



**House
Legislative
Analysis
Section**

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MICHIGAN ARCHAEOLOGY ACT

House Bills 4052 and 4053
Sponsor: Rep. Joseph Young, Jr.
Committee: State Affairs

Complete to 7-28-93

A SUMMARY OF HOUSE BILLS 4052 AND 4053 AS INTRODUCED 2-2-93

House Bill 4052 would create the Michigan Archaeology Act to require state permits to conduct field archaeology on state land; to encourage the protection of archaeological resources on private land; to protect Native American remains (and other human remains) and cultural artifacts; to require museums to inventory, and, in certain cases, repatriate their collections of Native American remains and cultural artifacts; and to set civil and criminal penalties for violations of the bill's provisions. The bill also would include a list of legislative findings and "declarations" and a description of the legislative intent of the bill.

Legislative findings. The bill would include the following legislative findings and declarations:

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

(b) *Archaeological resources have become increasingly endangered because of their commercial attractiveness, the activities of unprincipled collectors, and population increases.*

(c) *Existing state laws do not adequately protect the archaeological resources of this state, and uncontrolled excavations, pillages, and damage are resulting.*

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

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

(f) *Some human burial sites and remains may contain information important to the living and to science and may be a proper subject for scientific study.*

(g) *Human burial sites are subject to destruction for commercial purposes such as land development, agriculture, mining, and the sale of artifacts.*

(h) *Curiosity, vandalism, and private collecting are other causes of the destruction of human burial and other archaeological sites.*

(i) *Existing cemetery law reflects the value society places on the preservation of modern-day human burial sites but does not extend equal and adequate protection to prehistoric or unmarked historic burials.*

Legislative intent. The bill would say that the bill was intended to:

- * Secure and protect the heritage of the state's archaeological resources and sites for the benefit of present and future generations;

- * foster increased cooperation and exchange of information among governmental bodies, the professional archaeological community, Native American governmental authorities and people, and lay people who have collections of antiquities or other archaeological resources and data;

- * facilitate the protection and preservation of archaeological resources and sites on private land;

- * accord all human burials equal treatment and dignity without discriminating on the basis of ethnic origin, cultural background, or religious affiliation;

- * provide consideration for a variety of interests when human burials were discovered in the course of "ground-disturbing" activities (such as during an archaeological excavation, mining, construction,

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agriculture, and environmental impact assessments) without causing undue delay or hardship to those with an interest in using the land on which the burial was discovered; and

* balance the interests of descendants, scientists, landowners, developers, and others in relation to burials, including those with a cultural, tribal, or religious affiliation with the burial site.

Responsibilities of the secretary of state. The secretary of state would be the principal custodian in the state for state-owned archaeological resources, would be required to establish and maintain a program to protect and preserve these resources, and to keep certain records on all identified archaeological sites in the state.

The bill would define "custodian" to mean either someone who had a legal right to physical possession of state-owned archaeological resources or an institution with professional curatorial facilities and expertise. An "archaeological resource" would be "material evidence of past human life or activity that [was] of scientific value or of interest to the public." "Archaeological resources" would include:

- * aboriginal antiquities;
- * "objects of antiquity," (that is, archaeological resources at least 50 years old);
- * "artifacts" (objects made by human work, including, but not limited to, tools, weapons, vessels, ornaments, utensils, clothing, structures, environmental alterations, or remains of past earth-disturbing activities);
- * "cultural items," that is,
 - (a) human remains,
 - (b) "associated funerary objects" (objects that, as a part of the death rite or ceremony of a culture, were intentionally placed with the individual's human remains either at the time of death or later),
 - (c) "sacred objects" (specific ceremonial objects needed by traditional Native American religious leaders to practice a traditional Native American religion by its present-day adherents), or

(d) a "cultural patrimony" ("an object that [was] shown by a preponderance of the evidence to have ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual Native American, and that, therefore, [could] not be alienated, appropriated, or conveyed by an individual regardless of whether or not the individual [was] a member of the Indian tribe and that was considered inalienable by the Native American group at the time the object was separated from the group");

- * mounds, earthworks, or forts;
- * burials or village sites;
- * prehistoric or historic human remains;
- * mines;
- * relics (not defined in the bill);
- * materials resulting from activities of historic or prehistoric Native Americans and other early residents of the state; and
- * objects and materials illustrative of and relating to the history of the state and the old Northwest Territory, particularly objects indicative of the life, customs, dress, and resources of the residents of the state.

The bill lists in detail what the secretary of state would have to do to establish and maintain a program to protect and preserve the state's archaeological resources. The list would require the secretary of state to do the following:

- * encourage, engage in, and review fundamental research into the archaeological heritage of the state;
- * encourage both public and private archaeological research, especially on state sites, and encourage the protection and preservation of sites on private land;
- * coordinate archaeological research when more than one permit holder was doing (or would be doing) research at a state site;
- * cooperate with other governments (federal, state, local, and tribal) having authority over land

containing sites or responsibility for protecting or displaying sites or objects of antiquity;

- * evaluate, and (as appropriate) preserve and protect, archaeological resources from state sites (including those discovered through field work and those uncovered in the course of construction or demolition work) as well as those discovered on private land but donated or owned by the state;

- * cooperate with other custodians of archaeological resources (including scientific institutions, schools, and other governmental and private agencies) to preserve and protect them;

- * disseminate (and encourage the dissemination of) information about the archaeological heritage of the state;

- * establish and implement, in cooperation with the Department of Natural Resources, a system of field archaeology permits for archaeological research on state lands; and

- * administer annual appropriations (and any gifts, grants, or other funds) for the study, conservation, stabilization, and interpretation of archaeological resources located on and in state land.

