

Bavarian Law for the Protection and Preservation of Monuments (Monument Protection Law)

from 25th June 1973 (BayRS 2242-1-K), last revised 27th July 2009 (GVBl 2009 p. 385, 390 f.)

I. SCOPE

Article 1 Definitions

(1) Monuments are man-made things or parts thereof from a past epoch whose preservation, because of their historic, artistic, urban design, scientific or folkloristic significance, is in the interests of the general public.

(2) Built monuments are structures or parts thereof (including historic decorative details) from a past epoch which possess the significance listed in Paragraph 1, insofar as they are not covered by Paragraph 4. Movable objects can also be historic decorative details if they are an integral part of an original interior design or a comparable historic refurnishing or redesign. Gardens are also considered to be built monuments insofar as they fulfill the requirements listed in Paragraph 1.

(3) Built monuments can also include more than one structure (historic district or Ensemble); every individual building in the /Ensemble /need not fulfill the requirements of Paragraph 1, if the townscape, square or streetscape as a whole is worthy of preservation.

(4) Archaeological monuments are movable and immovable monuments which are or were in the earth and in general date from prehistorical or early historical times.

Article 2 Monument List

(1) For informational purposes built monuments and archaeological monuments should be entered in a list (the Monument List). Entry is made by the State Conservation Office in consultation with the local government. Entry can be suggested by the legally responsible parties and by the appropriate Local Heritage Conservator (/Heimatpfleger/). Entry in the list must be recorded in the building development plan. The list can be inspected by anyone.

(2) Movable monuments, insofar as they are not covered by Paragraph 1, can be entered in the list at the request of the legally responsible parties in especially important cases.

Article 3 Validity

(1) The provisions for protection in this law are valid for built monuments, for archaeological monuments and for all listed movable monuments.

(2) In the course of their public functions (above all within the framework of master planning) local governments must give appropriate consideration to interests of monument protection and monument care, especially to the preservation of Ensembles.

II. BUILT MONUMENTS

Article 4 Preservation of Built Monuments

(1) The owners and those otherwise having legal responsibility for the disposition of real property must maintain, repair and appropriately treat their built monuments and protect them from danger. If the owner or another party having legal responsibility for real property disposition is not the direct occupant, then the provisions of Sentence 1 are also valid for the direct occupant, insofar as he has the possibility to act accordingly.

(2) The persons named in Paragraph 1 can be obligated to carry out certain preservation measures, in whole or in part, insofar as this can be reasonably demanded, giving due consideration to their other responsibilities and obligations. Insofar as they cannot carry out these measures themselves, they can be obligated to allow measures to be carried out by others. The previous consent of the Highest Monument Protection Authority is necessary for decisions which are binding on the federal government or state governments.

(3) If the condition of a built monument requires measures for maintenance, repair or protection and an enforceable ruling according to Paragraph 2 does not exist, the responsible Monument Protection Authority can carry out the measures or allow them to be carried out. The parties having legal responsibility for the real property can be obligated to allow the measures to be carried out. The costs of the measures must be borne by the persons named in Paragraph 1, insofar as they were or could have been obligated to carry out the measures according to Paragraph 2; in other cases, costs are borne by the Compensation Fund (Article 21, Paragraph 2).

(4) Treatments which damage or endanger a built monument can be forbidden.

Article 5 Use of Built Monuments

Built monuments should be used for their original purpose, to the extent that this is possible. If built monuments are not used according to their original purpose, the owner or those otherwise having legal responsibility over the use should strive for a use which is similar or equivalent. If this is not possible, a use which ensures the long-term preservation of the monument's historic fabric should be chosen. If various uses are possible, that use which has the least adverse effect on the built monument and its appurtenances should be chosen. The state, the local governments and other bodies should support owners and occupants. If the conditions of Article 4 Paragraph 2 are fulfilled, the owner and those parties otherwise having legal responsibility over the use can be obligated to implement a certain type of use; insofar as they are not obligated to implement this use, they can be obligated to allow certain types of use.

