

## Chapter 70.

### Indian Antiquities, Archaeological Resources and Unmarked Human Skeletal Remains Protection.

#### Article 1.

##### Indian Antiquities.

#### § 70-1. Private landowners urged to refrain from destruction.

Private owners of lands containing Indian relics, artifacts, mounds or burial grounds are urged to refrain from the excavation or destruction thereof and to forbid such conduct by others, without the cooperation of the director of the State Museum and the Secretary of Natural and Cultural Resources or without the assistance or supervision of some person designated by either as qualified to make scientific archaeological explorations. (1935, c. 198, s. 1; 1973, c. 476, s. 48; 2015-241, s. 14.30(x).)

#### § 70-2. Possessors of relics urged to commit them to custody of State agencies.

All persons having in their possession collections of Indian relics, artifacts, and antiquities which are in danger of being lost, destroyed or scattered are urged to commit them to the custody of the North Carolina State Museum, the Department of Natural and Cultural Resources, or some other public agency or institution within the State which is qualified to preserve and exhibit them for their historic, scientific and educational value to the people of the State. (1935, c. 198, s. 2; 1973, c. 476, s. 48; 2015-241, s. 14.30(s).)

#### § 70-3. Preservation of relics on public lands.

It shall be the duty of any person in charge of any construction or excavation on any lands owned by the State, by any public agency or institution, by any county, or by any municipal corporation, to report promptly to and preserve for the director of the State Museum or the Secretary of Natural and Cultural Resources any Indian relic, artifact, mound, or burial ground discovered in the course of such construction or excavation. (1935, c. 198, s. 3; 1973, c. 476, s. 48; 2015-241, s. 14.30(x).)

#### § 70-4. Destruction or sale of relic from public lands made misdemeanor.

Any person who shall excavate, disturb, remove, destroy or sell any Indian relic or artifact, or any of the contents of any mound or burial ground, on or from any lands owned by the State, by any public agency or institution, by any county, or by any municipal corporation, except with the written approval of the director of the State Museum or the Secretary of Natural and Cultural Resources, shall be guilty of a Class 1 misdemeanor. (1935, c. 198, s. 4; 1973, c. 476, s. 48; 1993, c. 539, s. 542; 1994, Ex. Sess., c. 24, s. 14(c); 2015-241, s. 14.30(x).)

#### §§ 70-5 through 70-9. Reserved for future codification purposes.

#### Article 2.

##### Archaeological Resources Protection Act.

#### § 70-10. Short title.

This Article shall be known as "The Archaeological Resources Protection Act." (1981, c. 904, s. 2.)

**§ 70-11. Findings and purpose.**

(a) The General Assembly finds that:

- (1) Archaeological resources on State lands are an accessible and irreplaceable part of the State's heritage;
- (2) These resources are increasingly endangered because of their commercial attractiveness;
- (3) Existing State laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) There is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Article is to secure, for the present and future benefit of the people of North Carolina, the protection of archaeological resources and sites which are on State lands, excluding highway right-of-ways, and to foster increased cooperation and exchange of information among governmental authorities, the professional archaeological community, Indian Tribal governmental authorities and private individuals having collections of archaeological resources and data. (1981, c. 904, s. 2.)

**§ 70-12. Definitions.**

As used in this Article, unless the context clearly indicates otherwise:

- (1) "Archaeological investigation" means any surface collection, subsurface tests, excavation, or other activity that results in the disturbance or removal of archaeological resources.
- (2) "Archaeological resource" means any material remains of past human life or activities which are at least 50 years old and which are of archaeological interest, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carvings, intaglios, graves or human skeletal materials. Paleontological specimens are not to be considered archaeological resources unless found in an archaeological context.
- (3) "State lands" means any lands owned, occupied, or controlled by the State of North Carolina, with the exception of those lands under short term lease solely for archaeological purposes, excluding highway right-of-ways. (1981, c. 904, s. 2.)

**§ 70-13. Archaeological investigations.**

(a) Any person may apply to the Department of Natural and Cultural Resources for a permit to conduct archaeological investigations on State lands. The application shall contain information the Department of Natural and Cultural Resources, in consultation with the Department of Administration, deems necessary, including the time, scope, location and specific purpose of the proposed work.

