



# A Survey of State Statutes Protecting Archeological Resources

*by*

Carol L. Carnett, Esq.



National Trust  
for Historic  
Preservation



U.S. Department of the Interior  
National Park Service  
Cultural Resources  
Archeological Assistance Division

---

**A Survey of State Statutes  
Protecting Archeological Resources**

*by*

Carol L. Carnett, Esq.

# A Survey of State Statutes Protecting Archeological Resources

*by*

Carol L. Carnett, Esq.



National Trust  
for Historic  
Preservation



U.S. Department of the Interior  
National Park Service  
Cultural Resources  
Archeological Assistance Division

---

## TABLE OF CONTENTS

FOREWORD .....	vii
A SURVEY OF STATE STATUTES: OVERVIEW .....	1
STATE-BY-STATE STATUTORY SUMMARIES AND CITATIONS .....	3
FINDING AND READING STATE LAWS .....	65
LOOKING AT STATE LAWS .....	67
GLOSSARY .....	71
SELECTED CASES .....	79
BIBLIOGRAPHY .....	85

## FOREWORD

*This combined Archeological Assistance Study and Preservation Law Reporter Special Report compiles and summarizes State statutes that protect archeological resources. Its purpose is to provide a ready resource for archeological protection at the State level to help improve cooperation among agencies, and for the efficient application of the full range of statutory responsibilities in effective archeological preservation programs.*

*This extensive survey was prepared by Carol L. Carnett, Esq., an attorney with the Legal Aid Bureau of Maryland. The final report has several important sections, but its principal part is the state-by-state law summaries and legal citations. The summaries each provide a brief contextual paragraph about States' archeological preservation programs, followed by a second paragraph that specifically addresses archeological protection. The legal citations provide detailed information from each State code, and they are organized by categories which are found in typical law library research tools.*

*We depart from our standard format for reference citations (i.e., the style accepted for publication in the journal American Antiquity) in favor of usages and standard legal citation format, which are more familiar to attorneys and judges. Also, the standardized Federal government spelling of "archeology" is used throughout, except in titles and direct references to the Archaeological Resources Protection Act where it is spelled "archaeology."*

*We wish to thank Ms. Carnett for this significant contribution to the limited information currently available to the public on laws affecting archeological protection at the State level. We also acknowledge and thank the State Attorneys General and Historic Preservation Offices who insured that there were reviews, revisions, and additional information for each State's entry. Significant assistance to the author in preparing the final manuscript was also provided by David Tarler, Esq. Finally, we wish to thank Steve Hattenbach, of the University of Indiana School of Law, for his assistance in finalizing production of this publication.*

*Francis P. McManamon  
Departmental Consulting Archeologist  
National Park Service  
U.S. Department of the Interior*

*Paul W. Edmondson  
Deputy General Counsel  
National Trust for Historic Preservation*

## A SURVEY OF STATE STATUTES: OVERVIEW

Statutes promoting archeological resources protection at the State level vary widely in the areas of scope, construction, penalty provisions, and enforcement provisions. Some States clearly differentiate between protection of prehistoric archeological resources and historic archeological sites, while others use the same general statutes to cover both historic and prehistoric areas. A chart outlining the scope of State statutes which appeared in C. Carnett, *Legal Background of Archeological Resources Protection* 6-7 (revised ed. September 1991), divided existing State statutes into several categories in order to compensate for the fact that many States do not codify their archeological resources protection statutes under a single heading. States have different ways of addressing protection issues or defining types of offenses, and often enforcement authority is spread among several State agencies. In addition, statutory protection and recognition of funding needs for archeological resources may change from year to year, as legislatures pass new laws or modify existing laws.

Initial research into existing State statutes focused upon categories that reinforced or complemented the Federal Archaeological Resources Protection Act (ARPA; 16 U.S.C. §§ 470aa-mm). These categories included: restrictions on the sale of antiquities, artifacts, and/or forgeries; discouragement of resource-threatening activities on private lands; ARPA-like resource management statutes that contain penalty provisions; burial protection and reinterment; and acquisition of real property and archeological resources. It should be noted, however, that there are several more general State statutes that, under certain circumstances, may be considered applicable to protection of archeological resources, and which carry criminal and/or civil penalties for violations. Those statutes address vandalism, theft of private or government property, trespass, conversion, fraud, conspiracy, damage to or destruction of government or private property, embezzlement, burials, and cemeteries. Most States also have some statutory provisions for historic preservation zoning, public and private funding of historic preservation efforts, and comprehensive plans that identify and protect cultural and environmental resources. Site location is sometimes categorized in State laws as privileged or confidential information. Additional laws governing land use and management, transportation, and estates and trusts—and even the tax code—may impact both archeological and historical resources.

Almost all States have established statutes and regulations for issuing field investigation permits. In most cases, State permitting requirements are restricted to State-owned lands except when a State has a co-management agreement with a Federal agency (i.e., U.S. Forest Service or National Park Service). Co-management agreements occur, for example, when the Federal government leases Federal land to a State for the management of specific resources. Unless a choice of law is written into a Federal-State interagency agreement, both Federal and State laws are applicable to the co-managed lands. Because most States have requirements for inter-agency cooperation in completing activities such as environmental impact statements, this survey will point only to those States that do not statutorily mandate such cooperation.

Many States have statutes that create a State Archeologist position and a State Historical Agency, mandate a State Register of Historic Places, and provide for State cultural resources surveys. In addition, all States have created a State Historic Preservation Officer (SHPO). In the context of this survey, it was necessary to clearly distinguish between the position of State Archeologist, which exists only in some States, and the SHPO because these are often separate positions with separate duties and scope of authority. For example, in an earlier survey of SHPO offices, all responding SHPOs (68%) indicated that compliance with Federal law (i.e., permits issued pursuant to section 106 of the National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*) occupies a large portion of their work.

Preceding each summary of State protection and enforcement laws is a list of indexing categories to help locate citations to those laws. These terms are taken directly from the index provided in each State code, and are current for 1994. Only terms actually used as primary or secondary references in the particular State code index have been included. For example, statutes pertaining to native peoples may be indexed under “aboriginal peoples,” “Indians,” “Native Americans,” or under the names of individual tribes, depending on which code is used. State laws that address particular properties (e.g., ghost towns in Colorado), as well as significant pending legislation, also are included in the following discussion.

State burial laws having repatriation or reburial sections specifically involving Native American burials are flagged in the Burials category by a ♦ sign.

# A L A B A M A

## INDEXING CATEGORIES

---

**Main category:**

History and Archives  
Alabama Historical Commission

**Sub-categories:**

Aboriginal Mounds, Earthworks and Other Antiquities  
Archaeological Treasures  
Historical Preservation Authorities  
Cemeteries  
State Parks  
Museums  
Salvage  
Shipwrecks

**Authority:**

Department of Archives and History

The Alabama Historical Commission (AHC) is the primary agency for archeological resources protection. A number of commissions have also been created to administer specific sites not administered by the AHC. Among these are the Historic Blakeley Authority, Historic Chattahoochee Commission, *USS Alabama* Battleship Commission, Ft. Morgan, Cahaba Historical site, LaGrange Historic site, and Tannehill Furnace and Foundry. The Department of Archives and History and the State Conservation Department also assist in the protection of archeological resources. The State reserves exclusive right to explore, excavate and survey historic and prehistoric sites, but if the site is privately owned, the consent of the landowner is required. No artifacts may be removed from the State. Statutory mechanisms are in place for donations, endowments, and memorial funds for persons wishing to assist State preservation activities. Alabama is the only State to have established a Council on Historic Pilgrimages.

Penalties for archeological resources violations are specified at the misdemeanor level, with up to \$1,000 in fines, or up to one year in jail, or both. Complementing the nominal State policing authority, AHC also has police power, and is authorized to vest law enforcement authority in certain AHC employees. However, whereas individual site commission statutes contain specific penalty and enforcement sections, the AHC statute lacks analogous provisions.

## CITATIONS

---

**Code:** Code of Alabama (Ala. Code)

**State Archeologist:**

**Historic Agency:** § 41-9-240 (primary agency)

**Register:** § 41-9-249(10)

**Survey/Inventory:** § 41-9-249(9)

**Authority to Promulgate Rules/Regulations:**

§ 41-10-149; § 41-9-325; § 41-10-181

**Obligation to Report Discoveries:****Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** (contracts rather than permits)

**Land:** § 13A-7-23.1; § 41-3-1 to -6

**Submerged Lands:** § 41-9-249.1

**Acquisitions:** § 41-9-242

**Real Property:** § 41-9-242; § 41-9-249(4) and (7)a; § 41-9-326

**Artifacts:** § 41-3-5; § 41-9-249.1

**Gifts:** § 41-6-50 to -53; § 41-9-249(22)

**Curation:** § 41-9-249(14)

**Education:** § 16-42-1 to -3 (historic research);

§ 41-9-249(1),(2),(9),(10),(16), and (17)

**Commercial Restrictions:**

**Burials:** § 41-3-1 to -6; § 13A-7-23.1

**Excavation Prohibited:** § 13A-7-23.1; § 41-3-2

**Reinterment:** § 41-3-4 and -5

**Activity on Private Lands:** § 41-3-3; § 13-A-7-23.1 (burials)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 41-10-181 (specific to Blakeley site)

**Criminal:** § 4-3-6; § 41-9-325 (specific to Tannehill Furnace site)

**Native Involvement:** § 41-9-708 to -717

**Consultation:** § 41-9-716

**Appointment to State**

**Agency/Commission:** § 41-9-708

**Miscellaneous:** § 41-9-257 to -259 (Historic Pilgrimages); Article 2 § 272 (special properties); § 44-10-135 to -154 (Historic Preservation Authority)

# ALASKA

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation Act

**Sub-categories:**

Natives

Ships and Shipping

Historic, prehistoric and archaeological resources

**Authority:**

Department of Natural Resources

Alaska's Historic Preservation Act covers historic, prehistoric and archeological resources. Administered by the Department of Natural Resources (DNR), the Act addresses threats to resources from public and private construction, vests enforcement authority in DNR employees, and includes both criminal and civil penalties. The Act prohibits excavation, appropriation, removal, injury, or destruction of resources without a permit, and prohibits possession, sale, purchase, or transportation of resources taken in violation of the Historic Preservation Act or the Antiquities Act of 1906 (16 U.S.C. § 433). The Historic Preservation Act also allows the confiscation of personal resources for some violations. Written approval from the landowner is required for excavation and removal of remains from private lands. The State reserves title to all historic, prehistoric and archeological resources found on lands owned or controlled by the State, including tideland and submerged land, but recognizes the right of possession and use of such resources by "persons of aboriginal descent."

Civil and criminal enforcement actions are brought by the Attorney General. Stiff civil penalties provide a maximum fine of \$100,000 for each violation. Class A criminal misdemeanors carry a maximum sentence of up to one year in jail and a fine of \$5,000 per offense for individuals, and a \$200,000 fine per offense for associations or corporations. When calculating a fine, the financial resources of the defendant must be taken into account, as well as any effort by the violator to make restitution (or, in the case of an association, efforts to discipline its employee). A fine may also be assessed at two times the monetary gain realized by the defendant, or two times the loss caused to property or person, whichever is greater.

## CITATIONS

---

**Code:** Alaska Statutes (Alaska Stat.)

**State Archeologist:**

**Historic Agency:** § 45.35.300 *et seq.*

**Register:** § 41.35.030(2)

**Survey/Inventory:** § 41.35.070(a); § 41.35.090

**Authority to Promulgate Rules/Regulations:**  
§ 41.35.050

**Obligation to Report Discoveries:** § 41.35.070

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:** § 41.35.080

**Submerged Lands:** § 41.35.080

**Acquisitions:**

**Real Property:** § 41.35.080; § 41.35.060(b)  
(for endangered properties)

**Artifacts:** § 41.35.080

**Gifts:** § 41.35.080; § 41.35.380

**Curation:** § 41.35.020

**Education:**

**Commercial Restrictions:** § 41.35.200(b)

**Burials:** § 41.35.200

**Excavation Prohibited:** § 41.35.200(a)

**Reinterment:**

**Activity on Private Lands:** § 41.35.030;  
§ 41.35.100; § 41.35.090

**Penalties Provided By Protection Statute(s):**

**Civil:** § 41.35.215

**Criminal:** § 41.35.210; § 12.55.035;  
§ 12.55.135

**Native Involvement:** § 41.35.080

**Consultation:** § 41.35.080 (consent is required)

**Appointment to State Agency/Commission:**  
§ 41.35.310(4)

**Miscellaneous:**

# ARIZONA

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation

**Sub-categories**

Archaeological discoveries

Caves and caverns

Indians

**Authority:**

State Parks Division of History and Archives

**Special Incentives:**

Site Stewardship Program

Sections of the Arizona Historic Preservation Act pertaining to archeological resources have many of the same provisions as ARPA. The Arizona statute specifically addresses criminal and civil penalties, permitting procedures, defacement of sites and/or objects, burial sites and sacred funerary objects, and unlawful reproduction of archeological specimens. In addition to general statutes, the Historic Preservation and Caves statutes have separate sections on vandalism. The Historic Sites Review Committee, Historical Advisory Commission, and Archaeology Advisory Commission are all established by statute.

Felony offenses, such as unauthorized excavation of sites, carry maximum penalties of 5 years imprisonment and a \$150,000 fine. Misdemeanor penalties include a \$2,500 fine and up to 6 months in jail or, for each offense, a \$500 fine and 30 days in jail. All items taken and records kept about the site shall be forfeited pursuant to conviction.

## CITATIONS

---

**Code:** Arizona Revised Statutes Annotated (Ariz. Rev. Stat. Ann.)

**State Archeologist:**

**Historic Agency:** § 41-1352; § 41-821

**Register:** § 41-511.04(A)(9); § 41-862; § 41-511.04(B)(2)

**Survey/Inventory:** § 41-511.04(B)(1)

**Authority to Promulgate Rules/Regulations:** § 41-842; § 41-511.04(A)(11)

**Obligation to Report Discoveries:** § 41-861 and -862; § 41-844

**Confidentiality of Site Location/Information:****Permit to Conduct Field Investigations:**

**Land:** § 41-842 and -843

**Submerged Lands:** § 41-841

**Acquisitions:**

**Real Property:** § 41-821

**Artifacts:**

**Gifts:** § 42-139.01 to .03 (tax incentives)

**Curation:** § 15-631; § 41-844

**Education:** § 41-847(E)(2) and (5)

**Commercial Restrictions:** § 41-845

**Burials♦:** § 41-844; § 41-865

**Excavation Prohibited:** § 41-841(A)

**Reinterment:** § 41-844(E) and (G)

**Activity on Private Lands:** § 41-847(E)(4)

**Penalties Provided by Protection Statute(s):****Civil:**

**Criminal:** § 13-3702, 3702.01; § 13-707; § 3-906.01; § 41-846

**Native Involvement:** § 44-123 *et seq.*

**Consultation:** § 41-844; § 41-865

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 13-3702 (caves); § 41-845

(unlawful reproduction of original archeological specimen); § 41-3004.01 (Archaeology Advisory Commission extended to 1/1/2005)

# ARKANSAS

## INDEXING CATEGORIES

---

### Main categories:

- Archeological Sites
- Historical Preservation Program

### Sub-categories:

- Archeological survey
- Historic sites
- Caves
- Human skeletal burial remains

### Authority:

- University of Arkansas Archaeological Survey

Administered through the University of Arkansas, the State archeology law incorporates many aspects of ARPA, such as a comprehensive definitions section and delineation of specific penalties for violations. Several statements of legislative purpose appear directly in the statute rather than as legislative history footnotes. Cooperation from State departments and agencies, local governments, and municipal corporations is mandated, and duties of prosecuting attorneys are defined. The statute contains specific trespass and vandalism sections, assigns responsibility and liability for objects and artifacts obtained through the archeological survey programs, and prohibits public disclosure of certain site locations. The human skeletal remains statute includes repatriation provisions.

Penalty provisions are sometimes site-specific (e.g., Prairie Grove Battlefield). Most violations are misdemeanor offenses with fines of no less than \$50 and no more than \$500, or from one to six months imprisonment, or both. The maximum penalty for members of the State Commemorative Commission who violate the oath of service is a fine of \$500 and one year in jail. A first violation of the human skeletal remains protection statute is a Class A misdemeanor and each subsequent violation constitutes a felony. Mere possession of an item does not create a presumption of a violation.

## CITATIONS

---

**Code:** Arkansas Statutes Annotated (Ark. Stat. Ann.)

**Archeologist:** § 13-6-204; § 7-104 and -106

**Historic Agency:** § 13-7-201 to -206; § 13-7-106 to -108

**Register:** Act 58 § 4 (1967)

**Survey/Inventory:** §§ 13-6-201 to -203; § 13-7-105

**Authority to Promulgate Rules/Regulations:** § 13-7-104; §§ 13-7-106 to -108

**Obligation to Report Discoveries:** § 13-6-304

**Confidentiality of Site Location/Information:** § 25-19-105

**Permit to Conduct Field Investigations:** (contracts rather than permits)

**Land:** §§ 13-6-208 to -210

**Submerged Lands:**

**Acquisitions:**

**Real Property:** § 13-305

**Artifacts:**

**Gifts:** § 136-211; § 13-7-106(11); § 13-7-307

**Curation:** § 13-6-212

**Education:** § 13-3-215

**Commercial Restrictions:** § 13-6-406

**Burials♦:** §§ 13-6-401 to -409

**Excavation Prohibited:** § 13-408; § 13-6-306(c)

**Reinterment:** § 13-6-404 and -405

**Activity on Private Lands:** § 13-6-307; § 13-6-403(b)

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** § 13-6-303; §§ 13-6-306 to -308; § 13-7-204; §§ 13-6-406 to -408

**Native Involvement:** § 13-6-404

**Consultation:** § 136-403(b)

**Appointment to State Agency/Commission:**

**Miscellaneous:** §§ 15-20-601 to -607 (caves); § 50-1201 to -1206 (restrictive land use agreements)

# CALIFORNIA

## INDEXING CATEGORIES

---

### Main categories:

Archaeology  
Historical Sites

### Sub-categories:

Historical resources preservation projects  
Indians  
Abandoned vessels  
Caves

### Authority:

Department of Parks and Public Recreation  
Harbor and Navigation Authority

The California Department of Parks and Public Recreation is responsible for regulation and administration of archeological activities, including submerged archeological sites. The archeology statute addresses the need for environmental impact reports and details licensing and permitting procedures for both salvage and excavation activities. It also specifies that, absent a permit, possession of items of archeological or historical significance on board *any* watercraft constitutes *prima facie* evidence of a violation, and that authorities may confiscate such items immediately. The State is authorized to seek assistance from Federal or local law enforcement officers, deputizing them if necessary. Consultation with the Native American Heritage Commission is required only for issues arising under the California burial laws.

Penalties for destroying objects of archeological interest are determined under the general malicious mischief misdemeanor statute, which provides a maximum of six months in jail and \$1,000 fine per offense. For removal, destruction, or damage to submerged archeological resources, the maximum fine rises to \$5,000. A subsequent conviction for trafficking in human remains and burial objects is a felony offense carrying up to \$10,000 in fines and imprisonment. Civil penalties include payment of damages and other costs, forfeiture of all items taken, and a court-ordered ban on further archeological activities.

## CITATIONS

---

**Code:** West's Annotated California Code (Cal. [subject] Code (West)) (sections cited under this code are to the following subjects: Public Resources (Pub. Res.); Government (Gov't); Health and Safety (Health & Safety); Penal; Harbors and Navigation (Harb. & Nav.); Revenue and Taxation (Rev. & Tax))

### State Archeologist:

**Historic Agency:** Pub. Res. § 5024.6; Gov't § 9149 *et seq.*

**Register:** Pub. Res. § 5020.1; Pub. Res. § 5021 to 5026; Pub. Res. § 5024.1

**Survey/Inventory:** Pub. Res. § 5020.5; Pub. Res. § 30344 (coastal zones)

### Authority to Promulgate Rules/Regulations:

#### Obligation to Report Discoveries:

#### Confidentiality of Site Location/Information:

Gov't § 6254.10

**Permit to Conduct Field Investigations:** Pub. Res. § 5097.5

**Land:** Pub. Res. § 6313

**Submerged Lands:** Pub. Res. § 6309; Pub. Res. § 6313 (d); Pub. Res. § 5024.6(k)

**Acquisitions:** Pub. Res. § 5013

**Real Property:** Gov't § 37361

#### Artifacts:

**Gifts:** Gov't § 25376; Gov't § 37361.1; Gov't § 11005

**Curation:** Pub. Res. § 5013; Gov't § 25351

**Education:** Gov't § 12233 (oral history project); Pub. Res. § 5024.6(g) and (h)

**Commercial Restrictions:** Pub. Res. § 5097.99 (c) (burial artifacts)

**Burials♦:** Pub. Res. § 5097.9; Pub. Res. § 5097.94 *et seq.*

**Excavation Prohibited:** Health & Safety § 7050.5; Pub. Res. § 5097.5

**Reinterment:** Pub. Res. § 5097.98; Pub. Res. § 5097.991

### Activity on Private Lands:

#### Penalties Provided by Protection Statute(s):

**Civil:** Pub. Res. § 6314(b)

**Criminal:** Penal §§ 19 and 19a; Penal § 622-1/2; Penal § 672; Pub. Res. § 5097.99; Harb. and Nav. § 571; Penal § 6314(a)

(Cont'd)

CALIFORNIA (Cont'd)

INDEXING CATEGORIES

---

CITATIONS

---

**Native Involvement:** Pub. Res. § 5024.6(i); Pub. Res. § 5097.91 *et seq.*

**Consultation:** Pub. Res. § 5097.991; Gov't § 65040.6

**Appointment to State Agency/Commission:** Gov't § 65040.6

**Miscellaneous:** Penal § 623 (caves); Pub. Res. § 25527 (power plant sites prohibited on historic preservation areas); Rev. & Tax. § 421 to 430.5 (tax incentives)

# COLORADO

## INDEXING CATEGORIES

---

### Main category:

Archaeology and Archaeologists

### Sub-categories:

Historic sites

Historical, prehistorical and archaeological resources

Ghost towns

### Authority:

State Historical Society

The general statute, evocative of ARPA, covers crimes and civil offenses, respective penalties, salvage archeology, treatment of human remains, sites located on private lands, and unmarked human graves. Specific offenses defined in the statute include desecrating, damaging, defacing, or destroying archeological resources. There is also a section addressing bail for purported violators. State income tax credits are provided for the costs of preservation activities. Colorado has a specific statute for ghost towns. Only the owner or designated agent of the owner of such property is allowed to alter the site in any way. Where more than one law applies to burial sites, the statute designates which law will control. The law covers all political subdivisions in the State.

Any person who violates the protection provisions for ghost towns faces a \$2,000 fine, or up to six months in jail, or both, for a first offense. Civil penalties include forfeiture of all articles and materials taken, as well as any monetary proceeds from the prohibited activity. Court orders may be issued to prevent further violations. Misdemeanor penalties range from prison sentences of three months to two years, or fines of \$500 to \$5,000, or both, per offense. Felony offenses carry sentences of one to four years, or fines of \$1,000 to \$500,000.

## CITATIONS

---

**Code:** Colorado Revised Statutes (Colo. Rev. Stat.)

**State Archeologist:** § 24-80-403 to -405

**Historic Agency:** § 24-80-402

**Register:** §§ 24-80.1-101 *et seq.*

**Survey/Inventory:** § 24-80-405(d); § 24-80-502

**Authority to Promulgate Rules/Regulations:**

§§ 24-80-402 *et seq.*

**Obligation to Report Discoveries:** § 24-80-1302 (burials)

**Confidentiality of Site Location/Information:**

§ 24-80-405(g)

**Permit to Conduct Field Investigations:**

**Land:** §§ 24-80-406 *et seq.*

**Submerged Lands:** § 24-80-401

**Acquisitions:** § 24-80-405(a), (e), and (j)

**Real Property:** § 24-80-401; § 24-65.1-101 *et seq.*

**Artifacts:** § 24-80-401(1)

**Gifts:**

**Curation:** § 24-80-405(e) and (h)

**Education:** § 24-80-405(b) and (i)

**Commercial Restrictions:** § 18-5-110 (forgeries)

**Burials:** § 24-80-411; §§ 24-80-1301 *et seq.* (in case of conflict of laws, § 1301 *et seq.* controls)

**Excavation Prohibited:** § 24-80-1302

**Reinterment:** § 24-80-1302(f); § 24-80-1303(b)(3)

**Activity on Private Lands:** § 24-80-408; § 24-80-1302(4)(b) and (d)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 24-80-409 (forfeiture)

**Criminal:** § 24-80-409; § 18-9-113; § 18-5-110; § 18-4-509; § 24-80-801; § 24-80-1202

**Native Involvement:**

**Consultation:** § 24-80-1303(3)

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 24-80-1201 and -1202 (ghost towns); § 24-80-801 and -802 (Santa Fe Trail); § 39-1-104(5) and § 39-22-514 (tax incentives)

# CONNECTICUT

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation

**Sub-categories:**

Archaeological sites

Cemeteries

**Authority:**

Connecticut Historical Commission

The Historic Preservation statute primarily covers historic districts and buildings. Separate sections address public disclosure of certain archeological sites, designation of State preserves, and submerged lands.

Penalties include fines of not more than \$5,000, or twice the value of the site or artifact that was the subject of the violation, whichever is greater, or imprisonment of not more than five years, or both. Violators are also liable for the reasonable costs and expenses incurred by the State in restoring sites, associated sacred objects, or archeological artifacts. General code statutes cover other illegal acts related to historic sites and structures.

