

HOUSE BILL No. 5035

July 28, 1989, Introduced by Reps. Sparks, Fitzgerald, Van Regenmorter, Dolan, Miller, Emmons and Krause 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 prescribe the powers and duties of certain state agencies and officials and certain persons and entities; to assure protection of burials and human skeletal 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. 3. The legislature finds and declares that:

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

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

4 (c) Existing state laws do not adequately protect the
5 archaeological resources and sites of this state, and uncon-
6 trolled excavations, pillage, and damage are resulting.

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

10 (e) Human burial sites that do not presently resemble
11 well-tended and well-marked cemeteries or that may falsely be
12 assumed to have been vacated are subject to inadvertent destruc-
13 tion and vandalism.

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

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

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

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

26 Sec. 5. The legislature intends by this act to accomplish
27 all of the following:

1 (a) Secure and protect for the benefit of present and future
2 generations the heritage of the archaeological resources and
3 sites of this state.

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

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

11 (d) Accord all human burials equal treatment and dignity,
12 without discrimination on the basis of ethnic origins, cultural
13 background, age, or religious affiliation.

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

21 (f) Balance the interests of scientists, landowners, devel-
22 opers, and others in relation to a burial, including those with a
23 general cultural, tribal, or religious affiliation with the
24 burial site.

25 Sec. 7. As used in this act, unless the context requires
26 otherwise:

1 (a) "Abandoned property" means abandoned materials which are
2 50 years in age or older and result from activities of historic
3 or prehistoric Native Americans, including human remains.

4 (b) "Agency" means 1 or more of the following:

5 (i) A state officer, employee, department, division, bureau,
6 board, commission, council, authority, or other body in the exec-
7 utive branch of state government.

8 (ii) A board, commission, council, or other body within the
9 legislative branch of state government.

10 (iii) An official or employee within the judicial branch of
11 state government.

12 (iv) A county, city, township, village, intercounty, inter-
13 city, or regional governing body, council, school district, spe-
14 cial district, or municipal corporation, or a board, commission,
15 council, or subagency of an entity listed in this subparagraph.

16 (v) Any other body not listed in this subdivision that is
17 created by state or local authority or which is primarily funded
18 by or through state or local authority.

19 (c) "Ancient burial place" means a tract of land that has
20 been a burial place for 1 or more individuals for more than 100
21 years, but does not include a burial ground currently owned and
22 maintained by a religious organization or a cemetery
23 corporation.

24 (d) "Archaeological resource" means material evidence of
25 past human life or activity that is of scientific value or of
26 interest to the public, including aboriginal antiquities, objects
27 of antiquity, artifacts, mounds, earthworks, forts, burial and

1 village sites, prehistoric and historic human skeletal remains,
2 mines, relics, materials resulting from activities of historic
3 and prehistoric Native Americans and other early residents of the
4 state, objects and sites similar to those listed in this subdivi-
5 sion, and other objects and materials illustrative of and relat-
6 ing to the history of this state and the old northwest territory,
7 particularly objects indicative of life, customs, dress, and
8 resources of the residents of this state.

9 (e) "Archaeological methods" means scientific procedures
10 used in field archaeology by recognized authorities engaged in
11 the profession of archaeology.

12 (f) "Artifact" means an object made by human work, includ-
13 ing, but not limited to, a tool, weapon, vessel, ornament, uten-
14 sil, or clothing.

15 (g) "Bureau" means the bureau of history of the department
16 of state.

17 (h) "Curates" means the management and care of collections
18 of historical or archaeological objects according to standard,
19 professional museum practices, including, but not limited to, all
20 of the following:

21 (i) Inventorying, accessioning, labeling, and cataloging
22 collections.

23 (ii) Cleaning, identifying, evaluating, documenting, sta-
24 bilizing, and conserving collections.

25 (iii) Storing and maintaining collections under appropriate
26 environmental conditions and physically secure controls.

1 (iv) Periodically inspecting collections and taking actions
2 as may be necessary to preserve a collection.

3 (v) Providing access to facilities for studying
4 collections.

5 (i) "Custodian" means a person who has a legal right to
6 physical possession of an archaeological resource owned by the
7 state.

8 (j) "Data" means field notes, photographs, maps, and other
9 records generated for a site as a result of the practice of field
10 archaeology.

11 (k) "Department" means the department of state.

12 (l) "Director" means the director of the department of natu-
13 ral resources or his or her designated representative.

14 (m) "Executive director" means the executive director of the
15 Michigan commission on Indian affairs.

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

21 (o) "Historical value" means value relating to, or illustra-
22 tive of, the history of this state, including, but not limited
23 to, the statehood, territorial, colonial, and historic and pre-
24 historic Native American periods.