Article 6 Measures on Built Monuments

(1) Whoever wishes to

1. demolish, alter or relocate built monuments or

2. demolish, alter, relocate or remove protected appurtenances from a built monuments

must have permission. Permission is also required for anyone who wishes to erect, alter or remove a structure in the vicinity of built monuments, if this could affect the condition or appearance of one of the built monuments. Whoever wishes to alter an Ensemble only must have permission, if the alteration concerns a structure, which is for itself a built monument, or if this could affect the appearance of the Ensemble.

(2) Under the provisions of Paragraph 1 Sentence 1 No. 1 and 2, permission can be prohibited insofar as important reasons favor the unaltered preservation of the existing condition. Under

the provisions of Paragraph 1 Sentence 2, permission can be denied if the planned action would lead to an adverse effect on the character, the appearance or the artistic effect of a built monument and important reasons favor the unaltered preservation of the existing condition.

(3) If a building permit or in its place a building inspection consent or an inspection permit to dig off is required, than the [above-mentioned] permission is not required. If in the case of Article 18 Paragraph 2 of the Bavarian Building Code (BayBO) a building permit or a building inspection consent is not required, but in accordance with Article 63 Paragraph 1 Sentence 1 BayBO a variance caused by the capacity as a monument is required, the permission according to this law includes the consent in particular cases according to Article 18 paragraph 2 BayBO and the variance according to Article 63 Paragraph 1 Sentence 1 BayBO.

(4) In case of decisions in accordance with Paragraph 1 through 3 the interests of disabled persons and persons with other mobility injuries must take into account.

III. ARCHAEOLOGICAL MONUMENTS

Article 7 Excavation of Archaeological Monuments

(1) Permission is necessary for anyone wishing to excavate archaeological monuments on a property or to undertake excavation work on a property for other purposes, if he knows, or supposes, or circumstances support the assumption that archaeological monuments are located there. Permission can be refused, insofar as this is necessary for the protection of an archaeological monument.

(2) Specific properties suspected of containing archaeological monuments can be designated as Excavation Protection Areas through decrees by the districts. Within an Excavation Protection Area, all work which could endanger archaeological monuments requires permission. Article 6 Paragraph 2 Sentence 2 and Paragraph 3 are applicable accordingly. Excavation Protection Areas must be designated in the land use plan.

(3) Paragraph 1 and Paragraph 2 do not apply to excavations which are undertaken or ordered by or with the participation of the State Conservation Office.

(4) Permission is required for anyone wishing to erect, alter or remove a structure which is in the vicinity of archaeological monuments which are wholly or in part recognizable above the earth's surface if this could affect the condition or appearance of one of these archaeological monuments. Article 6 Paragraph 2 Sentence 2 and Paragraph 3 are applicable accordingly.

(5) The owner of a property can be obligated to allow an excavation if the State Conservation Office has determined that the excavation is of particular public interest. The holder of the excavation permit must compensate the owner for damages which arise.

Article 8 Discovery of Archaeological Monuments

(1) Anyone finding an archaeological monument is obligated to register his discovery promptly with the Local Monument Protection Authority or with the State Conservation Office. This obligation applies to the owner or the occupant of the property as well as to the contractor or project director for the measures which led to the discovery. Registration by one of these parties releases the others from this obligation. If the finder was engaged as an employee on the work which led to the discovery, he is released from this obligation by reporting to his employer or project director.

(2) Discovered objects and their sites must be left unaltered for one week after the date of registration, unless the Local Monument Protection Authority clears the objects or allows continuation of the work previously.

(3) Paragraphs 1 and 2 do not apply to work which is undertaken or ordered by or with the participation of the State Conservation Office.

(4) Owners, those having legal responsibility for the disposition of real property, and direct occupants of a property on which archaeological monuments have been found can be obligated to allow the measures necessary for a professional salvage of the artifacts, as well as for the clarification of the circumstances of the discovery and for the protection of further archaeological monuments on the property.