The secretary of state would be responsible for keeping records on all surveys undertaken to identify archaeological sites and on all sites identified (whether on state or private land), assigning a unique identification number to each identified site. The secretary of state and each agency and state-supported school would have to cooperate in assembling records concerning state sites, would have to let each other copy each other's archaeology records and data, and would have to take state sites into account when planning projects that might affect the sites. (An "agency" would include, basically, state legislative, executive, and judicial officials; state executive and judicial employees; and any body created and funded by state or local authorities, including state executive or legislative boards, commissions, and councils; state executive departments, divisions, bureaus, and authorities; counties, cities, townships, and villages; intercounty, intercity, or regional governing bodies, councils, school districts, special districts, or municipal corporations.)

The secretary of state would be the principal custodian in the state for state-owned archaeological

resources, and physical possession of archaeological resources would revert to the secretary of state if the custodian (1) did not properly care for the resource, (2) had not made it available for display to the public or for inspection by professional archaeologists and anthropologists and their students, professionals and students of related disciplines, or Native Americans, or (3) died, was imprisoned, dissolved, or went bankrupt. Upon written request, the secretary of state could, in writing, designate another agency, scientific institution, or school as a custodian of a state-owned archaeological resource. Real estate owned or managed by other departments of state government would not revert to the secretary of state, nor would the bill require an agency that already was custodian of an archaeological resource when the bill took effect to relinquish possession of the property.

The bill also would specify that it would not prohibit the secretary of state from appointing agents to do field archaeology at state or private sites, from contracting for field archaeology at state sites, or from issuing permits to other qualified people for field archaeology at state sites or on state land.

Rules promulgation. The Department of Natural Resources and the secretary of state could, jointly or separately, promulgate rules to implement the bill.

State property rights. Except as otherwise provided in the bill, the state would reserve to itself (a) legal title to all abandoned property of historical or recreational value and all archaeological resources found on or in state land, and (b) the exclusive right to all archaeological activity with respect to all aboriginal records and other archaeological resources on state land. ("Abandoned property" would mean material that was the result of the activities of historic or prehistoric human occupation, including human remains, that had been "deserted, relinquished, cast away, or left behind; and for which attempts at reclamation had been abandoned by the owner and insurer.") Except for state tax deeds for conveying land owned by the state, deeds granted or given by the state after the effective date of the bill would have to contain a clause reserving to the state a property right in all archaeological resources and sites in or on the land conveyed, as well as the sole right to practice field archaeology on the land conveyed. With the approval of the secretary of state, the Commission on Natural Resources or the State Transportation

Commission could waive this reservation when conveying platted property or when making conveyances under Public Act 193 of 1911, which authorizes the exchange of state lands under certain circumstances.

State sites. The bill would prohibit the harming, destruction, or alteration of state sites through vandalism. (A "state site" would mean "a site located on or within state land or in, on, under, over, or upon a navigable waterway, wetland, floodplain, unpatented lake, or river bottomland within the state." It would include a site located on private land in which the state had property rights in the archaeological resources found on or in the land and a right to explore for and excavate archaeological resources by and through authorized agents of the state.) This section of the bill wouldn't limit the right of people to use state lands and waters for recreational and other lawful purposes.

Field archaeology on private land. The bill would prohibit the practice of field archaeology on privately-owned land without the permission of the owner, and prohibit private landowners from allowing anyone to dig up, disinter, or take away human remains. (The bill would define "field archaeology" to mean the study of an archaeological resource or the traces of human culture at a site by means of surveying, digging, sampling, excavating, or removing surface or subsurface soil or objects, or entering upon a site with that intent.) However, private landowners could allow people to dig up, disinter, or take away human remains if:

- (a) the person doing the digging was a representative of an agency, school, funeral parlor, or scientific institution and was engaged in a formal scientific, legal, or similar investigation;
- (b) the remains were exposed as a result of accidental exposure of the body; or
- (c) the person had permission from the dead person's next of kin or a court.

The bill would specify that it would not prohibit representatives of schools or scientific institutions (museums, historical societies, foundations, archaeological societies, or scholarly groups with professional standing, professional staffs, and facilities for displaying, studying, and preserving archaeological resources) that had the written

consent of a landowner from digging up, disinterring, removing, or carrying away for scientific purposes prehistoric human remains.

Excavation of human burials and remains on private land. If the secretary of state and a private landowner reached an agreement for the excavation of human remains, the secretary of state would have to supervise the excavation or designate a member of his or her staff or authorize another professional archaeologist to excavate or supervise the excavation. If a professional archaeologist excavated the human remains, he or she would have to report -- as soon as possible, but not more than two business days after removal of the burial -- to the secretary of state the cultural and biological characteristics of the remains. The secretary of state would consult with the professional archaeologist when deciding where the remains were to be held if they were Native American. If the remains were not Native American, and the identity of the remains or next of kin was unknown, the secretary of state would have to publish weekly notices (for four successive weeks) in a local newspaper that remains had been excavated. If next of kin were located, the secretary of state would have 120 days to prepare a written agreement, in consultation with the next of kin, regarding the treatment and ultimate disposition of the remains.

The agreement would have to designate a qualified skeletal analyst to examine the human remains, specify the kind of analysis and amount of time it would take, give a timetable for the analyst's progress and final reports, and specify a plan for the ultimate disposition of the remains after the analysis was completed. If no agreement were reached between the secretary of state and the next of kin, the remains would have to be handled according to the wishes of the next of kin and reinterred at public expense. If the terms of the agreement weren't substantially met, the next of kin, after consulting with the secretary of state, could take possession of the human remains. The next of kin would determine the ultimate disposition of the human remains for which the next of kin was identified.

