agreement of the agency that owns, leases, or has jurisdiction over the property.

HISTORY: 1992 Act No. 503, Section 1.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

**SECTION 60‑12‑80.** Exceptions from coverage of chapter.

 This chapter does not apply to:

 (1) Section 106 of the National Historic Preservation Act, as amended. This includes any undertaking requiring federal funding, licensing, or approval or any undertakings on federal property.

 (2) the provisions of Article 5, Chapter 7, Title 54 (South Carolina Underwater Antiquities Act of 1991).

HISTORY: 1992 Act No. 503, Section 1.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

**SECTION 60‑12‑90.** Proposals for renovations to State House or capitol complex.

 Notwithstanding any provision of law to the contrary, the State House Committee shall cause the Department of Archives and History to review and comment on any proposal for alterations or renovations to the State House or that area designated as the capitol complex. The policy and decisions of the State House Committee, with regard to any proposal for or the administration of any project or program for the maintenance, alteration or renovation of the State House or that area designated as the capitol complex, shall be final.

HISTORY: 1992 Act No. 503, Section 1.

Federal Aspects

Section 106 of the National Historic Preservation Act, see 16 U.S.C.A. Section 470f.

Library References

Environmental Law 76.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Sections 166, 173.

Attorney General’s Opinions

There currently exists no binding legal authority to fly Confederate flag on State House dome. State House Committee not only possess legal authority to retire flag, but in absence of any affirmative authority to contrary, Committee should do so, because no current, binding authority exists to continue flying it. 1993 Op. Atty Gen No. 93‑69.