(b) A permit shall be issued pursuant to an application under subsection (a) of this section if, after any notifications and consultations required by subsection (d) of this section, the

Department of Natural and Cultural Resources, in consultation with the Department of Administration, finds that:

- (1) The applicant is qualified to carry out the permitted activity;
- (2) The proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;
- (3) The currently available technology and the technology the applicant proposes to use are such that the significant information contained in the archaeological resource can be retrieved;
- (4) The funds and the time the applicant proposes to commit are such that the significant information contained in the archaeological resources can be retrieved;
- (5) The archaeological resources which are collected, excavated or removed from State lands and associated records and data will remain the property of the State of North Carolina and the resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution;
- (6) The activity pursuant to the permit is not inconsistent with any management plan applicable to the State lands concerned; and
- (7) The applicant shall bear the financial responsibility for the reinterment of any human burials or human skeletal remains excavated or removed as a result of the permitted activities.

(c) A permit may contain any terms, conditions or limitations the Department of Natural and Cultural Resources, in consultation with the Department of Administration, deems necessary to achieve the intent of this Article. A permit shall identify the person responsible for carrying out the archaeological investigation.

(d) If a permit issued under G.S. 70-13(a) may result in harm to, or destruction of, any religious or cultural site, as determined by the Department of Natural and Cultural Resources, in consultation with the Department of Administration, before issuing such permit, the Department of Natural and Cultural Resources, in consultation with the Department of Administration, shall notify and consult with, insofar as possible, a local representative of an appropriate religious or cultural group. If the religious or cultural site pertains to Native Americans, the Department of Natural and Cultural Resources, in consultation with the Department of Administration, shall notify the Executive Director of the North Carolina Commission of Indian Affairs. The Executive Director of the North Carolina Commission of Indian Affairs shall notify and consult with the Eastern Band of Cherokee or other appropriate tribal group or community. Such notification shall include, but not be limited to, the following:

- (1) The location and schedule of the forthcoming investigation;
- (2) Background data concerning the nature of the study; and
- (3) The purpose of the investigation and the expected results.

(e) A permit issued under G.S. 70-13 may be suspended by the Department of Natural and Cultural Resources, in consultation with the Department of Administration, upon the determination that the permit holder has violated any provision of G.S. 70-15(a) or G.S. 70-15(b). A permit may be revoked by the Department of Natural and Cultural Resources, in consultation with the Department of Administration, upon assessment of a civil penalty under G.S. 70-16 against the permit holder or upon the permit holder's conviction under G.S. 70-15. (1981, c. 904, s. 2; 1991, c. 461, s. 1; 2015-241, s. 14.30(s).)

**§ 70-13.1. Criminal record checks of applicants for permit or license.**

(a) The following definitions apply to this section:

- (1) Applicant. – A person or entity applying for a permit or license under G.S. 70-13 to conduct any type of archaeological investigation on State lands.
- (2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to conduct archaeological investigations under G.S. 70-13. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers and Court Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants shall consent to a criminal history record check. Refusal to consent to a criminal history record check or to the use of fingerprints or other identifying information may constitute grounds for the Department of Natural and Cultural Resources to deny a permit or a license to an applicant. The Department of Natural and Cultural Resources shall be responsible for providing to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. If the applicant is not an individual, the applicant shall provide fingerprints for the principals, officers, directors, and controlling persons of the applicant. Each set of fingerprints shall be certified by an authorized law enforcement officer. The Department of Natural and Cultural Resources shall keep all information obtained under this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar the issuance of a permit or a license. When determining whether to issue a permit or license to an applicant, the

Department of Natural and Cultural Resources shall consider all of the following factors regarding the conviction:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the person's responsibilities pursuant to the application.
- (6) The incarceration, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a crime. (2005-367, s. 4; 2012-12, s. 2(dd); 2014-100, s. 17.1(o); 2015-181, s. 47; 2015-241, s. 14.30(s).)

**§ 70-14. Rule-making authority; custody of resources.**

The North Carolina Historical Commission, in consultation with the Department of Administration, may promulgate regulations to implement the provisions of this Article and to provide for the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from State lands pursuant to this Article, and the ultimate disposition of those resources. (1981, c. 904, s. 2.)

