

TO: House State Government Committee
FROM: Stephanie Chappell, District 18B
DATE: February 13, 2022

RE: HF3091 Sections 9 and 10 (SHPO)

HF3091 Sections 9 and 10 (SHPO) need further revision/examination, specifically 138.081 subdivision 3 and 138.665 subdivision 2. While House Research and Administration deems the changes are ‘clean up,’ the changes as introduced would conflict with existing statute (138.081 subdivision 1 and 3}, increase conflict of interest, confuse nonprofit and state duties, and deteriorate previous statute changes done in 2017 and 2021 regarding the nonprofit MN Historical Society (MNHS) and the State Department of Administration’s State Historic Preservation Office (SHPO). Additionally, amendment A1 addresses only parts of a single line and appears to need its own amendment to rectify related changes within 138.665 subdivision 2.

Please make the necessary changes or approve amendments as suggested (including amendments to amendments):

138.081 subdivision 3

New Amendment – Page 8, Lines 8.27 and 8.28 delete new wording/reinstate wording

New Amendment – Page 8 lines 8.28 through 8.31 delete new wording/reinstate wording

New Amendment (a) – Page 8 line 8.31 delete new wording/reinstate wording

New Amendment (b) – Page 8 line 8.31 delete “16, sections 469 to 469C” and replace with “54, section 300101 et seq.”

138.081 sub. 3 from HF3091 as introduced

8.27 Sec. 9. Minnesota Statutes 2020, section 138.081, subdivision 3, is amended to read:
8.28 Subd. 3. **Administration of federal act.** ~~The Department of Administration, Minnesota~~
8.29 ~~Historical Society~~ is designated as the state agency to administer the provisions of the federal
8.30 act providing for the preservation of historical and archaeological data, United States Code,
8.31 ~~title 16 54, sections 469 to 469C section 312501, as amended,~~ insofar as the provisions of
8.32 the act provide for implementation by the state.

138.081 Background

138.081 **Federal Funds, Acts**, was amended in 2017 and 2021 to reflect state responsibility (SHPO) for all *federal* aspects encompassing historic preservation, registers, and funds for historic places and structures. Previously, the responsibilities were left to the nonprofit Minnesota Historical Society. During that process title 16 was changed to read “Code 54, section 300101 et seq.” within another subdivisions of 138.081.

138.081 Discussion

The only clean up item that needs to be included in HF3091 regarding 138.081 subdivision 3 would be addressing USC 16.

New Amendment & (a and b): Page 8, lines 8.28 through 8.31 should be amended to reinstate stricken words (and deleting new wording), then, an amendment to streamline wording with the rest of 138.081 unless there is reason for application of US Code 54 beginning only with section 312501 is warranted.

New Amendment (b): Page 8, line 8.31 strike 16 and replace with 54. Inserting directly after 54 “, code 300101 et seq.” would mirror language already in 138.081 sub 2.

138.081 subdivision 3 Conclusion

Changing language in lines 8.28 and 8.29 would reverse services performed by SHPO to MNHS will confuse the public, create further conflict of interest, and damage the intent of the entire statute. 138.081 does not affect MNHS’s operation of historic sites.

State budget items related to any structure, survey, and asset protection and preservation of historic sites remain with MNHS. These budget items are not related to operation of historic sites.

138.665 subdivision 2

A1 Amendment – Approve; reinstates “mediation” where “consultation” was to replace it and reinstates stricken wording at lines 9.16 and 9.17

New Amendment to A1 Amendment – Page 9 line 17 delete new wording “Minnesota Historical”

New Amendment – Page 9 line 18 reinstate language “the one”

New Amendment – Page 9 lines 9.1 through 9.22 to be stricken and replaced with: Subd. 2. Mediation. The state, state departments, agencies, and political subdivisions, including the Board of Regents of the University of Minnesota, have a responsibility to protect the physical features and historic character of properties designated in sections 138.662 and 138.664 and 138.73 or listed on the National Register of Historic Places created by Public Law 89-665. Before carrying out any undertaking that will affect designated or listed properties, or funding or licensing an undertaking by other parties, the state department or agency shall consult with the State Historic Preservation Office ~~pursuant to the society's established procedures~~ to determine appropriate

treatments and to seek ways to avoid and mitigate any adverse effectson designated or listed properties. If the state department or agency and the State Historic Preservation Officeagree in writing on a suitable course of action, the project may proceed. If the parties cannot agree, any one of the parties may request that the governor appoint and convene a mediation task force consisting of ~~five~~ **four** members, two appointed by the governor, the chair of the State Review Board of the State HistoricPreservation Office, the commissioner of administration or the commissioner's designee, ~~and one member who is not an employee of the Minnesota Historical Society appointed by the director of the society.~~ Thetwo appointees of the governor ~~and the one of the director of the society~~ shall be qualified by training orexperience in one or more of the following disciplines: (1) history; (2) archaeology; and (3) architecturalhistory. The mediation task force is not subject to the conditions of section 15.059. This subdivision doesnt apply to section 138.662, subdivision 24, and section 138.664, subdivisions 8 and 111.