(5) If danger of their loss exists, discovered objects must be given promptly to the State Conservation Office or to a Monument Protection Authority for safekeeping.

Article 9 Analysis of Findings

The owner of a movable archaeological monument, those having legal responsibility for it, and the direct occupant can be required to hand over the object to the State Conservation Office for a limited time for scientific analysis and documentation.

IV. LISTED MOVABLE MONUMENTS

Article 10 Obligation to Secure Permission

(1) Permission is required for anyone wishing to destroy, alter or relocate a listed movable monument. Permission can be denied if this is necessary for the protection of the monument.

(2) The sale of a listed movable monument must be promptly reported to the State Conservation Office. The seller and the buyer are obligated to register the transaction.

V. PROCEDURAL REGULATIONS

Article 11 Monument Protection Authorities

(1) The Local Monument Protection Authorities are the county government offices. Local governments that have assumed the functions of the Local Building Authority from the county shall also assume the functions of the Local Monument Protection Authority. Article 115 Paragraph 2 of the Municipal Code is applicable accordingly.

(2) The Upper Monument Protection Authorities are the district governments.

(3) The Highest Monument Protection Authority is the Bavarian State Ministry of Sciences, Research and the Arts.*

(4) Unless otherwise specified, the Local Monument Protection Authority is responsible for enforcement of this law. Under the provisions of Article 73 Paragraph 1 BayBO the Upper Monument Protection Authorities are taking the place of the Local Monument Protection Authorities.

(5) The functions of the Monument Protection Authorities are state functions; for local governments, they are delegated functions.

Article 12 State Conservation Office

(1) The State Conservation Office is the specialized state office for all issues concerning monument protection and monument care. It is directly subordinate to the State Ministry.*

(2) The duties of the State Conservation Office involve the care of monuments and participation in the protection of monuments. Monument care also encompasses monument research, as far as such projects are directly connected with the other responsibilities of the State Conservation Office and are compatible with them. It has the following responsibilities in particular:

1. participation in the enforcement of this law and other pertinent regulations, as provided in these regulations and others which have been promulgated;
2. issuance of guidelines for the care of monuments, in cooperation with local organizations;
3. preparation and continuation of the inventories and the monument lists;
4. conservation and restoration of monuments, insofar as their conservation and restoration is not carried out by other responsible state offices;
5. provision of professional advisory services and consultation reports in all aspects of monument protection and monument care;
6. supervision of excavations, as well as the supervision and recording of the accumulated movable archaeological monuments;
7. care of local museums and similar collections, insofar as these are not otherwise administered by the state.

The State Ministry * can assign other relevant functions to the State Conservation Office.

(3) The existing functions of the Bavarian Administration of State Palaces, Gardens and Lakes remain unchanged.

Article 13 Local Heritage Conservators

(1) The Local Heritage Conservators advise and support the Monument Protection Authorities and the State Conservation Office in questions of monument care and monument protection. The Monument Protection Authorities must give the conservators ample time to comment on relevant cases within the scope of their duties.

(2) The Monument Protection Authorities and the State Conservation Office should avail themselves in appropriate cases of the support of local offices and private initiatives.

Article 14 State Monument Advisory Board

(1) The State Monument Advisory Board has the task of advising the state government and of participating in important issues concerning monument care. The State Monument Advisory Board must participate in the listing of a historic district (Ensemble). The members of the Monument Advisory Board are appointed by the State Parliament, the members listed in Paragraph 2b through l thereby from nominations by the authorities concerned. The term of appointment for members is for the duration of the legislative period. The members perform their duties without pay. They choose a chairman from among their members. The State Ministry *, the State Ministries of the Interior (Highest Building Authority) and for Development and Environmental Problems as well as the State Conservation Office must be invited to all discussions by the State Monument Advisory Board.