## CITATIONS

---

**Code:** Connecticut General Statutes Annotated  
(Conn. Gen. Stat. Ann.)

**State Archeologist:** § 10a-112

**Historic Agency:** § 10-321 *et seq.*

**Register:** § 10-321(b)(2); § 10-383(a); § 10-384

**Survey/Inventory:** § 10-321(b)(9) and (17); § 10-385(a); §10-386; §10-391

**Authority to Promulgate Rules/Regulations:** § 10-321(b)(2) and (16); § 10-385(a); § 10-386(b); § 10-389

**Obligation to Report Discoveries:** § 10-388(a)

**Confidentiality of Site Location/Information:** § 10-321(d)

**Permit to Conduct Field Investigations:**

**Land:** § 10-385 and -386

**Submerged Lands:** § 10-386; § 22a-90(1)(j)

**Acquisitions:** § 10a -112a(1)

**Real Property:** § 10-321d

**Artifacts:** § 10-383(a); § 10a-112a(1)

**Gifts:** § 10-321(d) and (f)

**Curation:** § 10a-112a; § 10-321(b)(16); § 10-383; § 10-385(a)

**Education:** § 10a-112a(3); § 10-321(b)(10); § 10a-112(b)(4)

**Commercial Restrictions:** § 10-390(a) and (b)

**Burials♦:** § 10-388 *et seq.*; §19a-315b

**Excavation Prohibited:** § 10-390(a)

**Reinterment:** § 10-388 and -389

**Activity on Private Lands:** § 10-384; § 10-388

**Penalties Provided by Protection Statute(s):**

**Civil:** § 10-390(d) and (e)

**Criminal:** § 10-390(d)

**Native Involvement:** § 10-382; § 10a-112(b)(2)(c)

**Consultation:** §§ 10-384, -388, -389, and -391

**Appointment to State Agency/Commission:** § 47-59b(a)

**Miscellaneous:** §§ 47-42a to c (conservation and preservation restrictions); §§ 7-131b and § 12-127a (tax incentives); §7-131b and c(a) (open space conservation); § 7-147 (establishes local historic districts)

# DELAWARE

## INDEXING CATEGORIES

---

**Main category:**

Archaeology

**Sub-categories:**

Aboriginal sites

Salvage

**Authority:**

Department of State, Division of Historical and Cultural Affairs

The Department of State, through the State Archives and Records Program, is responsible for the management and preservation of public records, as well as the protection, sponsorship, and preservation of archeological sites and resources in Delaware. Although the Delaware archeology statute addresses archeological sites on both public and private lands, penalties for site damage or destruction apply only to activities on public lands. There is a separate statute covering aboriginal sites. No statute addresses underwater archaeological resources, despite recent exploration of historic shipwrecks off the Delaware coast.

The misdemeanor penalty is \$100 and/or 30 days in jail for each offense. Each felony carries a maximum fine of \$10,000 and/or up to two years in prison.

## CITATIONS

---

**Code:** Delaware Code Annotated (Del. Code Ann.)

**State Archeologist:**

**Historic Agency:** Title 29 § 8705

**Register:**

**Survey/Inventory:** Title 7 § 5302 (includes excavation)

**Authority to Promulgate Rules/Regulations:** § 5302; § 5402

**Obligation to Report Discoveries:** § 5305; §5405

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 5302

**Land:** § 5404

**Submerged Lands:** Title 23 § 1305

**Acquisitions:**

**Real Property:** § 5302; § 5304

**Artifacts:** § 5401(4)

**Gifts:**

**Curation:** § 5304

**Education:** § 5401(7) and (9)

**Commercial Restrictions:** § 5409

**Burials♦:** §§ 5403 to 5411

**Excavation Prohibited:** §§ 5405 and 5406; Title 11 § 1340

**Reinterment:** § 5403(4); § 5408(d); § 5409

**Activity on Private Lands:** § 5305; § 5401(3); § 5407

**Penalties Provided by Protection Statute(s):**

**Civil:** § 5306; § 5411

**Criminal:** § 5306; §§ 5409 to 5411; § 5306

**Native Involvement:** § 5403(4); § 5408 (implied)

**Consultation:** §§ 5403 to 5411

**Appointment to State Agency/Commission:** § 404(7)

**Miscellaneous:**

# DISTRICT OF COLUMBIA

## INDEXING CATEGORIES

---

**Main category:**

Historic Landmark/Historic District Protection

**Authority:**

Historic preservation review board

The ordinance focuses primarily on the alteration or destruction of historic buildings, provides both criminal and civil penalties for violations, and includes procedures for administrative hearings. None of the sections deals specifically with archeological resources protection, probably because all Federal protection statutes already apply to the District of Columbia. Civil penalties include the cost of repair or restoration. Criminal misdemeanor convictions carry a maximum fine of \$1,000 and/or sentence of 90 days in jail for each offense.

## CITATIONS

---

**Code:** District of Columbia Code Annotated (D.C. Code Ann.), in addition to applicable Federal law

**State Archeologist:**

**Historic Agency:** § 5-1003; § 5-1103

**Register:**

**Survey/Inventory:** § 5-1003(3)

**Authority to Promulgate Rules/Regulations:** § 5-1009

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:**

**Submerged Lands:**

**Acquisitions:**

**Real Property:**

**Artifacts:**

**Gifts:**

**Curation:**

**Education:**

**Commercial Restrictions:**

**Burials:**

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:**

**Penalties provided by Protection Statute(s):**

**Civil:** § 5-1010

**Criminal:** § 5-1010

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 5-1021 (Historic Rhodes Tavern); § 5-1101 *et seq.* (Old Georgetown District); § 47-842 to -844 (tax incentives)

# FLORIDA

## INDEXING CATEGORIES

---

**Main category:**

Historic Sites and Property

**Sub-categories:**

Archaeology

Cemeteries

Caves

Abandoned ships

**Authority:**

Division of Historical Resources

The primary Florida statute is the Historical Resources Act, which contains State policy regarding preservation and covers both underwater archeological resources and paleontological sites and remains. Crimes and offenses are listed for specifically prohibited acts on public lands, and both criminal and civil penalties are prescribed. Sites on private lands are not protected by the Act, but there is a specific section stating the legislative intent to discourage field investigations on private lands except in accordance with both the spirit and provisions of the protection statute. There is no statutory obligation, however, to report the location of archeological sites. An emergency acquisitions provision in the Act sets aside \$2 million per year for the purchase of endangered archeological sites.

Civil penalties for resources violations include forfeiture of all objects excavated or removed, including all relevant records, photos, etc. An administrative procedure provides for fines of up to \$500 per day against associations that violate the Act. Permit violations are misdemeanors carrying fines of up to \$500, or six months in jail, or both, for each offense.

## CITATIONS

---

**Code:** Florida Statutes (Fla. Stat.)

**State Archeologist:** § 267.061

**Historic Agency:** § 266.0001 *et seq.*; § 266.00001; § 267.0612

**Register:** § 267.11

**Survey/Inventory:** § 267.061

**Authority to Promulgate Rules/Regulations:** §§ 267.11 to .14

**Obligation to Report Discoveries:** § 827.05 (burials); §267.14

**Confidentiality of Site Location/Information:** § 67.042(1)(b)

**Permit to Conduct Field Investigations:** § 267.12

**Land:** § 267.12

**Submerged Lands:** § 267.13; § 267.021; § 376.11; § 823.11

**Acquisitions:** § 267.0612

**Real Property:** § 253.027 (emergency)

**Artifacts:** § 267.12(3)

**Gifts:**

**Curation:** § 240.515; § 267.061; § 267.071

**Education:** § 267.071(3)

**Commercial Restrictions:** § 240.152; § 267.13 and .14

**Burials♦:** §§ 872.02 to .05

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** § 267.14 (legislative intent)

**Penalties provided by Protection Statute(s):**

**Civil:** § 497.056 (burials); § 267.13

**Criminal:** § 267.13(1); § 810.13; § 872.05

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 810.13 (caves); § 704.06 (conservation easements); §§ 266.0001 *et seq.* (recodified the eight Florida Historic Preservation Boards); § 943.1728 (provides for basic skills training relating to the protection of archeological sites)

# GEORGIA

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation/Historic Areas

**Sub-categories:**

Caves

Indians/Aboriginal site protection

Submerged cultural resources

**Authority:**

Department of Natural Resources

Georgia's Historic Preservation Act contains sections on protection of historic and prehistoric archeological sites, and prohibitions against disturbance or removal of sacred/cultural objects from American Indian burial sites. Submerged cultural resources and "scenic trails" are treated separately under Georgia law. Prohibited acts and penalties are specified. The Heritage Trust Program has been established by statute for the purposes of acquiring, rehabilitating, maintaining and protecting archeological sites.

The State co-manages certain areas with the Federal government. Preservation and protection efforts in those areas also are co-managed.

Civil penalties establish a fine of \$1,000 for each violation. Criminal misdemeanor fines are set at \$500 per offense or object taken in violation of the law.

## CITATIONS

---

**Code:** Official Code of Georgia Annotated (Michie) (Ga. Code Ann.)

**State Archeologist:** § 12-3-53

**Historic Agency:** §§ 12-3-70 to -77

**Register:** § 12-3-50.1 and .2

**Survey/Inventory:** § 12-3-53(3); § 12-3-81(c); § 36-72-5(2); § 44-10-26; § 44-12-261

**Authority to Promulgate Rules/Regulations:** § 12-2-8(b); § 12-3-9; § 12-3-52(b); § 12-3-81(a)

**Obligation to Report Discoveries:** § 12-3-52(b); § 12-3-81(b); § 12-3-621; § 31-21-6(b)

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 12-3-52(c); § 2-3-621(a); § 40-813a

**Land:** § 12-3-52(c)

**Submerged Lands:** §§ 12-3-80 to -83

**Acquisitions:** § 44-10-28

**Real Property:**

**Artifacts:** § 44-12-260(3)

**Gifts:** § 13-3-41

**Curation:** § 12-3-53(5)

**Education:** § 12-3-53(6) and (7); § 12-3-50(1); § 12-3-81(c)

**Commercial Restrictions:** § 12-3-622 (abandoned cemeteries and burial grounds)

**Burials♦:** § 12-3-52(7); § 31-21-6, -44, and -45; § 36-72-1 *et seq.*; §§ 44-12-260 to -285

**Excavation Prohibited:** § 31-21-6(a); § 36-72-4

**Reinterment:** § 31-10-20

**Activity on Private Lands:** § 12-3-50(6); § 12-3-52 and -53(3); § 36-72-5

**Penalties Provided by Protection Statute(s):**

**Civil:** § 12-3-11; § 44-12-264

**Criminal:** § 12-4-144; § 12-3-54; § 12-3-83; §§ 12-3-621(c) and -622(b); §§ 31-21-44(c) and -45(6); § 36-72-16; § 44-10-32

**Native Involvement:** § 12-3-52(7); § 31-21-6(b); § 31-21-45(a)(3); § 45-13-42 and -43

**Consultation:** §§ 12-3-620 to -622; § 36-72-5(4).1; § 44-12-261

**Appointment to State Agency/Commission:** § 41-12-280; §§ 44-10-1 to -5

**Miscellaneous:** §§ 12-4-140 to -147 (caves); §§ 44-10-1 to -8, and 85-1407 to -1409 (conservation easements); § 12-2-8(3)(F) (river corridor protection); §§ 44-10-21 to -25 (local Historic Preserves); §§ 12-3-110 to -117 (scenic trails).

**INDEXING CATEGORIES**

---

**Main category:**

Historic Properties

**Sub-categories:**

Abandoned vessels

Indian burials/cemeteries

Hawaiian People

**Authority:**

Land and Natural Resources Department

Hawaiian legislation covers preservation activities by State and local governments on public lands, and includes some regulation of privately owned historic property. Known Native Hawaiian burial sites are protected. A section of the law treating the accidental discovery of human remains is applicable to both historic and prehistoric sites. The State Land Use Commission, which has the power to classify lands as conservation, agricultural, or urban districts, is required to consider the maintenance of valued cultural, historic, or natural resources in its decisionmaking.

Civil actions may be brought by any person against the State to prevent damage to or alteration of property or a burial site. Fines for forgery or sale of historic objects can reach \$10,000 for each offense. Misdemeanor penalties also can reach \$10,000 for each offense, with additional fines imposed to cover the value of the lost or damaged property, or burial site. The State may confiscate and dispose of all equipment used in resources violations without compensation to the owner(s). Knowing violations of the statute can result in the exclusion of individuals or associations from participation in State-funded or county-funded projects for ten years.

**CITATIONS**

---

**Code:** Hawaii Revised Statutes (Haw. Rev. Stat.)

**State Archeologist:**

**Historic Agency:** § 6E-4; § 6E-5.5

**Register:** § 6E-3; § 6E-31

**Survey/Inventory:** § 6E-3(a); § 6E-9

**Authority to Promulgate Rules/Regulations:** § 6E-43.5(c); § 6E-15

**Obligation to Report Discoveries:** § 6E-10(a)

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 6E-9

**Land:** § 6E-3(5); § 6E-9

**Submerged Lands:** § 6E-1 and -2; § 6E-7(c) (burials)

**Acquisitions:** § 6E-3(2); § 6E-7; § 6E-10 (a) and (d) (condemnation of threatened properties)

**Real Property:** § 6E-3(11)

**Artifacts:** § 6E-3(2)

**Gifts:** § 6E-3(6) and (11)

**Curation:** § 6E-6

**Education:** § 6E-3(9)

**Commercial Restrictions:** § 6E-12

**Burials:** § 6E-43

**Excavation Prohibited:** § 338.25.5; § 6E-11(a); § 6E-43

**Reinterment:**

**Activity on Private Lands:** §§ 6E-8 to -10; § 6E-11(b)

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** §§ 6E-11 and -12; § 711-1107

**Native Involvement:** § 6E-43.5(c)(2)

**Consultation:** § 6E-43(b); § 6E-43.6

**Appointment to State Agency/Commission:** § 6E-43.5

**Miscellaneous:** § 6E-15 (historic easements/local land use restrictions); § 205-17 (decision-making criteria for Land Use Commission includes preservation of cultural and historical resources)

# IDAHO

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation and Protection

**Sub-categories:**

Caves

Cemeteries

Archaeology

**Authority:**

Department of Parks and Recreation/Bureau of  
Lands

The following archeological resources are covered in separate statutory sections: historic sites and monuments; archeological and vertebrate paleontological sites and resources; artifacts found in caves or caverns; and removal of artifacts or human remains taken from cairns or graves, including burial sites of Indian tribes. Each section also specifies penalties and/or fines for prohibited acts, including fines for allowing a property of historic significance to deteriorate through “willful neglect.”

Misdemeanors are punishable by fines up to \$300 and imprisonment up to 6 months. If a fine is not paid, an additional \$500 fine and 6 months in jail may be imposed. Felony offenses carry sentences of up to 5 years imprisonment and a maximum fine of \$10,000. Civil penalties include attorney’s fees, monetary damages, forfeiture of any artifacts or remains obtained in violation of the law and all equipment used to commit the violation, and a fine of up to three times the cost of repair, replacement, or reconstruction of the damaged object(s) or site.

## CITATIONS

---

**Code:** Idaho Code

**State Archeologist:**

**Historic Agency:** §§ 67-4123 to -4129A

**Register:** § 67-4115

**Survey/Inventory:**

**Authority to Promulgate Rules/Regulations:** § 67-4121; § 67-4126

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:** § 9-340

**Permit to Conduct Field Investigations:** § 67-4120  
(includes local government lands)

**Land:** § 27-503; § 67-4113

**Submerged Lands:**

**Acquisitions:** § 67-4129

**Real Property:** § 67-4125; § 67-4606

**Artifacts:**

**Gifts:** § 67-4129A

**Curation:****Education:**

**Commercial Restrictions:** § 27-502

**Burials♦:**

**Excavation Prohibited:** § 27-503

**Reinterment:** § 27-502

**Activity on Private Lands:****Penalties Provided by Protection Statute(s):**

**Civil:** § 27-504

**Criminal:** § 18-113; § 18-303; §§ 18-7027 and -7028; §§ 18-7035 and -7036; § 67-4118; § 67-4122; § 67-4617

**Native Involvement:**

**Consultation:** § 27-501

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 18-7035 (caves); §64-4613  
(historic easements)

# ILLINOIS

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation Agency Act

**Sub-categories:**

Archaeology

Cemeteries

Historical watercraft

**Authority:**

Department of Conservation

Except for historic watercraft, sites located on private property, and county government preservation activities, all archeological and historic resources protection is codified in the Historic Preservation Agency Act and the Archaeological and Paleontological Resources Protection Act. Those Acts, however, specify only offenses against artifacts and remains in unmarked graves. Additional provisions addressing crimes, offenses, and penalties are found in the Criminal Code.

Civil penalties may include forfeiture of all equipment used in disturbing a burial site; any and all costs of repair, restoration, curation, and analysis of the affected resources; data recovery costs; reinterment costs; and general civil damages, plus court costs. Initial criminal misdemeanors are punishable by a maximum penalty of one year in jail and \$10,000 in fines. All subsequent offenses are felonies.

## CITATIONS

---

**Code:** Illinois Compiled Statutes (Ill. Comp. Stat.) (ILCS)\*

**State Archeologist:**

**Historic Agency:** 20 ILCS 860/0.01 *et seq.*; 20 ILCS 3405/1 *et seq.*

**Register:** 20 ILCS 3410/6; 20 ILCS 3415/0.1 *et seq.*; 20 ILCS 3420/5(b)

**Survey/Inventory:** 20 ILCS 3410/5(c)

**Authority to Promulgate Rules/Regulations:** 20 ILCS 3420/5; 20 ILCS 3435/6(a); 20 ILCS 3435/9; 20 ILCS 3435/11; 20 ILCS 3440/13; 20 ILCS 3440/15

**Obligation to Report Discoveries:** 20 ILCS 3440/3

**Confidentiality of Site Location/Information:** 20 ILCS 3420/5(b)

**Permit to Conduct Field Investigations:** 20 ILCS 3435/.01 *et seq.*; 20 ILCS 3440/7

**Land:** 20 ILCS 3435/6

**Submerged Lands:** 20 ILCS 3435/6

**Acquisitions:****Real Property:**

**Artifacts:** 765 ILCS 1025/17 (abandoned property)

**Gifts:**

**Curation:** 20 ILCS 3440/14

**Education:**

**Commercial Restrictions:** 20 ILCS 3435/3(c)

**Burials:** 20 ILCS 3440/.01 *et seq.*

**Excavation Prohibited:****Reinterment:****Activity on Private Lands:****Penalties Provided by Protection Statute(s):**

**Civil:** 20 ILCS 3435/5(a) to (e); 20 ILCS 3440/12

**Criminal:** 20 ILCS 3435/5; 20 ILCS 3440/8, /10, and /11

**Native Involvement:****Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** 55 ILCS 5/5-30004 (County Historic Preservation Law)

---

\* The current uniform system of citation used for legal publications was printed prior to this recodification of Illinois Law. The form of citation used here is acceptable at this time.

# INDIANA

## INDEXING CATEGORIES

---

**Main category:**

Heritage and Archaeology

**Sub-categories:**

Caves

Cemeteries

**Authority:**

Department of Natural Resources

**Special Incentives:**

“Hometown Indiana” Program

The Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology, is directed by the SHPO and is primarily responsible for protection and preservation of historic sites and structures, burial disturbances (whether accidental or purposeful), and any artifacts or burial objects discovered during field investigations. The Division also administers Federal preservation grant programs. Indiana law specifies fines and penalties for alteration of historic properties or burial sites. The statute provides for encouragement of amateur archaeologists, and establishes a code of ethics for them.

Disturbance of burials is a felony unless there are mitigating circumstances (e.g., a first offense can be reduced to a misdemeanor). Felony penalties include up to 1 1/2 years in prison and/or a \$10,000 fine. Aggravating circumstances (e.g., repeat offenses) can result in up to 8 years imprisonment. Misdemeanor penalties include a maximum \$1,000 fine and/or six months in jail.

## CITATIONS

---

**Code:** Indiana Code (Ind. Code)

**State Archeologist:**

**Historic Agency:** § 14-3-3.4-1(e)

**Register:** § 14-3-3.4-1(j); § 14-3-3.4-6(a) to (d)

**Survey/Inventory:** § 14-3-3.3-7(b); § 14-3-3.4-6(a) to (d)

**Authority to Promulgate Rules/Regulations:** § 13-4.1-4-3.1(c); § 14-3-3.4-3(a) and (b)

**Obligation to Report Discoveries:** § 14-3-3.4-16; § 14-3-3.4-18

**Confidentiality of Site Location/Information:** § 14-3-3.4-3(b)

**Permit to Conduct Field Investigations:** § 14-3-3.4-7

**Land:** § 14-3-3.4-9

**Submerged Lands:** § 14-3-3.3

**Acquisitions:** § 14-3-3.3-8(b)

**Real Property:** § 14-3-3.4-4; § 14-3-20.1

**Artifacts:** § 13-4.1-4-3.1(5)

**Gifts:** § 14-3-3.4-4(a)

**Curation:** § 14-3-3.3-3(f)

**Education:** § 14-3-3.4-4(b) and (c); § 14-3-3.4-16

**Commercial Restrictions:** § 14-3-3.4-5; § 14-3-3.4-7; § 14-3-3.4-9

**Burials:** § 14-3-3.4-1(m); § 14-3-3.4-16

**Excavation Prohibited:** §§ 14-3-3.4-16 and -17

**Reinterment:**

**Activity on Private Lands:** § 13-4.1-4-3.1(5)

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** § 14-3-3.3-9; § 14-3-3.4-7; §§ 14-3-3.4-15 to -17; § 35-50-1 to -3

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 14-3-3.4-19 (Code of Ethics for Amateur Archeologists); § 35-43.1-3 (caves); §§ 14-4-5.5-1 to -4 (conservation easements); §§ 13-4.1-3-3.1 to 13-4.1-3-6 (coordination of surface mining permits with historic preservation requirements)

**INDEXING CATEGORIES**

---

**Main categories:**

Historical Landmarks, Markers, and Monuments  
 Historical Preservation

**Sub-categories:**

Archaeology  
 State Preserves

**Authority:**

Department of Natural Resources

Iowa vests a great deal of responsibility in the State Archaeologist, who oversees almost every aspect of archeological activity, from discovery exploration of sites to registry, restoration, and preservation of sites and associated artifacts. The Housing Finance Authority, however, is the agency responsible for financing the restoration and rehabilitation of historic properties under a separate statutory provision. Native American burial site protection is treated separately from other burial or cemetery laws. The sole statutory reference to private property deals with limiting liability in cases of sites on private lands.

Statutory penalties for resources violations are confined to third degree criminal mischief provisions. In addition, the law provides for repair and replacement fines of between \$100 and \$500.

**CITATIONS**

---

**Code:** Code of Iowa (Iowa Code)

**State Archeologist:** § 263B.1 *et seq.*

**Historic Agency:** § 303.1.18

**Register:** § 303.2(2)(e) and (f); § 303.8;  
 § 305.5(15); § 70-12.3

**Survey/Inventory:** § 305.5

**Authority to Promulgate Rules/Regulations:**  
 §§ 303 *et seq.*; § 3263B.2; § 455A.5(6)(a);  
 § 465C.8

**Obligation to Report Discoveries:** § 305A.5(2);  
 § 263.5(2)

**Confidentiality of Site Location/Information:**  
 § 263B.10; § 22.7(21)

**Permit to Conduct Field Investigations:**

**Land:**

**Submerged Lands:** §§ 462B.1 *et seq.*;  
 §§ 465C.1 to .4

**Acquisitions:** § 303.5; § 465B.1 *et seq.*

**Real Property:** § 303.8(2)(a); § 350.4(2)

**Artifacts:** § 303.2(2)(i)

**Gifts:** § 303.11; § 350.4(5); § 461a.11

**Curation:** § 303.1(2)(b) to (d); § 263b.2

**Education:** § 303.1(2); § 303.8(a); § 303.16

**Commercial Restrictions:** 303.9(2)

**Burials♦:** §§ 566.31 *et seq.*; § 263B.8

**Excavation Prohibited:** § 263B.9

**Reinterment:** § 263B.8

**Activity on Private Lands:** §§ 461c.1 *et seq.*

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** Title 35 § 716.5; § 566.31

**Native Involvement:** § 70-11.1(7)

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** §§ 108A.1 *et seq.* (scenic/historic rivers); §§ 465C.1 *et seq.* (preserves); § 457A (conservation easements); §§ 462B *et seq.* (dedication of protected water areas with outstanding archeological value); § 22.7(21) (State preserves—includes land/water areas of archeological significance)

# KANSAS

## INDEXING CATEGORIES

---

**Main category:**

Historical Property

**Sub-categories:**

Archaeology

Burials

**Authority:**

State Historical Society

Several individual historic and archeological sites are specifically protected under the Historic Preservation Act, but the Kansas Antiquities Commission has general responsibility for both historic and prehistoric sites and artifacts on State lands. The archeological resources protection provisions closely resemble section 4(f) of ARPA. Recent legislation provides for protection and preservation of unmarked burial sites. Law enforcement is provided by State Historical Society police personnel.

Misdemeanor penalties range from a \$25 fine and/or 30 days in jail, to \$500 and/or six months in jail, and forfeiture of materials obtained in violation of the law. Failure to give notice of a burial site discovery carries a fine of between \$100 and \$500. In addition to criminal penalties, civil damages may be awarded, including attorney's fees, to "any person with a cultural, tribal, research or scientific interest" in a site or object.

## CITATIONS

---

**Code:** Kansas Statutes Annotated (Kan. Stat. Ann.)

**State Archeologist:** § 75-3148

**Historic Agency:** § 75-2714; § 75-2717

**Register:** §§ 75-2715 to -2725; §§ 75-2745 and -2746(a)

**Survey/Inventory:**

**Authority to Promulgate Rules/Regulations:** § 75-2721

**Obligation to Report Discoveries:** § 75-5407

**Confidentiality of Site Location/Information:** § 45-221

**Permit to Conduct Field Investigations:** § 74-5403

**Land:** § 75-5404; § 75-2747

**Submerged Lands:**

**Acquisitions:** § 75-2726

**Real Property:** § 76-2047

**Artifacts:**

**Gifts:**

**Curation:** § 74-5406

**Education:**

**Commercial Restrictions:**

**Burials♦:** §§ 75-2741 *et seq.*

**Excavation Prohibited:** § 75-2753

**Reinterment:**

**Activity on Private Lands:**

**Penalties Provided by Protection Statute(s):**

**Civil:** § 75-2752

**Criminal:** § 74-5408; § 75-2749(c); §§ 76-2027 to -2029

**Native Involvement:** §§ 75-2741 *et seq.*

**Consultation:** § 75-2745(b)

**Appointment to State Agency/Commission:** § 75-2744(4)

**Miscellaneous:**

# KENTUCKY

## INDEXING CATEGORIES

---

**Main category:**

Archaeology

**Sub-categories:**

Caves

Cemeteries

Historical Society

**Authority:**

Department of Parks

Kentucky's archeology legislation contains a strong policy statement regarding the preservation of archeological and cultural resources. Although protection is provided for historic single family cemeteries and Civil War burials, there is no provision for Native American burial sites. Statutes provide for city historic preservation commissions and historic township commissions. Kentucky law also references section 106 of the Federal National Historic Preservation Act.