**§ 70-15. Prohibited acts and criminal penalties.**

(a) No person may excavate, remove, damage or otherwise alter or deface any archaeological resource located on State lands unless he is acting pursuant to a permit issued under G.S. 70-13.

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, exchange, transport or receive any archaeological resource excavated or removed from State lands in violation of the prohibition contained in G.S. 70-15(a).

(c) Any person who knowingly and willfully violates or employs any other person to violate any prohibition contained in G.S. 70-15(a) or G.S. 70-15(b) shall upon conviction, be fined not more than two thousand dollars (\$2,000) or imprisoned not more than six months, or both, in the discretion of the court.

(d) Each day on which a violation occurs shall be a separate and distinct offense. (1981, c. 904, s. 2.)

**§ 70-16. Civil penalties.**

A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Department of Administration, in consultation with the Department of Natural and Cultural Resources, against any person who violates the provisions of G.S. 70-15. In determining the amount of the penalty, the Department shall consider the extent of the harm caused by the violation and the cost of rectifying the damage. Any person assessed shall be notified of the assessment by registered or certified mail. The notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, the Department may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment.

The Department may use the assessed funds to rectify the damage to archaeological resources. The clear proceeds of all assessed funds not used to rectify the damage shall be remitted to the Civil

Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1981, c. 904, s. 2; 1987, c. 827, s. 215; 1998-215, s. 2; 2015-241, s. 14.30(s).)

**§ 70-17. Forfeiture.**

All archaeological resources with respect to which a violation of G.S. 70-15(a) or 70-15(b) occurred, and all vehicles and equipment which were used in connection with such violation shall be subject to forfeiture to the State of North Carolina in the same manner as vehicles and equipment subject to forfeiture under G.S. 90-112. (1981, c. 904, s. 2.)

**§ 70-18. Confidentiality.**

Information concerning the nature and location of any archaeological resource, regardless of the ownership of the property, may be made available to the public under Chapter 132 of the North Carolina General Statutes or under any other provision of law unless the Department of Natural and Cultural Resources determines that the disclosures would create a risk of harm to such resources or to the site at which such resources are located. (1981, c. 904, s. 2; 2015-241, s. 14.30(s).)

**§ 70-19. Cooperation with private individuals.**

The Department of Natural and Cultural Resources shall take any action necessary, consistent with the purposes of this Article, to foster and improve the communication, cooperation, and exchange of information between:

- (1) Private individuals having collections of archaeological resources and data which were obtained through legal means, and
- (2) Professional archaeologists and associations of professional archaeologists concerned with the archaeological resources of North Carolina and of the United States. (1981, c. 904, s. 2; 2015-241, s. 14.30(s).)

**§ 70-20. Delegation of responsibilities.**

If the Department of Administration and the Department of Natural and Cultural Resources agree, the responsibilities, in whole or in part, of the Department of Natural and Cultural Resources under this Article may be delegated through a memorandum of understanding to the Department of Administration. Such a memorandum of understanding will be subject to periodic review at the initiation of either party to the memorandum. (1981, c. 904, s. 2; 2015-241, s. 14.30(s).)

**§ 70-21. Cemeteries on State lands.**

(a) To preserve the sanctity of cemeteries located on State lands, the head of each State agency shall have the following duties and responsibilities:

- (1) To identify and inventory all known cemeteries on State lands allocated to that State agency.
- (2) To furnish a copy of the inventory to the State Property Office and the Department of Natural and Cultural Resources.

(b) State agencies are not required to provide State funds or other resources to maintain cemeteries on State land, except when required by law, regulation, or ordinance; directed by court order; or necessary to correct a known safety hazard to the public.

(c) State agencies may allow a family member or other interested person to maintain cemeteries and erect signs, fencing, grave markers, monuments, and tombstones within the

designated boundaries of the cemetery if this activity does not constitute a safety hazard to the public. The family member or person shall obtain approval from the respective State agency and shall be responsible for any expense incurred by the activity. (2015-241, s.14.30(c); 2015-285, s. 1.)

§ 70-22: Reserved for future codification purposes.

§ 70-23: Reserved for future codification purposes.

§ 70-24: Reserved for future codification purposes.

§ 70-25: Reserved for future codification purposes.