(2) The State Monument Advisory Board consists of:

- a) six members of the State Parliament,
- b) one representative each from the Association of Bavarian Local Governments, the Association of Bavarian Cities, and the Association of Bavarian Counties,
- c) one representative of the Association of Bavarian Districts,
- d) two representatives each from the Catholic Church and the Protestant-Lutheran Church in Bavaria,
- e) three representatives of private monument owners,
- f) one representative of the Bavarian Academy of Fine Arts,
- g) one representative each from the architectural community and the Bavarian Chapter of the German Academy for Urban Design and State Planning,
- h) one representative of the Bavarian State Association for Conservation of the Local Heritage,
- i) one representative of the Bavarian Association of Farmers,
- k) two experts in the fields of art history and early and ancient history, to be proposed by the State Ministry, *
- l) up to five further members, to be proposed by the State Ministry.*

(3) Political groups in the State Parliament which otherwise do not have a member on the Board according to Paragraph 2a receive one seat.

(4) For clarification of specialized issues, the State Monument Advisory Board may appeal to experts, who serve in a non-voting capacity.

(5) The State Ministry * is authorized to establish regulations concerning the organization, the convocation and the management of the Monument Advisory Board, as well as the appointment of the members and provisions for the compensation of travel expenses.

Article 15 Procedures for Permission and Restitution

(1) An application for issuance of permission according to Articles 6, 7, and 10 Paragraph 1 and concerning obligations of the property owner according to Article 7 Paragraph 5 must be submitted in writing to the local government, which must submit its opinion promptly to the Local Monument Protection Authority. Articles 75 and 76 of the Bavarian Building Code are valid in cases involving Articles 6, 7 and 8 Paragraph 2.

(2) The Local Monument Protection Authority shall consult the State Conservation Office before making a decision according to Sections II through IV of this law. Article 65 Paragraph 1 Sentence 3 of the Bavarian Building Code is applicable accordingly.

(2a) Article 69 of the Bavarian Building Code is applicable accordingly for permissions according to Chapter II through IV of this law.

(3) If actions according to Articles 6, 7, 8 Paragraph 2 or Article 10 Paragraph 1 are carried out without the required permission, building permit or exploitation permit, the Local Monument Protection Authority can require restitution of the original condition, insofar as this is possible; or the restoration in some other fashion of built monuments, archaeological monuments and listed movable monuments can be required.

(4) Whoever unlawfully, deliberately or in a grossly negligent way destroys or damages a built monument, an archaeological monument or a listed movable monument is obligated, independently from the imposition of a fine, to make restitution for the damages he caused to their full extent.

(5) The responsible office can defer a decision regarding an application for permission, building permit, building code consent or exploitation permit for a maximum of two years, if this is necessary for the clarification of the interests of monument protection (in particular, for research on the monument and its surroundings).

Article 16 Rights of Access and Information

(1) For the enforcement of this law, the Monument Protection Authorities and the State Conservation Office have the right to enter a property, even against the will of the persons concerned, if this appears to be urgently necessary for the preservation of a built monument, an archaeological monument or a listed movable monument.

(2) Owners and occupants of built monuments, archaeological monuments and of listed movable monuments and other legally responsible parties are obligated to give the Monument Protection Authorities and the State Conservation Office all information necessary for the enforcement of this law.

Article 17 Exemption from Costs

No costs are imposed for official acts involving this law. If a permission according to Article 6 Paragraph 3 Sentence 2 includes the consent in particular cases according to Article 18 Paragraph 2 BayBO or the variance according to Article 63 Paragraph 1 Sentence 1 BayBO, cost are imposed for the consent or the variance according to the law of costs.

VI. EXPROPRIATION

Article 18 Admissibility of Expropriation

(1) If a danger to the condition or appearance of a built monument, archaeological monument or listed movable monument cannot otherwise effectively be averted, then expropriation is allowable, for the benefit of the state or another legal public entity. Expropriation for the benefit of a legal private entity is permissible if the long-term preservation of the built monument, archaeological monument or listed movable monument is one of the statutory functions of the legal entity and if, giving due consideration to all the circumstances, preservation of the monument appears to be assured.