State enforcement authority may extend to private land if there is a contract with the landowner. Misdemeanor penalties for individuals cannot exceed \$500 in fines or 90 days in jail, unless there is a specific penalty statute for an offense (e.g., there are specific penalty provisions for permit violations).

## CITATIONS

---

**Code:** Baldwin's Official Edition, Kentucky Revised Statutes Annotated (Ky. Rev. Stat. Ann. (Baldwin))

**State Archeologist:**

**Historic Agency:** § 171.311; § 171.381; § 11.026

**Register:** § 171.381(2)(d)

**Survey/Inventory:** § 171.38(2)(d) and (7)(b)

**Authority to Promulgate Rules/Regulations:**

**Obligation to Report Discoveries:** § 164.730

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 164.720

(includes local government lands)

**Land:** § 433-879

**Submerged Lands:**

**Acquisitions:** §§ 11.026 and .027

**Real Property:** § 164.7; § 171.381(d)

**Artifacts:**

**Gifts:** § 171.321; § 171.381(a)

**Curation:**

**Education:** § 171.381(2)(c), (3)(a), and (7)(j)

**Commercial Restrictions:**

**Burials:**

**Excavation Prohibited:** § 164.715; § 164.720

**Reinterment:**

**Activity on Private Lands:** § 164.735; §433.879(d)

(contracting with private owners to excavate caves)

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** § 164.990; §§ 433.873 to .875;

§ 433.883; § 433.885; § 525.110

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 433.870 *et seq.* (caves)

# LOUISIANA

## INDEXING CATEGORIES

---

**Main category:**

Archaeology

**Sub-categories:**

Burials

Caves

Historical associations/sites

Sunken ships/title and salvage

**Authority:**

Department of Culture, Recreation and Tourism

Although there is no regulation of excavation on private lands, the statute does encourage individuals to provide notice to the Department of Culture, Recreation and Tourism so that excavations may be properly supervised. Archeological sites include resources found on submerged lands (coastal zones and scenic rivers) and unmarked burials. Louisiana also has a statute regarding preservation of Colonial trails and certain historic routes.

Fines and penalties for initial and subsequent violations range from \$50-\$100 to not more than \$10,000 in cases of demolition or destruction without a permit. Civil remedies include restoration and repair costs, and forfeiture of any items removed during the illegal act.

## CITATIONS

---

**Code:** West's Louisiana Revised Statutes Annotated  
(La. Rev. Stat. Ann. (West))

**State Archeologist:** § 41:1603B

**Historic Agency:** §§ 25:521 *et seq.*; § 25:736;  
§§ 25:831 *et seq.*; § 41:1603(A)

**Register:** § 41:1607

**Survey/Inventory:** § 41:1604(2); § 41:1607(5)

**Authority to Promulgate Rules/Regulations:**  
§ 41:1604(1); § 41:1607(1)

**Obligation to Report Discoveries:** § 41:1605;  
§ 41:1613

**Confidentiality of Site Location/Information:**  
§ 41:1609

**Permit to Conduct Field Investigations:**  
§ 41:1605B (contracts with fair competition)

**Land:** § 41:1606

**Submerged Lands:** § 49:213.10; § 49:214.29;  
§ 41:1605 and :1606

**Acquisitions:** §§ 41:1607 and :1608; § 41:1605A

**Real Property:** § 41:1608

**Artifacts:** §§ 41:1601 *et seq.*

**Gifts:** § 41:1608A

**Curation:** § 41:1604(3); § 41:1607

**Education:** § 41:1604(4)

**Commercial Restrictions:** § 41:1610

**Burials:** §§ 8:671 *et seq.*; § 41:1607

**Excavation Prohibited:** § 8:673; § 41:1610

**Reinterment:**

**Activity on Private Lands:** § 25:742; § 41:1606  
and :1607; § 41:1611

**Penalties Provided by Protection Statute(s):**

**Civil:** § 41:1612

**Criminal:** § 25:740; § 25:762; § 41:1611;  
§ 41:1614

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**  
§ 1602b.(1)

**Miscellaneous:** §§ 41:1601 *et seq.* (caves);

§§ 56:1951 *et seq.* (Colonial trails); § 9-1252  
(preservation restriction); § 41:1604(9)  
(implementation of Abandoned Shipwreck Act)

# MAINE

## INDEXING CATEGORIES

---

**Main category:**

Archaeology

**Sub-category:**

Historical Sites

Burials

**Authority:**Maine State Museum/Maine Historic Preservation  
Commission

Statutes mandating protection and planning for environmental resources also embrace historic and archeological resources. The purpose of those laws, which are directed at local governments, is to promote cooperative efforts with the State. Another statute gives the State title to all artifacts from State-owned lands, including submerged lands, and establishes a permitting procedure for any activity which disturbs sites that are either posted, State-owned, subject to a preservation easement granted by the landowner to the State, or listed on the National Register of Historic Places. Maine law includes a provision for emergency site designation and a statute protecting historic bridges.

Civil penalties for violations include forfeiture of items taken, fines of \$50 to \$1,000 per day, direct costs of restoration, repair, or mitigation of damage, and court orders to prevent continued violations. The sale of artifacts or items without permission of the owner, whether lawfully excavated or not, carries a penalty of two times the amount of sale or offer to sell. Native American human remains must be transferred to the affiliated tribe, but by law, scientists are allowed to study them up to one year prior to transfer.

## CITATIONS

---

**Code:** Maine Revised Statutes Annotated (Me. Rev. Stat. Ann.)**State Archeologist:****Historic Agency:** 27 § 371; 27 § 502**Register:****Survey/Inventory:****Authority to Promulgate Rules/Regulations:** 27 § 377; 27 § 3504.2.A; 27 § 505.2.A**Obligation to Report Discoveries:** 13 § 1371-A.2.A (undocumented burials)**Confidentiality of Site Location/Information:** 27 § 377**Permit to Conduct Field Investigations:** 27 § 374**Land:** 27 § 374.2B**Submerged Lands:** 27 § 371**Acquisitions:** 5 § 6209; 27 § 376; 27 § 601 (abandoned property)**Real Property:** 33 § 1357**Artifacts:** 27 §§ 371 and 374**Gifts:** 27 § 505.2.C**Curation:** 27 § 372.2; 27 § 376.4**Education:** 27 § 504.1**Commercial Restrictions:** 27 § 376.2**Burials♦:** 22 § 4720; 13 § 1371-A.2**Excavation Prohibited:****Reinterment:** 22 § 4720**Activity on Private Lands:** 27 § 376.4**Penalties Provided by Protection Statute(s):****Civil:** 27 §§ 375 to 376.3**Criminal:****Native Involvement:** 22 § 4720**Consultation:****Appointment to State Agency/Commission:**  
30 § 6212**Miscellaneous:** 36 § 1109.3.B (farm and open space tax credits); 33 §§ 1551 *et seq.* (private and public preservation interest); 27 § 378 (emergency site designation)

# MARYLAND

## INDEXING CATEGORIES

---

**Main category:**

Archeology

**Sub-categories:**

Submerged lands

Indians

Caves

**Authority:**

Department of Housing and Community Development, Division of Historical and Cultural Programs

Archeological resources awareness is reflected in State, county and local laws, although these laws generally emphasize historic building sites. Activity on private land without State-provided archeological assistance is discouraged. The statute provides for Native American representation at the State agency level. Community involvement in excavation projects under the supervision of State-employed archeologists has been successful in some counties.

Recent legislation dealing with activities on shipwrecks and submerged lands in violation of State law carries fairly high monetary penalties and up to two years imprisonment. Misdemeanor penalties range from a \$100 fine and/or 30 days in jail, to a \$10,000 fine and/or one year in jail for a permit violation, plus costs, and forfeiture of all information and materials related to the site.

## CITATIONS

---

**Code:** Annotated Code of Maryland (Md. Ann. Code) Annotated Code of Maryland subject-matter codes: Health-General (Md. Health-Gen. Code Ann.) TaxProperty (Md. Tax-Prop. Code Ann.)

**State Archeologist:** article (art.) 83B, § 5-622 (three positions: Chief Archeologist, Terrestrial Archeologist, and Underwater Archeologist)

**Historic Agency:** art. 83B, § 5-603

**Register:** art. 41, § 181N; art. 83B, § 5-615

**Survey/Inventory:** art. 83B, § 5-615

**Authority to Promulgate Rules/Regulations:** art. 83B, § 5-607(a)(1); art. 83B, § 5-620(i)(2); art. 83B, § 5-626

**Obligation to Report Discoveries:** art. 83B, § 5-621 (encouragement to report)

**Confidentiality of Site Location/Information:** art. 83B, § 5-615(d); art. 83B, § 5-621(c)

**Permit to Conduct Field Investigations:**

**Land:** art. 83B, §§ 5-625, -626, and -628

**Submerged Lands:** art. 83B, § 5-620(a)

**Acquisitions:** art. 83B, § 5-627

**Real Property:** art. 83B, § 5-607(a)

**Artifacts:** art. 83B, §§ 5-611.1(a) and -627

**Gifts:** art. 83B, § 5-607(a)(13)

**Curation:** art. 83B, § 5-607(a)(12) and (b)(7); art. 83B, § 5-627

**Education:** art. 83B, § 5-607(b); art. 83B, §§ 5-620(i) and -623(a); art. 83B, § 5-705(2)(b)(i) and (iv)

**Commercial Restrictions:** art. 83B, §§ 5-611, -611.1(a) and (b), and -620(e)

**Burials♦:**

**Excavation Prohibited:** art. 27, §§ 265 and 267; art. 83B, §§ 5-625 and -626

**Reinterment:** art. 27, § 265; Md. Health-Gen. Code Ann. § 4-215(e) (permit required)

**Activity on Private Lands:** art. 83B, §§ 5-620(j), -621, -623(a), and -628

**Penalties Provided by Protection Statute(s):**

**Civil:** art. 83B, § 5-620(g); art. 83B, § 5-629

**Criminal:** art. 83B, §§ 5-620, -621, and -630; art. 27, §§ 265 and 267; Md. Health-Gen. Code Ann. §§ 4-226(i) and -227 (burials)

(Cont'd)

MARYLAND (Cont'd)

INDEXING CATEGORIES

CITATIONS

**Native Involvement:** art. 83B, § 5-627(b)(2)(ii); art. 83B, § 5-403(6)

**Consultation:** art. 83B, § 5-627(d) (repatriation of burials)

**Appointment to State Agency/Commission:** art. 83B, § 5-402

**Miscellaneous:** art. 83B, § 5-628 (caves); art. 83B, § 5-607(b)(11), and Md. Tax-Prop. Code Ann. § 9-107 (tax credits); art. 83B, § 5-607(a)(9) and (13) (preservation easement donations); art. 25A, § 5(BB), art. 25B, § 13, art. 28, § 7-108(e), and art. 66B, §§ 2.12 and 8.01-5.15 (local restrictions on land use); art. 83B, § 5-614.1 (lighthouses); art. 81, § 12E (tax credit); art. 66D, § 3-801 (restrictions on local land use)

# MASSACHUSETTS

## INDEXING CATEGORIES

---

**Main category:**

Archeology and Archeologists

**Sub-categories:**

Indians/Burials

Historical Districts and Sites

**Authority:**

Historical Commission

Field exploration and investigation on State, county, and municipal lands, and lands in which the Commonwealth has control or interest are under the direction of the State Archeologist, with all recovered materials designated as State property. Fines and penalties are specified for defacement or malicious destruction of sites and structures, forgery of artifacts, and disturbance of Indian burials. Underwater archeological resources are treated under a separate statute. State landmarks and properties with preservation restrictions are held by the State Historical Society.

Unauthorized excavation of sites carries a misdemeanor penalty of \$500, or six months in jail, or both, and forfeiture of all objects removed. If items are knowingly reproduced (i.e., forged), sold, or traded, the penalty for each offense is a fine of up to \$500 and/or imprisonment of six months. Felonies carry sentences of up to two years in prison and a \$1,000 fine for each offense, plus restitution for damages. Penalties for disturbing burials include: 5 years in prison, or 2 1/2 years in jail, or a fine of \$5,000 for disturbing Indian burials on public or private land; and 5 years in prison, or 2 1/2 years in jail, or a \$2,000 fine for the willful destruction or violation of a sepulchre.

## CITATIONS

---

**Code:** Massachusetts General Laws Annotated (West) (Mass. Gen. Laws Ann. (West))

**State Archeologist:** 9 §§ 26A to 26C

**Historic Agency:** 9 §§ 26 to 28; 40C §§ 3, 4, and 10 (towns); 40 § 8D; 6 § 179

**Register:** 9 § 26C and D; 9 § 27C

**Survey/Inventory:** 9 § 26A(1); 9 § 27B; 40 § 8D

**Authority to Promulgate Rules/Regulations:** 40C §§ 4 and 10; 9 § 27C

**Obligation to Report Discoveries:** 9 § 27C; 38 § 6B

**Confidentiality of Site Location/Information:** 9 § 27C; 40 § 8D

**Permit to Conduct Field Investigations:**\* 9 § 26A; 9 § 27C;

**Land:** 9 § 26A; 9 § 27C

**Submerged Lands:** 6 §§ 179 *et seq.*; 91 § 63

**Acquisitions:** 79 § 5A (underwater archeology); 9 § 26A(7)

**Real Property:** 9 §§ 26 and 27A

**Artifacts:** 9 § 27C

**Gifts:** 9 §§ 26 and 27A; 40 § 8D

**Curation:** 91 § 63; 9 § 27C

**Education:** 9 §§ 26 and 26A

**Commercial Restrictions:** 9 § 26A; 9 § 27C

**Burials♦:** 7 § 38A (unmarked burials); 9 § 26A; 38 § 6B ; 114 §§ 17 and 18 (town-owned)

**Excavation Prohibited:** 272 §§ 71 and 73

**Reinterment:** 9 § 26A

**Activity on Private Lands:** 9 §§ 26A(7) and 27C; 266 § 113

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** 9 § 27C; 40C § 13; 266 §§ 95 and 113; 272 §§ 7, 71, and 73

**Native Involvement:** 7 § 38A; 9 § 26A; 9 § 27C

**Consultation:** 7 § 38A

**Appointment to State Agency/Commission:** 7 § 38A

**Miscellaneous:** 9 § 27D (historic homesteads); 184 §§ 31 to 33 (preservation and conservation restrictions)

---

\* The Code of Massachusetts Regulations (Mass. Regs. Code) contains provisions critical to the permitting process. Mass. Regs. Code tit. 950, § 70 covers activities on dry land, and Mass. Regs. Code tit. 312, § 2 covers activities on submerged lands.

# MICHIGAN

## INDEXING CATEGORIES

---

**Main category:**

Historical Sites/Historical Preservation

**Sub-categories:**

Aboriginal records and antiquities

Historic vessels

**Authority:**

Department of Natural Resources

Department of State -Bureau of History

Archeological resources are not addressed specifically in the Michigan statutes, although “sites of historic interest” likely include archeological sites other than historic buildings. Legislation specific to abandoned underwater archeological resources and shipwrecks allows a Great Lakes bottomlands preserve to be established wherever bottomlands include a single watercraft of significant historical value, or contain other historically or archeologically significant features.

Disturbances of aboriginal burial sites are covered by a separate statute. Excavation or exploration of those sites requires an additional permit.

Under the Michigan Aboriginal Records and Antiquities Act, if a penalty is not otherwise specified (NOS), it is limited to a fine of \$100, or a jail term of 90 days, or both. Other applicable misdemeanor statutes provide for fines of \$100 to \$500 and/or jail terms of 30 days to six months. The most severe penalties are reserved for disinterment and removal of aboriginal burial remains or artifacts, which are felony offenses punishable by up to two years in prison and a maximum fine of \$5,000 for each violation. Under the Great Lakes bottomlands statute, anyone who recovers or destroys abandoned property with a fair market value of \$100 or more is guilty of a felony, punishable by up to two years in prison, or \$5,000 in fines, or both. Enforcement authority is vested jointly in the Department of Natural Resources and the Department of State.

## CITATIONS

---

**Code:** Michigan Compiled Laws (Mich. Comp. Laws)

**State Archeologist:**

**Historic Agency:** §§ 399.1 *et seq.*; § 299.51b

**Register:** §§ 399.151 and .152; § 15.1815(1)

**Survey/Inventory:** § 399.5; § 299.51(1)

**Authority to Promulgate Rules/Regulations:**  
§ 399.8a; §299.54f; § 299.51(1)

**Obligation to Report Discoveries:** §§ 299.54b(2), c(2)(c), and d

**Confidentiality of Site Location/Information:**  
§ 399.4a; § 15.231(1)(p)

**Permit to Conduct Field Investigations:** §§ 299.51 *et seq.*

**Land:** § 299.53

**Submerged Lands:** § 299.51(2); § 299.54(c)

**Acquisitions:**

**Real Property:** §§ 554.701 *et seq.*; § 299.51(1); § 299.57

**Artifacts:** § 299.51(1); § 299.51a(a); § 399.7a(3)(a)

**Gifts:** § 399.3

**Curation:** § 399.4

**Education:** § 399.4; § 399.7a(3)(c)

**Commercial Restrictions:** § 299.52

**Burials:** § 299.51; § 299.54a(3)

**Excavation Prohibited:** § 750.160

**Reinterment:**

**Activity on Private Lands:** § 299.54

**Penalties Provided by Protection Statute(s):**

**Civil:** § 299.54h; § 299.56

**Criminal:** §§ 299.54a(4), .55, and .56; §318.251; § 318.253; § 750.160

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 554.706 (open space easement); 322.803(1)(g) (pre-mining inventory of archeological features); 3425.1303(1)(r) (impact statement required—coal mining); 3281.687 (sand dune protection also protects archeological features)

# MINNESOTA

## INDEXING CATEGORIES

---

**Main category:**

Archaeology

**Sub-categories:**

Historic Sites and Landmarks

Indians/Indian Affairs

**Authority:**

Department of Natural Resources

State Historical Society

Extensive legislation dealing with Aboriginal or Indian burial grounds and other significant sites provides for an Indian Advisory Task Force to cooperate with the State Archaeologist in the exploration and development of archeological sites. The Indian Affairs Council is given significant involvement in matters pertaining to Indian burials. Tribal identity of burials must be established, however, before remains may be returned to the tribe for reburial. Some of the statute sections mention the "Indian Affairs Intertribal Board," which is the former name of the Indian Affairs Council.

The Minnesota Field Archaeology Act, administered by the Historical Society, covers all archeological activities on lands owned or leased by the State. There is statutory authority for development of county and municipal heritage commissions.

Fines, rather than incarceration, are the chosen deterrent for violations in most protection statutes. Petty offenses carry a maximum fine of \$100 and are not considered criminal. Battlefield looting is considered a willful violation and is categorized as a "gross misdemeanor," but it is punishable only by a maximum fine of \$3,000. Penalties are assessed for each offense. A statute addressing thefts from cemeteries and removal of remains therefrom includes penalties of up to \$10,000 in fines, or five years in prison, or both. It is not clear whether this statute would apply to unmarked aboriginal burial sites.

## CITATIONS

---

**Code:** Minnesota Statutes (Minn. Stat.)

**State Archeologist:** § 138.35(1)

**Historic Agency:** §§ 138.31 to .42; § 471.193

**Register:** §§ 138.57

**Survey/Inventory:** § 138.35.2; § 138.38

**Authority to Promulgate Rules/Regulations:**  
§ 138.39

**Obligation to Report Discoveries:** § 138.32 (encouragement to communicate); § 307.08(10)

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** §§ 138.31 *et seq.*

**Land:** § 138.33; § 138.36 (includes local government land)

**Submerged Lands:** § 138.31

**Acquisitions:** § 138.37; § 138.052

**Real Property:** § 138.09; § 138.59

**Artifacts:** § 138.35(e)

**Gifts:** § 138.37(3)

**Curation:** § 138.37(1); § 138.35(f)

**Education:** §§ 138.92 *et seq.*; § 138.054;  
§ 138.35(g)

**Commercial Restrictions:**

**Burials♦:** § 307.08 (limited to burials more than 50 years old)

**Excavation Prohibited:**

**Reinterment:** § 307.08(7) and (8)

**Activity on Private Lands:** § 138.32; § 307.08 (burials)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 138.41; § 307.082

**Criminal:** § 138.41; § 89.20; § 398.34;  
§§ 609.03,.04, and .033; § 609.52.3(3)(a);  
307.08(2) (trespass)

**Native involvement:** §§ 126.54 *et seq.*; § 3.922;  
§ 138.40(3)

**Consultation:** § 307.08(4); § 138.35; § 138.40

**Appointment to State Agency/Commission:**  
§ 3.922

**Miscellaneous:** §§ 114B.01 *et seq.* (Mississippi headwaters area); 138.91 (folklife preservation)

# MISSISSIPPI

## INDEXING CATEGORIES

---

**Main category:**

Antiquities

**Sub-categories:**

Shipwrecks/salvage

History

Game and Fish Protection and Refuges

**Authority:**

Department of Archives and History

Under the Antiquities Law, all sites, structures, and objects of archeological significance located “in, on or under” lands belonging to the State, county, municipal and political subdivisions are the exclusive property of the State and may not be taken, altered, or excavated without a permit from the Board of Trustees, Department of Archives and History. Shipwrecks and buried treasure located in, on, or under lands belonging to the State are also the property of the State. Sites, structures and objects of historical significance may be designated as Mississippi landmarks by the Board of Trustees and are subject to the same Antiquities Law restrictions. The Local Government Historic Preservation Law requires cities and counties to notify the Department of Archives and History before letting bids for public construction, in order to protect potential landmarks.

The Attorney General may bring an action under the Antiquities Law. Both criminal and civil remedies exist for violations. Misdemeanor offenses carry fines of between \$500 and \$5,000, or 30 days imprisonment, or both, for each count.

Mississippi law prohibits defacing American Indian or aboriginal items, exclusive of burial mounds or sites. Removal of artifacts from or alteration of sites on private lands that are also designated landmarks may be deterred through civil remedies of injunction or court-ordered restoration and repair of damaged sites. All State agencies and local governments are authorized to assist the Attorney General and the Board of Trustees in enforcing the Antiquities Law. This statute provides for a reward (“finder’s fee”) for information leading to the arrest and conviction of resources violators.

## CITATIONS

---

**Code:** Mississippi Code Annotated (Miss. Code Ann.)

**State Archeologist:**

**Historic Agency:** §§ 39-5-1 *et seq.*; § 39-7-5; §39-15-5

**Register:** §§ 39-7-1 *et seq.*

**Survey/Inventory:** § 39-7-7; § 39-7-17

**Authority to Promulgate Rules/Regulations:** § 39-7-7; § 9-7-21

**Obligation to Report Discoveries:** § 39-7-22(3)

**Confidentiality of Site Location/Information:** § 39-7-41

**Permit to Conduct Field Investigations:** § 39-7-17 (contracts rather than permits)

**Land:** § 39-7-7; § 39-7-17

**Submerged Lands:** § 39-7-3; § 39-7-9; § 39-7-17; § 39-7-19; § 89-17-1

**Acquisitions:** § 39-7-9, 11; § 39-13-9

**Real Property:** § 39-5-17; 39-6-17; § 39-7-23

**Artifacts:** § 39-7-7; § 39-7-21 (custody)

**Gifts:** § 39-7-23 (purchase of artifacts from salvage); § 39-5-23; § 39-5-81

**Curation:** § 39-5-5; § 39-7-7; § 39-7-17

**Education:**

**Commercial Restrictions:** § 39-7-17; § 89-17-27

**Burials♦:**

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** § 39-7-11(3); § 39-7-13; § 39-7-15; § 39-7-17; § 39-7-31

**Penalties Provided by Protection Statute(s):**

**Civil:** § 39-7-37

**Criminal:** §§ 39-7-27 to -33 (unlawful acts); § 39-7-35; § 39-7-39; § 89-17-25

**Native Involvement:** § 39-5-43

**Consultation:**

**Appointment to State Agency/Commission:** § 39-5-43 (Dancing Rabbit Creek Treaty property)

**Miscellaneous:** §§ 53-7-41(b) and -49(a) (denial of permits to conduct mining activities); §§ 39-13-1 *et seq.* (local government historic preservation law); § 39-5-17 (purchase of historic or prehistoric ruins by counties for parks); §§ 89-19-1 *et seq.* (conservation easements)

# MISSOURI

## INDEXING CATEGORIES

---

**Main category:**

Historic Sites

**Sub-categories:**

Caves

Archaeological sites

Shipwrecks

**Authority:**

Department of Natural Resources, Division of Parks, Recreation, and Historic Preservation

Site protection under the Missouri statute extends to open space conservation, unmarked human burial remains, river shipwrecks, and archeological or historical sites and objects of interest found on State-owned lands. Recent legislation includes a Local Historic Preservation Act and a "Main Street Program." Laws concerning the preservation and protection of Indian burial grounds have also been enacted.

Penalties for violations are exclusively in the misdemeanor class; each day a party is in violation constitutes a separate offense. A violation may also result in forfeiture of all objects, specimens, materials, photos, and records associated with the offense.

