

HOUSE BILL No. 5860

May 28, 1992, Introduced by Rep. Joe Young, Jr. and referred to the Committee on State Affairs.

A bill to provide for the protection, authenticity, preservation, recovery, and regulation of this state's archaeological heritage, antiquities, artifacts, and sites; to protect Native American graves and cultural items; to provide for the repatriation of Native American human remains and cultural items; to prescribe the powers and duties of certain state agencies and officers and certain persons and entities; to assure protection of archaeological sites, burials, and human remains; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan archaeology act".

3 Sec. 2. The legislature finds and declares that:

1 (a) Archaeological resources and sites located on state and
2 private lands are a valuable and irreplaceable part of the
3 heritage of this state.

4 (b) Archaeological resources have become increasingly endan-
5 gered because of their commercial attractiveness, the activities
6 of unprincipled collectors, and population increases.

7 (c) Existing state laws do not adequately protect the
8 archaeological resources and sites of this state, and uncon-
9 trolled excavations, pillages, and damage are resulting.

10 (d) There is a wealth of archaeological information in this
11 state that could be made available to professional archaeologists
12 and institutions for research and interpretation.

13 (e) Human burial sites that do not presently resemble
14 well-tended and well-marked cemeteries or that may falsely be
15 assumed to have been vacated are subject to intentional and inad-
16 vertent destruction and vandalism.

17 (f) Some human burial sites and remains may contain informa-
18 tion important to the living and to science and may be a proper
19 subject for scientific study.

20 (g) Human burial sites are subject to destruction for com-
21 mercial purposes such as land development, agriculture, mining,
22 and the sale of artifacts.

23 (h) Curiosity, vandalism, and private collecting are other
24 causes of the destruction of human burial and other archaeologi-
25 cal sites.

26 (i) Existing cemetery law reflects the value society places
27 on the preservation of modern-day human burial sites but does not

1 extend equal and adequate protection to prehistoric or unmarked
2 historic burials.

3 Sec. 3. The legislature intends by this act to accomplish
4 all of the following:

5 (a) Secure and protect for the benefit of present and future
6 generations the heritage of the archaeological resources and
7 sites of this state.

8 (b) Foster increased cooperation between, and the exchange
9 of information among, governmental bodies, the professional
10 archaeological community, Native American governmental authori-
11 ties and persons, and lay persons possessing collections of
12 antiquities or other archaeological resources and data.

13 (c) Facilitate the protection and preservation of archaeo-
14 logical resources and sites located on private lands.

15 (d) Accord all human burials equal treatment and dignity,
16 without discrimination on the basis of ethnic origins, cultural
17 background, or religious affiliation.

18 (e) Provide consideration for a variety of interests con-
19 cerning each human burial encountered during an archaeological
20 excavation, metallic or nonmetallic mining, construction, agri-
21 cultural activities, environmental impact assessments, or any
22 other ground-disturbing activities, without causing undue delay
23 or hardship to any person who has an interest in using the land
24 on which the burial is located.

25 (f) Balance the interests of descendants, scientists, land-
26 owners, developers, and others in relation to a burial, including

1 those with a cultural, tribal, or religious affiliation with the
2 burial site.

3 Sec. 4. For the purposes of this act, the words and phrases
4 defined in sections 5 to 8 have the meanings ascribed to them in
5 those sections.

6 Sec. 5. (1) "Abandoned property" means material that is the
7 result of the activities of historic or prehistoric human occupa-
8 tion, including human remains; that has been deserted, relin-
9 quished, cast away, or left behind; and for which attempts at
10 reclamation have been abandoned by the owner and insurer.

11 (2) "Agency" means any of the following:

12 (a) A state officer, employee, department, division, bureau,
13 board, commission, council, authority, or other body in the exec-
14 utive branch of state government.

15 (b) A board, commission, council, or other body or an offi-
16 cial within the legislative branch of state government.

17 (c) An official or employee within the judicial branch of
18 state government.

19 (d) A county, city, township, village, intercounty, inter-
20 city, or regional governing body, council, school district, spe-
21 cial district, or municipal corporation, or a board, commission,
22 council, or subagency of an entity listed in this subdivision.

23 (e) Any other body not listed in this subdivision that is
24 created by state or local authority or that is primarily funded
25 by or through state or local authority.

26 (3) "Ancient burial place" means a tract of land that has
27 been a burial ground for 1 or more individuals for more than 50

1 years, but does not include a burial ground currently owned and
2 maintained by a religious organization or cemetery corporation
3 unless that burial ground is also known to contain ancient
4 burials.

5 (4) "Archaeological methods" means scientific procedures
6 used in field archaeology by recognized authorities engaged in
7 the profession of archaeology.

8 (5) "Archaeological resource" means material evidence of
9 past human life or activity that is of scientific value or of
10 interest to the public, including an aboriginal antiquity, an
11 object of antiquity, an artifact, a cultural item, a mound,
12 earthwork, or fort, a burial or village site, prehistoric or his-
13 toric human remains, a mine, a relic, materials resulting from
14 activities of historic and prehistoric Native Americans and other
15 early residents of the state, an object or site similar to those
16 listed in this subsection, and other objects and materials illus-
17 trative of and relating to the history of this state and the old
18 northwest territory, particularly objects indicative of the life,
19 customs, dress, and resources of the residents of this state.

20 (6) "Artifact" means an object made by human work, includ-
21 ing, but not limited to, a tool, a weapon, a vessel, an ornament,
22 a utensil, clothing, a structure, an environmental alteration, or
23 remains of past earth-disturbing activity.

24 (7) "Associated funerary object" means an object that, as a
25 part of the death rite or ceremony of a culture, was intention-
26 ally placed with individual human remains either at the time of
27 death or later.

1 (8) "Burial site" means any natural or prepared physical
2 location, whether originally below, on, or above the surface of
3 the earth, into which, as a part of the death rite or ceremony of
4 a culture, individual human remains are deposited.

5 Sec. 6. (1) "Cultural affiliation" means that there is a
6 relationship of shared group identity that can be reasonably
7 traced historically or prehistorically between a present day
8 Indian tribe and an identifiable earlier group.

9 (2) "Cultural item" means human remains, an associated
10 funerary object, an unassociated funerary object, a sacred
11 object, or a cultural patrimony.

12 (3) "Cultural patrimony" means an object that is shown by a
13 preponderance of the evidence to have ongoing historical, tradi-
14 tional, or cultural importance central to a Native American group
15 or culture itself, rather than property owned by an individual
16 Native American, and that, therefore, cannot be alienated, appro-
17 priated, or conveyed by an individual regardless of whether or
18 not the individual is a member of the Indian tribe and that was
19 considered inalienable by the Native American group at the time
20 the object was separated from the group.

21 (4) "Curate" means manage and care for a collection of his-
22 torical or archaeological objects according to standard profes-
23 sional museum practices, including, but not limited to, all of
24 the following:

25 (a) Inventorying, accessioning, labeling, and cataloging the
26 collection.

1 (b) Cleaning, identifying, evaluating, documenting,
2 stabilizing, and conserving the collection.

3 (c) Storing and maintaining the collection under appropriate
4 environmental conditions and physically secure controls.

5 (d) Periodically inspecting the collection and taking
6 actions as may be necessary to preserve the collection.

7 (e) Providing access to facilities for studying the
8 collection.

9 (5) "Custodian" means a person who has a legal right to
10 physical possession of an archaeological resource owned by the
11 state or an institution with professional curatorial facilities
12 and expertise.

13 (6) "Data" means field notes, photographs, maps, environmen-
14 tal information, and other records generated from a site as a
15 result of the practice of field archaeology.

16 (7) "Department" means the department of natural resources.

17 (8) "Director" means the director of the department of natu-
18 ral resources or the director's designated representative.

19 (9) "Field archaeology" means the study of an archaeological
20 resource or the traces of human culture at a site by means of
21 surveying, digging, sampling, excavating, or removing surface or
22 subsurface soil or objects, or entering upon a site with that
23 intent.

24 (10) "Historical value" means value relating to, or illus-
25 trative of, the history of this state, including, but not limited
26 to, the statehood, territorial, colonial, and historic and
27 prehistoric Native American periods.

1 (11) "Indian affairs commission" means the Michigan
2 commission on Indian affairs or its successor agency.

3 (12) "Indian tribe" means a tribe, band, nation, or other
4 organized group or community of Indians that is recognized by the
5 United States as Native American Indian.

6 (13) "Inventory" means a simple, itemized list that summa-
7 rizes the information required by section 67.

8 Sec. 7. (1) "Museum" means an institution or agency,
9 including any institution of higher learning, that receives state
10 funds and has possession of, or control over, Native American
11 cultural items.

12 (2) "Native American" means of, or relating to, a tribe,
13 people, or culture that is indigenous to the United States.

14 (3) "Object of antiquity" means an archaeological resource
15 that is not less than 50 years of age.

16 (4) "Person" means an individual, sole proprietorship, part-
17 nership, corporation, organization, agency, school, scientific
18 institution, or any other public or private entity.

