

Appendix

National Historic Preservation Act (1966)

The National Historic Preservation Act (NHPA) of 1966 [16 USC section 470-70x-6 1994] as amended is one of the most important pieces of legislation enacted to protect and preserve heritage resources. NHPA is a conclusive statute that provides for consideration of the value of a variety of heritage resources, including resources of federal, state, and local significance, and recognizes the ever-increasing growth of the nation's urban center. NHPA recognizes that our nation is founded upon and reflected in its historic heritage and that the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generation of Americans.

By enacting this law, Congress mandated for the first time some very precise guidelines to protect our heritage resources. The essences of these guidelines are that:

1. Federal agencies consider the impact of federal undertakings on historic resources of national significance.
2. Federal agencies assume responsibility for the preservation of historic resources that they own or control.

Failure to comply with these mandates can lead to a lawsuit against the agency. Any project that a federal agency is going to undertake is subject to these meaning any land that is a part of their project (this is mostly federal land) is subject to these guidelines.

Section 106 of this law is the important section to archeologists because this section sets forth the responsibilities of a federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted "undertaking."

The head of any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking in any state and the head of any federal department or independent agency having authority to license any undertaking shall: prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included eligible for inclusion on the National Register. The head of any such federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking. (16 USC section 470f)

Kansas Antiquities Commission Act (1967)

The Antiquities Commission Act (Kansas Statutes Annotated 74-5401 through 74-5408) formally recognizes the need to conserve significant archeological remains on state, county, and municipal lands. It establishes a commission to protect and regulate the removal of antiquities from these public lands. It also requires that provisions be made for the long-term storage of artifacts removed under an antiquities commission permit. The Antiquities Commission comprises the executive director of the Kansas State



Historical Society, the state archeologist, and archeologists from the University of Kansas, Kansas State University, and Wichita State University.

Archaeological Resources Protection Act (1979)

Federal laws provide for severe penalties to those who disturb and destroy sites more than 100 years old. The Archaeological Resources Protection Act (ARPA) [16 USC 470aa-mm (1997)] was passed in 1979 and prohibits unauthorized digging and collecting of archeological resources, including pottery, basketry, bottles, sites with coins, or arrowheads, tools, structures, pithouses, rock art, graves, and human skeletons. No person may sell or buy any archeological resource, that was illegally acquired. Penalties for those convicted of violating ARPA are:

1. **First Offense:** a person who breaks this law for the first time may be fined \$100,000 and spend one year in jail. IF the cost of repairing the damage exceeds \$500, the offender may receive a fine of \$250,000 and spend two years in jail.
2. **Second Offense:** a person who breaks this law for the second time may be fined \$250,000 and spend five years in jail.
3. Vehicles and other equipment used in breaking this law may be confiscated.

ARPA applies to all public lands, including those administered by the U.S. Forest Service, Bureau of Land Management, the military, Fish and Wildlife Service, the National Park Service, and the Bureau of Reclamation.

People who dig in sites are engaged in an illegal market activity, are armed with weapons, and should be considered dangerous. Never approach someone you see digging in sites or collecting artifacts. Instead, record information about them – their physical description, what they were seen doing, the license number of their vehicle – and immediately report them to a local law enforcement agency.

People enjoying recreation in the outdoors occasionally find archeological sites and wonder what they should do. Always leave artifacts where they are found, including small surface finds such as potsherds and stone flakes. Discoveries of rare or remarkable artifacts and sites should be reported to the land managing agency, or, in the case of private lands, to a local agency archeologist or the State Historic Preservation Office.

Kansas Unmarked Burial Sites Preservation Act (1989)

In 1989 the Kansas Unmarked Burial Sites Preservation Act (Kansas Statutes Annotated 75-2741 through 75-2754). [House Bill 1244] established a procedure for the protection, treatment, and disposition of human skeletal remains, and associated grave artifacts, from unmarked burial sites. It established an unmarked burial sites preservation board to make recommendations for the disposition



of human remains and grave goods and provided for a registry of unmarked burial sites. The act prohibits any person from willfully disturbing an unmarked burial site or from possessing, selling, trading, giving away, or throwing away human skeletal remains or grave goods. A person may be fined from \$5,000 to \$100,000 for breaking the law.

Native American Graves Protection and Repatriation Act (1990)

The Native American Graves Protection and Repatriation Act (NAGPRA) was enacted in 1990. This law was put into place in part to help right some wrongs done to the Native Americans in the 1800s and early 1900s. The NAGPRA protects human remains and other grave goods and to some extent ceremonial goods. This law is very complex and so only a very broad overview is given here.

The NAGPRA applies to federal lands, those lands owned or controlled by the United States, and to tribal lands. The NAGPRA goes into much detail in defining human remains and other categories of protected cultural items. It also has a very detailed procedure and definitions for determining cultural affiliation, which becomes crucial to the question of repatriation.

There are two ways to violate this act. The first deals with the museums' collections of Native Americans and Native Hawaiian organizations. All museums or federally funded organizations holding collections are required to inventory and complete summaries of all holding relating to these two groups. If these are not done and provided to the groups which the law specifies, and if there is failure to precede with repatriation once this has been done, federal criminal jurisdiction will be invoked.

The second way to violate this act is to not turn over material defined in the law to the Native American owner or to use the material in a prohibited activity.

The NAGPRA also does not allow the trafficking of human remains or cultural items. This includes the sale, purchase, use for profit, possession with out proper right, and the removing and transporting of these items.

Several different fines are enacted for these different violations. For the museums that do not comply a fine of 1% of all operating budgets can be assessed. For a sale, purchase, etc. violation of this act several steps can occur. The first violation is punishable as a misdemeanor. A second or subsequent violation is a felony, punishable by up to five years in prison and/or a fine.