## CITATIONS

---

**Code:** Missouri Revised Statutes (Mo. Rev. Stat.)

**State Archeologist:** § 253.410 (as part of SHPO staff)

**Historic Agency:** §§ 183.010 *et seq.*; § 253.412 and .415

**Register:**

**Survey/Inventory:** § 253.408(1)

**Authority to Promulgate Rules/Regulations:** § 253.408(2) and (4)

**Obligation to Report Discoveries:** § 194.406 (burials)

**Confidentiality of Site Location/Information:****Permit to Conduct Field Investigations:****Land:**

**Submerged Lands:** § 253.420

**Acquisitions:** § 253.4000.407; § 67.880; § 67.900(5)

**Real Property:** §§ 67.870 (open space);

§ 447.559 (unclaimed property of historic significance); § 253.040; § 253.403

**Artifacts:** § 447.559

**Gifts:** § 67.905; § 253.402; § 253.415(8)

**Curation:**

**Education:** § 253.408(6) and (7)

**Commercial Restrictions:**

**Burials♦:** §§ 194.400 *et seq.*; § 253.408(10)

**Excavation Prohibited:** §§ 214.450 to .455

**Reinterment:**

**Activity on Private Lands:** § 194.405

**Penalties Provided by Protection Statute(s):****Civil:**

**Criminal:** § 253.420.4; § 577.073(3) and (4); § 578.210; § 578.225

**Native Involvement:** § 214.450; § 214.455

**Consultation:** § 194.408(2)

**Appointment to State Agency/Commission:** § 194.409(1)

**Miscellaneous:** §§ 578.200 *et seq.* (caves); § 253.140 (covered wooden bridges)

# MONTANA

## INDEXING CATEGORIES

---

### Main category:

Antiquities and Aboriginal Records

### Sub-categories:

Historical sites and objects

Mining

Burial site protection

### Authority:

Department of State Lands

Department of Fish, Wildlife and Parks

Burial Site Protection

The Montana State Antiquities Act covers archeological sites and paleontological remains, specifically protects burial sites and/or materials, and provides site protection from mining activities. Native Americans are included in resources protection through the Indian Monument and Tribal Flag Circle Advisory Committee. The Antiquities Act encourages local management of historic sites and buildings, and cooperation among counties, cities, and towns to accomplish preservation goals. It provides funding for site stabilization and a preservation program that includes in-kind payment of estate and inheritance taxes.

Recently, the comprehensive Human Skeletal Remains and Burial Site Protection Act was enacted. Initial violation of this statute is punishable by a \$500 to \$1,000 fine, or up to six months in jail, or both. Subsequent violations are felonies punishable by fines ranging from \$20,000 to \$50,000, or prison terms ranging from 5 to 20 years, or both. Failure to report discoveries or permit violations carries civil penalties of up to \$2,000 for the first violation and up to \$10,000 for subsequent violations. Additional civil actions for damages are permitted.

## CITATIONS

---

**Code:** Montana Code Annotated (Mont. Code Ann.)

**State Archeologist:** § 22-3-104(3) (required member of Board of Trustees)

**Historic Agency:** § 22-3-101; § 2-15-1512

**Register:** § 22-3-423; § 22-3-804(3)(a)

**Survey/Inventory:** § 22-3-423(3); § 22-3-424; § 22-3-807

**Authority to Promulgate Rules/Regulations:** § 22-3-107(2); § 22-3-423(9); § 22-3-424(1); § 22-3-804(3)(i)

**Obligation to Report Discoveries:** § 22-3-435; § 90-1-102; §§ 22-3-804(3)(b), -805, -807, and -808(1)(c)

**Confidentiality of Site Location/Information:** § 22-3-423(10); § 22-3-807

**Permit to Conduct Field Investigations:** §§ 22-3-432; § 22-3-804(3)(g)

**Land:** § 22-3-107; § 22-3-432; § 22-3-806; § 22-3-434

**Submerged Lands:** § 22-3-421(2) and (5)

**Acquisitions:** § 23-1-102; § 23-1-108; § 87-1-209(2); §§ 22-3-113 and -114

**Real Property:** § 22-3-107(9); § 22-3-432

**Artifacts:** § 22-3-107(12)

**Gifts:** § 22-3-107(9); § 22-3-303; §§ 22-3-602 and -603; § 22-3-804(3)(h)

**Curation:** § 22-3-107(7); § 22-3-432(3)

**Education:** § 22-3-107(15) and (16); § 22-3-423(6)

**Commercial Restrictions:** §§ 22-3-441(2) and -442; § 22-3-808(1)(b)

**Burials♦:** §§ 22-3-801 *et seq.*

**Excavation Prohibited:** § 22-3-805(2)

**Reinterment:** § 22-3-804(3)(e)

**Activity on Private Lands:** § 22-3-431; § 22-3-804(3)(c) and (d)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 22-3-809

**Criminal:** § 22-3-442; §§ 22-3-805, -806(6), and -808; § 23-1-106

**Native Involvement:** § 22-3-804(1)(a) and (b);

§§ 23-3-805(4),(5),(6)(b), and (6)(c)

**Consultation:** § 60-2-223

**Appointment to State Agency/Commission:** § 22-2-602

**Miscellaneous:** § 82-4-228(2)(b)(ii) (surface mining prohibited on sites of historic or archeological significance)

# NEBRASKA

## INDEXING CATEGORIES

---

**Main category:**

Historical Society

**Sub-categories:**

Archeologists and archeology

Historical Properties

**Authority:**

Games and Parks Commission/State Historical Society

The Preservation of Public Property statute provides a broad basis for protection and preservation of historic and prehistoric sites and artifacts on public park lands. A mirror law, the Wildlife Management statute, covers other public lands.

Legislation now exists to protect unmarked human burials and skeletal remains on public lands. Repatriation of remains and burial objects associated with Native American tribes is mandated, with a three-person mediation committee established to resolve differences between museums and the Native American community.

Crimes and offenses, with appurtenant penalties, are specified in the statute. Most violations, including breaking park rules, are classified as misdemeanors punishable by fines ranging between \$100 and \$500, or jail terms of up to three months, or both. Where a misdemeanor penalty is not otherwise specified (NOS), it is considered a Class I misdemeanor, carrying up to \$1,000 in fines, or up to 1 year in prison, or both.

## CITATIONS

---

**Code:** Revised Statutes of Nebraska (Neb. Rev. Stat.)

**State Archeologist:**

**Historic Agency:** §§ 82-101 *et seq.*

**Register:**

**Survey/Inventory:** §§ 82-106 and -107; § 82-118

**Authority to Promulgate Rules/Regulations:** § 82-118

**Obligation to Report Discoveries:** § 12-1205 (burials)

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:**

**Submerged Lands:**

**Acquisitions:** § 82-120

**Real Property:** § 82-119; § 82-129

**Artifacts:** § 39-1363 (removal/preservation of items found during construction)

**Gifts:** § 82-101; §§ 82-120, and -121

**Curation:** § 12-1208; § 82-101

**Education:** § 82-101

**Commercial Restrictions:**

**Burials♦:** §§ 12-805 and -806

**Excavation Prohibited:** §§ 12-1201 *et seq.*

**Reinterment:** § 12-1208

**Activity on Private Lands:** § 12-1206

**Penalties Provided by Protection Statute(s):**

**Civil:** § 12-1212

**Criminal:** § 12-1205(1); § 82-122; § 82-124; § 82-126; §§ 28-104 *et seq.* (penalties defined)

**Native Involvement:** §§ 12-1209 and -1210

**Consultation:** § 12-1208(3)

**Appointment to State Agency/Commission:** § 81-1214

**Miscellaneous:** § 12-805 (unmarked Indian and other burial grounds); § 12-1211 (dispute resolution regarding disposition of skeletal remains and grave goods)

**INDEXING CATEGORIES**

---

**Main category:**

History and Archeology

**Sub-categories:**

Prehistoric and Historic Sites

Indian burial sites

**Authority:**

Department of Museums, Libraries and History  
Nevada State Historic Preservation Office

Although legislation protects Indian burial sites, the Nevada statute apparently permits surface collecting (and possibly excavation) of Indian artifacts if they are located in an area not falling under the statutory definition of “prehistoric” site. The statute establishing a State Register allows inclusion of sites/structures which, although not eligible for the National Register, are valued or owned by “enthusiastic preservationists.” A Statewide historic preservation plan is mandated. All materials discovered during permitted excavation on public lands must be turned over to the Nevada State Museum or an approved repository.

Civil and criminal violations are statutorily defined. The burial statute, for example, specifies penalties for removal, mutilation, defacement, injury, or destruction of Native American sites or objects. Violations are punishable by up to \$2,000 in fines, or one year in jail, or both. Civil actions may be brought by tribal members to secure injunctions, damages, and other appropriate relief; attorney’s fees also may be awarded. The statute permits forfeiture of any artifacts or human remains obtained in violation of the law, as well as equipment used to commit the violation. Sheriffs, the highway patrol, and all police officers are charged with enforcement authority.

**CITATIONS**

---

**Code:** Nevada Revised Statutes (Nev. Rev. Stat.)

**State Archeologist:**

**Historic Agency:** § 381.002

**Register:** § 383.085

**Survey/Inventory:** § 383.021(a) and (b)

**Authority to Promulgate Rules/Regulations:**  
§ 381.201; § 381.203

**Obligation to Report Discoveries:** § 383.118;  
§ 383.121 (intergovernmental cooperation);  
§ 383.170

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

§ 381.197; §381.199; § 383.111 (contracts rather than permits)

**Land:** § 383.170; §§ 38.199 to .283; § 381.201

**Submerged Lands:**

**Acquisitions:** § 381.009; § 384.170

**Real Property:** § 361A.050; § 381.365.2

**Artifacts:** § 381.207; § 381.219 (exempts surface collection); § 383.160(a)

**Gifts:** § 381.150; § 381.365; § 381.375;  
§ 381.425; § 383.101; § 383.365

**Curation:** §§ 381.004 to .007; § 381.207;  
§ 383.021(c)

**Education:** § 384.020 (public policy, generally)

**Commercial Restrictions:** § 383.180.3(c) (burials only)

**Burials♦:** § 383.170

**Excavation Prohibited:** § 383.170 (exceptions)

**Reinterment:** § 383.160(b); §§ 383.170-2(b),-3,  
and -4

**Activity on Private Lands:** § 383.160(4) (burials);  
§ 383.170; § 383.091

**Penalties Provided by Protection Statute(s):**

**Civil:** § 383.190; § 384.200

**Criminal:** § 381.223; § 381.225; § 381.227;  
§ 383.180 Penalties defined at § 193.140 and  
§ 193.150

**Native Involvement:**

**Consultation:** § 383.170-1

**Appointment to State Agency/Commission:**  
§ 233A.030

**Miscellaneous:** §§ 381.260 *et seq.* (Lost City Museum); § 383.180.4 (exemptions on sales of artifacts not from a cairn/grave site); §§ 111.400 *et seq.* (conservation easements)

# NEW HAMPSHIRE

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation

**Sub-categories:**

none

**Authority:**

Department of Resources and Economic  
Development  
State Historic Preservation Office, Division of  
Historical Resources

Historic resources on State lands and under State waters are covered by the statute, but "treasure hunting" with metal detectors and dowsing rods appears to be exempted. Agreements with private landowners to conduct archeological investigations on burial sites are permitted in the statute, but consultation with the Native American community is mandated. Acquisition of loaned artifacts is treated separately in the Museum Property Act.

Prohibited acts are defined in the Historic Preservation statute. Misdemeanor penalties include forfeiture of items and equipment, restitution to the State for restoration costs, and up to \$1,000 in fines, or six months in jail, or both.

## CITATIONS

---

**Code:** New Hampshire Revised Statutes Annotated  
(N.H. Rev. Stat. Ann.)

**State Archeologist:** § 227-C:1.IX; § 227-C:19  
(required as member of State Heritage Collection Committee)

**Historic Agency:** § 227-C:2 and :3

**Register:**

**Survey/Inventory:** § 227-C:4.I

**Authority to Promulgate Rules/Regulations:**  
§ 227-C:5; § 227-C:22

**Obligation to Report Discoveries:** § 227-C:8-a and -e

**Confidentiality of Site Location/Information:**  
§ 227-C:11

**Permit to Conduct Field Investigations:**

**Land:** § 227-C:7; § 227-C:9; § 12-E:9

**Submerged Lands:** § 227-C:7; § 227-C:17

**Acquisitions:**

**Real Property:** § 227-C:6

**Artifacts:** § 227-C:8

**Gifts:** §§ 227-C:4.XVIII and C:5.VII; § 227-C:22.V

**Curation:** § 227-C:4.XIX

**Education:** § 227-C:4.VIII and .IX

**Commercial Restrictions:**

**Burials♦:** §§ 227-C:10 *et seq.*; § 227-C:1-a

**Excavation Prohibited:** § 227-C:8-c  
(exceptions); § 227-C:8-g

**Reinterment:** § 227-C:8-g

**Activity on Private Lands:** § 227-C:8-b; § 236:45

**Penalties Provided by Protection Statute(s):**

**Civil:** § 236:45

**Criminal:** § 227-C:17 (forgeries/alterations);  
§ 227-C:8-i; §227-C:8-j (exceptions)

**Native Involvement:**

**Consultation:** § 227-C:8-d and :8-g.I

**Appointment to State Agency/Commission:**

**Miscellaneous:** §§ 77.45 to .47 (preservation restrictions); § 227-CCC:10 (avocational archeologist training and certificate)

# NEW JERSEY

## INDEXING CATEGORIES

---

**Main category:**

Historic Memorials, Monuments and Sites

**Sub-categories:**

Historic Preservation

Boats and Boating (Shipwrecks)

Submerged Lands

**Authority:**

Division of Parks and Forestry

With the exception of the permitting statute covering historic, prehistoric, archeological, paleontological and anthropological relics, objects, or artifacts, preservation laws are spread among several different sections of the New Jersey Annotated Code. These include: the Conservation Restriction and Historic Preservation Restriction Act; the Abandoned Vessels Disposition Law, which covers historic vessels and shipwrecks and contains specific sections on theft and trespass on State submerged lands; and municipal land use laws, which influence the activities of county historical commissions regarding surveys.

## CITATIONS

---

**Code:** New Jersey Statutes Annotated (West) (N.J. Stat. Ann.)

**State Archeologist:**

**Historic Agency:** §§ 13:1-B-15.108 *et seq.* (state agency); §§ 40:33B-1 *et seq.* (county agencies)

**Register:** § 13:1B-15.128

**Survey/Inventory:** § 40:33B-5; § 40:55D-109; § 13:1B-15.115; § 13:1B-15.110c

**Authority to Promulgate Rules/Regulations:** § 13:1B-15.137; § 13:1B-15.114

**Obligation to Report Discoveries:****Confidentiality of Site Location/Information:****Permit to Conduct Field Investigations:****Land:**

**Submerged Lands:** § 13:19-10(g)

**Acquisitions:** § 40:60-25.33 and -25.53

**Real Property:** § 40A:12-21(f); §40:32-6; § 13:1B-15.110a; § 13:1B-15.115(b)

**Artifacts:**

**Gifts:** § 40:33B-8; § 13:1B-15.115

**Curation:**

**Education:** § 40:33B-5(j); § 40:55D-109(f)

**Commercial Restrictions:****Burials♦:****Excavation Prohibited:****Reinterment:**

**Activity on Private Lands:** § 13:1B-15.129

**Penalties Provided by Protection Statute(s):**

**Civil:** § 13:19-18 (coastal areas protection)

**Criminal:** § 20-C:20-2 (general theft); § 13:1L-10; § 13:1B-15.131; § 12:3-8

**Native Involvement:****Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** §§ 13:8B-1 to -9 (conservation/historic preservation restriction); §§ 40:33B-1 *et seq.* and 40:55d-28(B)(6) (County Historic Commissions Act/local planning); §§ 40:55D-107 *et seq.* (Planning and Zoning Code - creation by ordinance of historic preservation commissions); 13:19-1 *et seq.* (coastal protection includes archeological and historic sites)

# NEW MEXICO

## INDEXING CATEGORIES

---

### Main category:

Cultural Properties

### Sub-categories:

Caves and caverns

Burials

Indians

### Authority:

Energy, Minerals and Natural Resources  
Department,

Division of State Parks and Recreation; Cultural  
Properties Review Committee

In addition to rather stiff general penalties for any destructive activity in State parks, New Mexico has comprehensive archeology that includes limited control over excavations on private lands. Burial sites and artifacts are protected, and a permit is required for any exploration of burial sites—marked or unmarked—situated on public or private lands. Permits are issued by the Cultural Properties Review Committee with the concurrence of the State Archeologist and the SHPO. There is close cooperation between the Committee and the SHPO in promulgating regulations. The Museum of New Mexico has created a committee on sensitive materials to address the repatriation of materials such as human remains. The Committee and Museum are governed by the Policy on Culturally Sensitive Materials, which is a regulation rather than a statute. Income tax credits are given for preservation of historic and prehistoric sites on private lands.

Misdemeanor penalties include fines of between \$500 and \$1,000, or up to 90 days in jail, or both. Trespass on private lands to remove, damage, or destroy cultural property that has been placed on the State Register is punishable as a misdemeanor. Burial disturbance is a felony punishable by fines of up to \$5,000, or incarceration for 18 months, or both, with forfeiture of all items, equipment, or information related to the violation.

## CITATIONS

---

**Code:** New Mexico Statutes Annotated (N.M. Stat. Ann.)

**State Archeologist:** § 18-6-15

**Historic Agency:** § 9-6-9; § 18-6-4

**Register:** §§ 18-6-5B *et seq.*

**Survey/Inventory:** § 18-6-7

**Authority to Promulgate Rules/Regulations:** § 18-6-5F; § 18-8-8

**Obligation to Report Discoveries:** § 18-6-10C(3); § 18-6-11.2(C)

**Confidentiality of Site Location/Information:** § 18-6-11.1

**Permit to Conduct Field Investigations:** § 18-6-9(B); § 18-6-50

**Land:** § 18-6-10C(5); § 18-6-11

**Submerged Lands:**

**Acquisitions:** §§ 18-6 to -6D; § 18-6-10C; § 18-8-4

**Real Property:** § 18-6-9

**Artifacts:** § 18-10-3; § 18-6-9

**Gifts:** § 18-6-6C; § 18-6-10C(2)

**Curation:** § 9-6-9; § 18-6-5 and -6

**Education:** § 18-6-5(M); § 18-6-16

**Commercial Restrictions:** § 18-6-10a

**Burials♦:** § 18-6-11.2

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** § 7-2-18.2; § 18-6-10(A)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 18-8-7

**Criminal:** § 30-15-6; § 30-12-12; §§ 18-6-9c to -11e; § 18-6-9b

**Native Involvement:** § 28-12-4

**Consultation:**

**Appointment to State Agency/Commission:** § 28-12-4

**Miscellaneous:** § 30-15-5 (caves); § 30-33-9 (Indian arts and crafts); §§ 16-4-1 *et seq.* and §§ 16-5-1 *et seq.* (scenic railroads—narrow gauge)

## INDEXING CATEGORIES

**Main category:**

Historic Sites and Property

**Sub-categories:**

Indians

Archaeological objects

**Authority:**

State Department of Education

Office of Parks, Recreation and Historic Preservation

New York's education statute created the State Museum, which is the repository for all objects or artifacts found through exploration of archeological and paleontological sites found on State lands. Preservation efforts are necessarily a cooperative effort between the Office of Parks, Recreation, and Historic Preservation, the Education Department, and the Lands and Forests Division of the Department of Environmental Conservation. The New York Historic Preservation Act provides permitting requirements, and each involved State agency is required to have its own preservation officer.

State law provides for comprehensive planning to protect historic sites. Over 100 local historic preservation ordinances have been promulgated to accomplish this goal.

Violations of preservation law are generally Class A misdemeanors and carry fines of up to \$1,000. Jail terms can range from sixteen days to one year. Violation of the submerged site protection statute carries administrative penalties of up to \$10,000 in fines and one year in jail. There is an alternative sentence provision that allows the court to fix a fine double the value of any money or property obtained from the commission of the offense. Towns also are allowed to increase penalties for violations of local zoning regulations beyond those penalties established in the applicable penal law classifications. Where a single act results in conviction of two or more offenses, a fine may be imposed for only one of the offenses. Injunctive relief is available under the State Historic Preservation Act and the State Environmental Quality Review Act.

## CITATIONS

**Codes:** McKinney's Consolidated Laws of New York Annotated (N.Y. [subject] Law (McKinney)) (sections cited under this code are to the following subjects: Education (Educ.); General Municipal (Gen. Mun.); Indian; Not-for-Profit Corporation (Not-for-Profit Corp.); Parks, Recreation and Historic Preservation (Parks Rec. & Hist. Preserv.); Penal; Public Buildings (Pub. Bldgs.); Public Lands (Pub. Lands); Public Service (Pub. Serv.); Real Property Tax (Real Prop. Tax); Village)

Official Compilation of Codes, Rules & Regulations of the State of New York (N.Y. Comp. Codes R. & Regs.)

**State Archeologist:**

**Historic Agency:** § 11.03; § 19.01; § 96-a; Gen. Mun. §§ 96(a), and 119-aa to 119-dd; Not-for-Profit Corp. § 1408

**Register:** § 13.03; § 14.07(1)(a); § 19.03(3); N.Y. Comp. Codes R. & Regs. tit. 9, Part 427

**Survey/Inventory:** § 11.09.4; § 13.03; § 19.03

**Authority to Promulgate Rules/Regulations:** Gen. Mun. § 119-dd(1); Gen. Mun. § 96-a; Parks Rec. & Hist. Preserv. § 1409

**Obligation to Report Discoveries:** Educ. § 233.4

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** Educ. § 233.5; N.Y. Comp. Codes R. & Regs. tit. 8, §§ 180.2 to 181.2

**Land:** (regs. only)

**Submerged Lands:** Pub. Bldgs. § 60 *et seq.*

**Acquisitions:** Educ. § 258-a (purchase by cultural agencies); Gen. Mun. § 119-dd(3),(4), and (5); Not-for-Profit Corp. §§ 1408

**Real Property:** § 17.03; §§ 19.01 to 19.11; Not-for-Profit Corp. § 1408

**Artifacts:** § 13.17; § 13.19

**Gifts:**

**Curation:** Educ. §§ 233.1 and 234

**Education:** § 11.01; § 14.05-1(e); § 19.11

**Commercial Restrictions:**

**Burials:** Indian § 12-a; Educ. § 233.3

**Excavation Prohibited:**

**Reinterment:**

(Cont'd)

NEW YORK (Cont'd)

INDEXING CATEGORIES

---

CITATIONS

---

**Activity on Private Lands:** Gen. Mun. § 96-a  
**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** Pub. Lands §§ 8 and 9; Indian § 44;  
Educ. § 233.4; Penal §§ 80.05, .10., and .15  
(penalties defined)

**Native Involvement:** Educ. § 234

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** Not-for-Profit Corp. § 1408; Real  
Prop. Tax § 450 (tax incentives); Pub. Serv.  
§ 146(2) (power plant sites); Village § 7-700  
(comprehensive planning); Educ. § 140 (historic  
documents preservation)

# NORTH CAROLINA

## INDEXING CATEGORIES

---

### Main category:

Archaeological Resources Protection

### Sub-categories:

Nature and Historic Preserves

Indians

Shipwrecks/Underwater archaeological sites

### Authority:

Department of Cultural Resources/Division of  
Archives and History

Department of Environment, Health and Natural  
Resources

Comprehensive legislation has resulted in a management statute similar to ARPA, as well as laws that protect unmarked burials and burial objects, provide for Native American involvement through the Commission on Indian Affairs, and govern abandoned shipwrecks and underwater salvage activities. Some State lands are co-managed with the Federal government. Civil and criminal offenses are included in the preservation statute and penalties are specified. The archeology statute also establishes a Site Steward Program and protects confidentiality of site locations and information. Native American burial sites on private lands are protected. The statute, however, only encourages private landowners to refrain from destructive activities and to place any resources they find in the custody of the State Museum.

Violation of the laws governing salvage of abandoned shipwrecks and other underwater archeological sites, or any related rules or regulations, is a misdemeanor if not otherwise specified (NOS), and carries penalties of up to two years in prison, with the fine amount left to the discretion of the court. This penalty also applies to the destruction or sale of resources from public lands. Violations of the State Archeological Resources Protection Act are subject to criminal penalties of fines up to \$2,000, or six months in jail, or both, with each day of violation treated as a separate offense. Civil penalties allow up to \$5,000 in fines, which shall be used to pay the costs of rectifying damage to archeological resources. All archeological resources taken during a violation, as well as all vehicles and other equipment used in connection with the violation, are subject to forfeiture.

(Cont'd)

## CITATIONS

---

**Code:** General Statutes of North Carolina (N.C.  
Gen. Stat.)

**State Archeologist:** § 70-48(5) [**Note:** State Archeologist title created at Ch. 461 § 2; for Chief Archeologist, see Ch. 761 § 12.1]

**Historic Agency:** § 143B-62; § 143B-49; § 121-3;  
§ 121-8(a)

**Register:** § 70-49(b); § 121-4.1

**Survey/Inventory:** § 121-8(b)

**Authority to Promulgate Rules/Regulations:** § 70-14; § 70-52; § 121-4(9); § 121-23; § 143B-62(2)

**Obligation to Report Discoveries:** § 70-3 (public agency or its contractors); § 70-13(b); § 70-29

**Confidentiality of Site Location/Information:**  
§ 70-18

**Permit to Conduct Field Investigations:** § 70-4;  
§ 121-25

**Land:** § 70-13; § 70-51

**Submerged Lands:** §§ 121-22 to -28; § 121-25  
(percentage to salvors)

**Acquisitions:** § 121-4(8); § 121-9(a), (f) and (g)

**Real Property:** § 121-12(b); § 121-9(b);  
§§ 121-22 and -23

**Artifacts:** § 70-2; § 70-13; § 121-7(c); § 121-23

**Gifts:** § 121-4(1) and (8)

**Curation:** § 70-2; § 70-13(b)(5); § 121-7(a)

**Education:** § 70-50; § 121-4(5); §§ 121-11 and -13

**Commercial Restrictions:** § 70-1; § 70-4; § 70-15(b); § 70-37(2); § 121-25

**Burials♦:** § 70-33 (consult with other individuals);  
§ 121-8(g)

**Excavation Prohibited:** § 70-13(d)

**Reinterment:** § 70-35

**Activity on Private Lands:** § 70-1; § 70-19; § 70-27(b); §§ 70-30 and -31

**Penalties Provided by Protection Statute(s):**

**Civil:** § 70-16; § 70-40; § 70-51(e)

**Criminal:** § 70-4; § 70-15(c) and (e); § 70-17;  
§ 70-40; § 14-149; § 14-159.21; § 121-28

**Native Involvement:** § 70-11(b); §§ 143B-411.1 *et seq.*

**Consultation:** § 70-13(d); § 70-32; § 70-35

**Appointment to State Agency/Commission:**

(Cont'd)

## NORTH CAROLINA *(Cont'd)*

### INDEXING CATEGORIES

---

The Unmarked Human Burial and Skeletal Remains Protection statute specifies prohibited acts, the commission of which constitutes a felony. Failure to notify authorities when human remains or unmarked burials are discovered or disturbed is a misdemeanor (NOS). The act of disturbing human remains or burials is a felony.