Field archaeology on state land: applications for permits. The bill would prohibit the practice of field archaeology on state land or at a state site without a permit issued jointly by the secretary of state and the Department of Natural Resources (DNR). ("State land" would mean land owned by

the state, regardless of the branch or department of state government that managed it; structures owned by private individuals but leased to the state; land owned by private individuals that the state had a property right to or upon, including, but not limited to, an easement or right-of-way; or land owned by private individuals for which the deed conveying the land contained a clause reserving to the state a property right in archaeological resources and a right to explore for and excavate these resources. "State land" would not include land owned by state schools.)

Permits would be free of charge, and would expire one year after being issued unless, upon request from the applicant, extended by the secretary of state. The prohibition against practicing field archaeology without a permit would not apply to the Department of Transportation if the secretary of state had a written agreement with the department. In issuing permits (including putting conditions on a permit, denying, suspending, or revoking a permit), the secretary of state would have jurisdiction over questions involving archaeological and historical expertise, while the DNR would have jurisdiction over questions involving the protection of natural resources. When the secretary of state received an application for a field archaeology permit or a survey report about a Native American site on state land, he or she would have to forward a copy to the Michigan Commission on Indian Affairs.

Only professional archaeologists could apply for permits to conduct field archaeology on state land. Applications would have to be filed with the secretary of state, and would have to include the following information (as well as any other information considered necessary by the secretary of state and the DNR):

- * The name and address of the applicant;
- * the name, education, experience, and professional standing (according to guidelines established by the Society of Professional Archaeologists, a body not identified or defined in the bill) of the professional archaeologist who would conduct the field archaeology;
- * the location and a description of the site or study area (including maps or drawings);
- * a description of the archaeological resources and data expected to be recovered at the site, and their proposed disposition (including their proposed custodian and the conservation methods to be used); and
- * a statement of the specific purpose of the proposed work and of the means and tools that would be used to search for or extract materials, a research design statement, and a restoration plan for the site.

An application for a permit would not be complete until the secretary of state had received all information he or she and the DNR had requested. If the secretary of state received an incomplete application, he or she would have to notify the applicant in writing of what was required to complete the application, and the applicant would have 45 days to respond. Failure to respond in 45 days would result in an automatic denial of the permit, unless the applicant requested an extension and provided satisfactory justification for the extension.

The secretary of state would have 45 days to act on a complete application, and could approve the application unconditionally, approve it with conditions, or deny it. The secretary of state also could ask for additional information or documents upon receiving an otherwise complete application. Whenever field archaeology beyond the scope of an approved permit was to be done, a new application for a permit would have to be filed with the secretary of state.

Permit approvals. The secretary of state would have to approve applications if the proposed field archaeology was consistent with the goals of the state historic preservation plan, other legitimate scientific goals, or other statutory requirements.

Field archaeologists who had gathered data under a contract with or permit from the secretary of state couldn't use the data for research without written permission from the secretary of state. (Under the bill, "data" would include field notes, photographs, maps, environmental information, and other records generated from a site as a result of the practice of field archaeology.) However, state universities, state colleges, or state educational institutions that gathered data under a contract with or permit from the secretary of state could use the data for

research without getting permission from the secretary of state.

Emergency permits. The secretary of state could issue an emergency permit to someone otherwise not qualified (that is, to someone other than a professional archaeologist) if an archaeological resource or site was threatened with imminent harm.

Conditions on permits. The secretary of state could grant permits but put certain conditions on the approval of a permit. Conditions imposed on permits would have to be written on the permit, and conditions not prescribed in writing would not be enforceable.

If the secretary of state determined that abandoned property that would be recovered in the course of the proposed field work had substantial historical value (in itself or in conjunction with other nearby abandoned property), he or she could require as a condition of approval of the permit that the applicant turn over recovered property for the secretary of state to preserve or to allow public access to the property. The bill also would allow the secretary of state to authorize the property to be displayed in a public or private museum or by a city, village, township, or county.

The secretary of state also could put conditions on permits if he or she considered the conditions to be reasonable and necessary in order to:

- (1) protect the public trust;
- (2) preserve and protect archaeological resources or data (including resources or data that was to stay at the site) and other property at or near the site;
- (3) assure that the exact location of the site was not revealed;
- (4) designate a custodian other than the state archaeologist; or
- (5) require a report on the work (to be completed within a specified time period after field activities were completed).

Denials of permits. The secretary of state or the Department of Natural Resources could deny an application for one or more of the following reasons:

(1) The application was inconsistent with the established goals of the historic preservation plan of the state, other legitimate scientific goals, or other statutory requirements.

(2) The applicant was not a professional archaeologist (or the field work wouldn't be done by a professional archaeologist) of "reputable standing" (where "reputable standing" would be determined by the secretary of state, using the guidelines of the Society of Professional Archaeologists).

(3) The proposed work would unnecessarily duplicate other work at the site or at other similar sites in the state.

(4) The proposed work would unnecessarily harm an archaeological resource to be recovered, other objects remaining at the site, the site itself, or the integrity of the area beyond the site designated for excavation.

Appeals of permit conditions or denials. A permit applicant could request an administrative review of the imposition of a condition on a permit or the denial of a permit. Requests for administrative reviews of permit denials would have to be made within 90 days after the permit was denied. Whomever had put conditions on the permit or denied the permit -- that is, either the secretary of state or the Department of Natural Resources -- would conduct the hearing and issue a final decision and order in the case. If both had denied the permit or both imposed a condition being appealed, and an administrative review was requested from each department, the appeals could be combined (and a single administrative hearing held) if requested by either department or by any party. In such combined cases, the director of the DNR and the secretary of state would issued a joint final decision and order in the case.