19 (5) "Public official" means an official whose term of office
20 is prescribed by statute, charter, ordinance, or the state con-
21 stitution, or who serves at the pleasure of an appointing
22 authority.

23 (6) "Recreational value" means value relating to an activity
24 that the public engages in, or may engage in, for recreation or
25 sport.

26 (7) "Review committee" means the committee established under
27 section 73.

1 (8) "Right of possession" means possession obtained with the
2 voluntary consent of an individual or group that had authority of
3 alienation. The original acquisition of a Native American unas-
4 sociated funerary object, sacred object, or cultural patrimony
5 from an Indian tribe with the voluntary consent of an individual
6 or group with authority to alienate that object is considered to
7 give right of possession of that object. The original acquisi-
8 tion of Native American human remains and associated funerary
9 objects that were excavated, exhumed, or otherwise obtained with
10 full knowledge and consent of the next of kin or the official
11 governing body of the appropriate culturally affiliated Indian
12 tribe is considered to give right of possession to those
13 remains.

14 Sec. 8. (1) "Sacred object" means a specific ceremonial
15 object that is needed by a traditional Native American religious
16 leader for the practice of a traditional Native American religion
17 by its present-day adherents.

18 (2) "School" means a university, college, junior college, or
19 other educational institution, whether publicly or privately
20 owned or funded.

21 (3) "Scientific institution" means a museum, historical
22 society, foundation, archaeological society, or scholarly group
23 with professional standing, a professional staff, and a facility
24 for the display, study, and preservation of archaeological
25 resources.

26 (4) "Secretary of state" means the secretary of state or the
27 secretary of state's designated representative.

1 (5) "Site" means a prehistoric or historic residence, mound,
2 fort, earthwork, garden bed, midden, village, camp location,
3 burial ground, mission, mine, quarry, cave, rock shelter, indus-
4 trial complex, or extractive complex that is or may be the source
5 of artifacts or paleontological or archaeological resources, or a
6 place showing evidence of prior human occupation and that is 50
7 years of age or older.

8 (6) "State agency" means an agency of the state government.

9 (7) "State land" means land owned by this state regardless
10 of the branch or department of state government that manages the
11 land; a structure owned by a private individual but leased to the
12 state; land owned by a private individual that the state has a
13 property right to or upon, including, but not limited to, an
14 easement or right-of-way; or land owned by a private individual
15 for which the deed conveying the land contains a clause reserving
16 to the state a property right in archaeological resources and a
17 right to explore for and excavate archaeological resources by and
18 through an authorized agent of the state. State land does not
19 include land owned by a state school.

20 (8) "State site" means a site located upon or within state
21 land or in, on, under, over, or upon a navigable waterway, wet-
22 land, floodplain, unpatented lake, or river bottomland within
23 this state. State site includes a site located on private land
24 in which the state has a property right in the archaeological
25 resources found on or in the land and a right to explore for and
26 excavate archaeological resources by and through an authorized
27 agent of the state.

1 (9) "Tribal land" means land within the exterior boundaries
2 of an Indian reservation or a dependent Indian community.

3 (10) "Unassociated funerary object" means an object that, as
4 a part of the death rite or ceremony of a culture, is reasonably
5 believed to have been placed with individual human remains either
6 at the time of death or later and that can be related by a pre-
7 ponderance of the evidence to a specific individual or family, to
8 known human remains, or to having been removed from a specific
9 burial site of an individual culturally affiliated with a partic-
10 ular Indian tribe.

11 (11) "Unmarked human burial" means an interment of human
12 remains for which there is no grave marker or other historical
13 documentation identifying the deceased.

14 Sec. 9. The secretary of state shall establish and maintain
15 a program to assure the protection and preservation of the
16 archaeological resources of this state. The secretary of state
17 shall do all of the following:

18 (a) Sponsor, engage in, foster, and review fundamental
19 research into the archaeological heritage of this state.

20 (b) Encourage archaeological research in both the public and
21 private sectors, with special emphasis on state sites.

22 (c) Coordinate archaeological research at state sites where
23 more than 1 person is conducting or waiting to conduct field
24 archaeology.

25 (d) Cooperate with other federal, state, and local govern-
26 mental agencies, including tribal governments, that have

1 authority over land containing sites or responsibility for the
2 protection or display of sites or objects of antiquity.

3 (e) Encourage the protection and preservation of sites
4 located on privately owned land.

5 (f) Evaluate and, as appropriate, preserve and protect
6 archaeological resources that are discovered through the practice
7 of field archaeology at state sites, are discovered during the
8 course of construction or demolition work at state sites, or are
9 discovered at privately owned sites, but are donated to or owned
10 by the state.

11 (g) Cooperate with scientific institutions, schools, and
12 governmental and private agencies that are custodians of archaeo-
13 logical resources, and other custodians, to preserve and protect
14 archaeological resources, and the data relating to them.

15 (h) Disseminate and encourage the dissemination of informa-
16 tion relating to the archaeological heritage of this state
17 through available media sources, including, but not limited to,
18 television, radio, motion pictures, and publications.

19 (i) In cooperation with the department of natural resources,
20 establish and implement a system for the issuance of field
21 archaeology permits to qualified persons.

22 (j) Administer gifts, grants, and funds designated for use
23 in fulfilling the program described in this section.

24 (k) Administer an annual appropriation for the study, con-
25 servation, stabilization, and interpretation of archaeological
26 resources located on and in state land.

1 Sec. 11. (1) Except as otherwise provided in this act, the
2 state reserves to itself legal title to all abandoned property of
3 historical or recreational value and all archaeological resources
4 found on or in state land or at a state site.

5 (2) Except as otherwise provided in this act, the state
6 reserves to itself the exclusive right and privilege of explor-
7 ing, surveying, excavating, regulating, and practicing field
8 archaeology through its authorized officers, agents, and employ-
9 ees with respect to all aboriginal records and other archaeologi-
10 cal resources, including, but not limited to, mounds, earthworks,
11 forts, burial and village sites, mines or other relics, and aban-
12 doned property that is of historical or recreational value and is
13 found upon or within state land.

14 (3) This act does not prohibit the secretary of state from
15 appointing agents to conduct field archaeology at state or pri-
16 vate sites, from contracting for the conducting of field archaeo-
17 logy at state sites, or from issuing permits to other qualified
18 persons for the conducting of field archaeology at state sites or
19 on state land.

20 (4) With the written permission of the secretary of state, a
21 field archaeologist who gathers data under a contract with or
22 permit from the secretary of state may use the data for
23 research. A state university, state college, or state educa-
24 tional institution that gathers data under a contract with or
25 permit from the secretary of state may use the data for research
26 without obtaining the permission of the secretary of state.

1 Sec. 13. Except for a state tax deed for the conveyance of
2 land owned by the state, a deed granted or given by this state
3 after the effective date of this act shall contain a clause
4 reserving to this state a property right in all archaeological
5 resources and sites in or on the land conveyed. The deed shall
6 reserve to the state the sole right to practice field archaeology
7 on the land conveyed. With the approval of the secretary of
8 state, the commission of natural resources or the state transpor-
9 tation commission may waive this reservation when conveying
10 platted property or when making conveyances under Act No. 193 of
11 the Public Acts of 1911, being sections 322.481 to 322.485 of the
12 Michigan Compiled Laws.

13 Sec. 15. (1) The secretary of state shall assemble and
14 maintain a complete record of each state and privately owned site
15 that has been or is discovered, together with as much data con-
16 cerning the site as possible, to document the location, extent,
17 nature, and significance of each site. The secretary of state
18 shall develop a system of cataloging these records and shall
19 assign a unique identification number to each identified site.

20 (2) The secretary of state shall assemble and maintain a
21 record of each survey undertaken in the state to locate a site,
22 whether successful in locating a site or not, and assemble as
23 much data as possible concerning each survey.

24 (3) Each agency and state supported school shall cooperate,
25 insofar as is practicable, with the secretary of state in assem-
26 bling records concerning a site, shall provide the secretary of
27 state with an opportunity to duplicate records and data in their

1 possession, and shall take state sites into account during the
2 planning of a project that may affect a state site. Likewise,
3 the secretary of state shall cooperate insofar as is practicable
4 with each agency, including a state supported school, and public
5 official in assembling records concerning a state site, in pro-
6 viding an opportunity to duplicate state archaeology records and
7 data, and in taking state sites into account during the planning
8 of projects that may affect a state site. However, without the
9 written permission of the secretary of state or other statutory
10 authority, a person shall not, directly or indirectly, publish or
11 disseminate in any way the information received or the conclu-
12 sions reached by studying the information received from the
13 duplicating of state archaeology records or data unless the
14 records or data have been in existence for at least 3 years.

15 (4) A person having knowledge of the location of a site that
16 is located on private or state land but was not previously known
17 by the secretary of state may receive a letter of commendation
18 from the secretary of state if, voluntarily or upon request, the
19 person willingly communicates that information to the secretary
20 of state.