### CITATIONS

---

**Miscellaneous:** § 70-50 (site stewardship program);  
§§ 121-34 to -43 (conservation and historic preservation agreements/tax incentives)

# NORTH DAKOTA

## INDEXING CATEGORIES

---

**Main category:**

Archaeological Materials  
Historical Sites

**Sub-category:**

Indians

**Authority:**

State Historical Society

North Dakota has an unusual preservation statute. It recognizes Federal historic preservation law and addresses Federal, State, and private lands. Cooperation among governmental entities for preservation is required, and legislative policy encourages cooperation with various Federal land-managing agencies. Site location information is protected. All surface mining permit requests must be accompanied by an inventory and evaluation of cultural resources, and a mitigation plan for alleviating adverse impacts on those resources.

Violations are designated as Class B misdemeanors, for which a maximum penalty of one year in prison, a fine of \$1,000, or both, may be imposed. If the violation is committed by an association, the maximum fine is \$10,000; agents of the organization may be individually prosecuted. Sentencing alternatives include restitution.

## CITATIONS

---

**Code:** North Dakota Century Code (N.D. Cent. Code)

**State Archeologist:**

**Historic Agency:** § 55-01-01; § 55-02-01

**Register:** §§ 55-10-03 *et seq.*

**Survey/Inventory:** § 55-02-01.2(5); § 55-02-01.3; § 55-10-11

**Authority to Promulgate Rules/Regulations:** § 55-02-03

**Obligation to Report Discoveries:** § 23-06-27

**Confidentiality of Site Location/Information:** § 55-02-07.1

**Permit to Conduct Field Investigations:** §§ 55-03-01 to -07

**Land:** § 38-14.1-10; § 55-03-01; §§ 55-02-01 to -09

**Submerged Lands:** § 55-10-02.1 (land *or* water areas)

**Acquisitions:** § 55-01-02; § 55-01-05; § 55-10-08

**Real Property:** § 55-10-07; § 55-03-02

**Artifacts:** § 55-02-01.2; § 55-02-07; § 55-03-06

**Gifts:** § 55-01-04

**Curation:** § 55-03-02

**Education:** § 55-02-01.2(8)

**Commercial Restrictions:**

**Burials♦:** § 23-06-07; § 23-06-27 (general policy)

**Excavation Prohibited:**

**Reinterment:** § 23-06-27

**Activity on Private Lands:** § 55-03-01.1; § 55-03-05; § 55-10-06;

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** § 55-03-07; § 55-10-13 Penalties defined at §§ 12.1-32-01 *et seq.*

**Native Involvement:** § 23-06-27

**Consultation:** § 23-06-27

**Appointment to State Agency/Commission:** § 54-36-01

**Miscellaneous:** § 38-14.1-07(1) (surface mining restrictions)

## INDEXING CATEGORIES

**Main category:**

Historic Society

**Sub-categories:**

Indians

Lake Erie

Caves

**Authority:**

Ohio Historical Society

Department of Natural Resources Division of  
Natural Areas and Preserves

Although most legislation controlling archeological activities on State lands comes under the State Historical Society statute, a recently enacted law specific to the desecration of archeological markers or “things of interest” is contained in a separate section of the Ohio Revised Code. Survey and salvage of abandoned vessels is addressed through a statute governing activities on Lake Erie, rather than the general watercraft statute. Native American representation on the Historic Site Preservation Advisory Board is mandated.

Penalties for violation of recent legislation enacted to protect submerged lands (Lake Erie) include fines of between \$100 and \$500. A misdemeanor becomes a felony for third and subsequent offenses.

## CITATIONS

**Code:** Ohio Revised Code Annotated (Baldwin)  
(Ohio Rev. Code Ann. (Baldwin))

**State Archeologist:****Historic Agency:** §§ 149.30 *et seq.*; § 1506.37**Register:** § 149.30(M); § 149.51; § 149.55**Survey/Inventory:** § 149-30(M); § 149-54**Authority to Promulgate Rules/Regulations:**  
§ 149.54; § 1506.31(A) and (C); § 1506.34**Obligation to Report Discoveries:** § 149.53;  
§ 1506.33**Confidentiality of Site Location/Information:****Permit to Conduct Field Investigations:**

§§ 1506.32, .33, and .35; § 1506.99

**Land:** § 149.51; § 149.54**Submerged Lands:** § 1506.30 (includes Native  
American sites); § 1506.31; § 1506.32**Acquisitions:** § 149.30(N); § 155.27; §§ 163.01 to  
.22; § 1743.06**Real Property:** § 149-52 (archeological pre-  
serves)**Artifacts:** § 149.30(H); § 1506.33 (sal-  
vage/abandoned property)**Gifts:****Curation:** § 149.30(H)**Education:** § 149.30(F) and (J); § 1506.34**Commercial Restrictions:** § 97.745(2)(c); § 149.30;  
§ 149.51; § 149.55**Burials:** §§ 97.740 *et seq.*; § 149.53**Excavation Prohibited:****Reinterment:****Activity on Private Lands:** § 149.52**Penalties Provided by Protection Statute(s):****Civil:** § 1506.35(D)**Criminal:** § 2927.11; §§ 149.51, .52, and .54;  
§ 1506.99**Native Involvement:** § 149.013**Consultation:****Appointment to State Agency/Commission:**  
§ 149.30.1**Miscellaneous:** § 1517.22 (caves); § 1713.02 (city  
planning); § 5709.18 (tax incentives)

# O K L A H O M A

## INDEXING CATEGORIES

---

### Main category:

Historic Sites and Property

### Sub-categories:

Historical Preservation Act

Indians

Cemeteries

### Authority:

Oklahoma Historical Society

Oklahoma Archaeological Survey

With the exception of human skeletal remains and Native American burial sites—each of which is covered under different code sections—archeological site protection is provided under the Historical Preservation Act. Consultation with Native American tribal leaders is mandated where human skeletal remains and burial artifacts are concerned. Underwater sites lying within lakes and tributaries and on State lands are protected. Federal laws apply exclusively to all lands co-managed with the State pursuant to lease agreements between the State and the Federal government.

Violation of any section of the preservation statute constitutes a misdemeanor punishable by up to \$200 in fines or thirty days in jail, or both, with each day of violation constituting a separate offense. Unlawful sale of artifacts is a misdemeanor with fines ranging from \$100 to \$500, or thirty days in jail, or both. Penalties for disturbing burial sites range from misdemeanors (up to \$500 in fines, or six months in jail, or both) to felonies (\$1,000 in fines and/or 2 years in prison).

## CITATIONS

---

**Code:** Oklahoma Statutes (Okla. Stat.)

**State Archeologist:** 53 § 53

**Historic Agency:** 53 § 2; 53 § 353

**Register:** 53 §§ 51 *et seq.* (includes submerged lands)

**Survey/Inventory:** 53 § 1.3-1; 74 § 241

**Authority to Promulgate Rules/Regulations:** 53 § 1.2B

**Obligation to Report Discoveries:** 21 § 1168.4 and .7; 53 § 361A

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:** 70 § 3309; 53 § 361.4.C (license/burial grounds)

**Submerged Lands:** 53 § 361; 74 § 1828

**Acquisitions:** 53 §§ 1.4 and 1.8; 70 § 3309(a)

**Real Property:** 53 § 1.4; 53 § 361

**Artifacts:** 53 § 1.3-1

**Gifts:** 53 §§ 1.20, 1.8, and 1.11; 53 § 5.1

**Curation:** 53 § 1.3-1 and -2; 53 § 4.10

**Education:** 53 §§ 1.3-2 to -6; 53 § 361.3; 74 § 241(6)

**Commercial Restrictions:** 21 §§ 1168.1 and .3 (display, sale, trade, purchase); 53 § 5.2; 53 § 361

**Burials♦:** 21 § 1168.2

**Excavation Prohibited:** 53 § 361 (license)

**Reinterment:** 8 § 81

**Activity on Private Lands:** 53 § 355D; 53 § 361C.3.e; 53 § 361K and M

**Penalties Provided by Protection Statute(s):**

**Civil:** 70 § 3309(h)

**Criminal:** 21 § 1164; 21 §§ 1168.1 and .6; 53 § 2.1; 53 § 361I to L

**Native Involvement:** 74 § 1849

**Consultation:** 21 §§ 1168 *et seq.*

**Appointment to State Agency/Commission:** 74 § 1202

**Miscellaneous:** 21 § 1789 (caves); 19 § 1104 (cooperation by/between counties)

# OREGON

## INDEXING CATEGORIES

---

**Main category:**

Archaeologists and Archaeology

**Sub-categories:**

Historic Property

Indians

Graves

**Authority:**

Division of State Lands

Department of Parks and Recreation§HPOOffice

A management statute similar to ARPA provides comprehensive statutory authority for protection of archeological sites and objects, and details the kinds of prohibited activities. Protection of historic ghost towns is provided in the cities and municipalities statute. Sites on private property may be cataloged and recommended for transfer to a State agency. Native American burial sites and artifacts are treated under a separate statute. Permits are required for excavation of archeological sites on public or private land. Permit application and review requires consultation with the “most appropriate” Indian tribe. Dispute resolution over permits is established by statute and includes mediation and binding arbitration.

Civil penalties include forfeiture of all property, real or personal, including money, used in the course of a violation. All archeological objects in the possession of persons in violation of the statutory provisions shall be seized by the police. The Attorney General, any district attorney, or any State agency having jurisdiction over the prohibited conduct may institute civil proceedings. Persons accidentally disturbing a cairn or the grave of any “native Indian” as a result of construction, mining, logging, or agricultural activities are required to reinter the remains at their own expense and under the supervision of the appropriate Indian tribe. When criminal action is brought, the general criminal penalty statute applies.

## CITATIONS

---

**Code:** Oregon Revised Statutes (Or. Rev. Stat.)

**State Archeologist:**

**Historic Agency:** § 358.622 (committee)

**Register:** § 358.605

**Survey/Inventory:** § 358.612; § 358.640

**Authority to Promulgate Rules/Regulations:**  
§ 358.617; § 358.640.4

**Obligation to Report Discoveries:** § 358.915  
(exception); § 358.945(3) (exception);  
§ 358.950

**Confidentiality of Site Location/Information:**  
§ 192.501(12)

**Permit to Conduct Field Investigations:** § 273.728

**Land:** § 390.235; § 390.235

**Submerged Lands:** § 273.231(2); § 273.728

**Acquisitions:** § 358.655(3); § 358.685

**Real Property:** § 105.677; § 358.653;  
§ 358.683; § 358.770

**Artifacts:** § 390.235(3)

**Gifts:** § 358.015; 358.612(15); § 358.650;  
§ 358.685

**Curation:** § 390.235(1)(b); § 358.710; § 358.880;  
§ 358.935

**Education:** §§ 358.612(10) and (12); § 358.880(b)

**Commercial Restrictions:** § 97.745(c);  
§ 358.640(3); § 358.647; § 358.920(2)

**Burials:** §§ 97.740 *et seq.*; §358.920(6)

**Excavation Prohibited:** § 97.750

**Reinterment:** § 358.940; § 97.745

**Activity on Private Lands:** § 358.920(5);  
§ 358.915 (exception)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 97.760; § 273.711; § 358.925;  
§ 358.955

**Criminal:** § 97.990; § 273.185; § 273.231;  
§ 273.990; § 358.920; § 358.925

**Native Involvement:** § 97.760; § 358.612(13);  
358.945; § 358.950; § 390.237

**Consultation:** § 97.750; § 358.950;  
§ 390.235(1)(f)(B)

**Appointment to State Agency/Commission:**  
§ 172.110; § 358.622

(Cont'd)

OREGON (Cont'd)

INDEXING CATEGORIES

---

CITATIONS

---

**Miscellaneous:** §§ 271.715 *et seq.* (conservation easements/tax incentive); §§ 358.160 *et seq.* (county funding); §§ 358.310 *et seq.* (city museums); §§ 358.505 *et seq.* and § 358.612(6) (tax incentives); § 358.915 (unintentional discoveries made on public or private lands—retention for personal use); 390.240 (dispute resolution/rulemaking authority to Tribes and Department of State Parks and Recreation).

# P E N N S Y L V A N I A

## INDEXING CATEGORIES

---

### Main category:

Historic Preservation

### Sub-categories:

Caves

Archeological sites

Ancient landmarks

### Authority:

Pennsylvania Historical and Museum Commission

Although Pennsylvania's preservation law dates to 1978, recent details crimes and offenses against archeological resources on public lands, and circumscribes the permitting process. Restrictions have been placed on drilling oil and gas wells in areas containing archeological sites, and notice to Native American tribes is required where State activities may result in disturbance of burial sites.

Penalties for violations of State preservation law vary from summary offense fines (\$100 to \$1,000, with a possible 30-day jail sentence for non-payment) to more serious misdemeanor punishments of up to \$2,500 in fines, or one year in jail, or both, plus forfeiture of all objects, specimens, records, and photographs collected in the course of the violation. Civil remedies of injunction or restraining order may be sought concurrently with any criminal action. Any person or legal entity, including the Attorney General, State or local commissions and agencies, and administrative subdivisions, may bring suit for enforcement.

## CITATIONS

---

**Codes:** Pennsylvania Consolidated Statutes (Pa. Cons. Stat.)

Pennsylvania Statutes (Pa. Stat.)

**State Archeologist:** 37 Pa. Cons. Stat. § 104

**Historic Agency:** 37 Pa. Cons. Stat. § 301; 37 Pa. Cons. Stat. §§ 504 and 505

**Register:** 37 Pa. Cons. Stat. § 502(2)

**Survey/Inventory:** 37 Pa. Cons. Stat. § 302(3); 37 Pa. Cons. Stat. §§ 504(1) and (2), and 506(c)

**Authority to Promulgate Rules/Regulations:** 37 Pa. Cons. Stat. §§ 302(11) and 303(3)

**Obligation to Report Discoveries:** 32 Pa. Cons. Stat. §§ 507 and 508

**Confidentiality of Site Location/Information:** 37 Pa. Cons. Stat. § 506(c)

### Permit to Conduct Field Investigations:

**Land:** 37 Pa. Cons. Stat. § 506(a) and (d)

**Submerged Lands:** 37 Pa. Cons. Stat. § 504(12)

**Acquisitions:** 32 Pa. Cons. Stat. § 5005(a) and (c) (counties); 37 Pa. Cons. Stat. § 502(12)

**Real Property:** 32 Pa. Stat. §§ 5001 *et seq.*

**Artifacts:** 37 Pa. Cons. Stat. § 304(1)

**Gifts:** 37 Pa. Cons. Stat. § 302(1), and § 304(1) and (2)

**Curation:** 37 Pa. Cons. Stat. §§ 302(3) and 304(2)

**Education:** 37 Pa. Cons. Stat. § 302(3) and (4), and § 303(1)

**Commercial Restrictions:** 37 Pa. Cons. Stat. § 304(4) and (5)

### Burials:

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** 32 Pa. Stat. § 5605; 37 Pa. Cons. Stat. § 503

### Penalties Provided by Protection Statute(s):

**Civil:**

**Criminal:** 32 Pa. Stat. §§ 505 and 506; 37 Pa. Cons. Stat. § 302(10) (enforcement); 37 Pa. Cons. Stat. §§ 506 and 511; 18 Pa. Cons. Stat. § 4101; 18 Pa. Cons. Stat. § 4904

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

(Cont'd)

P E N N S Y L V A N I A (Cont'd)

INDEXING CATEGORIES

---

CITATIONS

---

**Miscellaneous:** 32 Pa. Stat. §§ 5601 *et seq.* (caves— includes archeological materials, artifacts, and remains); 37 Pa. Cons. Stat. § 307 (archeological societies); 37 Pa. Cons. Stat. §§ 901-906 (concurrent jurisdiction with Federal government); 53 Pa. Stat. § 6902 (tax incentives); 58 Pa. Stat. § 601.205(c)(5) (restrictions on oil/gas drilling); 37 Pa. Cons. Stat. § 509 (transfer of land with historic resources)

# R H O D E I S L A N D

## INDEXING CATEGORIES

---

**Main category:**

Antiquities Act

**Sub-categories:**

Cemeteries

Historical Preservation

Shipwrecks

**Authority:**

Department of Environmental Management

Historical Preservation Commission

Protection of terrestrial archeological sites is provided by the Historic Preservation Act. Underwater archeological resources are managed by the Department of Environmental Management pursuant to the Antiquities Act, which addresses archeological investigations on lands owned by the State and under State territorial waters. Although Rhode Island law primarily addresses archeological resources on State lands, it also requires communication to the State of known archeological sites on privately owned lands by asserting State privilege of site investigation. Native American burial sites are subsumed under "historic cemeteries" provisions added to the Cemeteries Act in 1992. Under the Cemeteries Act, cities and towns prescribe procedures for the alteration or relocation of historic cemeteries when there is ". . . no prudent or feasible alternative to the proposed alteration." The Historical Preservation Commission has the right to be heard in such proceedings, and must be notified whenever Indian burials are discovered.

Penalties for unauthorized disturbance of underwater archeological properties (shipwrecks) consist of a \$1,000 fine for each offense. Civil actions for restraining orders or injunctive relief may be pursued in any court by the Attorney General, all agency heads, and law enforcement personnel.

## CITATIONS

---

**Code:** General Laws of Rhode Island (R.I. Gen. Laws)

**State Archeologist:**

**Historic Agency:** § 42-45.2

**Register:** § 42-45.5(1)(b)

**Survey/Inventory:** § 42-45.1-6; § 42.45.5(1)(i) and (k); § 46-10.4

**Authority to Promulgate Rules/Regulations:** § 42-45.1-5

**Obligation to Report Discoveries:** § 42-45.1-11 (encouragement only); § 46-10.8

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 42-45.1-4; § 42-45.1-5(a)

**Land:** § 42-45.1-4(a); § 42-45.6

**Submerged Lands:** § 42-45.1-4(b); § 46-10-19

**Acquisitions:** § 42-45.1-4

**Real Property:** § 42-45.1-4; § 42-45.5(1)(f)

**Artifacts:**

**Gifts:** § 42-45.5(1)(f) and (h)

**Curation:****Education:**

**Commercial Restrictions:** § 42-45.1-5(3); § 42-45.1-8; § 42-45.1-9

**Burials:** §§ 23-18-2.1 *et seq.*

**Excavation Prohibited:****Reinterment:**

**Activity on Private Lands:** § 42-45.1-10 and -11

**Penalties Provided by Protection Statute(s):**

**Civil:** § 23-18.2-6

**Criminal:** § 11-20-2; § 23-18.2-5, 6; § 46-10.7; § 46-10-23

**Native Involvement:****Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** §§ 34-39.1 to .5 (preservation restrictions)

# SOUTH CAROLINA

## INDEXING CATEGORIES

---

**Main category:**

Archaeology

**Sub-categories:**

Heritage Trust Program

Underwater Antiquities/Shipwrecks

**Authority:**

Divided among several agencies, primarily the Institute of Archaeology and Anthropology, the Department of Parks, Recreation and Tourism, and the Marine Resources Department

A fairly comprehensive network of statutory protection for historic and prehistoric archeological sites and objects is made effective through strong enforcement provisions. The permitting system includes three kinds of licenses: hobby, search, and salvage. The Underwater Antiquities Act covers not only shipwrecks but *all* prehistoric and historic submerged cultural resources. Various statute sections provide for site stabilization, education programs (including a Community Education Act and Discover America program), and cooperative programs to protect lands for research purposes. An annual State Appropriations Act provides for heritage preserves.

Conservation officers, park and forest rangers, and all other State and local law enforcement officials have enforcement authority. Rule and regulation enforcement is designated by statute to the Attorney General. Statutory violations wherein the assessed damage is less than \$500 are misdemeanors, punishable by a maximum fine of \$100, or thirty days in jail, for each offense. If damage exceeds \$500, the misdemeanor penalty for each offense is a fine of no less than \$500 and no more than \$5,000, or six months imprisonment, or both. The general shipwrecks and salvage operations statute also may offer protection to shipwrecks and associated resources. Violation of underwater antiquities statute constitutes a misdemeanor punishable by a maximum fine of \$50. In addition, if the violator holds a hobby license, it may be revoked. Violation of the terms of the hobby license itself results in a \$100 fine, with possible license revocation. Violation of the terms of an exclusive license to utilize a submerged archeological property is punishable by a fine of up to \$10,000, or imprisonment for up to one year, or both. Each day a violation continues constitutes a separate offense. The violator's license also may be revoked.

## CITATIONS

---

**Code:** Code of Laws of South Carolina Annotated (Law. Co-op.) (S.C. Code Ann. (Law. Co-op.))

**State Archeologist:** § 60-13-210; § 54-7-800; § 54-7-820

**Historic Agency:** § 51-1-60; § 51-1-70; § 60-13-210

**Register:** § 51-17-80; § 51-17-100

**Survey/Inventory:** § 51-1-60; § 51-1-70; § 60-13-10; § 51-17-60(6)

**Authority to Promulgate Rules/Regulations:** § 51-17-90(8); § 51-1-60

**Obligation to Report Discoveries:** § 54-7-670(G)(1) and (H)(1)

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 1-20-25

**Land:** §§ 54-7-610 *et seq.*; § 54-7-670(G)

**Submerged Lands:** §§ 54-7-610 *et seq.*

**Acquisitions:** § 51-17-90(6); § 51-17-115; § 51-17-140; § 51-17-150

**Real Property:** § 51-13-140; § 51-17-930; § 54-7-630

**Artifacts:** § 54-7-630

**Gifts:** § 51-17-80; § 51-17-90; § 51-17-115; § 60-13-40(7)

**Curation:** § 54-7-640; § 60-13-40

**Education:** § 51-3-10; § 51-3-50; § 51-3-120; § 51-3-160; § 54-7-840

**Commercial Restrictions:** § 54-7-60

**Burials:** § 54-7-820(c)

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** § 54-7-830 (exemption); § 51-17-10(6); § 51-17-70.4

**Penalties Provided by Protection Statute(s):**

**Civil:** § 54-7-40

**Criminal:** § 51-3-130; § 51-3-140; § 51-3-145; § 51-3-150; § 51-17-130; § 54-7-60; § 54-7-810

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 54-7-680 (certification of archeological sport divers); § 51-17-110 *et seq.* (historic preserves and sites); § 60-12-10 (protection of State-owned or State-leased lands includes prehistoric sites)

**INDEXING CATEGORIES**

---

**Main category:**

Archaeological Exploration

**Sub-categories:**

Preservation of Historic Sites  
Indian Burial Grounds

**Authority:**

Department of Education and Cultural Affairs  
State Centers for Archaeological  
Research/Historic Preservation

The extensive Archaeological Exploration statute states a public policy for investigations on private lands, provides for recovery of archeological data on public lands endangered by development and construction, and contains specific sections on crimes and offenses. Issues affecting preservation of historic properties at the county and municipal levels shall be addressed at public hearings, with legislative approval required for acquisition of historic properties. Historic sites legislation provides for educational and interpretive programs. Ordinances have been enacted to prevent site deterioration caused by neglect and promote remediation of unsafe site conditions. The State has a Preservation Plan that enables private parties to receive State assistance and allows property taxes to be used for historic preservation activities. Recent legislation protects Indian burial grounds and funerary objects, and provides for tribal involvement in the disposition of objects or reinterment of human remains.

Various classes of misdemeanors are specified in the statute. Class II misdemeanors carry maximum penalties of \$200 in fines, 30 days in jail, and payment of restitution over and above the fine. Class I misdemeanors are punishable by fines of up to \$1,000 and imprisonment of up to one year. Where misdemeanor penalties are not stated (NOS), Class II misdemeanor penalties apply. Purchase, sale, or barter of funerary remains or objects previously buried in the State constitutes a felony. Registered historic sites on private lands are protected statutorily from vandalism or trespass. Forgery or misrepresentation of archeological objects, or sale of unlawfully collected objects, is subject to Class I misdemeanor penalties. There is also a statutory penalty for willful neglect of historic property where such neglect results in site deterioration.