25 (p) "Object of antiquity" means an artifact that is not less
26 than 50 years of age, including petroglyphs, pictographs,
27 prehistoric and historic rock art, intaglios, rock alignments,

1 paintings, pottery, tools, implements, ornaments, jewelry, coins,
2 ingots, fabrics, clothing, containers, ceremonial objects, items
3 of socio-religious or political significance, vessels, armaments,
4 vehicles, structures, buildings, and their remains; and when
5 found within a cultural context, the skeletal and other bodily
6 remains of human beings or plants or animals that have been dead
7 for not less than 50 years, including fossils.

8 (q) "Person" means an individual, public official, agency,
9 school, scientific agency, or any other public or private
10 entity.

11 (r) "Public official" means an official whose term of office
12 is prescribed by statute, charter, ordinance, or the state con-
13 stitution, or who serves at the pleasure of an appointing
14 authority.

15 (s) "Recreational value" means value relating to an activity
16 that the public engages in, or may engage in, for recreation or
17 sport.

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

21 (u) "Scientific institution" means a museum, historical
22 society, foundation, or archaeological society, or scholarly
23 group with professional standing, with facilities for the dis-
24 play, study, and preservation of archaeological resources.

25 (v) "Secretary of state" means the secretary of state or his
26 or her designated representative.

1 (w) "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, extractive complex, that is or may be the source
5 of artifacts or archaeological resources, or a place showing evi-
6 dence of prior human occupation, which is 50 years of age or
7 older.

8 (x) "State land" means all land owned by this state regard-
9 less of the state executive department that manages the land,
10 including state colleges and universities; all lands and struc-
11 tures owned by private individuals but leased to the state; and
12 all lands owned by private individuals where the deed conveying
13 the land contains a clause reserving to the state a property
14 right in archaeological resources and a right to explore for and
15 excavate archaeological resources by and through an authorized
16 agent of the state.

17 (y) "State site" means a site located upon or within any
18 land owned by or under the control of the state or in, on, under,
19 over, or upon any unpatented lake or river bottomland within this
20 state, and includes sites located on private lands in which the
21 state has a property right in the archaeological resources found
22 on or in the land and a right to explore for and excavate archae-
23 ological resources by and through an authorized agent of the
24 state.

25 (z) "Unmarked human burial" means an interment of human
26 skeletal or other bodily remains for which there exists no grave

1 marker or any other historical documentation identifying the
2 deceased.

3 Sec. 9. The bureau shall establish and maintain a program
4 to assure the protection and preservation of the archaeological
5 resources of this state. This program shall be supervised by the
6 state archaeologist and shall do all of the following:

7 (a) Sponsor, engage in, and direct fundamental research into
8 the archaeological heritage of this state.

9 (b) Encourage and coordinate archaeological research in both
10 the public and private sectors, with special emphasis on sites
11 located on state land.

12 (c) Cooperate with other federal, state and local governmen-
13 tal agencies that have authority over land containing sites or
14 responsibility for the protection or display of sites or objects
15 of antiquity.

16 (d) Encourage the protection and preservation of sites
17 located on privately owned land.

18 (e) Preserve and protect archaeological resources that are
19 discovered through the practice of field archaeology at sites
20 located on state land, are discovered during the course of con-
21 struction or demolition work at sites located on state land, or
22 are discovered at privately owned sites but are donated to or
23 owned by the state.

24 (f) Cooperate with scientific institutions, schools, and
25 governmental and private agencies which are custodians of archae-
26 ological resources, and other custodians, to preserve and protect

1 archaeological resources, together with the data relating to
2 them.

3 (g) Disseminate and encourage the dissemination of informa-
4 tion relating to the archaeological heritage of this state
5 through available media sources, including, but not limited to,
6 television, radio, motion pictures, and publications.

7 (h) In cooperation with the department of natural resources,
8 establish and implement a system for the issuance of field
9 archaeology permits to qualified persons.

10 (i) Administer gifts, grants, and funds designated for use
11 in fulfilling the program described in this section.

12 (j) Administer an annual appropriation for the study, con-
13 servation, stabilization, and interpretation of archaeological
14 resources located on and in state land.

15 Sec. 11. (1) The state reserves to itself legal title to
16 all abandoned property of historical or recreational value and
17 all archaeological resources found on or in state land or at a
18 state site.

19 (2) Except as otherwise provided in this act, the state
20 reserves to itself the exclusive right and privilege of explor-
21 ing, surveying, excavating, regulating, and practicing field
22 archaeology through its authorized officers, agents, and employ-
23 ees, with respect to all aboriginal records and other antiqui-
24 ties, including, but not limited to, mounds, earthworks, forts,
25 burial and village sites, mines or other relics, and abandoned
26 property that is of historical or recreational value and is found

1 upon or within any of the lands owned by or under the control of
2 the state.

3 (3) This act shall not be construed to prohibit the bureau
4 from practicing field archaeology at state or private sites, from
5 appointing agents to conduct field archaeology at state or pri-
6 vate sites, from contracting for the conducting of field archaeo-
7 logy at state sites, or from issuing permits to other qualified
8 persons for the conducting of field archaeology at state sites.