21 (5) Information in the custody of a public official identi-
22 fying the location of a site situated on state or private land,
23 the preservation of which is in the interest of this state, shall
24 remain confidential unless the secretary of state determines that
25 the disclosure is necessary for the protection, preservation,
26 evaluation, or scientific excavation of the site or for public
27 display or educational purposes.

1 (6) Any person involved in construction or excavation on
2 land owned by an agency shall report promptly to the secretary of
3 state and preserve for the state any object of antiquity discov-
4 ered in the course of the construction or excavation.

5 (7) This act does not require a person to divest itself of
6 its own records or data concerning state sites that were obtained
7 before the effective date of this act unless the records or data
8 were obtained under a contract or permit with the secretary of
9 state. If the records or data were obtained under a contract or
10 permit, copies of the records or data acquired before the effec-
11 tive date of this act shall be made available to the secretary of
12 state upon request.

13 Sec. 17. (1) A person possessing historic or prehistoric
14 relics, archaeological resources, or human remains having histor-
15 ical, educational, or scientific value that are in danger of
16 being lost, destroyed, or scattered may donate them to the secre-
17 tary of state, to another institution, or to a tribal government
18 within this state that is qualified to preserve, study, and
19 exhibit them for their historic, scientific, and educational
20 value to the people of the state.

21 (2) Native American human remains shall not be exhibited in
22 any way except by a medical school, medical institution, or medi-
23 cal professional for a medical purpose, by a law enforcement
24 agency for a law enforcement purpose, or by an educational insti-
25 tution or scientific institution for an educational purpose or
26 for professional assessment.

1 (3) The secretary of state or another institution may reject
2 a donation or place conditions on acceptance of a donation
3 according to established procedures for accessioning and
4 deaccessioning. If it is demonstrable that a donation contains
5 human remains or a cultural item that has a cultural affiliation
6 with a particular Native American tribe of this state, the cur-
7 rent tribal authorities shall be notified in writing of the
8 donation.

9 Sec. 19. (1) A person shall not practice field archaeology
10 on state land or at a state site without a permit issued jointly
11 by the secretary of state and the department. A permit shall be
12 issued without charge. This subsection does not apply to the
13 department of transportation if the secretary of state and the
14 department of transportation have a written agreement.

15 (2) For a determination on issuing, conditioning, denying,
16 suspending, or revoking a permit, the secretary of state's juris-
17 diction takes precedence for questions involving archaeological
18 and historical expertise, and the department's jurisdiction takes
19 precedence for questions involving the protection of natural
20 resources on state land.

21 (3) A person who has knowledge of an object of antiquity
22 recovered at a state site without a permit shall immediately
23 report that information to the secretary of state.

24 Sec. 21. (1) A person who has standing as a professional
25 archaeologist may apply for a permit to conduct field archaeology
26 on state land. An application for a permit to practice field
27 archaeology on state land shall be filed with the secretary of

1 state. The application shall contain all of the following
2 information:

3 (a) The name and address of the applicant.

4 (b) The name, education, experience, and professional stand-
5 ing of the professional archaeologist who will conduct the field
6 archaeology. The professional standing of the archaeologist
7 shall be determined according to the guidelines established by
8 the society of professional archaeologists.

9 (c) The location of the site or study area.

10 (d) A description of the site or study area, including maps
11 or drawings of the area where the field archaeology will be
12 conducted.

13 (e) A description of the archaeological resource and data
14 expected to be encountered or recovered at the site.

15 (f) A statement of the specific purpose of the proposed
16 work.

17 (g) A concise, but thorough, research design statement,
18 including specifications of times for fieldwork and report
19 finalization.

20 (h) The proposed disposition of the archaeological resources
21 and data to be recovered, including their proposed custodian and
22 the conservation methods to be utilized.

23 (i) A statement of the means and tools to be used to search
24 for or extract materials.

25 (j) A plan for restoration of the site and access to near
26 pre-existing conditions after completion of field archaeological
27 work.

1 (k) Other information considered necessary by the secretary
2 of state or the department.

3 (2) An application for a permit is not complete until the
4 secretary of state receives all information requested by the sec-
5 retary of state or the department. After receipt of an otherwise
6 complete application, the secretary of state or the department
7 may request additional information or documents necessary to make
8 a decision to grant or deny a permit. If an application is
9 incomplete, the secretary of state shall notify the applicant in
10 writing indicating the nature of the deficiency.

11 (3) If an application is incomplete and the applicant does
12 not respond within 45 days after the secretary of state mails the
13 notice, the secretary of state shall deny the permit. If the
14 applicant requests an extension and provides satisfactory justi-
15 fication, the secretary of state may grant an extension.

16 (4) Immediately upon receipt of an application for a permit,
17 the secretary of state shall forward a copy of the application to
18 the Indian affairs commission. The secretary of state shall pro-
19 vide the Indian affairs commission with a copy of each survey
20 report that pertains to a Native American site on state land.

21 Sec. 23. (1) The secretary of state may approve uncondi-
22 tionally, approve with conditions, or deny an application for a
23 permit under section 21 to engage in field archaeology on state
24 land or at a state site. The secretary of state may impose the
25 conditions that it considers reasonable and necessary to protect
26 the public trust or conditions that accomplish 1 or more of the
27 following purposes:

1 (a) Preservation and protection of an archaeological
2 resource or data to be recovered.

3 (b) Preservation and protection of an archaeological
4 resource or data that is to remain at the site and other property
5 at or near the site.

6 (c) Assurance that the exact location of the site is not
7 revealed.

8 (d) Designation of a custodian other than the secretary of
9 state for an archaeological resource or data to be recovered.

10 (e) Requiring a report on the work be provided to the secre-
11 tary of state within a specified period of time after completion
12 of field activities.

13 (2) A condition imposed by a permit shall be expressed in
14 writing on the face of the permit or on an attachment to the
15 permit. A condition that is not prescribed in writing is not
16 enforceable.

17 Sec. 25. (1) The secretary of state shall act on a complete
18 application submitted under section 21 within 45 days after the
19 date the application is filed. The secretary of state shall
20 approve an application if the field archaeology to be performed
21 is consistent with the goals of the state historic preservation
22 plan, other legitimate scientific goals, or other statutory
23 requirements. The secretary of state or department may deny an
24 application if 1 or more of the following conditions exist:

25 (a) The application is inconsistent with the established
26 goals of the historic preservation plan of the state, other
27 legitimate scientific goals, or other statutory requirements.

1 (b) The applicant is not a professional archaeologist of
2 reputable standing or the work to be performed will not be con-
3 ducted by a professional archaeologist of reputable standing. As
4 used in this subdivision, "reputable standing" means the profes-
5 sional standing of the archaeologist as determined by the secre-
6 tary of state by applying the guidelines established by the soci-
7 ety of professional archaeologists.

8 (c) The work proposed is unnecessarily duplicative of other
9 work performed at the site or other similar sites within the
10 state.

11 (d) The work proposed will harm beyond necessity an archaeo-
12 logical resource to be recovered, other objects remaining at the
13 site, the site itself, or the integrity of the area beyond the
14 site designated for excavation.

15 (2) The secretary of state shall approve an application sub-
16 mitted under section 21 unless the secretary of state determines
17 that the abandoned property to be recovered has substantial his-
18 torical value in itself or in conjunction with other abandoned
19 property in its vicinity. If the property has substantial his-
20 torical value, the secretary of state, pursuant to section 23,
21 may impose a condition to the approval of the application requir-
22 ing the applicant to turn over recovered property to the secre-
23 tary of state for the purpose of preserving the property or per-
24 mitting public access to the property. The secretary of state
25 may authorize the display of the property in a public or private
26 museum or by a city, village, township, or county. In addition
27 to the conditions authorized by section 23, the secretary of

1 state may provide for payment of salvage costs in connection with
2 the recovery of the abandoned property if the secretary of state
3 wants the property to be recovered.

4 (3) An emergency permit may be issued under the auspices of
5 the secretary of state to a person not otherwise qualified to
6 perform field archaeology if an archaeological resource or a site
7 itself is threatened with imminent harm.

8 Sec. 27. A permit to engage in field archaeology expires 1
9 year after the date of issuance. The secretary of state may
10 extend the duration of a permit upon application to the secretary
11 of state. If field archaeology is to be conducted at a site that
12 goes beyond the scope of a permit previously approved for that
13 site, an original permit application shall be filed with the sec-
14 retary of state.

15 Sec. 29. (1) A person aggrieved by a denial of a permit to
16 practice field archaeology or the imposition of a condition on a
17 permit may request administrative review of that action by the
18 secretary of state or the director, whichever denied the permit
19 or imposed the condition. A person shall file the request for
20 review with the secretary of state or the department, whichever
21 is applicable, within 90 days after the permit is denied.

22 (2) An administrative hearing under this section shall be
23 conducted under the procedures set forth in chapter 4 of the
24 administrative procedures act of 1969, Act No. 306 of the Public
25 Acts of 1969, being sections 24.271 to 24.287 of the Michigan
26 Compiled Laws. Depending upon whether the department of state or

1 natural resources conducts the hearing, the secretary of state or
2 director shall issue a final decision and order in the case.