### Article 3.

#### Unmarked Human Burial and Human Skeletal Remains Protection Act.

#### § 70-26. Short title.

This Article shall be known as "The Unmarked Human Burial and Human Skeletal Remains Protection Act." (1981, c. 853, s. 2.)

#### § 70-27. Findings and purpose.

(a) The General Assembly finds that:

- (1) Unmarked human burials and human skeletal remains are subject to vandalism and inadvertent destruction at an ever-increasing rate;
- (2) Existing State laws do not provide adequate protection to prevent damage to and destruction of these remains;
- (3) There is a great deal of scientific information to be gained from the proper excavation, study and analysis of human skeletal remains recovered from such burials; and
- (4) There has been no procedure for descendants or other interested individuals to make known their concerns regarding disposition of these remains.

(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information. (1981, c. 853, s. 2; 2007-484, s. 11(a).)

#### § 70-28. Definitions.

As used in this Article:

- (1) "State Archaeologist" means the head of the Office of State Archaeology section of the Office of Archives and History, Department of Natural and Cultural Resources.
- (2) "Executive Director" means the Executive Director of the North Carolina Commission of Indian Affairs.

- (3) "Human skeletal remains" or "remains" means any part of the body of a deceased human being in any stage of decomposition.
- (4) "Professional archaeologist" means a person having (i) a postgraduate degree in archaeology, anthropology, history, or another related field with a specialization in archaeology, (ii) a minimum of one year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains, and (iii) designed and executed an archaeological study and presented the written results and interpretations of such study.
- (5) "Skeletal analyst" means any person having (i) a postgraduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology or other relevant aspects of physical anthropology or medicine, (ii) a minimum of one year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity, and (iii) designed and executed a skeletal analysis, and presented the written results and interpretations of such analysis.
- (6) "Unmarked human burial" means any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased. (1981, c. 853, s. 2; 2002-159, s. 35(a); 2007-484, s. 10(a); 2015-241, s. 14.30(s).)

**§ 70-29. Discovery of remains and notification of authorities.**

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being disturbed, destroyed, defaced, mutilated, removed, or exposed, shall notify immediately the medical examiner of the county in which the remains are encountered.

(b) If the unmarked human burials or human skeletal remains are encountered as a result of construction or agricultural activities, disturbance of the remains shall cease immediately and shall not resume without authorization from either the county medical examiner or the State Archaeologist, under the provisions of G.S. 70-30(c) or 70-30(d).

(c) (1) If the unmarked human burials or human skeletal remains are encountered by a professional archaeologist, as a result of survey or test excavations, the remains may be excavated and other activities may resume after notification, by telephone or registered letter, is provided to the State Archaeologist. The treatment, analysis and disposition of the remains shall come under the provisions of G.S. 70-34 and 70-35.

- (2) If a professional archaeologist directing long-term (research designed to continue for one or more field seasons of four or more weeks' duration) systematic archaeological research sponsored by any accredited college or university in North Carolina, as a part of his research, recovers Native American skeletal remains, he may be exempted from the provisions of G.S. 70-30, 70-31, 70-32, 70-33, 70-34 and 70-35(c) of this Article so long as he:
  - a. Notifies the Executive Director within five working days of the initial discovery of Native American skeletal remains;
  - b. Reports to the Executive Director, at agreed upon intervals, the status of the project;



- c. Curates the skeletal remains prior to ultimate disposition; and
- d. Conducts no destructive skeletal analysis without the express permission of the Executive Director.

Upon completion of the project fieldwork, the professional archaeologist, in consultation with the skeletal analyst and the Executive Director, shall determine the schedule for the completion of the skeletal analysis. In the event of a disagreement, the time for completion of the skeletal analysis shall not exceed four years. The Executive Director shall have authority concerning the ultimate disposition of the Native American skeletal remains after analysis is completed in accordance with G.S. 70-35(a) and 70-36(b) and (c).

(d) The State Archaeologist shall notify the Chief, Medical Examiner Section, Division of Health Services, Department of Health and Human Services, of any reported human skeletal remains discovered by a professional archaeologist. (1981, c. 853, s. 2; 1997-443, s. 11A.118(a); 2007-484, s. 10(b).)

#### **§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of G.S. 130A-383, the county medical examiner will immediately proceed with the investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of G.S. 130A-383, the county medical examiner shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the State Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The State Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the State Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The State Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner. (1981, c. 853, s. 2; 2007-484, ss. 10(c), 11(b).)