9 (4) A field archaeologist who gathers data under a depart-
10 ment contract or permit may, with the written permission of the
11 state archaeologist, use the data for research.

12 Sec. 13. A deed granted or given by this state after the
13 effective date of this act, except state tax deeds for the con-
14 veyance of land owned by the state, shall contain a clause
15 reserving to this state a property right in all archaeological
16 resources and sites in or on the land conveyed. The deed shall
17 reserve to the state the sole right to practice field archaeology
18 on the land conveyed. The commission of natural resources, with
19 the approval of the secretary of state, may waive this reserva-
20 tion when conveying platted property and when making conveyances
21 under Act No. 193 of the Public Acts of 1911, being sections
22 322.481 to 322.485 of the Michigan Compiled Laws.

23 Sec. 15. (1) The bureau shall assemble and maintain a com-
24 plete record of each state owned and privately owned site that
25 has been or is discovered, together with as much data concerning
26 the site as possible, to document the location, extent, nature,
27 and significance of each site. The bureau shall develop a system

1 of cataloging these records and shall assign a unique
2 identification number to each identified site.

3 (2) The bureau shall assemble and maintain a record of each
4 survey undertaken in the state to locate a site, whether success-
5 ful in locating a site or not, and assemble as much data as pos-
6 sible concerning each survey.

7 (3) Each agency, including state supported schools, and
8 public official shall cooperate insofar as is practicable with
9 the state archaeologist in assembling records concerning sites,
10 shall provide the state archaeologist with an opportunity to
11 duplicate records and data in their possession, and shall take
12 state sites into account during the planning of projects that may
13 affect them.

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

19 (5) Information in the custody of a public official identi-
20 fying the location of a site situated on state or private land,
21 the preservation of which is in the interest of this state, shall
22 remain confidential unless the bureau determines that the disclo-
23 sure is necessary for the protection, preservation, evaluation,
24 or scientific excavation of the site.

25 (6) A person supervising construction or excavation on land
26 owned by an agency shall report promptly to the state
27 archaeologist and preserve for the state any archaeological

1 resource discovered in the course of the construction or
2 excavation.

3 (7) The bureau may maintain the records required by this
4 section by electronic or computer generated means.

5 (8) This act shall not be construed to require an agency,
6 school, scientific institution, or other person to divest itself
7 of its own records or data concerning state sites that were
8 obtained before the effective date of this act unless the records
9 or data were obtained under a contract or permit with the
10 department.

11 Sec. 17. A person possessing Native American relics, arti-
12 facts, objects of antiquity, or skeletal remains having histori-
13 cal, educational, or scientific value that are in danger of being
14 lost, destroyed, or scattered may donate them to the department
15 or to another public institution within this state that is quali-
16 fied to preserve, study, and exhibit them for their historic,
17 scientific, and educational value to the people of the state.
18 The department and or any other public institution may reject a
19 donation or place conditions on acceptance of a donation.

20 Sec. 19. (1) Except for the state archaeologist, his or her
21 assistants, and his or her agents, a person or agency, including
22 other state departments, shall not practice field archaeology on
23 state land or at a state site without a permit issued jointly by
24 the department of state and the department of natural resources.
25 A permit shall be issued without charge. This section does not
26 apply to the Mackinac Island state park commission on lands owned
27 or controlled by the Mackinac Island state park commission.

1 (2) An archaeological resource recovered at a state site
2 without a permit shall be immediately transported to the nearest
3 office of the department.

4 Sec. 21. (1) A person who has standing as a professional
5 archaeologist may apply for a permit to practice field archaeo-
6 logy at a site located on state land.

7 (2) An application for a permit to practice field archaeo-
8 logy at a state site shall be filed with the bureau on a form
9 prescribed by the bureau. The application shall contain all of
10 the following information:

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

12 (b) The name, education, experience, and professional stand-
13 ing of the professional archaeologist who will conduct the field
14 archaeology.

15 (c) The location of the site.

16 (d) A description of the site, including maps or drawings.

17 (e) A description of the archaeological resource and data
18 expected to be encountered or recovered at the site, or both.

19 (f) A statement of the specific purpose of the proposed
20 work.

21 (g) A concise, but thorough, research design statement,
22 including specifications of times for fieldwork and report
23 finalization.

24 (h) The proposed disposition of the archaeological resources
25 and data to be recovered, including their proposed custodian, and
26 the conservation methods to be utilized.

1 (i) Other information considered necessary in evaluating the
2 application by the department of state or the department of
3 natural resources.