3 (3) If both the secretary of state and the department deny
4 the permit, or if both impose a condition being grieved, and an
5 administrative review is requested from each department, the
6 appeals shall be combined upon request of any party or either
7 department, and a single administrative hearing shall be
8 conducted. In a combined case, the director and the secretary of
9 state shall issue a joint final decision and order in the case.

10 Sec. 31. (1) A field archaeology permit may be suspended or
11 revoked by the secretary of state or the department after notice
12 and an opportunity for a hearing conducted under the procedures
13 set forth in chapter 4 of the administrative procedures act of
14 1969, Act No. 306 of the Public Acts of 1969, being sections
15 24.271 to 24.287 of the Michigan Compiled Laws, if any of the
16 following have occurred:

17 (a) The holder of the permit violated a condition of the
18 permit.

19 (b) The holder of the permit violated this act or a rule
20 promulgated under this act.

21 (c) The holder of the permit made a false statement in con-
22 nection with the application for the permit.

23 (d) The field archaeology practiced at the site is sub-
24 standard or improper as determined by the secretary of state.

25 (e) Unauthorized damage to an archaeological resource or the
26 site has occurred or is threatened.

1 (2) Under subsection (1)(d), the executive committee of the
2 conference on Michigan archaeology may advise the secretary of
3 state on whether the field archaeology practiced at a site is
4 substandard or improper. In order for the executive committee to
5 give the secretary of state its advisory opinion, the committee
6 shall have access to the site at issue for inspection and shall
7 have access to the information possessed by the secretary of
8 state on the field archaeology methods practiced at the site.
9 The members of the executive committee shall not receive addi-
10 tional compensation for advisory service to the secretary of
11 state. The executive committee does not have any authority,
12 power, or duties now vested in the secretary of state or another
13 department of state government.

14 (3) The advisory business that the executive committee of
15 the conference on Michigan archaeology may perform for the secre-
16 tary of state under subsection (2) shall be conducted at a public
17 meeting of the committee held in compliance with the open meet-
18 ings act, Act No. 267 of the Public Acts of 1976, being
19 sections 15.261 to 15.275 of the Michigan Compiled Laws.

20 Sec. 32. (1) If either the secretary of state or department
21 finds that the holder of a field archaeology permit is not in
22 compliance with this act, a rule promulgated under this act, or a
23 provision of or condition in a permit, or has irreparably damaged
24 an archaeological resource or failed to use diligence in attempt-
25 ing to recover a resource for which a permit was issued, the sec-
26 retary of state or the department may summarily suspend or revoke
27 the permit. If the permit holder requests a hearing within 15

1 days following the effective date of the suspension or
2 revocation, the secretary of state or department shall conduct an
3 administrative hearing pursuant to chapter 4 of the administra-
4 tive procedures act of 1969, Act No. 306 of the Public Acts of
5 1969, being sections 24.271 to 24.287 of the Michigan Compiled
6 Laws, to consider whether the permit should be reissued.

7 (2) The secretary of state or department may commence a
8 civil action in circuit court to enforce compliance with this
9 act, to restrain a violation of this act, to restrain an action
10 contrary to a decision denying a permit, to enjoin the further
11 removal of geological material or archaeological resources, or to
12 order the restoration of an affected area to its prior
13 condition.

14 Sec. 33. (1) Within 10 days after recovery of an object of
15 antiquity, the holder of a field archaeology permit shall report
16 the recovery in writing to the secretary of state. The person
17 recovering the object of antiquity shall give authorized repre-
18 sentatives of the secretary of state an opportunity to examine
19 the object of antiquity for a period of 90 days after recovery.
20 A person shall not remove a recovered object of antiquity from
21 this state without written approval of the secretary of state.
22 If the recovered object of antiquity is removed from the state
23 without written approval, the attorney general, upon request from
24 the secretary of state, shall bring an action for the recovery of
25 the property.

26 (2) If the secretary of state determines that the recovered
27 property does not have historical value, the secretary of state

1 shall release the property to the person holding the permit by
2 means of a written instrument.

3 Sec. 35. (1) The secretary of state shall be the principal
4 custodian in this state for a state owned archaeological
5 resource. Upon written request, the secretary of state may in
6 writing designate another agency, scientific institution, or
7 school as a custodian of a state owned archaeological resource.

8 (2) If a custodian is other than the secretary of state,
9 each custodian of an archaeological resource recovered on state
10 land or at a state site after the effective date of this act
11 shall be designated in writing by the secretary of state.

12 (3) Except for real estate owned or managed by other depart-
13 ments of state government, physical possession of an archaeologi-
14 cal resource reverts to the secretary of state if the secretary
15 of state finds, after a duly noticed administrative hearing con-
16 ducted pursuant to the administrative procedures act of 1969, Act
17 No. 306 of the Public Acts of 1969, being sections 24.201 to
18 24.328 of the Michigan Compiled Laws, that the custodian of the
19 resource has not properly cared for the resource or has not made
20 the resource available for display to the public or for inspec-
21 tion by professional archaeologists and anthropologists, students
22 of archaeology and anthropology, professionals and students of
23 related disciplines, or Native Americans.

24 (4) Upon the death, imprisonment, dissolution, or bankruptcy
25 of a custodian of a state owned archaeological resource, physical
26 possession of the resource reverts to the secretary of state.

1 (5) This section does not require an agency that is the
2 custodian of an archaeological resource on the effective date of
3 this act to obtain the concurrence of the secretary of state to
4 retain possession or to relinquish possession of the resource to
5 the secretary of state.

6 Sec. 39. Without the consent of the landowner, a person
7 shall not practice field archaeology on privately owned land
8 within this state.

9 Sec. 41. (1) Unless authorized by law, a person shall not
10 willfully dig up, disinter, remove, or convey away human remains
11 from a place where the remains are interred or deposited, know-
12 ingly aid that activity, or mutilate or deface human remains.

13 (2) A landowner shall not knowingly allow a person, except a
14 representative of an agency, school, funeral parlor, or scien-
15 tific institution, to dig up, disinter, remove, or convey away
16 human remains unless it is in the course of a formal scientific,
17 legal, or similar investigation, the remains are exposed as a
18 result of accidental exposure of the body, or the person has per-
19 mission from the decedent's next of kin or a court of law.

20 (3) An official of a city, village, township, or county who
21 obtains information concerning the location of human remains in
22 an unmarked grave shall notify the department of state police.
23 If the department of state police determines that the remains are
24 not those of a known or suspected missing person, that informa-
25 tion shall be conveyed to the secretary of state.

26 (4) A person shall not collect or maintain a collection of
27 human remains unless the person is a licensed professional in a

1 health care field, or an employee or agent of an agency, school,
2 or scientific institution and is engaged in the study of the
3 remains. This subsection does not apply to a collection of human
4 remains all of which were collected before the effective date of
5 this act.

6 (5) This section shall not be construed to prohibit the dig-
7 ging up, disinterment, removal, or carrying away for scientific
8 purposes prehistoric human remains by a representative of a
9 school or scientific institution that has the written consent of
10 the owner of the land on which the human remains are found.

11 Sec. 43. A modern cemetery or new burial shall not be
12 placed upon the site of an ancient burial place that contains an
13 existing burial. This section shall not be construed to prohibit
14 the practice of field archaeology in the ancient burial place.

15 Sec. 45. (1) A city, village, township, or county shall not
16 alienate or appropriate an ancient burial place to a use other
17 than that of a burial ground. A portion of an ancient burial
18 place shall not be taken for public use without statutory author-
19 ity from the state legislature. If an ancient burial place is
20 appropriated for another use and a body buried in or a monument,
21 gravestone, or other memorial located in an ancient burial place
22 is removed, the entity authorized to alienate or appropriate the
23 ancient burial place shall make a record that indicates the date
24 of the removal and the site or place to which removal is made,
25 and shall file a copy of the record with the secretary of state.
26 This subsection applies to a neglected cemetery or burial
27 ground.

1 (2) The state or a city, village, township, or county that
2 has a known abandoned or neglected ancient burial place within
3 its limits and on public land shall do all of the following:

4 (a) Take charge of the ancient burial place and keep it in
5 good order.

6 (b) Repair or restore fences, tombs, monuments, or other
7 structures in the ancient burial place.

8 (c) Appropriate money for the upkeep of the ancient burial
9 place, but property rights shall not be violated and a body shall
10 not be disinterred except as provided in this act.

11 Sec. 47. (1) Except in accordance with this section, a
12 person shall not destroy, damage, or remove a fence, tomb, monu-
13 ment, mound, gravehouse, cairn, or gravestone that is part of an
14 ancient burial place. With the approval of the owner, or if the
15 owner cannot be found, the owner's next of kin, of the burial lot
16 in which the gravestone or memorial is placed or, if the owner
17 and owner's next of kin are unknown, with the approval of a
18 court, a gravestone or other memorial for the dead may be removed
19 for the purpose of repair or replacement, for the purpose of
20 reproduction, or for the purpose of preservation and display in a
21 reputable museum.