#### **§ 70-31. Archaeological investigation of human skeletal remains.**

(a) If an agreement is reached with the landowner for the excavation of the human skeletal remains, the State Archaeologist shall either designate a member of his staff or authorize another professional archaeologist to excavate or supervise the excavation.

(b) The professional archaeologist excavating human skeletal remains shall report to the State Archaeologist, either in writing or by telephone, his opinion on the cultural and biological characteristics of the remains. This report shall be transmitted as soon as possible after the commencement of excavation, but no later than two full business days after the removal of a burial.

(c) The State Archaeologist, in consultation with the professional archaeologist excavating the remains, shall determine where the remains shall be held subsequent to excavation, pending other arrangements according to G.S. 70-32 or 70-33.

(d) The Department of Natural and Cultural Resources may obtain administrative inspection warrants pursuant to the provisions of Chapter 15, Article 4A of the General Statutes to

enforce the provisions of this Article, provided that prior to the requesting of the administrative warrant, the Department shall contact the affected landowners and request their consent for access to their land for the purpose of gathering such information. If consent is not granted, the Department shall give reasonable notice of the time, place and before whom the administrative warrant will be requested so that the owner or owners may have an opportunity to be heard. (1981, c. 853, s. 2; 2007-484, s. 10(d); 2015-241, s. 14.30(s).)

**§ 70-32. Consultation with the Native American Community.**

(a) If the professional archaeologist determines that the human skeletal remains are Native American, the State Archaeologist shall immediately notify the Executive Director of the North Carolina Commission of Indian Affairs. The Executive Director shall notify and consult with the Eastern Band of Cherokee or other appropriate tribal group or community.

(b) Within four weeks of the notification, the Executive Director shall communicate in writing to the State Archaeologist, the concerns of the Commission of Indian Affairs and an appropriate tribal group or community with regard to the treatment and ultimate disposition of the Native American skeletal remains.

(c) Within 90 days of receipt of the concerns of the Commission of Indian Affairs, the State Archaeologist and the Executive Director, with the approval of the principal tribal official of an appropriate tribe, shall prepare a written agreement concerning the treatment and ultimate disposition of the Native American skeletal remains. The written agreement shall include the following:

- (1) Designation of a qualified skeletal analyst to work on the skeletal remains;
- (2) The type of analysis and the specific period of time to be provided for analysis of the skeletal remains;
- (3) The timetable for written progress reports and the final report concerning the skeletal analysis to be provided to the State Archaeologist and the Executive Director by the skeletal analyst; and
- (4) A plan for the ultimate disposition of the Native American remains subsequent to the completion of adequate skeletal analysis.

If no agreement is reached within 90 days, the Archaeological Advisory Committee shall determine the terms of the agreement. (1981, c. 853, s. 2; 2007-484, s. 10(e).)

**§ 70-33. Consultation with other individuals.**

(a) If the professional archaeologist determines that the human skeletal remains are other than Native American, the State Archaeologist shall publish notice that excavation of the remains has occurred, at least once per week for four successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or next of kin or both of the deceased.

(b) If the next of kin are located, within 90 days the State Archaeologist in consultation with the next of kin shall prepare a written agreement concerning the treatment and ultimate disposition of the skeletal remains. The written agreement shall include:

- (1) Designation of a qualified skeletal analyst to work on the skeletal remains;
- (2) The type of analysis and the specific period of time to be provided for analysis of the skeletal remains;

- (3) The timetable for written progress reports and the final report concerning the skeletal analysis to be provided to the State Archaeologist and the next of kin by the skeletal analyst; and
- (4) A plan for the ultimate disposition of the skeletal remains subsequent to the completion of adequate skeletal analysis.

If no agreement is reached, the remains shall be handled according to the wishes of the next of kin. (1981, c. 853, s. 2; 2007-484, s. 10(f).)

#### **§ 70-34. Skeletal analysis.**

(a) Skeletal analysis conducted under the provisions of this Article shall only be accomplished by persons having those qualifications expressed in G.S. 70-28(5).

(b) Prior to the execution of the written agreements outlined in G.S. 70-32(c) and 70-33(b), the State Archaeologist shall consult with both the professional archaeologist and the skeletal analyst investigating the remains.