4 (3) An application for a permit shall not be considered
5 administratively complete until all information requested by the
6 department or the department of natural resources has been
7 received. After receipt of an otherwise complete application,
8 either department may request additional information or documents
9 as are determined to be necessary to make a decision to grant or
10 deny a permit. The bureau shall notify the applicant in writing
11 when the application is administratively deficient and shall
12 indicate the nature of the deficiency.

13 (4) An applicant notified that an application is administra-
14 tively deficient due to insufficient information shall, within 20
15 days after the date the notice is mailed, provide the
16 information. If the applicant fails to respond within the 20-day
17 period, the application shall be denied unless the applicant
18 requests additional time and provides reasonable justification
19 that is satisfactory to the bureau for an extension of time.

20 Sec. 23. (1) An application for a permit under section 21
21 to engage in field archaeology on state land or at a state site
22 may be approved unconditionally, approved with conditions, or
23 disapproved. Conditions may be imposed as are considered by the
24 bureau to be reasonable and necessary to protect the public trust
25 or if the conditions accomplish 1 or more of the following
26 purposes:

1 (a) Preserves and protects an archaeological resource or
2 data to be recovered.

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

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

8 (d) Designates a custodian other than the department for an
9 archaeological resource or data to be recovered.

10 (e) Requires that a report on the work shall be provided to
11 the secretary of state within a specified period of time after
12 completion 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 department shall act on an application
18 submitted pursuant to section 21 within 30 days after the date of
19 application unless additional information is needed and
20 requested. If the department does not act, the application shall
21 be considered approved.

22 (2) The department shall approve the application if the
23 field archaeology to be performed is consistent with the goals of
24 the state historic preservation plan. The department or depart-
25 ment of natural resources may disapprove the application if 1 or
26 more of the following conditions exist:

1 (a) The application is inconsistent with the established
2 goals of the historic preservation plan of the state.

3 (b) The applicant is not a professional archaeologist of
4 reputable standing and the work to be performed will not be con-
5 ducted by a professional archaeologist of reputable standing.

6 (c) The work proposed is duplicative of other work performed
7 at the site or other similar sites within the state.

8 (d) The work proposed will damage or harm an archaeological
9 resource to be recovered, other objects remaining at the site,
10 the site itself, or the integrity of the area beyond the site
11 designated for excavation.

12 (3) The secretary of state shall approve the application
13 unless the secretary of state determines that the abandoned prop-
14 erty to be recovered has substantial historical value in itself
15 or in conjunction with other abandoned property in its vicinity.
16 If the property has substantial historical value, the secretary
17 of state, pursuant to subsection (2), may impose a condition to
18 the approval of the application requiring the applicant to turn
19 over recovered property to the secretary of state for the purpose
20 of preserving the property or permitting public access to the
21 property. The secretary of state may authorize the display of
22 the property in a public or private museum or by a city, village,
23 township, or county of government. In addition to the conditions
24 authorized by subsection (2), the secretary of state may provide
25 for payment of salvage costs in connection with the recovery of
26 the abandoned property if the secretary of state wants the
27 property to be recovered.

1 (4) An emergency permit may be issued to a person not
2 otherwise qualified to perform field archaeology when an archaeo-
3 logical resource or a site itself is imminently threatened with
4 imminent harm.

5 Sec. 27. A permit to engage in field archaeology shall
6 expire on December 31 of the year of issuance. A permit may be
7 extended upon application to the bureau on a form prescribed by
8 the bureau. An original permit application shall be filed in
9 connection with any additional field archaeology at the site.

10 Sec. 29. A person aggrieved by a denial of an application
11 for a permit to practice field archaeology or the imposition of a
12 condition on a permit may request administrative review of that
13 action by the secretary of state or the director, whichever dis-
14 approved the application or imposed the condition. A person
15 shall file the request for review with the department or the
16 department of natural resources, whichever is applicable, within
17 90 days after the permit application is submitted to the
18 department. An administrative hearing conducted pursuant to this
19 subsection shall be conducted under the procedures set forth in
20 chapter 4 of the administrative procedures act of 1969, Act
21 No. 306 of the Public Acts of 1969, being sections 24.271 to
22 24.287 of the Michigan Compiled Laws. The secretary of state or
23 director, whichever department conducts the hearing, shall issue
24 a final decision and order in the case. If neither the depart-
25 ment nor the department of natural resources approves the appli-
26 cation or if both impose a condition being grieved and an
27 administrative review is requested from each department, the

1 appeals shall be combined upon request of any party or either
2 department and a single administrative hearing shall be
3 conducted. In a combined case, the director of the department of
4 natural resources and the secretary of state shall issue a joint
5 final decision and order in the case.

6 Sec. 31. (1) A permit issued under section 23 or 25 may be
7 suspended or revoked by the department or the department of natu-
8 ral resources after notice and an opportunity for a hearing con-
9 ducted under the procedures set forth in chapter 4 of the admin-
10 istrative procedures act of 1969, Act No. 306 of the Public Acts
11 of 1969, being sections 24.271 to 24.287 of the Michigan Compiled
12 Laws, if any of the following have occurred:

13 (a) The holder of the permit violated a condition of the
14 permit.