22 (2) The court may approve a removal under subsection (1) if
23 the court determines after a hearing that the removal is neces-
24 sary or desirable for the protection or preservation of the
25 gravestone or memorial or for the furtherance of educational
26 objectives. A hearing under this section shall be held not less
27 than 7 days after notice of the hearing is published in a

1 newspaper that is circulated in the ancient burial place's
2 locality. An owner, or if the owner cannot be found, the owner's
3 next of kin, of a burial lot who does not receive notice of the
4 hearing may request replacement of a gravestone or memorial
5 removed under this section. If satisfied that the person is the
6 owner or owner's next of kin, the court shall order the
7 replacement.

8 Sec. 49. (1) Except for a professional archaeologist, a
9 person that knows or has reasonable grounds to believe that an
10 unmarked human burial or human remains are being disturbed,
11 destroyed, defaced, mutilated, removed, or exposed shall immedi-
12 ately notify the medical examiner of the county in which the
13 remains are encountered.

14 (2) Except for a professional archaeologist or a law
15 enforcement officer, if an unmarked human burial or human remains
16 are encountered as a result of construction, mining, logging,
17 dredging, or recreational, agricultural, or another land disturb-
18 ing activity, a person shall immediately cease disturbance of the
19 remains and shall not resume without authorization from the sec-
20 retary of state. If the human remains are from a recent burial,
21 a person, including a professional archaeologist, shall immedi-
22 ately cease disturbance of the remains and shall not resume with-
23 out authorization from either the county medical examiner or the
24 local law enforcement agency. Except as otherwise provided in
25 this act, after removal and curation of human remains, a profes-
26 sional archaeologist shall notify the secretary of state of the

1 discovered remains and the location of both where the remains
2 were found and where they are stored.

3 Sec. 50. (1) If an unmarked human burial or human remains
4 are encountered by a professional archaeologist conducting sys-
5 tematic archaeological research on private property and the
6 remains are not Native American, the archaeologist is exempt from
7 sections 51 to 61 if the archaeologist does all of the
8 following:

9 (a) Notifies the secretary of state within 5 working days
10 after the initial discovery of prehistoric or historic human
11 remains.

12 (b) Reports to the secretary of state, at agreed upon inter-
13 vals, the status of the project.

14 (c) Curates the human remains prior to ultimate
15 disposition.

16 (2) Upon completion of the project fieldwork, the profes-
17 sional archaeologist, in consultation with a skeletal analyst,
18 and the secretary of state, in consultation with appropriate law
19 enforcement agencies or medical examiners, shall determine the
20 schedule for the completion of the skeletal analysis.

21 (3) The secretary of state shall notify the department of
22 public health of any reported human remains discovered by a pro-
23 fessional archaeologist.

24 Sec. 51. (1) If an agreement is reached between the secre-
25 tary of state and a landowner for the excavation of human
26 remains, the secretary of state shall supervise the excavation or
27 shall designate a member of his or her staff or authorize another

1 professional archaeologist to excavate or supervise the
2 excavation.

3 (2) A professional archaeologist excavating human remains
4 under this section shall report to the secretary of state his or
5 her opinion on the cultural and biological characteristics of the
6 remains. The archaeologist shall report as soon as possible
7 after the commencement of excavation, but not later than 2 busi-
8 ness days after the removal of a burial.

9 (3) In consultation with the professional archaeologist
10 excavating the remains, the secretary of state shall determine
11 where the remains shall be held after excavation, pending other
12 arrangements according to sections 53 to 57.

13 Sec. 53. (1) If a professional archaeologist excavating
14 human remains under section 49 or 51 or under a state permit
15 determines that the human remains are Native American, the secre-
16 tary of state shall immediately notify the Indian affairs
17 commission. The commission shall notify and consult with other
18 appropriate tribal groups.

19 (2) Within 4 weeks after the notification, the Indian
20 affairs commission shall communicate in writing to the secretary
21 of state the concerns of the commission and of an appropriate
22 culturally affiliated tribal group with regard to the treatment
23 and ultimate disposition of the Native American remains.

24 (3) If cultural affiliation with a tribe is established,
25 within 120 days after receipt of the concerns of the Indian
26 affairs commission, in consultation with the appropriate
27 personnel and the commission and with the approval of the

1 principal tribal official of the culturally affiliated tribe, the
2 secretary of state and the professional archaeologist shall pre-
3 pare a written agreement concerning the treatment and ultimate
4 disposition of the Native American remains. The written agree-
5 ment shall include all of the following:

6 (a) A designation of a qualified skeletal analyst to work on
7 the skeletal remains.

8 (b) The type of analysis and the specific period of time to
9 be provided for analysis of the human remains.

10 (c) The timetable for the skeletal analyst to provide writ-
11 ten progress reports and a final report concerning the skeletal
12 analysis to the secretary of state, the appropriate tribe, and
13 the commission.

14 (d) A plan for the ultimate disposition of the Native
15 American remains subsequent to the completion of skeletal
16 analysis.

17 (4) If an agreement is not reached within 90 days, the
18 remains shall be released to the appropriate tribal official or,
19 if the tribal official rejects responsibility for the remains or
20 is located in another state or country, to the Indian affairs
21 commission for reinterment at public expense.

22 (5) Only a culturally affiliated tribe may enter a written
23 agreement provided for in this section. The Indian affairs com-
24 mission shall not be a party to such an agreement, but the com-
25 mission shall be consulted during the negotiation and may make
26 comments on the terms of the agreement.

1 (6) Beginning with the original archaeological discovery of
2 Native American remains and until an affiliated tribe is
3 established and enters an agreement provided for in this section,
4 the archaeologist may measure, examine, study, x-ray, and possess
5 the remains. During this same time, the archaeologist shall not
6 lease, sell, give away, destroy, or damage the remains. The
7 status of the remains' decay and the remains' reaction to the
8 environment both before and after proper curation is to be con-
9 sidered in determining if a violation of this subsection has
10 occurred.

11 Sec. 55. The cultural affiliation of Native American
12 remains, funerary objects, or sacred objects shall be ascertained
13 under this act by the preponderance of the evidence based upon
14 documentation, geography, kinship, biology, archaeology, anthro-
15 pology, linguistics, folklore, oral tradition, history, or other
16 relevant information or expert opinion.

17 Sec. 57. (1) If a professional archaeologist excavating
18 human remains under section 51 or under a state permit determines
19 that the remains are not Native American and the identity of the
20 remains or next of kin is unknown, the secretary of state shall
21 publish at least once each week for 4 successive weeks in a news-
22 paper of general circulation in the county where the burial or
23 human remains are discovered a notice that excavation of the
24 remains has occurred.

25 (2) If next of kin is located, within 120 days after the
26 next of kin is located, the secretary of state, in consultation
27 with the next of kin, shall prepare a written agreement

1 concerning the treatment and ultimate disposition of the human
2 remains. The written agreement shall include all of the
3 following:

4 (a) A designation of a qualified skeletal analyst to examine
5 the human remains.

6 (b) The type of analysis and the specific period of time to
7 be provided for analysis of the human remains.

8 (c) The timetable for the skeletal analyst to provide writ-
9 ten progress reports and the final report concerning the skeletal
10 analysis to the secretary of state and the next of kin.

11 (d) A plan for the ultimate disposition of the human remains
12 after the completion of skeletal analysis.

13 (3) If an agreement under subsection (2) is not reached, the
14 remains shall be handled according to the wishes of the next of
15 kin with reinterment at public expense.

16 Sec. 59. (1) A skeletal analysis performed under this act
17 shall only be performed by a person possessing the qualifications
18 of a skeletal analyst.

19 (2) Prior to the execution of a written agreement under sec-
20 tion 53 or 57, the secretary of state shall consult with the pro-
21 fessional archaeologist and the skeletal analyst investigating
22 the remains.

23 (3) The professional archaeologist and the skeletal analyst
24 shall submit a proposal to the secretary of state within the
25 90-day period prescribed by section 53 or 57, which proposal
26 shall include all of the following:

1 (a) Methodology and techniques to be utilized.

2 (b) A statement of research objectives.

3 (c) The proposed time schedule for completion of the
4 analysis.

5 (d) The proposed time intervals for submission of written
6 progress reports and the final report.

7 (4) If the terms of a section 53 or 57 written agreement are
8 not substantially met, the affiliated tribe, if cultural affilia-
9 tion with a tribe is established, or the next of kin, after con-
10 sultation with the secretary of state, may take possession of the
11 human remains.

12 Sec. 61. (1) The affiliated tribe may determine the ulti-
13 mate disposition of Native American remains for which a cultural
14 affiliation with the tribe is established. The next of kin may
15 determine the ultimate disposition of the human remains for which
16 the next of kin is identified.