(c) The professional archaeologist and the skeletal analyst shall submit a proposal to the State Archaeologist within the 90-day period set forth in G.S. 70-32(c) and 70-33(b), including:

- (1) Methodology and techniques to be utilized;
- (2) Research objectives;
- (3) Proposed time schedule for completion of the analysis; and
- (4) Proposed time intervals for written progress reports and the final report to be submitted.

(d) If the terms of the written agreement are not substantially met, the Executive Director or the next of kin, after consultation with the State Archaeologist, may take possession of the skeletal remains. In such case, the State Archaeologist may ensure that appropriate skeletal analysis is conducted by another qualified skeletal analyst prior to ultimate disposition of the skeletal remains. (1981, c. 853, s. 2; 2007-484, s. 10(g).)

#### **§ 70-35. Disposition of human skeletal remains.**

(a) If the skeletal remains are Native American, the Executive Director, after consultation with an appropriate tribal group or community, shall determine the ultimate disposition of the remains after the analysis.

(b) If the skeletal remains are other than Native American and the next of kin have been identified, the next of kin shall have authority concerning the ultimate disposition of the remains after the analysis.

(c) If the State Archaeologist has received no information or communication concerning the identity or next of kin of the deceased, the skeletal remains shall be transferred to the State Archaeologist and permanently curated according to standard museum procedures after adequate skeletal analysis. (1981, c. 853, s. 2; 2007-484, s. 10(h).)

#### **§ 70-36. Financial responsibility.**

(a) The provisions of this Article shall not require that the owner of the land on which the unmarked human burials or human skeletal remains are found, bear the cost of excavation, removal, analysis or disposition.

(b) If a determination is made by the Executive Director, in consultation with an appropriate tribal group or community, that Native American skeletal remains shall be reinterred following the completion of skeletal analysis, an appropriate tribal group or community may

provide a suitable burial location. If it elects not to do so, it shall be the responsibility of the North Carolina Commission of Indian Affairs to provide a suitable burial location.

(c) The expense of transportation of Native American remains to the reburial location shall be borne by the party conducting the excavation and removal of the skeletal remains. The reburial ceremony may be provided by an appropriate tribal group or community. If it elects not to do so, the reburial ceremony shall be the responsibility of the Commission of Indian Affairs. (1981, c. 853, s. 2.)

#### **§ 70-37. Prohibited acts.**

(a) No person, unless acting under the provisions of G.S. 130-198 through G.S. 130-201, shall:

- (1) Knowingly acquire any human skeletal remains removed from unmarked burials in North Carolina after October 1, 1981, except in accordance with the provisions of this Article;
- (2) Knowingly exhibit or sell any human skeletal remains acquired from unmarked burials in North Carolina; or
- (3) Knowingly retain human skeletal remains acquired from unmarked burials in North Carolina after October 1, 1981, for scientific analysis beyond a period of time provided for such analysis pursuant to the provisions of G.S. 70-32, 70-33 and 70-34, with the exception of those skeletal remains curated under the provisions of G.S. 70-35.

(b) Other provisions of criminal law concerning vandalism of unmarked human burials or human skeletal remains may be found in G.S. 14-149. (1981, c. 853, s. 2.)

#### **§ 70-38. Rule-making authority.**

The North Carolina Historical Commission may promulgate rules and regulations to implement the provisions of this Article. (1981, c. 853, s. 2.)

#### **§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of G.S. 130A-383 are not subject to the prohibitions contained in this Article. (1981, c. 853, s. 2; 2007-484, s. 11(c).)

#### **§ 70-40. Penalties.**

(a) Violation of the provisions of G.S. 70-29 is a Class 1 misdemeanor.

(b) Violation of the provisions of G.S. 70-37(a) is a Class H felony. (1981, c. 853, s. 2; 1993, c. 539, s. 543; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§§ 70-41 through 70-45. Reserved for future codification purposes.**

Article 4.

North Carolina Archaeological Record Program.

#### **§ 70-46. Short title.**

This Article shall be known as "The North Carolina Archaeological Record Program". (1991, c. 461, s. 2.)