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

17 (c) The holder of the permit made a false statement in con-
18 nection with his or her application for the permit.

19 (d) The field archaeology practiced at the site is sub-
20 standard or improper as determined by the state archaeologist.

21 (e) Harm to an archaeological resource or the site has
22 occurred or is threatened.

23 (2) If either the department or department of natural
24 resources finds that the holder of a permit issued pursuant to
25 section 23 or 25 is not in compliance with this act, a rule
26 promulgated under this act, or a provision of or condition in a
27 permit, or has irreparably damaged an archaeological resource or

1 failed to use diligence in attempting to recover a resource for
2 which a permit was issued, the department and the department of
3 natural resources, individually or jointly, may summarily suspend
4 or revoke the permit. If the permit holder requests a hearing
5 within 15 days following the effective date of the suspension or
6 revocation, the department or department of natural resources
7 shall conduct an administrative hearing pursuant to chapter 4 of
8 the administrative procedures act of 1969, Act No. 306 of the
9 Public Acts of 1969, being sections 24.271 to 24.287 of the
10 Michigan Compiled Laws, to consider whether the permit should be
11 reissued.

12 (3) The department or department of natural resources, indi-
13 vidually or jointly, may commence a civil action in circuit court
14 to enforce compliance with this act, to restrain a violation of
15 this act or to restrain an action contrary to a decision denying
16 a permit, to enjoin the further removal of artifacts, geological
17 material, or archaeological resources, or to order the restora-
18 tion of an affected area to its prior condition.

19 Sec. 33. (1) Within 10 days after recovery of abandoned
20 property, a person with a permit issued pursuant to section 23 or
21 25 shall report the recovery in writing to the department. The
22 person recovering the abandoned property shall give authorized
23 representatives of the department an opportunity to examine the
24 abandoned property for a period of 90 days after recovery.
25 Recovered abandoned property shall not be removed from this state
26 without written approval of the department. If the recovered
27 abandoned property is removed from the state without written

1 approval, the attorney general, upon request from the department,
2 shall bring an action for the recovery of the property.

3 (2) If the secretary of state determines that the recovered
4 property does not have historical value, the secretary of state
5 shall release the property to the person holding the permit by
6 means of a written instrument.

7 Sec. 35. (1) The bureau shall be the principal custodian in
8 this state for state owned archaeological resources. Upon writ-
9 ten request, the bureau may in writing designate another agency,
10 scientific institution, or school as a custodian of state owned
11 archaeological resources.

12 (2) If a custodian is other than the bureau, each custodian
13 of an archaeological resource recovered on state land or at a
14 state site after the effective date of this act shall be desig-
15 nated in writing by the bureau.

16 (3) Physical possession of an archaeological resource shall
17 revert to the bureau if the department finds, after a duly
18 noticed administrative hearing conducted pursuant to the adminis-
19 trative procedures act of 1969, Act No. 306 of the Public Acts of
20 1969, being sections 24.201 to 24.328 of the Michigan Compiled
21 Laws, that the custodian of the resource has not properly cared
22 for the resource or has not made the resource available for dis-
23 play to the public or for inspection by professional archaeolo-
24 gists and anthropologists and students of archaeology and anthro-
25 pology, or professionals and students of related disciplines.

1 (4) Upon the death, imprisonment, dissolution, or bankruptcy
2 of a custodian of a state owned archaeological resource, physical
3 possession of the resource shall revert to the bureau.

4 (5) This section shall not be construed to require an agency
5 which is the custodian of an archaeological resource on the
6 effective date of this act to obtain the concurrence of the sec-
7 retary of state to retain possession or to relinquish possession
8 of the resource to the bureau.

9 Sec. 37. (1) A person shall not make or manufacture an
10 archaeological resource with intent to utilize or transfer the
11 facsimile resource so as to defraud, or alter an archaeological
12 resource so that it appears to have value beyond its inherent
13 value with intent to utilize or transfer the resource so as to
14 defraud.

15 (2) A person shall convey an archaeological resource to the
16 bureau if the resource was obtained by deceit, fraud, or theft
17 and was previously discovered on state land or at a state site.

18 (3) A person who fails to convey a resource to the bureau as
19 provided in subsection (2) within 30 days after his or her
20 receipt of the resource is guilty of a misdemeanor and may be
21 imprisoned for not more than 30 days, or fined not more than
22 \$500.00, or both.

23 (4) A person who excavates, disturbs, removes, destroys, or
24 sells a relic or artifact of a Native American, or the contents
25 of a mound or burial ground, on or from lands owned by or under
26 the control of the state, except with the written approval of the
27 state archaeologist, or in violation of this act or a rule

1 promulgated pursuant to this act, is guilty of felony and may be
2 imprisoned for not more than 3 years, or fined not more than
3 \$25,000.00, or both.