17 (2) If the human remains are prehistoric and are discovered
18 on state land and if the secretary of state has not received
19 information or communication establishing that the deceased is
20 culturally affiliated with a tribe, the human remains shall be
21 transferred to the secretary of state who shall provide for per-
22 manent curation or disposal according to standard museum proce-
23 dures after adequate skeletal analysis. If the human remains are
24 discovered on private property without an agreement with the sec-
25 retary of state and the remains are either historic without a
26 next of kin or the remains are prehistoric without the secretary
27 of state receiving information or communication establishing

1 cultural affiliation with a tribe, the professional archaeologist
2 shall provide for permanent curation or disposal according to
3 standard museum procedures after adequate skeletal analysis.

4 (3) If cultural affiliation with a tribe is established for
5 Native American remains and the remains are reinterred, the grave
6 goods discovered with the remains shall be reinterred with the
7 remains. Native American remains that are reinterred shall be
8 reinterred either in an appropriate Native American burial ground
9 or in a place as close as possible to the site where the remains
10 were disinterred.

11 (4) A reinterment under this section shall be at public
12 expense.

13 Sec. 63. (1) The ownership or control of a Native American
14 cultural item that is excavated or discovered on state or tribal
15 land after the effective date of this act is as follows, with
16 priority given in the order listed:

17 (a) For Native American remains or an associated funerary
18 object, in the lineal descendants of the Native American.

19 (b) If a lineal descendant cannot be ascertained, or for an
20 unassociated funerary object, sacred object, or object of cul-
21 tural patrimony, as follows:

22 (i) In the Indian tribe on whose tribal land the remains or
23 object is discovered.

24 (ii) In the Indian tribe that has the closest cultural
25 affiliation with the remains or object and that, upon notice,
26 states a claim for the remains or object.

1 (iii) If the cultural affiliation of the remains or object
2 cannot be reasonably ascertained and if the remains or object is
3 discovered on state land or federal land that is recognized by a
4 final judgment of the Indian claims commission or the United
5 States court of claims as the aboriginal land of some Indian
6 tribe as follows:

7 (A) In the Indian tribe that is recognized as aboriginally
8 occupying the area in which the remains or object is discovered,
9 if upon notice, that tribe states a claim for the remains or
10 object.

11 (B) If it can be shown by a preponderance of the evidence
12 that a different tribe has a stronger cultural relationship with
13 the remains or object than the tribe or organization specified in
14 sub-subparagraph (A), in the Indian tribe that has the strongest
15 demonstrated relationship, if upon notice, that tribe states a
16 claim for the remains or object.

17 (2) A Native American cultural item not claimed under sub-
18 section (1) shall remain in the possession of the item's current
19 possessor.

20 (3) The intentional removal from or excavation of a Native
21 American cultural item from state or tribal land for purposes of
22 discovery, study, or removal of the item is permitted only if all
23 of the following are complied with:

24 (a) The item is excavated or removed pursuant to a permit
25 issued under this act.

1 (b) The item is excavated or removed after consultation with
2 or, in the case of tribal land, consent of the appropriate Indian
3 tribe, if any.

4 (c) The ownership and right of control of the disposition of
5 the item is as provided in subsections (1) and (2).

6 (d) Proof of consultation or consent under subdivision (b)
7 is shown.

8 Sec. 64. (1) A person who knows, or has reason to know,
9 that the person has discovered a Native American cultural item on
10 state or tribal land after the effective date of this act shall
11 notify, in writing, the secretary of state and the appropriate
12 Indian tribe with respect to tribal land, if known or readily
13 ascertainable. If the discovery occurred in connection with an
14 activity, including, but not limited to, construction, mining,
15 logging, and agriculture, the person shall cease the activity in
16 the area of the discovery, make a reasonable effort to protect
17 the item discovered before resuming the activity, and provide
18 notice under this subsection. After 30 days after the secretary
19 of state or appropriate Indian tribe certifies that the notifica-
20 tion under this subsection has been received, the activity may
21 resume.

22 (2) The disposition of and control over a cultural item
23 excavated or removed under this section shall be determined as
24 provided in section 63.

25 (3) If the secretary of state consents, all or some of the
26 responsibilities under subsection (1) or (2) of a director,
27 commission, or board of another department or of the head of

1 another agency or instrumentality of this state may be delegated
2 to the secretary of state with respect to land managed by the
3 other director, commission, or board of another department or by
4 head of another agency or instrumentality of this state.

5 (4) This section does not prevent the governing body of an
6 Indian tribe from expressly relinquishing control over Native
7 American remains, or title to or control over a funerary object
8 or sacred object.

9 Sec. 65. (1) A person who knowingly sells, purchases, uses
10 for profit, or transports for sale or profit the human remains of
11 a Native American without the right of possession to those
12 remains as provided in this act is guilty of a felony punishable
13 by a fine or imprisonment as provided in section 85. A second or
14 subsequent violation of this subsection is punishable by impris-
15 onment for not less than 3 years or more than 10 years, or a fine
16 of not less than \$20,000.00 or more than \$75,000.00, or both.

17 (2) A person who knowingly sells, purchases, uses for
18 profit, or transports for sale or profit a Native American cul-
19 tural item obtained in violation of this act shall be imprisoned
20 for not more than 1 year, or fined not less than \$1,000.00 or
21 more than \$5,000.00, or both. A person who commits a second or
22 subsequent violation of this section shall be imprisoned for not
23 less than 1 year or more than 5 years, or fined not less than
24 \$5,000.00 or more than \$26,000.00, or both.

25 Sec. 67. (1) A state agency or a museum that, on the effec-
26 tive date of this act, has possession or control over holdings or
27 collections of Native American human remains and associated

1 funerary objects shall compile an inventory of those items and,
2 to the extent possible, based on information possessed by the
3 museum or state agency, identify the geographical and cultural
4 affiliation of each item.

5 (2) An inventory or identification required under subsection
6 (1) shall be all of the following:

7 (a) Completed in consultation with tribal government offi-
8 cials and traditional religious leaders.

9 (b) Completed not later than 5 years after the effective
10 date of this act.

11 (c) Made available both during the time it is being con-
12 ducted and afterward to the review committee.

13 (3) Upon request by an Indian tribe that receives or should
14 receive notice, a museum or state agency shall supply additional
15 available documentation to supplement the information required by
16 subsection (1). As used in this subsection, "documentation"
17 means a summary of existing museum or state agency records,
18 including inventories or catalogs, relevant studies, or other
19 pertinent data for the limited purpose of determining the geo-
20 graphical origin, cultural affiliation, and basic facts surround-
21 ing acquisition and accession of Native American human remains
22 and associated funerary objects subject to this section.

23 Documentation does not mean, and this act shall not be construed
24 to be an authorization for, the initiation of new scientific
25 studies of Native American remains and associated funerary
26 objects or other means of acquiring or preserving additional
27 scientific information from those remains and objects.

1 (4) A museum that makes a good faith effort to carry out an
2 inventory or identification under this section, but that is
3 unable to complete the process, may appeal to the secretary of
4 state for an extension of the time requirement set forth in sub-
5 section (2)(b). The secretary of state may extend the time
6 requirement for that museum upon a finding of good faith effort.
7 An indication of good faith includes the development of a plan to
8 carry out the inventory or identification process.

9 Sec. 68. If the cultural affiliation of particular Native
10 American human remains or a particular associated funerary object
11 is determined pursuant to section 67, the state agency or museum
12 concerned shall notify the affected Indian tribe not later than 6
13 months after the completion of the inventory under section 67.
14 The notice shall include information that does all of the
15 following:

16 (a) Identifies each Native American human remains or associ-
17 ated funerary object and the circumstances surrounding its
18 acquisition.

19 (b) Lists the human remains or associated funerary objects
20 that are clearly identifiable as to tribal origin.

21 (c) Lists the Native American human remains and associated
22 funerary objects that are not clearly identifiable as being cul-
23 turally affiliated with that Indian tribe, but that, given the
24 totality of circumstances surrounding acquisition of the remains
25 or objects, are determined by a reasonable belief to be remains
26 or objects culturally affiliated with the Indian tribe.

1 Sec. 69. (1) A state agency or a museum that, on the
2 effective date of this act, has possession or control over
3 holdings or collections of Native American unassociated funerary
4 objects, sacred objects, or objects of cultural patrimony shall
5 provide a written summary of those objects based upon available
6 information held by the agency or museum. The summary shall
7 describe the scope of the collection; kinds of objects included;
8 reference to geographical location, means, and period of acquisi-
9 tion; and cultural affiliation, if readily ascertainable.

10 (2) The summary required under subsection (1) shall be all
11 of the following:

12 (a) In lieu of an object-by-object inventory.

13 (b) Followed by consultation with tribal government offi-
14 cials and traditional religious leaders.

15 (c) Completed not later than 3 years after the effective
16 date of this act.

17 (3) Upon request, an Indian tribe shall have access to
18 records, catalogs, relevant studies, or other pertinent data for
19 the limited purposes of determining the geographic origin, cul-
20 tural affiliation, and basic facts surrounding acquisition and
21 accession of Native American objects subject to this section.
22 The information shall be provided in a reasonable manner to be
23 agreed upon by all parties.