(2) Expropriation for the benefit of the state is also admissible for movable archaeological monuments, if their preservation is within the special interests of the public. Application for cases according to Sentence 1 can only be made if the complete salvage of the archaeological monument has not been known to the State Conservation Office for longer than one year before the time of application.

Article 19 Right of Pre-Emption

(1) The Free State of Bavaria has the right of pre-emption in the event of the sale of historic appurtenances which are protected as part of listed built monuments according to Article 1 Paragraph 2, and in the event of the sale of listed movable monuments. The right of pre-emption can only be exercised if the common good justifies it, and especially if the appurtenances or the listed movable monuments should be made accessible to the public or should be preserved in their totality. The right of pre-emption does not exist if the owner of the appurtenances or of listed movable monuments sells these to his/her spouse or to another person who is related directly or as an in-law, or in a side lineage up to the third degree. The right of pre-

emption for the purchase of appurtenances does not apply if these are being sold together with the built monument and are to remain within the built monument.

(2) The right of pre-emption can only be exercised by the State Conservation Office within three months of notification to the State Conservation Office of the sale contract. Sections 463 through 468 Paragraph 1, Section 469 Paragraph 1 and Section 471 of the Civil Law Code (BGB) are applicable. The right of pre-emption is nontransferable. It has precedence over all other rights of pre-emption, except those provided by federal law. With the acquisition of property through the exercise of the right of pre-emption, other contractual rights of pre-emption expire.

Article 20 Expropriation Measures

(1) Insofar as the enforcement of this law has effects exceeding the social constraints of property ownership (Article 14 Paragraph 2 of the German Constitution, Article 103 Paragraph 2 and Article 158 of the Constitution of the Free State of Bavaria), the person concerned is to be granted monetary compensation, according to the provisions of the Bavarian law concerning the obligation to compensate for expropriation. Tax advantages based on monument listing are in all cases to be deducted to the appropriate extent from the compensation.

(2) The county government establishes the amount of compensation, after application by the party concerned. The provisions of the Bavarian law concerning expropriation with obligatory compensation are valid accordingly for the establishment of the compensation.

(3) If, on the basis of a new application, a decision is handed down which is more favorable for the party receiving the expropriation than is the decision on the compensation sum according to Paragraph 1, then in all cases the compensation must be decreased so that it corresponds to the disadvantage caused. Paragraph 2 is applicable accordingly. An overpayment must be returned, insofar as the person receiving the compensation still has profited.

Article 21 Burden of Compensation Expenses

(1) In principle the Free State of Bavaria and its communities must carry the burden of compensation together. Claims for compensation are to be made to the Free State of Bavaria. The Compensation Fund repays the Free State of Bavaria for the compensation payments granted to the affected parties. The district government is responsible for asserting the repayment claim.

(2) The Highest Monument Protection Authority establishes and administers a Compensation Fund as a state special capital fund, without its own legal status valid as of 1st January of the year following the year in which this law goes into effect. Half of the annual contributions to the fund are to be supplied by the Free State of Bavaria and half by the local governments. In general this amounts to 5 million EURO each. Contributions in a different amount from Sentence 3 can be established through legal regulations according to Paragraph 4 with the consent of the State Parliament; after the Bavarian Association of Cities and the Bavarian Association of Local Governments have been heard, the final obligation of the communities can be raised to up to 50 % of the amount required by the State in the previous year according to Paragraph 1 Sentence 2 in combination with Article 20 and according to Article 4 Paragraph 3, if the means in the fund are not enough to cover the costs of the payments.

(3) The contribution of the individual communities to the total amount of the Compensation Fund according to Paragraph 2 is determined according to the relevant apportionment for the

running fiscal year (article 18 Paragraph 3, Article 21 Paragraph 3 of the Financial Compensation Law).