4 (4) Any law enforcement officer, including a conservation
5 officer, may enforce this section. Any prosecuting attorney may
6 prosecute a person or entity who violates this section.

7 (5) An archaeological resource with respect to which a vio-
8 lation of this act or a rule promulgated under this act has
9 occurred, and all vehicles, vessels, or any other apparatus or
10 equipment which were used in connection with the violation, the
11 items so used may be seized, proceeded against, and confiscated
12 as prescribed in this act.

13 (6) To effect confiscation, the law enforcement or conserva-
14 tion officer seizing the property shall file a verified complaint
15 in the circuit court for the county in which the seizure was made
16 or in the circuit court for Ingham county. The complaint shall
17 set forth the kind of property seized, the time and place of the
18 seizure, the reasons for the seizure, and a demand for the
19 property's condemnation and confiscation. Upon the filing of the
20 complaint, an order shall be issued requiring the owner to show
21 cause why the property should not be confiscated. The substance
22 of the complaint shall be stated in the order. The order to show
23 cause shall fix the time for service of the order and for the
24 hearing on the proposed condemnation and confiscation.

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

1 hear the complaint on shorter notice. If the owner is not known
2 or cannot be found, notice may be served in 1 or more of the fol-
3 lowing ways:

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

10 (b) By publishing a copy of the order in a newspaper 1 each
11 week for 3 consecutive weeks in the county where the seizure was
12 made and by sending a copy of the order by registered mail to the
13 last known residential address of the owner. If the last resi-
14 dential address of the owner is not known, mailing a copy of the
15 order is not required.

16 (c) In such other manner as the court directs.

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

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

5 Sec. 39. A person shall not, without the written consent of
6 the landowner, practice field archaeology on privately owned land
7 within this state.

8 Sec. 41. (1) A person shall not, unless lawfully empowered
9 to do so, willfully dig up, disinter, remove, or convey away a
10 dead human body from a place where the body may be interred or
11 deposited, or knowingly aid or abet in that activity, or mutilate
12 or deface a dead human body.

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

20 (3) The body of a Native American interred after A.D. 1650
21 shall be returned to the commission on Indian affairs for
22 reinterment. A determination or estimation of the date of origi-
23 nal interment shall be made by the state archaeologist or another
24 recognized archaeological authority and a report of that informa-
25 tion shall be made to the commission.

26 (4) Every official of a city, village, township, or county
27 who obtains information concerning the location of human remains

1 in an unmarked grave or unregistered cemetery shall notify the
2 department of state police. If the department of state police
3 determines that the remains are not those of a known or suspected
4 missing person, that information shall be conveyed to the state
5 archaeologist.

6 (5) A person shall not collect or maintain a collection of
7 human skeletal remains unless the person is a licensed profes-
8 sional in a health care field, or is an employee or agent of an
9 agency, school, or scientific institution and is engaged in the
10 display or study of the remains.

11 (6) This section shall not be construed to prohibit the dig-
12 ging up, disinterment, removal, or carrying away for scientific
13 purposes the remains of prehistoric persons by representatives of
14 schools or scientific institutions having the written consent of
15 the owners of the land from which the remains may be
16 disinterred.

17 Sec. 43. (1) Before commencing any construction or excava-
18 tion activity in an area where human remains have been previously
19 discovered or reported, a person shall contact the state archaeo-
20 logist to determine whether more human remains are likely to be
21 found. If it is likely that human remains will be encountered,
22 construction or excavation in the area shall not commence until
23 written authorization from the state archaeologist is obtained.

24 (2) This section shall be construed to prohibit burials in a
25 modern cemetery upon the site of an ancient burial place which
26 contains an existing burial, but shall not be construed to
27 prohibit the practice of field archaeology in the cemetery.

1 Sec. 45. (1) A city, village, township, or county shall not
2 alienate or appropriate an ancient burial place to a use other
3 than that of a burial ground. A portion of an ancient burial
4 place shall not be taken for public use without statutory author-
5 ity from the state legislature. If an ancient burial place is
6 appropriated for any other use and the bodies buried in the
7 place, the monuments, gravestones, or other memorials are
8 removed, the entity authorized to alienate or appropriate the
9 burial place shall make a record that indicates the date of the
10 removal and the site or place to which removal is made, and a
11 copy of the record shall be filed with the state archaeologist.

12 (2) The state or a city, village, township, or county
13 having, within its limits, on public land, a known abandoned or
14 neglected ancient burial ground shall do all of the following:

15 (a) Take charge of the burial ground and keep it in good
16 order.

17 (b) Repair or restore fences, tombs, monuments, or other
18 structures in the place.

19 (c) Appropriate money for the upkeep of the burial grounds,
20 but property rights shall not be violated and a body shall not be
21 disinterred except as provided in this act.