Permit suspensions and revocations. The secretary of state or the DNR could suspend or revoke a field archaeology permit after giving notice and an opportunity for a hearing under the Administrative Procedures Act. Permits could be suspended or revoked if any of the following occurred:

- * the permit holder violated a condition of the permit or a provision of the bill or a rule promulgated under the bill;
- * the permit holder lied in his or her application;

* the secretary of state determined that the field archaeology practiced at the site was substandard or improper (see below); or

* there was (or was threatened) unauthorized damage to an archaeological resource or the site.

A permit could be summarily suspended or revoked if either the secretary of state or the DNR found that the permit holder was not in compliance with the bill, a rule promulgated under the bill, or a condition in a permit or the permit holder had irreparably damaged an archaeological resource or failed to use "diligence" in trying to recover a resource for which the permit had been issued. In cases of summary suspensions or revocations, the secretary of state or the DNR would have to hold an administrative hearing to consider whether the permit should be reissued if the permit holder requested a hearing within fifteen days from the date of suspension or revocation.

Substandard or improper field archaeology. The executive committee of the Conference on Michigan Archaeology (not identified or defined in the bill) could advise the secretary of state on whether field archaeology being practiced at a site was substandard or improper. The committee would have access to the site in question for inspection, as well as to any information the secretary of state had on the field archaeology methods practiced at the site. The members of the executive committee wouldn't receive additional compensation for these advisory services, nor would the committee have any authority, power, or duties vested in the secretary of state or other departments of state government. The committee would have to conduct its advisory business for the secretary of state at public meetings held in compliance with the Open Meetings Act (Public Act 267 of 1976).

Information on site locations. Information held by public officials that identified site locations would be confidential unless the secretary of state determined that disclosure of the information was necessary for the protection, preservation, evaluation, or scientific excavation of the site or for public display or educational purposes. The bill would specify that public or private entities holding records and data on state sites that had been acquired before the effective date of the bill would not have to divest themselves of these records and data unless they had been acquired under a contract or permit with the secretary of state (in which case, the records

and data would have to be made available to the secretary of state upon request).

The secretary of state could issue a letter of commendation to someone who knew of the location of a site (on either private or public land) and voluntarily or upon request told the secretary of state. Anyone who discovered an object of antiquity while involved in construction or excavation on land owned by a state agency would be required to report it immediately to the secretary of state.

Donations. Anyone who had historic or prehistoric relics, archaeological resources or human remains that had historical, educational, or scientific value and that were in danger of being lost, destroyed, or scattered could donate them to the secretary of state, to another institution, or to a tribal government in the state that was qualified to preserve, study, and exhibit them. The secretary of state or another institution could refuse donations or place conditions on their acceptance ("according to established procedures for accessioning and deaccessioning"). If a donation contained human remains or cultural items with a cultural affiliation with a particular Native American tribe of the state, the tribe would have to be notified in writing of the donation.

Human remains: protection and reporting. The bill would protect human remains in unmarked burials from unauthorized disinterment or vandalism, and would require the reporting to various agencies of discoveries of human remains.

The bill would prohibit (unless otherwise authorized by law) (1) the willful digging up, disinterment, or removal of human remains (or helping in these activities); (2) the mutilation or defacing of human remains; and (3) after the effective date of the act, the collection (or keeping of a collection) of human remains. The prohibition against collecting human remains would not apply to licensed health professionals or employees or agents of agencies, schools, or scientific institutions studying the remains.

The bill would require people other than professional archaeologists to immediately notify the county medical examiner if they knew or believed that an unmarked human burial or human remains were being disturbed, destroyed, defaced, mutilated, removed, or exposed. The bill also would require people, other than professional archaeologists or

law enforcement officers, who discovered an unmarked human burial or human remains in the course of certain "land disturbing" activities (such as construction, mining, logging, dredging, or recreational or agricultural activities) to immediately stop the activity and not resume the activity without authorization from the secretary of state.

When professional archaeologists came upon human remains from a recent burial in the course of archaeological field work, they, too, would have to stop their work and not resume it without authorization from either the county medical examiner or the local law enforcement agency. Except as otherwise provided in the bill, professional archaeologists would be required to remove and "curate" (that is, manage and care for, according to standard professional museum practices) human remains and then notify the secretary of state of the discovered remains, where they had been found, and where they were being stored.

If a professional archaeologist conducting systematic archaeological research on private property discovered an unmarked human burial or human remains that were not Native American, the archaeologist would be exempted from certain of the bill's provisions if he or she did all of the following: (1) Notified the secretary of state within five working days after the initial discovery of the human remains, (2) periodically reported the status of the project to the secretary of state, and (3) curated the human remains before their ultimate disposition. After completing the project fieldwork, the professional archaeologist and the secretary of state (in consultation with a skeletal analyst and with appropriate law enforcement agencies or medical examiners) would determine a schedule for completing a skeletal analysis. The secretary of state would be required to notify the Department of Public Health of any reported human remains discovered by a professional archaeologist.

Local government officials who found out about the location of human remains in an unmarked grave would be required to notify the state police, and if the state police determined that the remains were not of a missing person, that information would be conveyed to the secretary of state.

Burial places and markers. The bill would prohibit modern cemeteries or new burials from being placed on the site of ancient burial places containing

existing burials but would specify that it didn't prohibit the practice of field archaeology in ancient burial places. (The bill would define "ancient burial place" to mean a tract of land that had been a burial ground for one or more individuals for more than 50 years, but would not include a burial ground currently owned and maintained by a religious organization or cemetery corporation unless that burial ground also was known to contain ancient burials. A "burial site" would mean any natural or prepared physical location -- whether originally below, on, or above the surface of the earth -- into which, as a part of the death rite or ceremony of a culture, individual human remains were deposited.)