138.665 subdivision 2 as introduced

9.1 Sec. 10. Minnesota Statutes 2020, section 138.665, subdivision 2, is amended to read:
9.2 Subd. 2. **Mediation Consultation.** The state, state departments, agencies, and political
9.3 subdivisions, including the Board of Regents of the University of Minnesota, have a
9.4 responsibility to protect the physical features and historic character of properties designated
9.5 in sections 138.662 and 138.664 or listed on the National Register of Historic Places created
9.6 by Public Law 89-665. Before carrying out any undertaking that will affect designated or
9.7 listed properties, or funding or licensing an undertaking by other parties, the state department
9.8 or agency shall consult with the State Historic Preservation Office pursuant to the **society's**
9.9 **State Historic Preservation Office's** established procedures to determine appropriate
9.10 treatments and to seek ways to avoid and mitigate any adverse effects on designated or
9.11 listed properties. If the state department or agency and the State Historic Preservation Office
9.12 agree in writing on a suitable course of action, the project may proceed. If the parties cannot
9.13 agree, any one of the parties may request that the governor appoint and convene a mediation
9.14 task force consisting of five members, two appointed by the governor, the chair of the State
9.15 Review Board of the State Historic Preservation Office, the commissioner of administration
9.16 or the commissioner's designee, and one member ~~who is not an employee of the Minnesota~~
9.17 ~~Historical Society~~ appointed by the director of the **Minnesota Historical** Society. The two
9.18 appointees of the governor and ~~the one~~ of the director of the society shall be qualified by
9.19 training or experience in one or more of the following disciplines: (1) history; (2)
9.20 archaeology; and (3) architectural history. The mediation task force is not subject to the
9.21 conditions of section 15.059. This subdivision does not apply to section 138.662, subdivision
9.22 24, and section 138.664, subdivisions 8 and 111.

138.665 subdivision 2 Background

Subdivision describes/defines process to mitigate disagreements pertaining to areas or properties on the National Register of Historic Places. SHPO is the state's designated agency/department assigned to all aspects of the National Register of Historic Places. When SHPO was removed from the nonprofit Minnesota Historical Society, MNHS surrendered all responsibility, including directives, architectural interpretations, and input in historic structures and place listed on the National Register of Historic Places. No part of 138.665 alters MNHS's ability to operate Statewide Historic Network sites.

138.665 subdivision 2 Discussion

Amendment to A1 would address new wording added on line 17 related to language now deleted by A1 Amendment. Language added on line 17 is not needed; only one society is mentioned in the subdivision and previously addressed formally as the Minnesota Historical Society.

New Amendment Striking “the one” because the removal is affiliated with language addressed in A1 that is now reinstated with A1 approval.

HF3091 proposes a language change from “society” to “State Historic Preservation Office” and is on track with the purpose of the statute. *This language should remain part of the bill.* Lines 9.8 and 9.9 should remain and reflect the removal of society/MNHS and replacement of SHPO/Dept of Administration.

MNHS has been confused for a state agency. MNHS is a nonprofit corporation. MNHS owns several historic properties that are listed on the National Register of Historic Properties.

138.665 subdivision 2 should be amended to alleviate conflicts of interest. An amendment performing this action would create clear separation of MNHS from perceived and real conflicts, address the need for MNHS to be accountable for mediation outcomes and not privileged or exempt. 138.665 has no bearing on MNHS’s ability to operate any historic site.

A new amendment to replace all amendments and introductory language referring to lines 9.1 through 9.22 would further distance the nonprofit MNHS from SHPO/State duties while adding historic places covered under another statute (138.73).

138.665 subdivision 2 Conclusion

SHPO’s move from nonprofit MNHS to State Department of Administration requires reflection in statute.

Further clarification showing separation of state and nonprofit duties will curb future conflicts of interest regarding National Registering of Historic Places of which SHPO holds total responsibility for records management.

Removal of MNHS from statute language will further define state's role and remove public perception of MNHS as a state entity rather than its role as a nonprofit.

Changes proposed have no bearing on MNHS's responsibilities, management or operation of State Historic Site Network as identified in 138.661 (listing appearing in 138.662).

HF3091 Sections 9 and 10 Overall Conclusion

SHPO/State and nonprofit duties are misunderstood by State agencies, nonprofits, experts, businesses and the general public. Additional language inserting Minnesota Historical Society is not advised. Inserting/reinserting MNHS to any authority to act as a state agency undermines both the Office of the State Archaeologist and the State Historic Preservation Office now housed within the State Department of Administrative; both have expertise or access to expertise in areas related to Minnesota's historic places without influence from nonprofits, business, or partisan groups.

Review and removal of MNHS from sections 9 and 10 will promote public awareness of MN Historical Society's operation as a nonprofit organization. *All reference to MNHS should be removed.* Present public opinion perceives MNHS as a full time state department with all authority of state in aspects of employment, conduct, and data practices adherence.

MNHS has not followed state mediation procedure. From 2018 through 2021, MNHS refused to correct building designs within Building 18, a 1904 Calvary Barracks at Fort Snelling. Even the National Park Service urged MNHS to follow SHPO's directive. As a result, the state-owned building lost original historic character – a staple of historic properties. Communications outlining MNHS's failure to utilize mediation are available at SHPO, NPS, MNHS, and from Stephanie Chappell, signatory to the federal procedure.

Please contact me if further information is desired. I can be reached via email at fussy@hotmail.com, by phone or by address available online.