22 Sec. 47. A fence, tomb, monument, mound, gravehouse, cairn,
23 or gravestone within an ancient burial ground shall not be
24 destroyed, damaged, or removed except in accordance with this
25 section. A gravestone or other memorial for the dead may, with
26 the approval of the owner of the burial lot in which the
27 gravestone or memorial is placed or, if the owner is unknown,

1 with the approval of a court, be removed for the purpose of
2 repair or replacement, for the purpose of reproduction, or for
3 the purpose of preservation and display in a reputable museum.
4 The approval may be given by a court only after 7 days' notice of
5 a hearing published in a newspaper having a circulation in the
6 locality where the burial ground is located and after a determi-
7 nation by the court following the hearing that the removal is
8 necessary or desirable for the protection or preservation of the
9 gravestone or memorial or for the furtherance of educational
10 goals and objectives. An owner of a burial lot who has not
11 received notice of the hearing may after the removal request
12 replacement of a gravestone or memorial so removed. The court,
13 if satisfied that the person is the owner of the burial lot,
14 shall order the replacement.

15 Sec. 49. (1) A person knowing or having reasonable grounds
16 to believe that unmarked human burials or human skeletal remains
17 are being disturbed, destroyed, defaced, mutilated, removed, or
18 exposed, shall notify immediately the medical examiner of the
19 county in which the remains are encountered.

20 (2) If the unmarked human burials or human skeletal remains
21 are encountered as a result of construction, mining, logging,
22 dredging, recreational, agricultural, or any other land disturb-
23 ing activity, disturbance of the remains shall cease immediately
24 and shall not resume without authorization from either the county
25 medical examiner or the state archaeologist.

26 (3) If unmarked human burials or human skeletal remains are
27 encountered by a professional archaeologist as a result of survey

1 or test excavations, the remains may be excavated and other
2 activities may resume after notification by telephone or regis-
3 tered letter is provided to the state archaeologist. The treat-
4 ment, analysis, and disposition of the remains shall be governed
5 by sections 57 and 59.

6 (4) If a professional archaeologist directing long-term sys-
7 tematic archaeological research intended to continue for 1 or
8 more field seasons of 4 or more weeks duration and sponsored by
9 an accredited college or university, recovers Native American
10 skeletal remains on private property, the archaeologist may be
11 exempted from the provisions of sections 51, 53, 55, 57, and 59
12 if he or she does all of the following:

13 (a) Notifies the executive director and state archaeologist
14 within 5 working days after the initial discovery of Native
15 American skeletal remains.

16 (b) Reports to the executive director, at agreed upon inter-
17 vals, the status of the project.

18 (c) Curates the skeletal remains prior to ultimate
19 disposition.

20 (d) Does not conduct destructive skeletal analysis without
21 the written permission of the executive director.

22 (5) Upon completion of the project fieldwork, the profes-
23 sional archaeologist, in consultation with a skeletal analyst and
24 the executive director, shall determine the schedule for the com-
25 pletion of the skeletal analysis. In the event of a disagree-
26 ment, the time for completion of the skeletal analysis shall not
27 exceed 4 years. The executive director shall determine the

1 ultimate disposition of the Native American skeletal remains
2 postdating A.D. 1650.

3 (6) The state archaeologist shall notify the department of
4 public health of any reported human skeletal remains discovered
5 by a professional archaeologist.

6 Sec. 51. (1) If an agreement is reached between the depart-
7 ment of state and a landowner for the excavation of human skele-
8 tal remains, the state archaeologist shall excavate or supervise
9 the excavation or designate a member of his or her staff or
10 authorize another professional archaeologist to excavate or
11 supervise the excavation.

12 (2) A professional archaeologist excavating human skeletal
13 remains under this section shall report to the state archaeolo-
14 gist, either in writing or by telephone, his or her opinion on
15 the cultural and biological characteristics of the remains. This
16 report shall be transmitted as soon as possible after the com-
17 mencement of excavation, but not later than 2 business days after
18 the removal of a burial.

19 (3) The state archaeologist, or in consultation with the
20 professional archaeologist excavating the remains, shall deter-
21 mine where the remains shall be held after excavation, pending
22 other arrangements according to sections 53 and 55.

23 Sec. 53. (1) If the professional archaeologist excavating
24 human remains under section 51 or under a state permit determines
25 that the human skeletal remains are Native American, the state
26 archaeologist shall immediately notify the executive director.

1 The executive director shall notify and consult with other
2 appropriate tribal groups.

3 (2) Within 4 weeks after the notification, the executive
4 director shall communicate in writing to the state archaeologist
5 the concerns of the Michigan commission of Indian affairs and of
6 an appropriate tribal group or community with regard to the
7 treatment and ultimate disposition of the Native American skele-
8 tal remains.