The bill also would prohibit local governments from using ancient burial places (including neglected cemetery or burial grounds) for other than as a burial ground, and would require statutory authority from the state legislature for a local government to take part of an ancient burial place for public use. If an ancient burial place was taken for another use and a body, monument, gravestone, or other memorial was removed, the entity authorized to alienate or appropriate the ancient burial place would have to make a record of the date of the removal and the place to which the object was moved, and would have to file a copy of this record with the secretary of state.

When the state or local governments had a known abandoned or neglected ancient burial place within their limits and on public land, the state or local government would be required to take charge of the ancient burial place, keep it in good order, repair or restore any structures (such as fences, tombs, or monuments), and appropriate money for its upkeep. However, property rights could not be violated and bodies could not be disinterred except as provided by the bill.

The bill would prohibit, with certain exceptions, the destruction, damage, or removal of structures (such as fences, tombs, monuments, mounds, gravehouses, cairns, and gravestones) that were part of ancient burial places. Gravestones or other memorials for the dead could be removed for repair or replacement, for reproduction, or for preservation and display in a reputable museum provided that the owner (or, if the owner couldn't be found, the owner's next of kin) of the burial lot gave approval. If the owner or his or her next of kin couldn't be found, a court could approve removal for repair or replacement. A court, after a hearing, also could

approve removal of gravestones or memorials for their protection or preservation or for educational reasons. Notice of the hearing would have to be given at least a week before the hearing, and if a gravestone or memorial were removed after such a hearing, the owner (or his or her next of kin, if the owner couldn't be found) who didn't receive notice of the hearing could request that the gravestone or memorial be replaced.

Unaffiliated prehistoric human remains discovered on state land. Prehistoric human remains discovered on state land that were not culturally affiliated with a tribe would be transferred to the secretary of state, who would provide for permanent curation or disposal according to standard museum procedures after adequate skeletal analysis. Human remains discovered on private property without an agreement with the secretary of state that were either (a) historic but without identified next of kin or (b) prehistoric but without cultural affiliation with a tribe, would be curated and disposed of according to standard museum procedures (and after adequate skeletal analysis) by the professional archaeologist.

Skeletal analyses. Skeletal analyses could be done only by qualified skeletal analysts. Before executing a written agreement regarding the treatment and ultimate disposal of human remains, the secretary of state would have to consult with the professional archaeologist and the skeletal analyst investigating the remains. The professional archaeologist and the skeletal analyst would have to submit to the secretary of state, within the 90 days required by the bill, a proposal which specified the methodology and techniques to be used, a statement of research objectives, a proposed timetable for completing the analysis, and the proposed intervals for written progress reports and the final report.

Native American remains. The bill would prohibit the exhibition of Native American human remains except (1) by medical schools, institutions, or professionals for a medical purpose; (2) by law enforcement agencies for a law enforcement purpose; or (3) by an education or scientific institution for an educational purpose or for professional assessment.

If a professional archaeologist excavating human remains determined that they were Native American, the secretary of state would have to immediately notify the Michigan Commission on

Indian Affairs, which in turn would notify and consult with other appropriate tribal groups. Within four weeks of notification, the commission would write to the secretary of state regarding the concerns that the commission and an appropriate culturally affiliated tribal group had about the treatment and ultimate disposition of the remains. (The bill would define "cultural affiliation" to mean that there was "a relationship of shared group identity that [could] be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group.")

The cultural affiliation of Native American remains, funerary objects, or sacred objects would be ascertained "by the preponderance of the evidence based upon documentation, geography, kinship, biology, archaeology, anthropology, linguistics, folklore, oral tradition, history, or other relevant information of expert opinion." Until an affiliated tribe was established and an agreement was entered into, archaeologists could measure, examine, study, X-ray, and keep the remains, but could not lease, sell, give away, destroy, or damage them.

If cultural affiliation with a tribe was established, the secretary of state and the professional archaeologist -- in consultation with the appropriate personnel and the commission and with the approval of the principal tribal official of the culturally affiliated tribe -- would be required to prepare a written agreement concerning the treatment and ultimate disposition of the Native American remains. The agreement would have to designate a qualified skeletal analyst to work on the skeletal remains, specify the kind of analysis and amount of time it would take, set a timetable for the analyst's progress and final reports, and specify a plan for the ultimate disposition of the remains after the analysis was completed. Only a culturally affiliated tribe could enter such an agreement, and although the Michigan Commission on Indian Affairs couldn't be a party to such agreements, it would have to be consulted during the negotiation of the agreement and could comment on the terms of the agreement. If an agreement wasn't reached within 90 days, the remains would be released to the appropriate tribal official or to the Commission on Indian Affairs (if the tribal official rejected responsibility for the remains or was located in another state or country). If the terms of the agreement weren't substantially met, the affiliated tribe (if cultural affiliation with a tribe was established) could take possession of the remains.

The affiliated tribe could determine the ultimate disposition of Native American remains for which a cultural affiliation with the tribe was established.

If cultural affiliation with a tribe was established for Native American remains, and the remains were reinterred, the grave goods discovered with the remains would have to be reinterred with the human remains, and the remains and grave goods would have to be reinterred either in an appropriate Native American burial ground or in a place as close as possible to the site where the remains were disinterred. Reinterment would be at public expense.

Ownership or control of Native American cultural items discovered on state or tribal lands. The bill would establish a priority list of who would own or control Native American cultural items excavated or discovered on state or tribal lands after the bill took effect.

Priority for ownership or control would be given in the following order:

(1) The lineal descendants of the Native American, for Native American remains or associated funerary objects.