**CITATIONS**

---

**Code:** South Dakota Codified Laws Annotated (S.D. Codified Laws Ann.)

**State Archeologist:** §§ 1-20-19 and -20

**Historic Agency:** § 1-45-22; § 1-45-36; § 1-19-B-2; § 1-19B-38; §§ 1-19B-40 and -41; § 1-19-B-53

**Register:** §§ 1-20-30 and -31; § 51-19A-5

**Survey/Inventory:** §§ 1-19B-8e and -9; § 1-19A-3; § 1-20-21

**Authority to Promulgate Rules/Regulations:** § 1-19A-1; § 1-19B-41; § 34-27-30

**Obligation to Report Discoveries:** § 1-20-22; § 1-20-24; § 1-20-33; § 34-27-25; § 34-27-28

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 1-20-25  
**Land:** §§ 1-20-31 and -32

**Submerged Lands:**

**Acquisitions:** § 1-19A-17; §§ 1-19B-13 to -16; § 1-19B-35; § 1-20-25; § 1-20-28

**Real Property:** § 1-20-34

**Artifacts:** § 1-20-34

**Gifts:** § 1-19A-9; § 1-19B-26

**Curation:** § 1-20-34

**Education:** § 1-19B-18; §§ 1-19A-15 and -16

**Commercial Restrictions:** § 1-20-27; § 1-20-37; § 34-27-22; § 34-27-32; § 34-27-34; § 34-27-36

**Burials♦:** §§ 24-27-21 *et seq.*

**Excavation Prohibited:** § 34-27-31 (exceptions)

**Reinterment:**

**Activity on Private Lands:** § 1-19A-4; § 1-19A-13; § 1-19A-21; § 1-19B-9; § 1-20-29; § 1-20-36

**Penalties Provided by Protection Statute(s):**

**Civil:** § 1-19B-52; § 23A-26-6

**Criminal:** §§ 1-20-35 to -37; § 34-27-22; §§ 34-27-25 and -26

**Native Involvement:** §§ 34-27-21, -28, -31, and -32

**Consultation:** § 1-4-26; § 34-27-23

**Appointment to State Agency/Commission:** § 1-4-7

**Miscellaneous:** §§ 19-B-1 to -60 (county and municipal preservation activities—includes archeological sites, conservation easements, and preservation easements); §§ 1-19-1 *et seq.* (historic sites/monuments); § 1-19A-7 (interagency cooperation in land use planning); § 1-19A-20 (tax incentives)

# T E N N E S S E E

## INDEXING CATEGORIES

---

**Main category:**

Archaeology  
Historic Preservation

**Sub-categories:**

Caves  
Cultural Property  
Indians  
Cemeteries

**Authority:**

Department of Conservation, Division of  
Archaeology

In addition to the archeological resources protection statute, Tennessee has an Abandoned Cultural Property law and a Historic Zoning law. Native American burials are included in the archeology statute. Enforcement provisions give police powers to employees of the Division of Archaeology. Registered sites on private lands are protected by the statute. Any public display of Native American remains (by museums, etc.) is prohibited by law.

Unauthorized excavation of burials on either private and public lands carries criminal misdemeanor penalties. Removal of remains from burial sites is a felony, and violators must pay costs for restoration and repair in excess of \$5,000.

## CITATIONS

---

**Code:** Tennessee Code Annotated (Tenn. Code Ann.)

**State Archeologist:** §§ 11-6-101 and -103

**Historic Agency:** § 4-11-102; § 11-1-101; § 11-6-103

**Register:** § 11-6-110; § 4-11-201

**Survey/Inventory:** § 11-6-101(1); § 11-6-103

**Authority to Promulgate Rules/Regulations:** § 4-11-103; § 11-1-101(e) and (f); § 11-6-103(e); § 11-6-116(b)

**Obligation to Report Discoveries:** § 11-6-107

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:** § 11-6-105

**Submerged Lands:**

**Acquisitions:** § 4-11-107; §§ 66-29-201 to -204

**Real Property:** § 11-6-114

**Artifacts:** § 11-6-104

**Gifts:** § 4-11-107; § 4-12-102(c)(1); § 11-6-114

**Curation:** § 4-12-101; § 11-6-101(2) and (6); § 11-6-104

**Education:** § 11-6-101(4) and (7); § 11-6-109(c)

**Commercial Restrictions:** § 11-6-108

**Burials:**

**Excavation Prohibited:** § 11-6-107; § 11-6-116

**Reinterment:** § 11-6-119

**Activity on Private Lands:** § 4-11-205; § 11-6-107(7); § 11-6-109; § 11-6-110

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** §§ 11-6-105, -106, and -107; § 11-6-109; § 11-6-112; § 11-6-118; § 39-17-311

**Native Involvement:** §§ 11-6-116 to -119

**Consultation:** § 11-6-116

**Appointment to State Agency/Commission:** § 4-34-104; § 11-6-103(4)

**Miscellaneous:** § 11-5-108 (caves); §§ 11-6-107(5) and (6)(B) (exempts surface collecting from penalty); § 11-6-113 (Federal/State transportation agencies—cooperative agreements); §§ 11-15-101 to -108 (protective easements and tax incentives); §§ 66-29-201 to -204 (Abandoned Cultural Properties Act)

**INDEXING CATEGORIES**

---

**Main category:**

Antiquities Code/Archeological Sites and Objects

**Sub-categories:**

Caves

Historical Sites and Property

Shipwrecks/Ships and Shipping

**Authority:**

Parks and Wildlife Department

Texas Antiquities Committee

Texas Historic Commission

Archeological resources embedded in dry or submerged lands are protected under the Texas Antiquities Code, which is a part of Texas Natural Resources law. This law mandates a State archeology program. It also provides for the recordation of sites on private lands. Site protection goals were weakened, however, when a statute providing for volunteer participation in preservation efforts was repealed and replaced by a more general "volunteer services" statute that does not target preservation activities.

Local and municipal governments have considerable authority to acquire and protect historic or archeological sites. Shipwrecks may be designated as archeological "landmarks." In addition, some cultural resources are co-managed with the Federal government.

The statute creating the Texas Historical Commission and Antiquities Committee will expire under a sunset provision unless action is taken in the 1995 legislative session. The Sunset Advisory Committee has recommended that the Antiquities Committee be merged into the Historical Commission and that the Historical Commission be continued.

Generally, a violation of the statute constitutes a misdemeanor punishable by fines of \$25 to \$500. For each offense, civil damages ranging from \$50 to \$1,000 also may be assessed for restoration and repair; each day the violation continues is a separate offense. Persons engaging in activities such as construction or development of land may be liable for damages if they adversely impact historic sites and/or structures. The Attorney General or any citizen may bring an action in District Court to restrain or enjoin violations or threatened violations of the Antiquities Code.

**CITATIONS**

---

**Codes:** Texas Codes Annotated (Vernon) (Tex.

[subject] Code Ann. (Vernon)) (sections cited under this code are to the following subjects: Civil Practice and Remedies (Civ. Prac. & Rem.); Government (Gov't); Health & Safety; Natural Resources (Nat. Res.); Parks and Wildlife (Parks & Wild.); Tax; Local Government (Local Gov't.))

Texas Code of Criminal Procedure Annotated (Vernon) (Tex. Code Crim. Proc. Ann. (Vernon))

**State Archeologist:** Nat. Res. § 191.011(a); Gov't § 442.007(d)-(e)

**Historic Agency:** Gov't § 442.007; Nat. Res. § 191.011

**Register:**

**Survey/Inventory:** Nat. Res. § 191.051; Nat. Res. § 191.091; Gov't § 442.007(b)(1) and (e)(1)-(3)

**Authority to Promulgate Rules/Regulations:** Parks & Wild. §§ 13.101 *et seq.*; Nat. Res. § 191.052; Nat. Res. § 191.058(b)

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:** Nat. Res. § 191.004; Gov't § 442.007(f) [mis-lettered as e1]

**Permit to Conduct Field Investigations:** Nat. Res. § 191.051(4); Nat. Res. § 191.054; Nat. Res. § 191.131

**Land:** Nat. Res. § 191.051; Nat. Res. § 191.053d

**Submerged Lands:** Nat. Res. § 191.053

**Acquisitions:** Nat. Res. § 181.001; Parks & Wild. § 26.001 and .002 (exceptions); Nat. Res. §§ 191.092 and .093; Gov't § 442.051(b)

**Real Property:** Nat. Res. § 181.001; Parks & Wild. § 13.005; Nat. Res. § 191.092

**Artifacts:** Nat. Res. § 191.053(d); Nat. Res. § 191.091

**Gifts:** Nat. Res. § 191.056; Gov't § 442.015(g); Gov't § 442.005(p)

**Curation:** Nat. Res. § 191.058(c); Gov't § 442.007(e)(6)

**Education:** Gov't § 442.005(l); Gov't § 442.007(e)(2)

(Cont'd)

**INDEXING CATEGORIES**

---

**CITATIONS**

---

**Commercial Restrictions:** Nat. Res. § 191.093 to .097; Nat. Res. §§ 191-132 and -133

**Burials:** Health & Safety § 711.004

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** Nat. Res. § 191.057; Nat. Res. §§ 191.094 to .098; Civ. Prac. & Rem. § 75.001

**Penalties Provided by Protection Statute(s):**

**Civil:** Nat. Res. §§ 191.172 and .173; Gov't § 442.011

**Criminal:** Nat. Res. § 201.014; Nat. Res. §§ 201.041 *et seq.*; Tex. Code Crim. Proc. §§ 13.11 and 13.12; Nat. Res. § 191.171; Nat. Res. §§ 191.094 and .095

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** Nat. Res. § 201.001 *et seq.* (caves); Gov't § 442.008 (historic courthouses); Nat. Res. § 191.132a, and Nat. Res. § 183.001 (conservation easements: § 183.001(1)(D) and § 183.001(2)(B)(v) specify archeological resources); Nat. Res. §§ 191.095 to .096, and Parks & Wild. § 11.028 (volunteer program); Tax § 23.81 (tax incentives for land use restrictions to preserve archeological, historic, and scientific sites); Local Gov't §§ 318.001 *et seq.* (historic preservation by counties); Parks & Wild. § 28.1011a (zoning protection and preservation of culturally and historically significant places); Parks & Wild. §§ 28.001 to .004 (historic trails)

**INDEXING CATEGORIES**

---

**Main category:**

Cultural Sites Protection  
Historic Sites

**Sub-categories:**

Antiquities  
History  
Indians

**Authority:**

Utah Division of State History, Antiquities  
Section

The Cultural Sites Protection statute protects archeological sites. The stated legislative intent of this statute is that all sites discovered on private or public lands be reported to the Division of State History. The Antiquities Law requires individuals to obtain a permit before conducting a survey or excavation of archeological or paleontological sites on State-owned or State-controlled lands. Curation is the responsibility of the Museum of Natural History.

Burials located on private and public lands are protected under Utah law. Recent legislation provides for Native American grave protection and repatriation. Activities affecting Native American human remains discovered on State lands after 1992—including remains of individuals and objects placed as part of a death rite or ceremony—may be conducted only pursuant to a separate permit and after consultation with the Native American Remains Committee and the affiliated tribe.

**CITATIONS**

---

**Code:** Utah Code Annotated (Utah Code Ann.)

**State Archeologist:** § 9-8-305

**Historic Agency:** § 9-8-303; § 9-8-201 and -207

**Register:** § 9-8-402

**Survey/Inventory:** § 9-8-203; § 9-8-305

**Authority to Promulgate Rules/Regulations:** § 63-46c-1; §§ 9-8-201, -203, and -303

**Obligation to Report Discoveries:** § 9-8-307; § 9-9-403(4)

**Confidentiality of Site Location/Information:** § 63-2-304(25) and (26)

**Permit to Conduct Field Investigations:** § 9-8-305

**Land:** § 9-8-306

**Submerged Lands:**

**Acquisitions:** § 7A-3-1301; §§ 17A-3-1304 and -1305; §§ 9-8-303, -304, and -305; § 9-8-207

**Real Property:** § 9-8-504

**Artifacts:** § 63-11-56

**Gifts:** § 9-8-506; § 9-8-207

**Curation:** § 53B-17-601 to -603; § 9-8-305

**Education:** § 9-8-203; § 9-8-304

**Commercial Restrictions:** § 9-9-404; § 9-9-305

**Burials:** §§ 9-9-401 *et seq.*; § 76-9-704

**Excavation Prohibited:** § 9-9-305

**Reinterment:** § 9-8-176

**Activity on Private Lands:** § 9-8-306 and -307

**Penalties Provided by Protection Statute(s):**

**Civil:** § 65A-3-1

**Criminal:** § 9-8-305(5); § 9-9-404; § 76-6-902; § 65A-3-1

**Native Involvement:** § 9-9-402; § 9-9-406

**Consultation:** § 9-9-403

**Appointment to State Agency/Commission:** § 9-9-405

**Miscellaneous:** § 9-8-503 (preservation easements); § 9-8-506 (tax incentives); §§ 17A-3-1301 (Historic Districts Act, giving power to counties/cities/towns to protect historic and prehistoric resources)

# VERMONT

## INDEXING CATEGORIES

---

**Main category:**

Archeology  
Historic Preservation

**Sub-categories:**

Cemeteries  
Underwater historic properties/preserve areas

**Authority:**

Division for Historic Preservation  
Agency of Natural Resources  
Public Service Board

Only a small percentage of Vermont lands are State-owned. Nevertheless, laws governing areas such as housing and community affairs, cemeteries and burial grounds, and agricultural land protection, as well as general laws governing land use and development, do address preservation. In addition, the State has a historic preservation statute. Before a party undertakes a broad range of mining, construction, or development activities, local, regional, and State authorities are required to coordinate their preservation plans and complete environmental impact reviews.

Under the State's primary historic preservation statute, misdemeanor penalties are confined to activities conducted without a permit, and consist of fines up to \$1,000, or six months in jail, or both, as well as forfeiture of all objects, equipment and photographs related to the violation(s).

## CITATIONS

---

**Code:** Vermont Statutes Annotated (Vt. Stat. Ann.)

**State Archeologist:** title (tit.) 22, § 722

**Historic Agency:** tit. 22, §§ 701, 721, and 741

**Register:** tit. 22, § 723(a)(3)

**Survey/Inventory:** tit. 22, §§ 761 and 723(a)(1)

**Authority to Promulgate Rules/Regulations:** tit. 10, § 425; tit. 22, §§ 781 and 723(a)(10)

**Obligation to Report Discoveries:** tit. 22, §§ 763, 764, and 767

**Confidentiality of Site Location/Information:** tit. 22, § 761(b)

**Permit to Conduct Field Investigations:** tit. 22, §§ 762 and 782

**Land:** tit. 22, §§ 763 and 764; tit. 10, § 422

**Submerged Lands:** tit. 22, § 782

**Acquisitions:** tit. 22, §§ 766 and 723b

**Real Property:** tit. 22, § 782

**Artifacts:** tit. 22, §§ 764, 781, and 782

**Gifts:** tit. 22, §§ 723(b) and 724(a)(3)

**Curation:** tit. 22, §§ 764 and 781

**Education:** tit. 22, § 762

**Commercial Restrictions:** tit. 22, § 766

**Burials:**

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** tit. 22, § 763; tit. 10, § 823

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** tit. 22, § 791; tit. 135, § 2023; tit. 13, § 3

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** tit. 10, §§ 821 to 823 (preservation rights and interests); tit. 23, § 3311 (restricts vessels from operation in an underwater historic preserve area); tit. 10, § 823 (conservation and preservation interests); tit. 30, § 248(b)(5) (natural gas installations—impact on historic sites)

# VIRGINIA

## INDEXING CATEGORIES

---

**Main category:**

Antiquities Act

**Sub-categories:**

Caves

Cemeteries

Historic Preservation

Underwater Historic Property

**Authority:**

Virginia Department of Historic Resources

Marine Resources Commission

Department of Conservation and Recreation

Archeological sites, burials, caves, and underwater cultural resources are all protected by the Virginia Antiquities and Historic Resources Act, which includes specific sections on zoning, real property, violations and penalties, interagency and intergovernmental cooperation, appropriations from State funds and other sources, and statewide preservation planning. Caves also are covered specifically under the Caves Protection Act. Education programs, though many and varied, are not designated specifically by statute.

Certain privately owned sites and zones are protected under the Antiquities Act with the owner's consent. Archeological activities on these lands may not be conducted without a permit.

Unauthorized excavation of State-owned or State-designated archeological sites constitutes a misdemeanor punishable by a fine of up to \$1,000, or imprisonment of up to one year, or both. Civil penalties are provided for damaging or destroying historic landmarks, and carry maximum fines up to the value of the landmark. If the violation occurs on an underwater archeological site, the penalty provides for forfeiture of all objects recovered. Unauthorized excavation or removal of human remains is a felony punishable by imprisonment of two to ten years.

## CITATIONS

---

**Code:** Code of Virginia Annotated (Va. Code Ann.)

**State Archeologist:** § 10.1-2203(15)\*

**Historic Agency:** §§ 10.1-2400 *et seq.*

**Register:** § 10.1-138

**Survey/Inventory:** § 10.1-230; § 10.1-2202(6); § 10.1-2304

**Authority to Promulgate Rules/Regulations:** § 10.1-2202(5); § 10.1-2205

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 10.1-2302

**Land:** § 10.1-2305 (burials); § 10.1-1003 (caves)

**Submerged Lands:** § 10.1-2214; § 62.1-3

**Acquisitions:** § 10.1-2202(9); § 10.1-2204(4); § 10.1-2207; §§ 10.1-1700 *et seq.*

**Real Property:** § 10.1-2303; § 10.1-2402; § 10.1-201

**Artifacts:** §§ 10.1-2302 and -2303

**Gifts:** § 10.1-2202(3); § 10.1-2404

**Curation:**

**Education:** § 10.1-2202(14)

**Commercial Restrictions:**

**Burials:** § 10.1-2305 (exemption)

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** § 10.1-1008 (caves); § 10.1-2301(7)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 10.1-2205; § 15.1-499.2

**Criminal:** § 10.1-1004; § 10.1-2214; § 10.1-2302; § 10.1-2306

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** §§ 10.1-1001 *et seq.* (caves)

---

\* **Note:** The position of State Archeologist was created in § 10.1-147 of the Conservation Article. When these sections were repealed and recodified, however, the language creating the position was not included. Nonetheless, the position still exists.

# WASHINGTON

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation

**Sub-categories:**

Indian Graves

Shipwrecks

Public lands

**Authority:**

Department of Community Development, Office of Archaeology and Historic Preservation

Broad cultural resources protection is provided through historic preservation legislation, supplemented by the State environmental protection policy, and more recently, through growth management law. Indian burial site protection under the Indian Graves and Records Act includes provisions for individual or collective Native American involvement in the disposition of burial artifacts and reinterment of skeletal remains. As of 1989, a permit is required for excavation or removal of archeological resources on both public and private lands. A statute creating an oral history program was adopted in 1991.

Disturbance of private or public burial sites constitutes a Class C felony, but if proof can be shown that the disturbance was accidental or inadvertent, no fine or sentence shall be imposed. Reasonable efforts to preserve a site and proper reporting of site discovery are considered mitigating factors. Civil remedies for Indian tribes include recovery of attorney's fees, forfeiture of objects and equipment to the tribe, and costs of reinterment (where applicable). Money damages up to \$500, or the actual amount of loss or damage, may be awarded, whichever is greater. Punitive damages are allowed against willful violators. Surface collection of artifacts is exempted from civil or criminal penalties.

## CITATIONS

---

**Code:** Revised Code of Washington (Wash. Rev. Code)

**State Archeologist:**

**Historic Agency:** § 27.34.270; § 27.34.040

**Register:** § 27.34.220

**Survey/Inventory:**

**Authority to Promulgate Rules/Regulations:**

**Obligation to Report Discoveries:** § 27.53.100

**Confidentiality of Site Location/Information:**

§ 27.17.301(1)(k)

**Permit to Conduct Field Investigations:**

§§ 27.53.110 to .150 (salvage archeology contracts)

**Land:** § 27.53.060

**Submerged Lands:** § 79.90.565

**Acquisitions:** § 27.53.045; § 36.24.435

**Real Property:** § 64.04.135; § 64.04.130

**Artifacts:****Gifts:****Curation:**

**Education:** § 43.07.240

**Commercial Restrictions:** § 27.44.040(2);

§ 27.53.060

**Burials♦:** § 68.05.410; § 27.44.020

**Excavation Prohibited:** § 68.05.420

**Reinterment:**

**Activity on Private Lands:** § 27.53.060(1) and (2)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 27.44.050

**Criminal:** § 27.44.040; § 27.53.060;  
§ 27.53.090

**Native Involvement:** § 27.44.050

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 64.04.130 (preservation easements); §§ 84.34.010 to .922 (tax incentives)

# WEST VIRGINIA

## INDEXING CATEGORIES

---

**Main category:**

History/Historic preservation section

**Sub-categories:**

Caves protection

Archaeology

Burials

**Authority:**

Department of Culture and History

Department of Natural Resources

The rules and regulations promulgated by the Department of Culture and History include specific sections on historic and prehistoric site protection section and, together with various general sections of the culture and history statute, provide a measure of archeological resources protection. Violations and penalties are specified for excavation and removal of objects from burial sites. The statute also includes historic preservation zoning provisions.

Penalties for misdemeanor offenses include fines from \$100 to \$500 and/or jail terms of no less than ten days and no more than six months. The illegal sale of artifacts can result in fines of \$1,000 to \$5,000 and jail terms of six months to one year for each offense. Disinterment of human remains is a felony punishable by two years in prison. Civil penalties include the assessed costs of reinterment, restoration, curation, and recovery of objects, and certain administrative costs. Injunctive relief is also available. All fines collected are used to fund resources protection costs, including payment of rewards for information about violators and their activities.

## CITATIONS

---

**Code:** West Virginia Code (W. Va. Code)

**State Archeologist:**

**Historic Agency:** §§ 8-26A-1 *et seq.*; §§ 29-1-1 *et seq.*

**Register:** § 29-1-8(d)(3)

**Survey/Inventory:** § 29-1-8(A)

**Authority to Promulgate Rules/Regulations:** § 8-26A-5; §§ 29-1-6 *et seq.*

**Obligation to Report Discoveries:** § 29-1-8a(d)

**Confidentiality of Site Location/Information:** § 29B-1-4

**Permit to Conduct Field Investigations:** § 29-1-8a(e) (burials); § 20-7A-5 (caves)

**Land:**

**Submerged Lands:**

**Acquisitions:**

**Real Property:**

**Artifacts:** § 29-1-13

**Gifts:**

**Curation:** § 29-1-1; § 29-1-7

**Education:** § 29-1-12

**Commercial Restrictions:** § 29-1-8a

**Burials:** § 29-1-8a

**Excavation Prohibited:** § 29-1-8a (exceptions)

**Reinterment:**

**Activity on Private Lands:** §§ 37-13-1 to -7 (burials)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 29-1-8a(g)

**Criminal:** § 29-1-7; § 29-1-8a, b; § 20-7A-2; § 20-7A-5; § 8-26A-9

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** §§ 20-7A-1 *et seq.* (caves); § 20-6-22(a)(2) (restrictions on mining activities); § 8-26A-4 (historic restriction—allows courts to bar material changes or alterations to historic property)

**INDEXING CATEGORIES**

---

**Main category:**

Historic Sites

**Sub-categories:**

Archaeology

Burial sites/grounds

Indian Mounds

**Authority:**

Department of Natural Resources

In addition to State control and protection of historic and prehistoric archeological resources, Wisconsin law provides for private, non-profit entities to hold significant sites for the public interest, such as Indian mounds. Some zoning laws address historic preservation concerns. Amendments and additions to statutes related to preservation became effective in May, 1994. They provide for county regulation of historic structures, State historic rehabilitation tax credit eligibility criteria, and assistance to the Historical Markers Council, and mandate that cities containing any property listed on either the State or National Register of Historic Places—including archeological sites—enact ordinances for the preservation of “. . . the place, structure or object and its significant characteristics.”

Civil penalties include court-ordered prevention of further activities, attorney’s fees, and restitution in an amount up to two times the gross value of the object(s) or twice the gross value of the loss, whichever is greater, plus court costs. Criminal penalties include fines between \$500 and \$1,000 for some misdemeanors, although certain permit violations carry fines of \$1000 to \$5,000 per offense. Owners who have been notified by the State of an uncatalogued site on their property, and who subsequently disturb that site, are subject to fines of up to \$1,000.

**CITATIONS**

---

**Code:** Wisconsin Statutes (Wis. Stat.)

**State Archeologist:**

**Historic Agency:** § 15.70; §§ 15.705 and .707; § 44.02

**Register:** § 101.121; § 44.36; § 44.45

**Survey/Inventory:** § 44.45; § 157.70(2)(b)

**Authority to Promulgate Rules/Regulations:**

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:** § 44.47

**Land:** § 27.012

**Submerged Lands:** § 44.30

**Acquisitions:** § 27.012(5); § 44.41; § 61.34(3)

**Real Property:** § 70.11 (non-profit holder in trust)

**Artifacts:**

**Gifts:** § 44.20; § 44.015

**Curation:** § 15.70; § 44.205

**Education:** §§ 44.30 *et seq.*

**Commercial Restrictions:**

**Burials♦:** §§ 157.70 *et seq.*

**Excavation Prohibited:**

**Reinterment:** § 157.70(6)(a)

**Activity on Private Lands:** § 895.52 (caves)

**Penalties Provided by Protection Statute(s):**

**Civil:** § 157.70(8)

**Criminal:** § 157.70(8) and (10)

**Native Involvement:**

**Consultation:** § 157.70.5(2)(b)

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 59.97 (county historic preservation programs); § 62.23 (city historic preservation programs with new language mandating city ordinances to preserve properties listed on both the National and State registers of historic places); 66.01 *et seq.* (general municipalities law—includes preservation considerations); § 70.07 (tax credits); § 70.11 (archeological and historic properties exempted from taxation); § 87.304 (regulation of historic properties in floodplains); § 120.12 (consideration of effects of school district actions on historic properties); § 700.40 (conservation easements)

# W Y O M I N G

## INDEXING CATEGORIES

---

**Main category:**

History

**Sub-categories:**

Archaeology

Historic Landmarks/Sites

**Authority:**

Department of Commerce/Parks and Cultural  
Resources Commission

Archeological resources are protected only if they are situated on public lands. Existing protection legislation is meager, and focuses mainly on State and county museum collections and resources. Misdemeanor penalties provide for fines of \$25 to \$100 per offense, and jail terms up to 6 months, as well as forfeiture of materials obtained as a result of the illegal act(s).

