

nens and for the preservation, restoration, maintenance, and operation of properties under the jurisdiction of the office.

Source: SL 1973, ch 14, § 5 (4); SL 1985, ch 8, § 3.

Library References

States ⇨85.
Westlaw Key Number Search: 360k85.
C.J.S. States § 145.

1-19A-11.1. Preservation of historic property—Procedures

The state or any political subdivision of the state, or any instrumentality thereof, may 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 until the Office of History has been given notice and an opportunity to investigate and comment on the proposed project. The office may solicit the advice and recommendations of the board with respect to such project and may direct that a public hearing be held thereon. If the office determines that the proposed project will encroach upon, damage or destroy any historic property which is included in the national register of historic places or the state register of historic places or the environs of such property, the project may 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 has made a written determination, based upon the 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 the historic property, resulting from such use; and
- (2) Ten day's notice of the determination has been given, by certified mail, to the Office of History. A complete record of factors considered shall be included with such notice.

Any person aggrieved by the determination of the Governor or governing body may appeal the decision pursuant to the provisions of chapter 1-26.

The failure of the office to initiate an investigation of any proposed project within thirty days from the date of receipt of notice thereof is approval of the project.

Any project subject to a federal historic preservation review need not be reviewed pursuant to this section.

Source: SL 1987, ch 20.

Library References

Environmental Law ⇨83.
Westlaw Key Number Search: 149Ek83.

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1. In general
Statute governing preservation of property does not give State Office the power to disapprove final decision of historic preservation commission, but provides that commission may not act on a proposed project until History has been given an opportunity to investigate and comment on it. SDCL 1-19A-11.1. In re B.Y. Development, Inc., 615 N.W.2d 102. Environmental Law ⇨

2. Due process
Even if city's motivation in rescinding building permit was to avoid loss of city and those of city commission voted for permit, developers' substantive process rights were not violated; even if perception was erroneous and its fear of groundless, this would be no more error of state law and not an irrational one completely unrelated to merits of a project. SDCL 1-19A-11.1; U.S.C.A. Const. Art. I, § 8, cl. 2. Achten v. City of Deadwood, 1993, 81 S.D. 808. Constitutional Law ⇨ 278.2(1) And Planning ⇨ 469

3. Factors considered
Under statute governing preservation of historic property, city historic preservation commission is not required to consider as "feasible and prudent" any and all alternatives, but only those supported by sufficient facts to indicate that they are feasible and prudent. SDCL 1-19A-11.1. In re B.Y. Development, Inc., 615 N.W.2d 102. Environmental Law ⇨ 76

City historic preservation commission considered all relevant factors, and found that there was no feasible and prudent alternative to proposal, before approving for hotel-gaming facility within a historic district; commission reviewed several proposed designs and rejected several, considering and different shaped buildings, expressed concern about the height of the building, taller structures and eventually approved height of 45 feet, considered setbacks from street, evaluated overall width and massing as overall appearance, appraised the impact on surrounding historic properties, and found that area was zoned commercial. SDCL 1-19A-11.1. In re B.Y. Development, Inc., 615 N.W.2d 102. Environmental Law ⇨ 88