(2) If lineal descendants couldn't be determined -- or for "unassociated funerary objects" (objects that, as a part of the death rite or ceremony of a culture, were reasonably believed to have been placed with individual human remains either at the time of death or later and that could be related by a preponderance of the evidence to a specific individual or family, to known human remains, or to having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe), sacred objects, or objects of cultural patrimony -- ownership or control would be as follows:

(a) The Indian tribe on whose tribal land the remains or object was discovered;

(b) The Indian tribe that had the closest cultural affiliation with the remains or object and that, upon notice, claimed the remains or object;

(c) If the cultural affiliation of the remains or object couldn't be reasonably determined and they were discovered on state or federal land that was recognized by a final judgment of the Indian Claims

Commission (not defined in the bill) or the U.S. Court of Claims as the aboriginal land of some Indian tribe, ownership or possession would be as follows:

(i) The Indian tribe that was recognized as aboriginally occupying the area in which the remains or objects were discovered, if upon notice that tribe claimed them;

(ii) If it could be shown by a preponderance of the evidence that a different tribe had a stronger cultural relationship with the remains or objects than the tribe or organization in (i), the Indian tribe that had the strongest demonstrated relationship, if upon notice that tribe claimed the remains or objects.

Unclaimed Native American cultural items would stay in the possession of whomever had excavated or discovered them.

Native American cultural items could be intentionally removed from or excavated from state or tribal lands for study only if the following conditions were met:

(1) The items were excavated or removed under a permit issued under the bill and after consultation with (or, in the case of tribal lands, consent of) the appropriate Indian tribe, if any;

(2) The ownership and right of control of the disposition of the items was as provided in the bill; and

(3) Proof of the required consultation with the appropriate Indian tribe was shown.

Discovery of Native American cultural items on state or tribal lands. Someone who knew (or had reason to know) that he or she had discovered a Native American cultural item on state or tribal land after the bill took effect would be required to give written notification of the discovery to the secretary of state and (with respect to discoveries on tribal lands) the appropriate Indian tribe, if the tribe was known or readily determined. If the discovery occurred in connection with a commercial activity (such as construction, mining, logging, or agriculture), the commercial activity would have to stop in the area of the discovery and reasonable efforts would have to be made to protect the discovered items before resuming the commercial

activity. Thirty days after the secretary of state or appropriate Indian tribe had certified that they had received notification the commercial activity could resume. Though ownership and control of any Native American cultural objects discovered on state or tribal lands would be as provided in the bill, the bill expressly would not prevent the governing body of an Indian tribe from relinquishing control over funerary or sacred objects discovered on state or tribal lands after the bill took effect.

Inventory, identification and repatriation of Native American cultural items: review committee. Within 120 days after the bill took effect, the secretary of state would be required to appoint a seven-member review committee to monitor and review the inventory and identification process and the repatriation activities required by the bill. The review committee also would resolve disputes concerning the discovery, excavation, study, possession, and cultural affiliation of Native American cultural items.

The members of the review committee would have to be residents of the state and would be appointed by the secretary of state as follows: three members from nominations submitted by Indian tribes and traditional Native American religious leaders, with at least two of these three members being traditional Indian religious leaders; three members from nominations submitted by museum organizations or archaeological scientific organizations; and one member from a list of people developed and agreed to by the above six members. If the six members appointed from nominations the Indian tribes and museum organizations didn't develop a list or if they couldn't agree on who should be appointed, the secretary of state would appoint the seventh member without the consent of the other review committee members. However, the secretary of state couldn't appoint a state officer or employee to the review committee.

Review committee members' terms would be for four years, with vacancies being filled within 90 days and in the same way as the original appointment. (However, the initial members would draw lots to determine the length of their terms, with three members serving for four years, three members serving for three years, and one member serving for one year.)

Members would serve without pay, but would be reimbursed for travel expenses (including per diems

in lieu of subsistence) for the time the committee members were actually engaged in review committee business. (The reimbursement rate would be established by the Department of Management and Budget.) The committee would be required to meet at least twice each calendar year at the call of the chair, with a majority of the members constituting a quorum. The secretary of state would be required to provide reasonable administrative and staff support for the committee's deliberations, and would be required to ensure that it had reasonable access to Native American cultural items under review, as well as associated scientific and historical documents. Decisions of the committee would be made by affirmative vote of four or more members at committee meetings. Committee records or findings regarding the identity or cultural affiliation of cultural items and their return would be admissible in court actions. Committee records would be subject to the Freedom of Information Act (Public Act 442 of 1976), and committee business would have to be conducted in accordance with the Open Meetings Act (Public Act 267 of 1976).

The review committee would be responsible for all of the following:

- * annually electing a chairperson, vice-chairperson, and secretary;
- * monitoring the inventory and identification process conducted by state agencies and museums holding Native American cultural items "to ensure a fair, objective consideration and assessment of all available relevant information and evidence";
- * upon request of an affected party, reviewing and making findings regarding the identity or cultural affiliation of a cultural item and the return of cultural items;
- * facilitating the resolution of disputes between Indian tribes (or lineal descendants) and agencies, museums, archaeologists, or scientists regarding the discovery, excavation, or study of Native American cultural items;
- * facilitating the resolution of disputes between Indian tribes (or lineal descendants) and state agencies or museums regarding the return of cultural items;
- * compiling an inventory of culturally unidentifiable human remains that were in the possession or

control of each state agency and museum, and recommending specific actions to dispose of these remains (in consultation with Indian tribes and appropriate scientific and museum groups);

- * consulting with Indian tribes and museums on matters affecting those tribes and within the committee's scope of work;

- * consulting with the secretary of state in developing rules to carry out the bill;

- * carrying out other related functions assigned by the secretary of state; and

- * making recommendations, if appropriate, regarding the future care of cultural items that were to be repatriated.

The review committee also would be required to submit an annual report to the secretary of state and the director of the Department of Management and Budget on the progress being made, and any barriers encountered, in its work during the previous year.