(4) The Highest Monument Protection Authority is authorized to determine the details, particularly procedures for payment and charges, through legal regulations in agreement with the State Ministries of Interior and Finance. It can be provided that the State Office for Statistics and Data Processing computes and establishes the contributions and that the charges are made to the local governments by means of a bill to the counties.

(5) If an expropriation due to an expropriation procedure favors a public corporation which is not a territorial authority or favors a private corporation, then the corporation must bear the compensation costs.

VII. FINANCING

Article 22 Financial Contributions

(1) Notwithstanding existing obligations, the Free State of Bavaria assists with the costs of restoration, preservation, stabilization, and excavation of monuments according to state budget appropriations for the costs of monument protection and monument care respectively. The extent of financial participation depends on the importance and the urgency of the case and on the financial capabilities of the owner.

(2) The local governments participate to an appropriate extent in the costs of the measures named in Paragraph 1 within the framework of their financial capabilities.

VIII. ADMINISTRATIVE OFFENCES

Article 23

(1) Fines of up to two hundred fifty thousand EURO can be levied on persons who deliberately or negligently:

1. undertake actions according to Article 4 Paragraph 4, although these have been forbidden by enforceable orders;
2. carry out measures on a built monument without the necessary permit or taking its place the building code consent or the exploitation permit according to Article 6 Paragraph 1, Article 7 Paragraph 4 Sentence 1 or Article 10 Paragraph 1;
3. excavate archaeological monuments without the necessary permit according to Article 7 Paragraph 1 or undertake excavations for another purpose or carry out work which could endanger archaeological monuments in an Excavation Protection Area without the necessary permit according to Article 7 Paragraph 2;
4. do not promptly report required information according to Article 8 Paragraph 1 or Article 10 Paragraph 2;
5. do not leave unaltered discovered objects and sites, according to Article 8 Paragraph 2;
6. do not promptly fulfill the obligation to surrender objects according to Article 8 Paragraph 5.

(2) The prosecution of these offenses is subject to a five year statute of limitations.

IX. GENERAL PROVISIONS AND CONCLUDING PROVISIONS

Article 24 Limitation on Constitutional Rights

The basis right of the immunity of one's residence (Article 13 of the German Constitution, Article 106 Paragraph 3 of the Constitution), of personal freedom (Article 2 Paragraph 1 of the German Constitution, Article 101 of the Constitution) and of property (Article 14 of the German Constitution, Article 103 of the Constitution) are restricted by this law.

Article 25 Issuance of Certifications for Tax Purposes

Certifications for the attainment of tax benefits are issued by the State Conservation Office subject to ulterior provisions.

Article 26 Ecclesiastical Monuments

(1) Article 10 Sections 3 and 4 of the Concord with the Holy See from 29th March 1924 and Articles 18 and 19 of the contract between the Free State of Bavaria and the Protestant-Lutheran Church in Bavaria Right of the Rhine from 15th November 1924 remain unaltered.

(2) If decisions are to be made involving built or archaeological monuments or listed movable monuments which directly serve devotional purposes of the Catholic Church or the Protestant-Lutheran Church, the Monument Protection Authorities must take into account the declared church-related concerns of the relevant church offices. The churches must be allowed to participate in procedures. If the Local and Upper Monument Protection Authorities do not accept the asserted interests of the church, the decision is to be made by the appropriate church superior authority in consultation with the Highest Monument Protection Authority. Concerning other acknowledged religious communities, which are legal public corporations, sentence 1 through 3 are applicable correspondingly.

Article 27 Changed Regulations

(no longer valid)

Article 28 Effective Date

(1) This law takes effect 1 October 1973. **

(2) (no longer valid)

Notes

* At the time the law was passed (1973): the Bavarian State Ministry of Education and Cultural Affairs

** Applies to the version from 25th June 1973

Key to the laws

BayRS = Revised Collection of Bavarian Laws;

GVBl = Table of Laws and Ordinances