24 Sec. 71. (1) If pursuant to section 67 the cultural affili-
25 ation of Native American human remains or an associated funerary
26 object with a particular Indian tribe is established, then the
27 state agency or museum, upon the request of the tribe or of a

1 known lineal descendant of the Native American and pursuant to
2 section 72(1) and (4), shall expeditiously return the remains or
3 associated funerary object. If pursuant to section 69 the cul-
4 tural affiliation with a particular Indian tribe is shown with
5 respect to an unassociated funerary object, sacred object, or
6 object of cultural patrimony, then the state agency or museum,
7 upon the request of the Indian tribe and pursuant to section
8 72(1), (2), and (4), shall expeditiously return the object. The
9 return of a cultural item covered by this act shall be in consul-
10 tation with the requesting lineal descendant or tribe to deter-
11 mine the place and manner of delivery of the item.

12 (2) If cultural affiliation of Native American human remains
13 or a funerary object is not established in an inventory prepared
14 pursuant to section 67 or the summary pursuant to section 69 or
15 if Native American human remains or a funerary object is not
16 included in an inventory, then, upon request and pursuant to sec-
17 tion 72(1) and (4) and, for an unassociated funerary object, sec-
18 tion 72(2), the Native American human remains or funerary object
19 shall be expeditiously returned if the requesting Indian tribe
20 can show cultural affiliation by a preponderance of the evidence
21 based upon geographical, kinship, biological, archaeological,
22 anthropological, linguistic, folkloric, oral traditional, histor-
23 ical, or other relevant information or expert opinion.

24 (3) Upon request and pursuant to section 72(1), (2), and
25 (4), a sacred object or object of cultural patrimony shall be
26 expeditiously returned if any of the following are true:

1 (a) The requesting party is the direct lineal descendant of
2 an individual who owned the sacred object.

3 (b) The requesting Indian tribe can show that the object was
4 owned or controlled by the tribe.

5 (c) The requesting Indian tribe can show that the sacred
6 object was owned or controlled by a member of the tribe, provided
7 that, if a sacred object was owned by a member of the tribe,
8 there are no identifiable lineal descendants of that member or
9 the lineal descendants, upon notice, have failed to make a claim
10 for the object under this act.

11 Sec. 72. (1) If a lineal descendant or Indian tribe
12 requests the return of a culturally affiliated Native American
13 cultural item, the state agency or museum shall expeditiously
14 return the item unless the item is indispensable for completion
15 of a specific scientific study, the outcome of which would be of
16 major benefit to the United States or this state. The item shall
17 be returned not later than 90 days after the date on which the
18 scientific study is completed.

19 (2) If a known lineal descendant or an Indian tribe requests
20 the return of a Native American unassociated funerary object,
21 sacred object, or object of cultural patrimony pursuant to this
22 act and presents evidence that, if standing alone before the
23 introduction of evidence to the contrary, would support a finding
24 that the state agency or museum does not have the right of pos-
25 session, then the agency or museum shall return the object unless
26 it can overcome that inference and prove that it has a right of
27 possession to the object.

1 (3) A state agency or museum shall share information it
2 possesses regarding the object in question with the known lineal
3 descendant or Indian tribe to assist in making a claim under this
4 section or section 71.

5 (4) If there are multiple requests for repatriation of a
6 cultural item and, after complying with the requirements of this
7 act, the state agency or museum cannot clearly determine which
8 requesting party is the most appropriate claimant, the agency or
9 museum may retain the item until the requesting parties agree
10 upon its disposition or the dispute is otherwise resolved pursu-
11 ant to the provisions of this act or by a court of competent
12 jurisdiction.

13 (5) A museum that repatriates a cultural item in good faith
14 pursuant to this act is not liable for claims by an aggrieved
15 party or for a claim of breach of fiduciary duty, breach of the
16 public trust, or violation of a state law that is inconsistent
17 with the provisions of this act.

18 Sec. 73. (1) Within 120 days after the effective date of
19 this act, the secretary of state shall establish a review commit-
20 tee to monitor and review the implementation of the inventory and
21 identification process and repatriation activities required under
22 sections 67 to 72 and to resolve disputes concerning the discov-
23 ery, excavation, study, possession, and cultural affiliation of
24 Native American cultural items.

25 (2) The review committee is composed of 7 members appointed
26 by the secretary of state as follows:

1 (a) Three members from nominations submitted by Indian
2 tribes and traditional Native American religious leaders with at
3 least 2 of those members being traditional Indian religious
4 leaders.

5 (b) Three members from nominations submitted by museum orga-
6 nizations or archaeological scientific organizations.

7 (c) One member from a list of persons developed and con-
8 sented to by all of the members appointed pursuant to subdivi-
9 sions (a) and (b). However, if, within 60 days after their
10 appointment, the members appointed pursuant to subdivisions (a)
11 and (b) do not develop a list of persons or do not consent to a
12 single individual for appointment under this subdivision, the
13 secretary of state shall appoint an individual under this subdi-
14 vision without the consent of the other review committee
15 members.

16 (3) The secretary of state shall not appoint a state officer
17 or employee to the review committee. Each review committee
18 member shall be a resident of this state.

19 (4) Except for a member first appointed, each review commit-
20 tee member shall serve a 4-year term. The initial term of office
21 for the review committee members first appointed shall be deter-
22 mined at the first meeting of the review committee by the drawing
23 of lots among the members with 3 members serving for 4 years, 3
24 members serving for 3 years, and 1 member serving for 2 years.

25 (5) If a vacancy occurs, the secretary of state shall fill
26 the vacancy in the same manner as the original appointment within
27 90 days after vacancy occurs.

1 (6) A review committee member shall serve without pay, but
2 shall be reimbursed in accordance with the rate established by
3 the department of management and budget for travel expenses,
4 including per diem in lieu of subsistence, for the time the
5 member is actually engaged in review committee business.

6 Sec. 74. (1) The review committee shall meet not less than
7 twice each calendar year at the call of the chairperson. A
8 majority of the members constitutes a quorum for the transaction
9 of business. A decision of the review committee shall be made by
10 4 or more members voting in agreement and voting at a review com-
11 mittee meeting.

12 (2) The review committee is responsible for all of the
13 following:

14 (a) Annually electing a chairperson, vice-chairperson, and
15 secretary.

16 (b) Monitoring the inventory and identification process con-
17 ducted under sections 67 to 69 to ensure a fair, objective con-
18 sideration and assessment of all available relevant information
19 and evidence.

20 (c) Upon the request of an affected party, reviewing and
21 making findings related to the following:

22 (i) The identity or cultural affiliation of a cultural
23 item.

24 (ii) The return of a cultural item.

25 (d) Facilitating the resolution of a dispute between an
26 Indian tribe or lineal descendant and an agency, museum,
27 archaeologist, or scientist relating to the discovery,

1 excavation, or study of Native American cultural items including,
2 but not limited to, convening the parties to the dispute if con-
3 sidered desirable.

4 (e) Facilitating the resolution of a dispute between an
5 Indian tribe or lineal descendant and a state agency or museum
6 relating to the return of a cultural item including, but not
7 limited to, convening the parties to the dispute if considered
8 desirable.

9 (f) Compiling an inventory of culturally unidentifiable
10 human remains that are in the possession or control of each state
11 agency and museum and recommending specific actions for develop-
12 ing a process for disposition of those remains. The review com-
13 mittee shall make the recommendations under this subdivision in
14 consultation with Indian tribes and appropriate scientific and
15 museum groups.

16 (g) Consulting with Indian tribes and museums on matters
17 within the scope of the work of the review committee affecting
18 those tribes.

19 (h) Consulting with the secretary of state in the develop-
20 ment of rules to carry out this act.

21 (i) Performing other related functions that the secretary of
22 state assigns to the review committee.

23 (j) Making recommendations, if appropriate, regarding future
24 care of cultural items that are to be repatriated.

25 Sec. 75. (1) A record or finding made pursuant to this act
26 by the review committee relating to the identity or cultural
27 affiliation of a cultural item and the return of the item is

1 admissible in an action brought in a court having jurisdiction
2 under this act.

3 (2) A writing prepared, owned, used, in the possession of,
4 or retained by the review committee in the performance of an
5 official function shall be made available to the public in com-
6 pliance with the freedom of information act, Act No. 442 of the
7 Public Acts of 1976, being sections 15.231 to 15.246 of the
8 Michigan Compiled Laws.

9 (3) Review committee business shall be conducted at a public
10 meeting of the review committee held in compliance with the open
11 meetings act, Act No. 267 of the Public Acts of 1967, being sec-
12 tions 15.261 to 15.275 of the Michigan Compiled Laws.

13 (4) The secretary of state shall ensure that the review com-
14 mittee and review committee members have reasonable access to
15 Native American cultural items under review and to associated
16 scientific and historical documents. The secretary of state
17 shall provide reasonable administrative and staff support neces-
18 sary for the deliberations of the review committee.