Anyone who believed that the review committee was needed to resolve a dispute could file a written complaint with the secretary of state, who then would forward it to the committee. The complaint would have to describe "in reasonable detail" the alleged dispute, identify all available evidentiary material, and give (in addition to the complainant's name, address, and telephone number) the opposing party's name and address. The review committee could summarily dismiss complaints it determined, by majority, to be frivolous, illegible, indefinite, or unsigned, or that did not identify issues assigned to the review committee under the bill. If the committee summarily dismissed a complaint, it would have to notify the complainant in writing why the complaint was dismissed. If the committee did not summarily dismiss a complaint, it would be required to immediately mail a copy of the complaint to the opposing party, along with any request the committee had for additional evidentiary material. The review committee could decide a complaint based on the evidentiary material submitted by both parties, or it could give the parties written notice to appear at a review committee meeting. The parties would be given "reasonable time" to appear, and would be notified of the time and place of the meeting, that they could appear in person or by counsel, and that they

could give testimony or submit other material evidence. The review committee would make their decisions resolving disputes in writing and serve the decision on the parties to the dispute.

Inventory of Native American human remains and associated funerary objects held by state agencies or museums. State agencies or museums that, when the bill took effect, had collections of Native American human remains and associated funerary objects would have to inventory those items and, where possible, identify the geographical and cultural affiliation of each item. (Note: The bill would define "museum" to mean an institution or agency -- including any institution of higher learning -- that received state funds and that had possession of, or control over, Native American cultural items.)

State agencies or museums that held collections of Native American human remains and associated funerary objects when the bill took effect would be required to inventory those items and, to the extent possible, identify the geographical and cultural affiliation of each item based on information that the state agency or museum had. The inventory or identification would have to be completed within five years after the bill took effect and be done in consultation with tribal government officials and traditional religious leaders. The inventory or identification also would have to be made available to the review committee. A museum that was unable to complete its inventory within five years despite a good faith effort could appeal to the secretary of state for an extension. (An indication of "good faith" would include the development of a plan to carry out the inventory or identification process.)

Upon request by an Indian tribe that had received notice (or should have received notice) that a state agency or museum was inventorying a collection of Native American remains and associated funerary objects, the state agency or museum would be required to supply additional available documentation to supplement the information required for an inventory or identification. ("Documentation" would mean a summary of existing state agency or museum records, including "pertinent data" for determining the geographical origin, cultural affiliation, and basic facts about the acquisition and accession of the collection. "Documentation" would not mean, or be construed to mean, the bill authorized the initiation of new scientific studies of the existing collections or other

means of acquiring or preserving additional scientific information from these collections.)

If the cultural affiliation of particular Native American remains or associated funerary objects were established, the state agency or museum would have to notify the affected Indian tribe within six months after completing the inventory. The notice would have to do all of the following:

- * identify each Native American human remains or associated funerary object and the circumstances surrounding its acquisition;
- * list the human remains or associated funerary objects that had clearly identifiable tribal origins; and
- * list the Native American human remains and associated funerary objects that were not clearly identifiable as being culturally affiliated with that Indian tribe, but that, given all of the circumstances surrounding their acquisition, could reasonably be believed to be culturally affiliated with the Indian tribe.

Repatriation of Native American human remains or cultural items. Upon request, state agencies and museums would have to "expeditiously" return Native American remains and cultural items that they held if:

(1) The state agency or museum established the cultural affiliation of Native American remains or cultural objects in their possession in the course of inventorying or summarizing their collection, and the affiliated Indian tribe or a lineal descendant of the Native American requested the return.

(2) An Indian tribe showed ("by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information of expert opinion") that Native American remains and funerary objects whose cultural affiliation had not been established by the inventorying or summarizing state agency or museum (or which had been left out of the inventory or summary) were culturally affiliated with the tribe.

(3) A sacred object or object of cultural patrimony was requested either by the direct lineal descendant of someone who owned the sacred object or by an

Indian tribe that could show that the object was owned or controlled either by the tribe or by a member of the tribe (so long as there were no identifiable lineal descendants of that tribal member or, if there were lineal descendants, the lineal descendants, upon notice, failed to claim the object under the bill's provisions).

In addition, a state agency or museum would have to return a Native American unassociated funerary object, sacred object, or object of cultural patrimony if a known lineal descendant or an Indian tribe requested the return of the object and presented prima facie evidence that the agency or museum didn't have the right of possession. However, the agency or museum wouldn't have to return the object if it could prove that it had a right of possession to the object. ("Right of possession" would mean possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or cultural patrimony from an Indian tribe with the voluntary consent of an individual or group with authority to alienate that object would be considered to give right of possession of that object. The original acquisition of Native American human remains and associated funerary objects that were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe also would be considered to give right of possession to those remains.)

Culturally affiliated Native American cultural items would not have to be "expeditiously" returned if (1) the item was indispensable for completing a specific scientific study that would have a major benefit to the United States or to the state, or (2) there were multiple requests for repatriation of a cultural item, and the state agency or museum couldn't clearly determine which requesting party was the most appropriate claimant. In the first case, the item would have to be returned within 90 days after the study was completed. In the second case, the agency or museum could keep the item until the dispute was resolved under the bill's provisions or by a court.

State agencies and museums would have to share information with known lineal descendants or Indian tribes to help in making claims for repatriation of cultural objects. If a museum repatriated a cultural item in good faith, it would not be liable for claims

by an aggrieved party or for a claim of breach of fiduciary duty, breach of the public trust, or violation of state laws inconsistent with the provisions of the bill.