## CITATIONS

---

**Code:** Wyoming Statutes Annotated (Wyo. Stat. Ann.)

**State Archeologist:** § 36-4-106

**Historic Agency:** §§ 36-4-101 *et seq.*

**Register:** § 36-4-105

**Survey/Inventory:** § 36-4-106(d)(ii)

**Authority to Promulgate Rules/Regulations:** § 36-1-115

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:** § 36-1-114

**Submerged Lands:**

**Acquisitions:** § 36-1-115; § 36-4-108; § 18-10-105

**Real Property:** § 18-10-101

**Artifacts:**

**Gifts:** § 26-4-111

**Curation:** §§ 18-10-101 to -105

**Education:**

**Commercial Restrictions:**

**Burials:**

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:**

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:** §§ 36-1-114 to -116

**Native Involvement:** §§ 9-2-1902 *et seq.*

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** § 15-1-103 (caves); § 35-11-406(h)(iv) (restrictions on surface mining)

# AMERICAN SAMOA

## INDEXING CATEGORIES

---

NOTE: The American Samoa Code Annotated contains no statutes related to archeological resources protection; all Federal laws, however, are applicable.

## CITATIONS

---

**Code:** American Samoa Code Annotated (Am. Samoa Code Ann.)

# G U A M

## INDEXING CATEGORIES

---

## CITATIONS

---

**Code:** Guam Code Annotated (Guam Code Ann.), in addition to applicable Federal statutes

**State Archeologist:**

**Historic Agency:**

**Register:**

**Survey/Inventory:**

**Authority to Promulgate Rules/Regulations:**

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:**

**Submerged Lands:** § 13985.29 to .35

**Acquisitions:**

**Real Property:**

**Artifacts:**

**Gifts:**

**Curation:**

**Education:**

**Commercial Restrictions:**

**Burials:**

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:**

**Penalties Provided by Protection Statute(s):**

**Civil:**

**Criminal:**

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:**

# PUERTO RICO

## INDEXING CATEGORIES

---

### Main category:

Historic Zones, Buildings and Monuments

### Sub-categories:

Burials

Historic development

Caves

Underwater archaeological sites and resources

### Authority:

In addition to applicable Federal laws, recent legislation includes protection and preservation of caves, caverns, or sinkholes, and amends existing law to provide more rigorous penalties for disturbing or damaging “ancient or historic zones.” A recent underwater archeological resources protection statute includes a strong public policy statement, encourages Commonwealth acquisition of private historic or archeological properties, and establishes penalties for violations.

Violation of the submerged site protection statute carries administrative penalties of up to \$10,000 in fines for each offense (each day constituting a separate offense), as well as misdemeanor penalties of up to \$500 in fines, or six months in jail, or both. Additional fines for restitution of damaged sites or objects also may be imposed. Failure to pay fines or comply with court orders under the statute is punishable by additional fines, up to \$50,000. Violation of the land archeology statute can result in misdemeanor penalties of between \$300 and \$500 in fines, or ten days to six months in jail, or both. Felony penalties for arbitrary destruction of archeological resources or failure to provide notification of discoveries can reach \$25,000 in fines, or three years in prison, or both. Permit violations carry a minimum \$500 fine (\$2,000 maximum) and a maximum three year prison term, and a permit bar on permits.

## CITATIONS

---

**Code:** Puerto Rico Laws Annotated (P.R. Laws Ann.), in addition to applicable Federal law

### State Archeologist:

**Historic Agency:** 18 § 1506; 18 § 1552

**Register:** 18 § 1508(e); 18 § 1554(e)

**Survey/Inventory:** 18 § 1552; 18 § 1554(e)

**Authority to Promulgate Rules/Regulations:** 12 § 1207; 18 § 1515; 18 § 1560; 23 § 162

**Obligation to Report Discoveries:** 18 § 1555; 18 § 1560

### Confidentiality of Site Location/Information:

**Permit to Conduct Field Investigations:** 18

§§ 1508(h) and 1509; 18 § 1559

**Land:** 12 § 1143(f)

**Submerged Lands:** 18 §§ 1501 *et seq.*

**Acquisitions:** 18 § 1557

**Real Property:** 18 § 1514(a) [subseq. to 18 § 1198(b)(4)]; 23 § 171; 28 § 11

### Artifacts:

**Gifts:** 18 § 1193; 18 § 514(b); 18 § 6564

**Curation:** 18 § 1508(i)

**Education:** 18 § 1554(g)

**Commercial Restrictions:** 12 § 1143c(7); 18 § 1559; 18 § 1563; 23 § 165a

### Burials:

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:** 18 § 1514(a); 18 § 1556

### Penalties Provided by Protection Statute(s):

**Civil:** 18 §§ 1518(d) and 1563 (administrative fines); 18 § 1561

**Criminal:** 12 § 1143(c); 18 §§ 1512 to 1518; 18 §§ 1555, 1560, and 1563; 23 § 166

### Native Involvement:

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** 12 §§ 1143 to 1143h (caves); 18 § 1508(j) (salvage contracts); 18 § 1509 (EIS with bond posted for underwater sites); 18 § 1511 (economic benefit sharing); 18 § 1558 (restoration, conservation, and maintenance)

# VIRGIN ISLANDS

## INDEXING CATEGORIES

---

**Main category:**

Historic Preservation Commission

**Sub-categories:**

Cemeteries

Historic districts

**Authority:**

Department of Planning and Natural Resources

Archeological resources protection under Virgin Islands law derives from general statutes pertaining to activities on public lands. In addition, Federal civil and criminal protection and preservation statutes also apply to the Virgin Islands.

## CITATIONS

---

**Code:** Virgin Islands Code Annotated (V.I. Code Ann.), in addition to applicable Federal law

**State Archeologist:**

**Historic Agency:** title (tit.) 22, § 3-403

**Register:** tit. 29, § 282

**Survey/Inventory:** tit. 29, § 285

**Authority to Promulgate Rules/Regulations:** tit. 29, § 280 *et seq.*

**Obligation to Report Discoveries:**

**Confidentiality of Site Location/Information:**

**Permit to Conduct Field Investigations:**

**Land:**

**Submerged Lands:**

**Acquisitions:**

**Real Property:**

**Artifacts:**

**Gifts:** tit. 29, § 281(4)

**Curation:**

**Education:**

**Commercial Restrictions:**

**Burials:** tit. 14, § 1265

**Excavation Prohibited:**

**Reinterment:**

**Activity on Private Lands:**

**Penalties Provided by Protection Statute(s):**

**Civil:** tit. 29, § 287

**Criminal:** tit. 14, § 1265

**Native Involvement:**

**Consultation:**

**Appointment to State Agency/Commission:**

**Miscellaneous:** tit. 33, § 362 (tax incentives)

## FINDING AND READING STATE LAWS

Two basic sources may be consulted in order to locate State laws that promote archeological resources protection. The general indexes to State law codes contain citations to preservation and protection provisions. Category rubrics found in the survey section of this study are typical index entries. Agency and other publications also might cite pertinent State statutes.

A close examination of State laws should help to answer several questions:

**1. What do certain words mean?** When examining State laws, sections that provide definitions of terms relevant to the particular statute should not be overlooked. Definitions provide clarification of and limitations to the law. This can be critical in determining whether the statute treats a specific problem in whole or part. For example, under the Federal Archaeological Resources Protection Act, part of the definition of an archeological resource is that an item is at least 100 years old. In contrast, under the various State statutes, the mandated age of an artifact or antiquity ranges from 50 to 150 years.

**2. Is there a requirement that the State and Federal law be strictly compatible?** Unless the State law requires reliance upon or deference to Federal law, the State law need not track existing Federal preservation and protection law.

**3. What is the purpose of the law?** The preservation community tends to focus its efforts on the protection of historic structures and sites by promoting legislation that will produce funding for specific projects. Nonetheless, such laws may bring collateral benefits to prehistoric archeological resources. For example, historic preservation legislation passed by Wisconsin in 1988, prioritized historic properties such as homes and historic buildings used for public purposes, but it also expanded an existing field archeology act to increase protection of archeological sites and establish a regional field archeology program. Finding the purpose of a law may require reading the entire statute, absent a specific section expressing the public policy or legislative intent behind the law. Laws enacted for primary purposes such as land management, environmental protection, restriction of certain activities, or acquisition of property by the State may contain sections that strengthen existing protection laws or, generally, serve a protection or preservation need when more specific laws are absent.

**4. What is the scope of the law?** The title of a law can be deceiving, and the general index to statutes does not indicate the breadth of the statute. Only by reading the statute would one know, for example, that four States now have rehabilitation tax credits, but that these credits apply to historic structures only, not archeological sites. Also, historic preservation laws may not be state-oriented at all but, rather, serve to empower counties and municipalities to enact preservation and protection ordinances. In Dade County, Florida, for example, local preservation ordinances apply to both public and private property, leading some advocates to

assert that local ordinances out-perform State laws. Locating the real authority for effecting archeological resources protection, therefore, requires a reading of the statute. In addition, while all States have specific cemetery laws, the purpose of those laws was not cultural resources protection. Consequently, specific legislation has been required in order to protect prehistoric and historic Native American burials and other burial sites, and associated funerary objects. With the enactment of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA; 25 U.S.C. § 3001), existing State statutes dealing with Native American burials might require revision.

**5. How is the law implemented?** State statutes generally create entities such as boards, commissions, societies, or trusts to implement preservation law and help establish State preservation policies. Some States give broad powers and responsibilities to these groups, while other States limit their authority to advisory duties. The effectiveness of preservation and protection laws depends on how the State restricts or empowers its various agencies concerning cultural resources issues.

**6. How is the law enforced?** Statutes may or may not state specifically how preservation laws are to be enforced. Agencies and law enforcement personnel might share responsibility. In several States, any citizen has standing to bring an action to enforce protection/preservation laws. Some State statutes detail the criminal penalties for violations. Others refer to general criminal offenses that apply to resources violations, and often do not provide the apposite criminal code sections. A few States also include specific civil remedies that may be sought notwithstanding any criminal actions pending or completed. A significant number of minor violations are dealt with through administrative procedures found in the various State regulations that have been promulgated to implement the statutes. Mechanisms for collecting court-ordered fines are always found in the general statutes, although the preservation statutes often contain sections designating how fines collected by the State are to be used and establishing repository funds.

## LOOKING AT STATE LAWS

Figures 1 through 3 provide examples of State statute organization, and point out information in each section. State laws typically include some or all of the following:

**History and statutory notes.** Sometimes referred to as “editor’s notes,” these explain how and when the law was enacted or amended, list cross-references, and provide information about any sections that have been recodified. The effective date of the law and, where applicable, the effective date for any “sunset provisions” are also given.

**Disposition tables.** These tables show when and where the law can be found before and after any amendments, recodification, or reenactment of the statute. Tables may appear in a variety of places depending on how the individual State code is organized.

**Chapter headings.** Chapter headings provide a summary of what is included within the statute or chapter, and sometimes might list each section with a topic statement.

**Publisher’s reference aids.** Reference aids are found either at the beginning or the end of a section. They include cross-references, citations to law review articles, library references (including computer libraries), and sometimes a listing of cases without commentary on case content.

**Notes to Decisions.** These are separate paragraphs on each point relevant to the statute section. They appear at the end of the section, usually with specific short headings, and may contain important information about the constitutionality of the statute or how the statute interacts with Federal law.

**Pocket parts.** So called because they are supplements that fit into a pocket on the inside back cover of the code book, these cumulative supplements provide the latest amendments, deletions and additions to the specific code volume, as well as information on any new cases in which the law was applied. It is critical to check the pocket parts when looking up the law. The pocket parts follow the sequence of the volume itself. Some codes underline or italicize new text within the statute itself, and indicate deletions with closed empty brackets or asterisks.

**Opinions of the Attorney General.** When the State Attorney General receives requests for interpretation of all or part of a statute pertaining to issues of general importance and interest, the opinions generated are summarized at the end of the statute section(s) in question. These opinions are advisory in nature and do not create precedent, but courts may accord them some weight, particularly where there is no existing case law.

**Conversion tables.** Conversion tables show which sections of the law have been revised and cite both the former and revised section numbers. Often these tables appear in a separate soft-bound volume or in pocket parts, or are reprinted at the beginning of the statute section.

**Advance Code Service.** Soft-bound, cumulative pamphlets provide current information on cases, Attorney General opinions, and law review articles. The Service is published between annual shipments of the code supplements, and includes laws passed in Special Legislative Sessions. The Service is used in conjunction with the bound volumes and most recent cumulative supplements of the code.

**Tables of Comparable Sections.** When a code is undergoing major revisions or recodification, a separate table is printed to track the progression of the laws from the old code volumes and titles to the new ones. These tables are usually published in a soft-bound volume and are updated as each recodification is completed.

**ILLUSTRATION 1. Example of State Statute:** DELAWARE CODE ANNOTATED (Michie), Title 7 (Conservation), Subchapter I (General Provisions). (7 Del. Code Ann. § 5401 (1991)).

7 § 5401	CONSERVATION	7 § 5401
<b>CHAPTER 54. ARCHAEOLOGICAL ACTIVITIES</b>		
<p><b>Subchapter I. General Provisions</b></p> <p>Sec. 5401. Duties of the Department of State. 5402. Rules and regulations.</p> <p><b>Subchapter II. Archaeological Excavation</b></p> <p>5403. Purpose. 5404. Definitions.</p>	<p>Sec. 5405. Discovery of remains and notification of authorities. 5406. Jurisdiction over remains. 5407. Archaeological investigation of human skeletal remains. 5408. Consultation, analysis and disposition. 5409. Prohibited acts. 5410. Exceptions. 5411. Penalties.</p>	
<p><b>Cross references.</b> — As to transfer of powers, duties and functions of Delaware Archaeological Board to Division of Historical and Cultural Affairs of Department of State, see § 8705 of Title 29.</p>		
<i>Subchapter I. General Provisions</i>		
<b>§ 5401. Duties of the Department of State.</b>		
<p>The duties of the Department of State relative to archaeological history, activities and interests within the State are as follows:</p> <ol style="list-style-type: none"> <li>(1) To sponsor, engage in and direct fundamental research into the archaeology of this State and to encourage and coordinate archaeological research and investigation undertaken by any archaeological society or association of the State;</li> <li>(2) To cooperate in the excavation of sites of historical significance which have or may come into the custody or control of any other agency of this State;</li> <li>(3) To protect and encourage the preservation of prehistoric sites located on privately owned lands in this State;</li> <li>(4) To retrieve and protect objects of archaeological significance discovered during the course of any public construction in this State;</li> <li>(5) To cooperate with and assist the University of Delaware and other public institutions of this State in the preservation and protection of objects of archaeological nature which have or may come into their custody;</li> <li>(6) To furnish to the Delaware State Museum materials and objects of a nature suitable for the demonstration of the archaeological history of this State;</li> <li>(7) To furnish to public and private schools of this State exhibits, and to assist in the instruction of pupils as to the manner of early life of the natives of Delaware;</li> <li>(8) To cooperate with similar agencies of other states for the general purposes of preserving archaeological sites and objects of significance of this State, and to prevent the exploitation of such sites and objects within this State by institutions or agencies of other states;</li> </ol>		
258		

CITATION

CHAPTER HEADINGS & SUBJECT TOPICS

REFERENCE AIDS

SUBCHAPTER & SECTION HEADINGS

OFFICIAL TEXT OF CODE

Delaware Code Annotated Copyright © 1991, The Michie Company; all rights reserved. Reproduced with permission.

**ILLUSTRATION 2. Example of State Statute (Cont'd):** DELAWARE CODE ANNOTATED (Michie), Title 7 (Conservation), Subchapter II (Archaeological Excavation). (7 Del. Code Ann. § 5403 (1991)).

STATUTORY  
SOURCE  
REFERENCES

7 § 5402

ARCHAEOLOGICAL ACTIVITIES

7 § 5404

(9) To disseminate archaeological facts through the publication of reports of archaeological research and investigation conducted in the State or pertaining thereto;

(10) To enforce the laws regulating archaeological sites and materials situated on state-owned or state-controlled lands. (7 Del. C. 1953, § 5403; 49 Del. Laws, c. 232; 52 Del. Laws, c. 253; 57 Del. Laws, c. 608, § 5B; 66 Del. Laws, c. 38, § 1.)

**§ 5402. Rules and regulations.**

The Department of State may formulate such rules and regulations as it deems necessary for the effective execution of its purposes. (7 Del. C. 1953, § 5404; 49 Del. Laws, c. 232; 57 Del. Laws, c. 608, § 5C; 66 Del. Laws, c. 38, § 1.)

*Subchapter II. Archaeological Excavation*

**§ 5403. Purpose.**

The purpose of this subchapter is:

(1) To help provide adequate protection for unmarked human burials and human skeletal remains found anywhere within the State except on federal land;

(2) To provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the Medical Examiner that are encountered during archaeological excavation, construction or other ground disturbing activities;

(3) To provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials;

(4) To provide for the dignified and respectful reinterment or other disposition of Native American skeletal remains. (66 Del. Laws, c. 38, § 1.)

**§ 5404. Definitions.**

As used in this subchapter:

(1) "Director" shall mean Director of the Division of Historical and Cultural Affairs, Department of State.

(2) "Human skeletal remains" or "remains" shall mean any part of the body of a deceased human being in any stage of decomposition.

(3) "Professional archaeologist" shall mean a person having:

a. A graduate degree in archaeology, anthropology, history or another related field with a specialization in archaeology;

b. A minimum of 1 year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains; and

c. Designed and executed an archaeological study and presented written results and interpretations of such study.

259

Delaware Code Annotated Copyright © 1991, The Michie Company; all rights reserved.  
Reproduced with permission.

**ILLUSTRATION 3. Example of State Statute Pocketpart Update: DELAWARE CODE ANNOTATED (Michie), Title 7 (Conservation), Subchapter II (Archaeological Excavation). (7 Del. Code Ann. § 5408(e) (1995).**

7 § 5408                      ENVIRONMENTAL CONTROL                      7 § 5408

**CHAPTER 54. ARCHAEOLOGICAL ACTIVITIES**

**Subchapter II. Archaeological Excavation**

Sec.  
5408. Consultation, analysis and disposition.

*Subchapter II. Archaeological Excavation*

**§ 5408. Consultation, analysis and disposition.**

(e) Any state agency which is responsible, either directly or indirectly, for the unearthing of human remains deemed to be the responsibility of the Division of Historical and Cultural Affairs shall be responsible for the cost of reinterment of those remains. (66 Del. Laws, c. 38, § 1; 68 Del. Laws, c. 290, § 84.)

**Revisor's note.** — Section 2 of 68 Del. Laws, c. 290, provides: "Any previous act inconsistent with the provisions of this act is hereby repealed to the extent of such inconsistency."  
Section 3 of 68 Del. Laws, c. 290, provides: "If any provision of this act, or of any rule, regulation or order thereunder, or the application of such provision to any person or circumstances, shall be invalid, the remainder of this act and the application of such provisions of this act or of such rule, regulation or order to persons or circumstances other than those to which it is held invalid shall not be affected thereby."  
**Effect of amendments.** — 68 Del. Laws, c. 290, effective July 1, 1992, added (e).  
As the rest of this section was not amended, it is not reprinted in this Supplement.

---

**PART VII**

**Natural Resources**

---

**CHAPTER 60. ENVIRONMENTAL CONTROL**

<p style="text-align: center;"><b>Subchapter II. Powers and Duties of Secretary and Department</b></p> <p>Sec. 6002. Definitions. 6003. Permit — Required. 6013. Criminal penalties. 6035. Vessel sewage discharge. 6037B. Recreational water.</p> <p style="text-align: center;"><b>Subchapter V. Water Utilities</b></p> <p>6077. Issuance of certificate; limitations.</p>	<p style="text-align: center;"><b>Subchapter VII. Clean Air Act Title V Operating Permit Program</b></p> <p>Sec. 6095. Applicability. 6096. Title V account. 6097. Fees. 6098. Title V Operating Permit Program Advisory Committee.</p>
---	---

REVISED  
OR ADDED  
SECTION

REVISOR'S  
NOTE AND  
STATUTORY  
HISTORY

## GLOSSARY

The definitions in this glossary are taken primarily from *Black's Law Dictionary* or from “definitions” sections of Federal statutes. For the sake of consistency, and in light of the parameters of the subject matter, the prototype for this glossary is found in S. Hutt, E. Jones, and M. McAllister, *Archeological Resources Protection* (1992), pp. 156-67. *Caveat lector*: the statutory definition controls for purposes of applying a State statute.

Many statutes begin with a “definitions” section, which is critical to understanding the meaning and scope of a particular law. “Artifact” in one State may be defined as an archeological, paleontological, or historic object 50 or more years old, while in a second State, it must be at least 100 years old, and in a third State, it must be 150 or more years old. State definitions may or may not correspond to those found in Federal statutes. The following terms are useful for research purposes. *An asterisk (\*) indicates terms likely to be defined differently or more specifically by State law.*

***Abandoned vessel.***\* Any vessel that has been found adrift or unattended in or upon the waters of the State, and is found in a condition of disrepair.

***Aboriginal site.***\* Any site which yields or is likely to yield information of significance to the scientific study of prehistory.

***Administrative hearing.*** Nonjury proceeding, presided over by an administrative law judge (ALJ), in which matters arising from violations of agency regulations are heard.

***Administrative remedy.*** A remedy obtained through following agency procedure, which may include informal or formal hearings before an ALJ or other administrative panel, but which is not filed in court.

***Advisory commission.*** A commission created by statute, with appointments usually made by the governor of the State. Appointees are citizens of the State with skill and knowledge in fields related to preservation of cultural resources. The commission advises and assists State officials, and reviews policies, plans, or rules and regulations that pertain to archeological or preservation matters.

***Alienation.*** The voluntary and complete transfer of property (usually real property) from one person to another; disposition by will.

***ALJ.*** Administrative Law Judge; a hearings officer for civil offenses charged under State agency regulations.

***Antiquity.***\* A term used for historic or prehistoric ruins or monuments, or in reference to objects of considerable age, or objects used in conjunction with ancient rituals or American Indian religious practices.

***Archeological damage.*** Injury or harm to an archeological resource; see archeological resource.

***Archeological looting.*** The illegal and unscientific removal of archeological resources; see archeological resource.

***Archeological material.***\* Synonymous with “archeological resource,” but especially portable archeological resources.

***Archeological resource.***\* Any site, structure, object or remains which yields or is likely to yield information of significance to the scientific study of human prehistory, history, or culture.

**Archeological site.\*** A place or location where archeological resources are found in context; see archeological resource, material remains, context.

**Archeological value.\*** “. . .the value of the information associated with the archeological resource . . . appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation;” see archeological resource.

**Archeology.** The scientific study of past human behavior from archeological resources and their context; see archeological resource.

**ARPA.** The Federal Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. §§ 470aa-mm). Together with its regulations, ARPA has provided and continues to provide a model for state-legislated archeological protection laws.

**Artifact.\*** An object made or modified by human beings; archeological materials or resources resulting from this process are artifacts; see archeological resource.

**Assessment.\*** The determination of the sum of money due to the government or other property owner from the responsible party or parties for damage they have caused.

**Attempt.** In criminal law, “an effort or endeavor to accomplish a crime, amounting to more than a preparation or planning for it, which, if not prevented, would have resulted in the full consummation of the act attempted, but which, in fact, does not bring to pass the party’s ultimate design.”

**Burden of proof.** “[T]he necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties . . . .” In criminal cases, the government bears the burden of proving the defendant guilty beyond a reasonable doubt, and in civil cases, it bears the burden of proving the defendant responsible by a preponderance of the evidence (that is, anything over a 50% probability).

**Burial site.\*** Any natural or prepared physical location, whether originally on, below or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture. (Usually excludes cemeteries and graveyards protected under other State laws.)

**Cairn.** A heap of stones piled up as a memorial or a landmark.

**Citation.** A notice commanding a person to appear in court and respond to criminal or civil charges based upon agency regulations; see criminal sanction, civil sanction, regulation.

**Civil case.** A court case seeking monetary damages or return of something; see civil sanction, criminal case.

**Civil sanction.** A penalty that may be requested by the government that is specifically provided for in a statute or regulation and is set forth in monetary terms, such as a fine or restitution.

**Collector.\*** An individual who collects unscientifically removed archeological materials for any reason, whether personal or commercial.

**Co-management.** The management of land by more than one agency pursuant to a written interagency cooperative agreement permitting designated, mutually beneficial land use activities. Co-management implies that the party agencies have made a comparable commitment to the joint management venture. Co-management agreements may occur between different agencies within the same state, or between a State agency and a Federal agency. Unless a choice of law is written into a Federal-State interagency agreement, both Federal and State laws are applicable to the co-managed lands.

**Confiscation.** To appropriate property to the use of the government; to adjudge property to be forfeited to the public.

**Conspiracy.** An agreement between two or more persons formed for the purpose of committing, by their joint efforts, an unlawful act.

**Context.** “. . . the whole situation, background, or environment relevant to a particular event . . .”; specifically, the physical surroundings, conditions, and circumstances in which archeological materials are deposited and subsequently discovered.

**Conversion.** An unauthorized assumption or exercise of the right of ownership over goods or personal property belonging to another, to the alteration of their condition or the exclusion of the owner’s rights.

**Conviction.** In a criminal case, a finding of guilt beyond a reasonable doubt. This finding may be made by a jury, a judge (if the defendant has waived the right to a jury trial), or a plea of guilty by the defendant.

**Cost of restoration and repair.\*** The sum of incurred and projected costs necessary to restore and/or repair damage.

**Criminal case.** A court action based on a violation of law where imprisonment as well as a fine is possible. Such cases are investigated by the State’s Attorney General.

**Criminal sanction.\*** A punishment that may be requested by the government, specifically as provided for in a criminal statute, which may include fines, imprisonment, restitution, confiscation (forfeiture), or any combination of the three. Sanctions vary from State to State.

**Curation.** Responsibility for the care of something held in trust for other people. In the context of archeological collections, curation is “. . . managing and preserving a collection according to professional museum and archival practices . . . .”

**Damage.** See archeological damage.

**Damage assessment.\*** The procedures carried out by professional archeologists to identify the archeological elements of the damage in an archeological violation case.

**Dealer.** An individual who earns income through the business of buying and selling archeological materials; see archeological material.

**Defacement.\*** To mar or destroy the physical appearance of written or inscribed characters; for example, to alter or destroy rock art.