19 (5) The review committee shall submit an annual report to
20 the secretary of state and to the director of the department of
21 management and budget on the progress made, and any barriers
22 encountered, in implementing sections 73 and 74 and this section
23 during the previous year.

24 Sec. 77. (1) A person who believes the review committee is
25 necessary to resolve a dispute may file a written complaint in
26 person or by mail with the secretary of state who shall forward
27 the complaint to the review committee chairperson.

1 (2) A complaint shall be typewritten or handwritten in ink.
2 The complainant's name, address, and telephone number shall be
3 typewritten or handwritten upon the complaint. A complaint shall
4 be signed by the complainant. A complaint shall describe in rea-
5 sonable detail the alleged dispute, identify all available evi-
6 dentiary material, and set forth the opposing party's name and
7 address.

8 (3) If, upon reading the complaint, a majority of the review
9 committee determines a complaint is frivolous, illegible, indefi-
10 nite, or unsigned, or does not identify an issue assigned to the
11 review committee under this act, the review committee may summar-
12 ily dismiss the complaint without prejudice. If a complaint is
13 summarily dismissed, the complainant shall be notified in writing
14 as to the reason the complaint was dismissed.

15 (4) If a complaint is not summarily dismissed, the review
16 committee shall immediately mail a copy of the complaint to the
17 opposing party along with any request the review committee may
18 have for additional evidentiary material.

19 (5) To resolve a complaint, the review committee may meet
20 and decide the dispute based upon the evidentiary material sub-
21 mitted by the parties, or the review committee may notify the
22 parties in writing to appear at a review committee meeting. The
23 notice shall give the parties involved reasonable time to appear,
24 if they choose to do so. The parties shall be notified of the
25 time and place of the meeting, that they may appear in person or
26 by counsel, and that they may give testimony or submit other
27 material evidence.

1 (6) The review committee shall make a decision resolving a
2 dispute in writing and shall serve the decision upon the parties
3 to the dispute.

4 Sec. 81. (1) A person shall not make or manufacture a fac-
5 simile archaeological resource with intent to utilize or transfer
6 the facsimile resource so as to defraud, or alter an archaeologi-
7 cal resource so that it appears to have value beyond its inherent
8 value with intent to utilize or transfer the resource so as to
9 defraud.

10 (2) If an archaeological resource is discovered on state
11 land or at a state site after the effective date of this act and
12 the resource is obtained by deceit, fraud, or theft, a person
13 shall convey the archaeological resource to the secretary of
14 state. A person who fails to convey a resource as required by
15 this subsection within 30 days after the person's receipt of the
16 resource is guilty of a felony, punishable by imprisonment for
17 not more than 2 years or a fine of not more than \$10,000.00, or
18 both.

19 (3) A person who excavates, disturbs, removes, destroys, or
20 sells an object of antiquity or artifact of archaeological or
21 historical value, or the contents of a mound or burial ground, on
22 or from state land, except with the written approval of the sec-
23 retary of state, or in violation of this act or a rule promul-
24 gated pursuant to this act, is guilty of a felony, punishable by
25 imprisonment for not more than 3 years or a fine of not more than
26 \$25,000.00, or both.

1 (4) A law enforcement, conservation, or tribal police
2 officer may enforce this section. The attorney general or a
3 prosecuting attorney may prosecute a person who violates this
4 section.

5 Sec. 83. (1) An archaeological resource with respect to
6 which a violation of this act or a rule promulgated under this
7 act has occurred, and a vehicle, vessel, or other apparatus or
8 equipment that is used in connection with the violation may be
9 seized, proceeded against, and confiscated as prescribed in this
10 act.

11 (2) A law enforcement, conservation, or tribal police offi-
12 cer seizing the property shall file a verified complaint in the
13 circuit court for the county in which the seizure was made or in
14 the circuit court for Ingham county. The complaint shall set
15 forth the kind of property seized, the time and place of the sei-
16 zure, the reasons for the seizure, and a demand for the
17 property's condemnation and confiscation. Upon the filing of the
18 complaint, an order shall be issued requiring the owner to show
19 cause why the property should not be confiscated. The substance
20 of the complaint shall be stated in the order. The order to show
21 cause shall fix the time for service of the order and for the
22 hearing on the proposed condemnation and confiscation.

23 (3) The order to show cause shall be served on the owner of
24 the property as soon as possible, but not less than 7 days before
25 the complaint is to be heard. The court, for cause shown, may
26 hear the complaint on shorter notice. If the owner is not known

1 or cannot be found, notice may be served in 1 or more of the
2 following ways:

3 (a) By posting a copy of the order in 3 public places for 3
4 consecutive weeks in the county in which the seizure was made and
5 by sending a copy of the order by certified mail to the last
6 known business or residential address of the owner. If the last
7 addresses of the owner are not known, mailing a copy of the order
8 is not required.

9 (b) By publishing a copy of the order in a newspaper once
10 each week for 3 consecutive weeks in the county where the seizure
11 was made and by sending a copy of the order by registered mail to
12 the last known business or residential address of the owner. If
13 the last addresses of the owner are not known, mailing a copy of
14 the order is not required.

15 (c) In another manner as the court directs.

16 (4) Upon a hearing before the court, if the court determines
17 that the property mentioned in the petition was possessed,
18 shipped, or used contrary to law, either by the owner or by a
19 person lawfully in possession of the property under an agreement
20 with the owner, an order shall be made condemning and confiscat-
21 ing the property and directing its sale or other disposal by the
22 secretary of state. If the owner signs a property release, a
23 court proceeding is not necessary. At the hearing, if the court
24 determines that the property was not possessed, shipped, or used
25 contrary to law, the court shall order the appropriate agency to
26 immediately return the property to its owner.

1 (5) The secretary of state shall deposit the proceeds it
2 receives under this section into the state treasury. The
3 proceeds shall be earmarked for disbursement to the secretary of
4 state for the preservation and interpretation of state sites and
5 archaeological resources.

6 Sec. 85. (1) The secretary of state may assess a civil fine
7 on a museum that fails to comply with the requirements of this
8 act. A fine assessed under this subsection shall be determined
9 after the museum has an opportunity for an administrative hearing
10 conducted by the secretary of state pursuant to the procedures
11 set forth in chapter 4 of the administrative procedures act of
12 1969, Act No. 306 of the Public Acts of 1969, being sections
13 24.271 to 24.287 of the Michigan Compiled Laws. Each violation
14 under this subsection is a separate offense.

15 (2) The amount of a civil fine assessed under subsection (1)
16 shall be determined after taking into account, in addition to
17 other factors, all of the following:

18 (a) The archaeological, historical, or commercial value of
19 the item involved.

20 (b) The damages suffered, both economic and noneconomic, by
21 an aggrieved party.

22 (c) The number of violations that have occurred by the
23 violator.

24 (3) If a museum fails to pay an assessment of a civil fine
25 pursuant to a final decision and order of the secretary of state
26 issued under subsection (1) and not appealed or after a final
27 judgment has been rendered on appeal, the attorney general may

1 institute a civil action in an appropriate circuit court of this
2 state to collect the fine. In the action, the validity and
3 amount of the fine are not subject to review.

4 (4) For a hearing held under subsection (1), the secretary
5 of state may issue a subpoena for the attendance and testimony of
6 witnesses and the production of relevant papers, books, and
7 documents. A subpoenaed witness shall be paid the same fees and
8 mileage that are paid to a witness in the circuit court of Ingham
9 county.

10 Sec. 87. A person who violates this act or a rule promul-
11 gated under this act concerning human burials or human remains is
12 guilty of a felony, punishable by imprisonment for not more than
13 3 years or a fine of not less than \$5,000.00 or more than
14 \$20,000.00, or both.

15 Sec. 89. A person shall not harm, destroy, or alter a state
16 site through vandalism, the use of a vehicle, or other means.
17 This section does not limit the right of a person to utilize
18 state lands and waters for recreational and other lawful
19 purposes.

20 Sec. 91. This act shall not be construed to do any of the
21 following:

22 (a) Limit the authority of a state agency or museum to
23 return or repatriate a Native American cultural item to an Indian
24 tribe or individual, or to enter into another agreement with the
25 consent of the culturally affiliated tribe as to the disposition
26 of, or control over, an item covered by this act.

1 (b) Delay action on a repatriation request that is pending
2 on the effective date of this act.

3 (c) Deny or otherwise affect access to the court.

4 (d) Limit a procedural or substantive right that may other-
5 wise be secured to individuals or Indian tribes.

6 (e) Limit the application of a state or federal law pertain-
7 ing to theft or stolen property.

8 (f) Require a person to donate an archaeological resource.

9 Sec. 93. To implement this act, the department and the sec-
10 retary of state, jointly or separately, may promulgate rules pur-
11 suant to the administrative procedures act of 1969, Act No. 306
12 of the Public Acts of 1969, being sections 24.201 to 24.328 of
13 the Michigan Compiled Laws.

14 Sec. 95. This act shall not take effect unless Senate Bill
15 No. _____ or House Bill No. 5861 (request no. 02269'91a) of the
16 86th Legislature is enacted into law.