Summaries of other Native American items. State agencies or museums that had collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony would have to provide a written summary of the objects, based on information available to the agency or museum. The summary would have to describe the scope of the collection and the kinds of objects included; reference the geographical location, means, and period of acquisition; and cultural affiliation, if readily ascertainable. The summary would be in lieu of an object-by-object inventory, would have to be followed by consultation with tribal government officials and traditional religious leaders, and be completed no later than three years after the bill took effect. Upon request, Indian tribes would have access to records, catalogs, relevant studies, or other pertinent data only to determine the geographic origin, cultural affiliation, and basic facts about the acquisition and accession of these Native American objects. The information would have to be provided in a "reasonable manner" to be agreed upon by all parties.

Seizure of property. Law enforcement, conservation, or tribal police officers could seize and confiscate archaeological resources associated with violations of the bill, as well as vehicles, vessels, or other equipment used in connection with such violations. The officer seizing the property would have to file a verified complaint in the Ingham County Circuit Court or the circuit court of the county in which the property was seized. When the complaint was filed, an order would be issued requiring the owner to show cause why the property shouldn't be confiscated. The substance of the complaint would have to be stated in the order. The order to show cause would have to be served on the owner as soon as possible, but at least seven days before the hearing (though the court, for cause shown, could hear the complaint on shorter notice). If the owner wasn't known or couldn't be found, notice could be served either by publicly posting a copy of the notice and mailing a copy of the order by certified mail to the owner's last known address or by publishing a copy of the notice in a newspaper and sending a copy of the notice by registered mail to the owner's last known address. (In both cases,

if no known address was known, a copy of the notice wouldn't have to be mailed.)

If the court decided that the property in question had been held, shipped, or used contrary to law, it would order the property to be condemned, confiscated, and sold or otherwise disposed of by the secretary of state. If the owner signed a release, a court proceeding wouldn't be necessary. If the court decided that the property hadn't been held, shipped, or used contrary to law, it would order the appropriate agency to immediately return the property to its owner.

The secretary of state would deposit proceeds it received under this part of the bill into the state treasury, where they would be earmarked for distribution to the secretary of state for preserving and interpreting state sites and archaeological resources.

Civil penalties. The secretary of state could assess civil fines on museums that failed to comply with the bill's requirements. Each violation would be a separate offense. Fines would be determined after the museum had an opportunity for a hearing held by the secretary of state under the Administrative Procedures Act (Public Act 306 of 1969), and would take into account all of the following ("in addition to other factors"): (1) The archaeological, historical, or commercial value of the item involved; (2) the economic and noneconomic damages suffered by the aggrieved party; and (3) the number of violations incurred by the museum. At an administrative hearing held under this part of the bill, the secretary of state could issue subpoenas for witnesses and the production of relevant papers, books, and documents. Subpoenaed witnesses would be paid the same fees and mileage that are paid to witnesses in the Ingham County Circuit Court.

If a museum failed to pay a civil fine assessed by the secretary of state for a violation, the attorney general could bring a civil action in an appropriate circuit court to collect the fine. The validity and amount of the fine would not be subject to review in such an action.

Criminal penalties. The bill would impose criminal penalties in general for illegally removing archaeological resources from state lands and for violating the provisions regarding human burials or human remains. The bill also would impose

criminal penalties specifically for the illegal use or possession of Native American human remains or cultural items.

It would be a felony both to illegally acquire or to keep archaeological resources from state lands. More specifically, after the bill took effect, anyone who acquired by deceit, fraud, or theft an archaeological resource discovered on state land, and who failed to turn the resource over to the secretary of state within 30 days after acquiring it, would be guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$10,000, or both. Similarly, anyone who excavated, disturbed, removed, destroyed, or sold any of the following from or on state land without the written approval of the secretary of state or in violation of the bill would be guilty of a felony punishable by imprisonment for up to three years or a fine of up to \$25,000, or both:

- * objects of antiquity;
- * artifacts of archaeological or historical value; or
- * the contents of mounds or burial grounds.

Anyone who violated the bill or rules promulgated under the bill regarding human burials or human remains also would be guilty of a felony punishable by imprisonment for up to three years, a fine of \$5,000 to \$20,000, or both.

Anyone who knowingly sold, bought, used for profit, or transported for sale or profit Native American human remains without the right of possession to those remains would be guilty of a felony punishable by a fine of \$5,000 to \$20,000 and imprisonment for up to three years. Second or subsequent violations would be punishable by imprisonment for not less than three years and a fine of \$20,000 to \$75,000.

In addition, illegally selling, buying, or using Native American cultural items for profit (or transporting them for sale or profit) would result in imprisonment for up to one year or a fine of at least \$1,000 (or both). Second or subsequent violations would result in imprisonment for one to five years, a fine of \$5,000 to \$26,000, or both.

Other legal remedies. The secretary of state (or the DNR) could bring action in circuit court to enforce compliance with the bill, to restrain violations of its provisions or actions contrary to decisions denying

permits, to enjoin the further removal of geological material or archaeological resources, or to order the restoration of an affected area to its previous condition.

Disclaimers. The bill would explicitly say that it could not be construed to do any of the following:

- (1) Limit the authority of a state agency or museum to return or repatriate a Native American cultural item to an Indian tribe or individual, or to enter into another agreement with the consent of the culturally affiliated tribe as to the disposition of, or control over, an item covered by the bill.
- (2) Delay action on a repatriation request that was pending when the bill took effect.
- (3) Deny or otherwise affect access to the court.
- (4) Limit a procedural or substantive right that might otherwise be secured to individuals or Indian tribes.
- (5) Limit the application of state or federal laws regarding theft or stolen property.

Other provisions. The bill would prohibit making or manufacturing fake archaeological resources or altering archaeological resources so that they appeared to be more valuable than they actually were with the intent to use or transfer them to defraud.

Tie bar. House Bill 4052 is tie-barred to House Bill 4053, which would amend Public Act 173 of 1929 (MCL 299.52 et al.) to repeal those provisions of the act which regulate the recovery of, and state property rights in, aboriginal records and antiquities.