**De novo.** Anew; afresh. In a de novo trial, the matter is heard as if it had never been heard before, and as if there had been no previous decision rendered.

**Element of an offense or violation.** The evidence that must be proven, according to the burden of proof, before a person may be convicted in court; see burden of proof, conviction.

**Embezzlement.** The fraudulent taking of items entrusted to one’s safekeeping.

**Evidence.** Any species of proof, or probative matter, legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

**Felony.** A criminal offense that is punishable by a fine and/or a term of imprisonment in excess of one year.

**Field notes.** Notations of facts and evidence developed during an investigation and used to prepare formal written reports.

**Fine.** A penalty for conviction of an offense that is payable in money.

**Forfeiture.** Something to which a right is lost by the commission of a crime or fault, or the losing of something by way of penalty.

**General intent.** An intention, purpose, or design, either without specific plan or object, or without reference to such plan or object.

**Grand jury.** A secret proceeding during which a small group of people is empaneled by the State Attorney, under the direction of the court, to hear evidence and decide whether to issue an indictment (that is, the charging document upon which the defendant will stand trial).

**Historic.** After the advent of written history. In the case of the Native Americans, historic sites would date from after the arrival of the Europeans or European Americans.

**Historic site.** An archeological site for which there is library, archival, or oral documentation.

**In rem.** A technical term used to designate proceedings or actions instituted against the thing, in contrast to personal actions, which are said to be *in personam*.

**Indian land.** “. . . lands of Indian Tribes or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interest not owned or controlled by an Indian Tribe or Indian individual . . . .”

**Indictment.** An accusation in writing found and presented by a grand jury, charging that a person named in the indictment has done some act or is guilty of some omission which, by law, is a punishable offense.

**Intent.** The determination or will with which a person acts to consummate a crime.

**Judicial review.** An examination of the decision of a judicial officer (judge, magistrate, ALJ) by the next higher court. An appeal to a superior court to correct an error or injustice. Judicial review may be limited by statute to either exhaustion of administrative remedies or a single appeal of right.

**Jurisdiction.** Areas of authority; the geographic area in which a court or other adjudicatory entity has power, or types of cases it has power to hear.

**Jurisdictional amount.\*** The dollar amount that separates a misdemeanor from a felony.

**Law enforcement officer (LEO).\*** A person who has been identified, either individually or collectively, and authorized by an agency to make arrests, carry firearms, conduct investigations, and enforce the law.

**Legal curation.** The storing of archeological items in such a way that the specific nature as well as identity of the item(s) for evidence at trial is retained; see chain of custody.

**Legislative history.** The background and events, including committee reports, hearings, and floor debates, leading up to enactment of a law. Such history is important to the courts when they are required to determine the legislative intent of a particular statute, particularly when there is no other case law available on the statute, e.g., a case of first impression.

**Looting.** See archeological looting.

**Mandamus.** A complaint “in the nature of mandamus” requests specific action from an administrative/public official or agency within the scope of authority, or requests restoration of privileges that the complaining party alleges they have been deprived.

**Material remains.**\* “[P]hysical evidence of human habitation, occupation, use or activity, including the site, location, or context in which such evidence is situated . . . .”

**Misdemeanor.**\* A criminal offense that is punishable by a fine and/or imprisonment for less than a year in an institution that is usually a jail or other facility that is other than a state penitentiary. There are several classes of misdemeanors that vary from State to State.

**Mitigating factor.**\* Facts or circumstances that do not excuse the offense in question, but that may be cause for reduction or abatement of a penalty or punishment imposed by law.

**Monetary value.**\* Worth in money; for example, certain archeological resources, both artifacts and sites, have a monetary value.

**NOS.** Not otherwise specified; in the context of penalty assessment in several States, the general criminal statutes will include a section on how to assess penalties for violations that are stated within a particular section but without explanation as to either amount of possible fines or time of incarceration. For example, the statute will say that disturbance of an archaeological site on State lands is a Class B misdemeanor, but it is necessary to consult the penalties section from the general criminal statutes to find the definition and parameters of the Class B misdemeanor.

**Noncommercial artifact hunter.** Individual who engages in artifact hunting because of an interest in the past and because of a desire to possess a personal collection of archeological materials.

**Notice of violation/notice requirement.**\* A written statement containing the basis for allegations of wrong-doing, amount of redress requested, which is a prerequisite to any final judgment at either the administrative or court level. There must be proof that the notice was received by the person alleged to have committed the wrong-doing.

**Offense.**\* A breach of the criminal laws; a felony, misdemeanor, or petty offense, as defined by law.

**Paleontological.** Pertaining to paleontology, the study of ancient, nonhuman plant and animal life forms and their impressions.

**Penalty.**\* A punishment imposed by statute as a consequence of violating a law.

**Permit.**\* In general, a document that grants a person the right to do something; a license or grant of authority.

**Permittee.**\* Any individual, corporation, partnership or other organization, public or private, holding a permit issued by an authorizing State agency that allows the entity to conduct certain activities.

**Perpetrator.** A person who has committed a crime.

**Petition for relief.**\* A document (petition) or letter from a violator to the ALJ stating specific reasons why the petitioner should not be held accountable for the alleged violation, and/or a statement as to why the amount of assessment should be modified.

**Petroglyph.** A carving on rock.

**Petty offense.**\* A criminal act that is punishable by a small fine and/or by a jail term of less than six months.

**Pictograph.** Painting on rock.

**Police powers.** The power vested in a State or by a State in its agencies to establish and enforce laws and ordinances.

**Precedent (precedence).**\* Published opinions of State or Federal appellate courts that have addressed an issue to be considered in a new court case. Appellate court precedent is binding upon a lower court.

**Prehistoric.** An archeological site dated to the prehistoric period, and for which there is no library, archival, or oral historical documentation of the site itself or its included materials; see archeological site, prehistoric.

**Preponderance of the evidence.** The greater weight; more likely than not. The balance of evidence needed to obtain a favorable result in a civil case.

**Preservation agreement.**\* A right stated in any deed, will, or other instrument executed by or on behalf of the owner of land to limit activities that would alter or damage the features or condition of an historic structure or archeological site.

**Private property.** Land or other property owned by an individual or group of individuals (including a corporation), as opposed to Federal, Tribal, State or local government property.

**Probable cause.** Reasonable cause; having more evidence for a thing than against it.

**Professional archeologist.** An individual who earns a salary or fee for work in scientific archeology. Qualifications for professional archeologists are provided in the Secretary of the Interior's Standards for Archeology and Historic Preservation (48 Fed. Reg. 44,716 (1983)).

**Proof.** The effect of evidence; the establishment of fact by evidence; see burden of proof.

**Public interest.** Something in which the public, the community at large, has either some pecuniary interest or interest by which their legal rights or liabilities are affected.

**Public land.** Any land other than private land.

**Public trust.** A trust constituted for the benefit of the public at large, or at least a significant portion of it, answering a particular description.

**Reasonable doubt.** "Reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is doubt that a reasonable man or woman might entertain . . . and it is not doubt that a juror might conjure up to avoid performing an unpleasant task or duty."

**Recorded site.** An archeological site located and documented by professional archeologists or other trained individuals; see archeological site, professional archeologist.

**Regulation.**\* A rule or order prescribed for management or government, which is written by a State or Federal agency delegated the authority to promulgate rules and regulations by statute.

**Relic.**\* A synonym for the term "artifact."

**Relic hunting.** The unscientific, legal removal of archeological resources from archeological sites; "artifact hunting."

**Restitution.** Non-punitive money damages, calculated to make the victim whole; see civil sanction, criminal sanction, fine.

**Restoration and repair.** Activities carried out to attempt to return archeological resources to a condition that to some degree approximates that which they were in prior to damage from a violation.

**Right of possession.** A right which may reside in one person while another has actual possession; "possession obtained with the voluntary consent of an individual or group that had authority of alienation."

**Rock art.** Carvings (petroglyphs) or paintings (pictographs) of symbols and designs on rock.

**Ruin.** A dilapidated, devastated, decayed, destroyed, or fallen down structure; a historic or prehistoric antiquity.

**Sanction.** A fine or penalty, either civil or criminal.

**Search.** The examination of an area with a view to finding evidence to be used in a criminal or civil action; see search warrant.

**Search warrant.** An order, in writing, issued by a justice or other magistrate, in the name of the State, directed to a sheriff, constable, or other officer, commanding him to search a specified house, shop or other premises for any property that constitutes evidence of the commission of a crime, contraband, the fruits of crime, or things otherwise criminally possessed; or, property designed or intended for use or which has been used in commission of crime, and to bring the same, when found, before the justice or magistrate.

**Sentence.** The judgment formally handed down after a conviction in a criminal prosecution specifying jail, prison or probationary time to be served by the defendant.

**Significance.** The term used to indicate an archeological site's eligibility for inclusion in a national or state register of historic places.

**Specific intent.** Having a precise plan formulated to violate a law.

**Statute.** An act of the legislature commanding, declaring, or prohibiting a thing; a particular law enacted by the legislature.

**Submerged archeological sites.\*** Submerged or submersible lands and the seabed that contains archeological objects and the contextual associations of the archeological objects with each other or with biotic or geological remains or deposits.

**Sunset law.** A statute or provision in a law that requires periodic review of the rationale for the continued existence of the particular law, specific administrative agency, or other governmental function. The legislature must take positive steps to allow the law, agency, or function to continue in existence by a specified date or it will cease to exist.

**Surface collecting.** Taking of archeological material found on the surface of the land.

**Theft.** Taking of the property of another without permission and with the intent to permanently deprive the rightful owner of possession.

**Trespass.** An unlawful interference with one's person, property, or rights.

**Trial.** "[A] judicial examination, in accordance with the law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or of fact, before a court that has jurisdiction over it"; see jurisdiction.

**Tribal.** Relating to the activities of Indian tribes.

**Tribe.** A unit of social organization (such as American Indian or Native American) consisting of a number of families, clans or other groups who share a common ancestry, culture, and leadership. "By a 'tribe' we understand a body of Indians of the same or similar race, united in a community under one leadership or government, inhabiting a particular though sometimes ill-defined territory" (*Montoya v. U.S.*, 180 U.S. 261, 266 (1901)).



## SELECTED CASES

This section contains selected archeological protection cases brought under various State laws. They provide a sample set of references as well as a series of illustrations about effective State enforcement.

### ALABAMA

**Citation(s):** *State v. Hamlin*, Nos. CC-92-931 and CC-92-1007 (Baldwin Co., Ala. 1993) and *State v. Heyer*, Nos. CC-92-1004 and CC-92-1005 (Baldwin Co., Ala. 1993).

**Site(s):** Battery Huger, site of an 1865 Civil War fort near Mobile, Alabama.

**Facts:** A two-year undercover operation by the Alabama Department of Conservation's Game and Fish Division, the Baldwin County Sheriff's Department, and the Office of the Baldwin County District Attorney tracked the removal of Civil War-era archeological resources from the fort site, located on State land. The defendants had used a gold mining dredge (high-pressure hose) to sink a 7-foot hole into the bank adjacent to the fort, through which materials were removed.

Search and arrest warrants were issued against the defendants after one of them sold some artifacts to an undercover agent. Approximately 150 items were recovered, including still-active artillery shells weighing up to 100 pounds that could have detonated if mishandled. The commercial value of the archeological resources exceeded \$20,000.

Alabama law provides that all archeological resources located on State lands belong to the State of Alabama. Although removal of such items is prohibited, the preservation law sections of the Code of Alabama specify penalties only for violations committed at specific sites. The defendants were charged under the general criminal misdemeanor laws with first degree theft of property and first degree criminal mischief. These general statutes specify maximum penalties of \$1,000 in fines and one year in jail for each offense.

**Disposition:** Hamlin pled guilty to Criminal Mischief (2nd degree) and Violation of the Alabama Antiquities Law. Heyer pled guilty to Theft of Property (1st degree) and Criminal Mischief (2nd degree). The defendants assisted in the location and recovery of State Civil War artifacts, which were returned to the State. All equipment used to commit the violations was confiscated and given to the State, including a boat, trailer, motor, goldmining dredge, and other equipment. Heyer was sentenced to one year in jail and placed on two years probation after serving at least two days in the County jail, and was ordered to complete 200 hours of community service, pay \$13,000 in restitution to the Alabama Historical Commission and the Department of Conservation, cooperate in the location of other artifacts throughout Alabama, and testify in Court against others who may be involved in the illegal handling of artifacts in Alabama.

## CALIFORNIA

**Citation(s):** *State v. Beach*, No.93-C-000217 (Inyo Co., Cal. 1993).

**Site(s):** Various sites on private lands and Bureau of Land Management (BLM) lands adjacent to Inyo National Forest.

**Facts:** A drug task force search by the Inyo National Forest Resident Agent revealed evidence that Beach had collected a considerable number of artifacts over a 20-year period from many private landowners and from sites on both State and Federal lands. Beach was prosecuted for illegally removing archeological resources from BLM lands and from two privately-owned lands. Many items in the collection were obtained from areas known to contain burial sites. In 1993, Beach was charged with six counts of violating the California Penal Code and one violation of the California Public Resources Code, for unlawful removal of archeological artifacts. This case is significant because it constitutes a successful prosecution of removal of artifacts from private lands without the landowner's permission.

**Disposition:** Beach entered a plea agreement, pleading guilty to one count of theft from private lands and one count of theft from BLM lands, for removal of projectile points from the surface. He received 36 months probation, and forfeited all artifacts and equipment used in obtaining the artifacts. He was also ordered not to possess artifacts without properly documented permission from private landowners or engage in any collection involving soil disturbance or digging, and to perform 40 hours of community service to help restore damage he had done to the site, assist agency archeologists in locating sources of the artifacts, and show agency archeologists other significant and disturbed archeological sites known to him. Beach also was assessed the costs of restoring the area he dug.

## FLORIDA

**Citation(s):** *State v. Hudson, Smitt, Webb, and Williams*, No. 92-1757CF (20th Cir. Ct., Fla. 1993).

**Site(s):** Various archeological sites on State and Federal lands in southwest Florida.

**Facts:** Four of eighteen known "treasure hunters" were indicted on felony racketeering and grand theft charges for destruction of Indian mounds and other archeological sites. Evidence of at least 60 separate incidents of site destruction was obtained. In addition, the defendant in the case cited here had been actively treasure hunting for close to 30 years, had published books on how to treasure hunt, and was sending out a monthly newsletter on the subject. Sites allegedly destroyed by the treasure hunters over a period of approximately 20 years included the Caloosa Indian temple mounds at Big Mound Key, mounds on Cayo Costa, and mound sites covering a four-county area in Southeast Florida. At Big Mound Key the looters bulldozed a trench 200 feet long, 20 feet wide, and 25 feet deep through 7,000 cubic yards of shell midden and burials.

The yearlong undercover investigation leading to the indictments was conducted by the Florida Department of Natural Resources, Florida Park Service, Florida Department of State—Bureau of Archeological Research, and Lee County Office of the State's Attorney. It was the first investigation of its kind in Florida history

to result in arrests. The felony racketeering counts derived from the “treasure hunters” soliciting individuals and charging them fees to invest in their scheme, by claiming that the pirate Jose Gaspar had buried treasure in the mounds.

**Disposition:** All four defendants pled guilty to racketeering conspiracy under the Florida’s Racketeer Influenced and Corrupt Organizations (RICO) Act, criminal mischief (a 3rd degree felony), and grand theft (a 3rd degree felony) for “the unauthorized excavation, destructive probing, digging and removing of earth . . . in a destructive effort to locate buried treasure” on five State-owned and two Federally-owned sites. None of the four received jail sentences.

Hudson (sentenced December, 1992) was placed on five years State probation and fined \$280. He also was ordered to pay restitution but had no assets from which restitution could be collected. Under Florida law, where lack of assets can be shown, failure to pay restitution cannot be considered a violation of probation. Hudson was ordered to refrain from promoting or publishing information on buried treasure hunting. Smitt and Webb (sentenced October, 1993) were placed on four years State probation (with possible termination of probation in two years), fined \$330 in fees and costs, and ordered to perform 50 hours each of community service. Hudson, Smitt, and Webb also were ordered to refrain from any participation in “treasure hunting” during the time of their probation.

Williams (sentenced December, 1994) received the most stringent sentence. The Court placed him under two years house arrest, followed by three years State probation, fined him \$3,700 in costs, and ordered him to perform 300 hours of community service. His boat and other equipment used in the treasure hunting activities were confiscated by the State Parks authorities.

## INDIANA

**Citation(s):** *Indiana Coal Council, Inc. v. Indiana Dept. of Natural Resources*, 542 N.E.2d 1000 (Ind. 1989), *cert. denied*, 493 U.S. 1078 (1990).

**Site(s):** “Beehunter” site, a substantially intact midden containing four distinct cultural periods of occupation, located on private farm land.

**Facts:** Huntingburg Machinery and Equipment Rental, Inc. (“HUMER”) owned 305 acres of land used primarily for farming. The land contained a 6.57-acre area where the “Beehunter” site was located. Because the site was below the plow line, it was essentially intact. HUMER discovered that the land also sat atop millions of tons of minable coal and began to strip mine the farm. The Wabash County Archaeological Society petitioned the Indiana Department of Natural Resources (DNR) to have the site designated as unsuitable for surface coal mining under the State’s Surface Mining Coal and Reclamation Act. Under that law, the land could be unsuitable for surface mining if such activity would result in damage to areas of historic, cultural, and scientific value.

The Director of DNR made an initial determination that the “Beehunter” site was unsuitable for surface coal mining and later issued a final order to that effect. The order included a mitigation plan providing that the “area unsuitable” designation could be removed after site testing and data recovery was conducted by an archaeologist approved by DNR. The plan would allow the continued use of the land for farming and would allow strip mining on all but the “Beehunter” site acreage.

HUMER was joined by the Indiana Coal Council in filing suit to block the DNR order as land use regulation that amounted to an unconstitutional taking of property in violation of the Fifth Amendment. The lower court found that DNR's application of the Surface Mining Control and Reclamation Act and the regulations promulgated under that Act had been applied by DNR in a way that resulted in an unconstitutional taking of the landowner's property. DNR appealed.

**Holding:** Applying the two-pronged test set forth in U. S. Supreme Court decisions, the Supreme Court of Indiana held that: 1) the DNR order substantially advanced a legitimate State interest, i.e., the protection of historically significant archeological resources; and 2) the DNR decision and accompanying mitigation plan did not deprive the landowner of economically viable use of the property, since farming could continue and surface mining could commence on all but 2% of the land.

The lower court's decision was vacated and remanded to that court for enforcement of the DNR order. This case and the *Hunziker* case (below) illustrate how laws regulating land use have been applied to the protection of archeological resources.

**Citation(s):** *Whitacre v. State*, 619 N.E.2d 605 (Ind. Ct. App. 1993), *aff'd*, 629 N.E.2d 1236 (Ind. 1994).

**Site(s):** Hopewell Indian site on private land in Dearborn County, Indiana.

**Facts:** Robert Whitacre and his wife were amateur archeologists. In 1982, with permission of the landowner, they had begun to excavate a Hopewell Indian site (ca. 150 A.D.) on a 40-acre farm in Dearborn County, Indiana. They purchased the farm in 1987, and continued to excavate the site.

In 1989, the Indiana Historic Preservation and Archeology Act was amended to require that anyone disturbing the ground for the purposes of discovering artifacts or burial objects first must have an archeological plan approved by the Indiana Department of Natural Resources. The amendments also provided that to knowingly proceed without such a plan would constitute a Class A misdemeanor. When he heard about the new law, Whitacre consulted an archeologist at the Indiana Department of Natural Resources and was told he would need a permit to conduct archeological investigations on his property.

Whitacre did not agree that the law applied to private property, and filed an action for declaratory judgment, i.e., that the Indiana Historic Preservation and Archeology Act did not apply to private property. The trial court, however, found that the Act did apply to private property. Whitacre then appealed to the Indiana Court of Appeals, which affirmed the trial court. Subsequently, the Supreme Court of Indiana accepted Whitacre's petition for review. Whitacre originally asserted that requiring an approved archeological plan before the ground could be disturbed would be an unconstitutional taking. He waived that argument, however, on the final appeal.

**Holding:** The Indiana Historic Preservation and Archeology Act is applicable to privately owned property. The Supreme Court of Indiana affirmed the judgment of the trial court and also endorsed the State's argument that the statute works for the benefit of people like Whitacre who are interested in archeology.

## IOWA

**Citation(s):** *Hunziker v. State*, 519 N.W.2d 367 (Iowa 1994).

**Site(s):** Fifty-five acre private farm being developed for single residential homes, containing a Native American burial mound.

**Facts:** Land developers Hunziker, Furman, R. Friedrich and Sons, Inc. and Buck Construction Company, Inc. purchased a 59-acre Iowa farm to create a residential subdivision. Lot 15, which they sold for \$50,000, contained a Native American burial mound close to the center of the lot. The Iowa State Archeologist determined that the site dated to the Woodland Period and was between 1,000 and 2,500 years old.

As permitted under the Iowa Code, the State Archeologist prohibited disinterment and required a buffer zone around the mound, making construction of a house on the lot impossible. The purchase price was returned to the buyer and the developers filed a *mandamus* action, alleging that the State's action amounted to a regulatory taking of property without compensation in violation of both the United States and Iowa Constitutions. Although a lower court found in favor of the State, Hunziker appealed and was granted a new trial.

While acknowledging that compensation must be paid where the owner's rights in the land have been taken, the State argued that the developers never had a vested right under State law or at common law to build on a burial mound because Iowa property law protecting ancient human remains had been a part of the Iowa Code for many years prior to Hunziker's purchase of the land for development. Thus, the developers took possession of the land subject to those laws.

**Holding:** The Iowa Supreme Court agreed with the State, holding that: 1) land use regulation in advancement of a legitimate State interest will not rise to the level of a "taking" unless the regulation involves a permanent physical invasion of the property or deprives the landowner of all economic or productive use of the land; and 2) even where deprivation of economic or productive use can be shown, the State may not be obligated to reimburse the landowner if the proposed use of the land is forbidden under existing laws and regulations. Since the developers had no right to disinter ancient human remains, as a matter of law, a taking could not have occurred.

## MICHIGAN

**Citation(s):** *People v. Massey*, 137 Mich. App. 480, 358 N.W.2d 615 (1984).

**Site(s):** Great Lakes bottom.

**Facts:** Massey and others conducted diving and salvage operations on the Great Lakes bottom in violation of Michigan law and the Great Lakes Submerged Lands Act. Michigan law states that any relics or artifacts of historic significance found on State lands, including lands under water, are the property of the State of Michigan. Massey presented a constitutional challenge to the Michigan law, saying that the artifacts he collected were "abandoned property" and were governed by Federal maritime and admiralty law. According to Massey, application of the Michigan law would be an impermissible interference with the Federal law.

**Holding:** A statute declaring abandoned property of historic or recreational value found on the bottom of the Great Lakes to be the property of the State creates no interference with Federal maritime or admiralty law and provides a supplement to the Great Lakes Submerged Lands Act.

## BIBLIOGRAPHY

American Bar Association, Section on Natural Resources, Energy, and Environmental Law and the National Energy Law and Policy Institute

(published annually) *Natural Resources, Energy, and Environmental Law: Year in Review*. University of Tulsa.

Archeological Assistance Program, National Park Service

(published quarterly) *Federal Archeology*. Washington, DC.

*Black's Law Dictionary* (9th edition 1993).

Carnett, Carol

1991 *Legal Background of Archeological Resources Protection*. Archeological Assistance Division, National Park Service, Washington, DC.

Committee on Land Use, Planning and Zoning Law, subcommittee on Historic Preservation and Architectural Control Law

(published annually) Annual Report. *Urban Lawyer* (Fall/Winter ed.).

deVallance, Brian and Julie A. Pace, editors

1992 Symposium: The Native American Graves Protection and Repatriation Act of 1990 and State Repatriation-related Legislation. *Arizona State Law Journal*, 24:1.

Ehrenhard, John E., editor

1990 *Coping with Site Looting: Southeastern Perspectives, Essays in Archeological Resource Protection*. Interagency Archeological Services Division, Southeast Region, National Park Service, Atlanta.

Goss, Sarah

1992 *Propriety of Using the Police Power for Aesthetic Regulation: A Comprehensive State-by-State Analysis*. National Park Service and the National Center for Preservation Law, Washington, DC.

Hutt, Sherry, with Elwood Jones, and Martin McAllister

1992 *Archeological Resources Protection*. Preservation Press/J. Wiley & Sons, NY, NY.

Lerner, Shereen

1994 *Archeology and Historic Preservation*. National Trust for Historic Preservation, (Information Series Booklet No. 2I86), Washington, D.C.

National Conference of State Historic Preservation Officers

1993 *Directory of State Historic Preservation Programs*. Washington, DC.

National Trust for Historic Preservation

(published monthly) *Preservation Law Reporter*. Washington, DC.

(published bi-monthly) *Historic Preservation* (magazine). Washington, DC.

Native American Rights Fund

(published bi-monthly) *The Reporter*. Indian Law Support Center, Legal Services Corporation, Boulder, CO.

Neumann, Loretta, with Kathleen Schamel, and J. Schaefer, compilers

1992 *Compilation of State Repatriation, Reburial and Grave Protection Laws*. Natural Resources Conservation Service, Washington, DC.

Price, H. Marcus, III

1991 *Disputing the Dead: U.S. Law on Aboriginal Remains and Grave Goods*. University of Missouri Press:Columbia.

Talmage, Valerie A.

n.d. Index to State Archaeological Laws. Unpublished manuscript, prepared by the National Association of State Archaeologists.

Vrana, Kenneth and Edward Mahoney, editors

1993 *Great Lakes Underwater Cultural Resources: Important Information for Shaping Our Future*, proceedings of the Great Lakes Regional Conference on Underwater Cultural Resource Policy, published by the Department of Park and Recreation Resources, Michigan State University, East Lansing.

Wagner, Richard.

1991 *Local Government and Historic Preservation*. National Trust for Historic Preservation: Washington, DC.