9 (3) Within 90 days after receipt of the concerns of the com-
10 mission, the state archaeologist and the executive director, with
11 the approval of the principal tribal official of an appropriate
12 tribe, shall prepare a written agreement concerning the treatment
13 and ultimate disposition of the Native American skeletal
14 remains. The written agreement shall include all of the
15 following:

16 (a) A designation of a qualified skeletal analyst to work on
17 the skeletal remains.

18 (b) The type of analysis and the specific period of time to
19 be provided for analysis of the skeletal remains.

20 (c) The timetable for written progress reports and final
21 report concerning the skeletal analysis to be provided to the
22 state archaeologist and the executive director by the skeletal
23 analyst.

24 (d) A plan for the ultimate disposition of the Native
25 American remains subsequent to the completion of adequate skele-
26 tal analysis.

1 (4) If an agreement is not reached within 90 days, the
2 remains shall be released to the executive director for
3 disposition.

4 Sec. 55. (1) If a professional archaeologist excavating
5 human remains under section 51 or under a state permit determines
6 that the remains are not Native American and the identity of the
7 remains or next of kin is unknown, the state archaeologist shall
8 publish a notice that excavation of the remains has occurred, at
9 least once each week for 4 successive weeks, in a newspaper of
10 general circulation in the county where the burials or skeletal
11 remains were discovered, in an effort to determine the identity
12 or next of kin, or both, of the remains.

13 (2) If the next of kin is located, within 90 days the state
14 archaeologist, in consultation with the next of kin, shall pre-
15 pare a written agreement concerning the treatment and ultimate
16 disposition of the skeletal remains. The written agreement shall
17 include all of the following:

18 (a) A designation of a qualified skeletal analyst to examine
19 the skeletal remains.

20 (b) The type of analysis and the specific period of time to
21 be provided for analysis of the skeletal remains.

22 (c) The timetable for written progress reports and the final
23 report concerning the skeletal analysis to be provided to the
24 state archaeologist and the next of kin by the skeletal analyst.

25 (d) A plan for the ultimate disposition of the skeletal
26 remains after the completion of skeletal analysis.

1 (3) If an agreement under subsection (2) is not reached, the
2 remains shall be handled according to the wishes of the next of
3 kin.

4 Sec. 57. (1) A skeletal analysis performed under this act
5 shall only be performed by a person possessing the qualifications
6 of a skeletal analyst.

7 (2) Prior to the execution of a written agreement under sec-
8 tion 53 or 55, the state archaeologist shall consult with the
9 professional archaeologist and the skeletal analyst investigating
10 the remains.

11 (3) The professional archaeologist and the skeletal analyst
12 shall submit a proposal to the state archaeologist within the
13 90-day period prescribed by sections 53 and 55, which shall
14 include all of the following:

15 (a) Methodology and techniques to be utilized.

16 (b) A statement of research objectives.

17 (c) The proposed time schedule for completion of the
18 analysis.

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

21 (4) If the terms of a section 53 or 55 written agreement are
22 not substantially met, the executive director or the next of kin,
23 after consultation with the state archaeologist, may take posses-
24 sion of the skeletal remains. In that event, the state archaeo-
25 logist may arrange for skeletal analysis by another qualified
26 skeletal analyst prior to ultimate disposition of the skeletal
27 remains.

1 Sec. 59. (1) If the skeletal remains are Native American,
2 the executive director, after consultation with an appropriate
3 tribal group or community, may determine the ultimate disposition
4 of the remains.

5 (2) If the skeletal remains are not Native American and the
6 next of kin has been identified, the next of kin may determine
7 the ultimate disposition of the remains.

8 (3) If the state archaeologist has not received information
9 or communication concerning the identity or next of kin of the
10 deceased, the skeletal remains shall be transferred to the state
11 archaeologist who shall provide for permanent curation according
12 to standard museum procedures after adequate skeletal analysis.

13 Sec. 61. (1) A person shall not harm, destroy, or alter a
14 state site through vandalism, the use of a vehicle, or other
15 means.

16 (2) This section shall not be construed to limit the right
17 of a person to utilize state lands and waters for recreational
18 and other lawful purposes.

19 Sec. 63. A person who violates this act or a rule promul-
20 gated under this act concerning human burials or human remains is
21 guilty of a felony, and upon conviction shall be imprisoned for
22 not more than 2 years, or fined not less than \$2,500.00 or more
23 than \$20,000.00, or both.

24 Sec. 65. The department and the department of natural
25 resources, jointly or separately, may promulgate rules pursuant
26 to the administrative procedures act of 1969, Act No. 306 of the

1 Public Acts of 1969, being sections 24.201 to 24.328 of the
2 Michigan Compiled Laws, to implement this act.

3 Sec. 67. This act shall not take effect unless Senate Bill
4 No. ____ or House Bill No. 5036 (request no. 02840'89 a) of the
5 85th Legislature is enacted into law.