**§ 70-47. Findings and purpose.**

(a) The General Assembly finds that archaeological resources on private lands constitute the majority of the irreplaceable historic and prehistoric resources of the State. These resources are increasingly endangered and existing State laws do not provide private landowners with the means adequately to preserve these resources. There is currently no provision for assisting and giving recognition to a private landowner who wishes to preserve the archaeological resources located on the owner's property.

(b) The purpose of this Article is to preserve and protect for the present and future benefit of the people of North Carolina through a program of voluntary site enrollment the prehistoric and historic archaeological resources that are on private lands. (1991, c. 461, s. 2.)

**§ 70-48. Definitions.**

As used in this Article, unless the context clearly indicates otherwise:

- (1) "Archaeological investigation" means any surface collection, subsurface tests, excavation, or other activity that results in the disturbance or removal of archaeological resources.
- (2) "Archaeological resource" means any material remains of past human life or activities which are at least 50 years old and which are of archaeological interest, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carvings, intaglios, graves or human skeletal materials. Paleontological specimens are not to be considered archaeological resources unless found in an archaeological context.
- (3) "Program" means the North Carolina Archaeological Record Program established under this Article.
- (4) "Record" means the North Carolina Archaeological Record established under this Article.
- (5) "State Archaeologist" means the head of the Office of State Archaeology section of the Office of Archives and History, Department of Natural and Cultural Resources. (1991, c. 461, s. 2; c. 761, s. 12.1; 2002-159, s. 35(b); 2007-484, s. 10(i); 2015-241, s. 14.30(s).)

**§ 70-49. The North Carolina Archaeological Record Program.**

(a) The Department of Natural and Cultural Resources, Office of Archives and History shall establish the North Carolina Archaeological Record Program. The purpose of the Program shall be to assist private owners of archaeological resources in the preservation and protection of those resources. Participation in the Program shall be voluntary.

(b) As part of the Program, the Department shall establish and maintain the North Carolina Archaeological Record. The North Carolina Archeological Record shall include a list of the archaeological resources owned privately by each person participating in the Program. No archaeological resource shall be enrolled in the Record without the permission of its owner.

(c) An archaeological resource that is enrolled in the North Carolina Archaeological Record shall be removed from the Record at the written request of either the State Archaeologist or the owner of the archaeological resource. The archaeological resource shall be removed from the Record 30 days after the receipt by the Department of Natural and Cultural Resources of the written request. (1991, c. 461, s. 2; 2002-159, s. 35(c); 2015-241, s. 14.30(s).)

**§ 70-50. Site Steward Program.**

The Department of Natural and Cultural Resources may create and maintain a volunteer program for purposes of monitoring the condition of archaeological resources listed in the Record. This program shall be known as the Site Steward Program and will be administered through the Department in cooperation with local and statewide archaeological societies and groups. (1991, c. 461, s. 2; c. 761, s. 12.2; 2015-241, s. 14.30(s).)

**§ 70-51. Archaeological investigations.**

(a) Any person wanting to conduct an archaeological investigation on private land that is the site of an archaeological resource enrolled in the Record shall apply to the Department of Natural and Cultural Resources for a permit to conduct such an investigation. The application shall contain information the Department of Natural and Cultural Resources deems necessary, including the time, scope, location and specific purpose of the proposed work.

(b) A permit shall be issued pursuant to this section if, after any notifications and consultations required by subsection (d) of this section, the Department of Natural and Cultural Resources finds that:

- (1) The applicant is qualified to carry out the permitted activity;
- (2) The proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;
- (3) The currently available technology and the technology the applicant proposes to use are such that the significant information contained in the archaeological resource can be retrieved;
- (4) The funds and the time the applicant proposes to commit are such that the significant information contained in the archaeological resources can be retrieved;
- (5) The archaeological resources that are enrolled in the Record and that are collected, excavated or removed from the privately owned site and the associated records and data will remain the property of the private owner of the archaeological resource;
- (6) Copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution;
- (7) The applicant shall bear the financial responsibility for the reinterment of any human burials or human skeletal remains excavated or removed as a result of the permitted activities; and
- (8) The applicant has obtained the permission of the owner of the archaeological resource to conduct the archaeological investigation.

(c) A permit may contain any terms, conditions or limitations the Department of Natural and Cultural Resources deems necessary to achieve the intent of this Article. A permit shall identify the person responsible for carrying out the archaeological investigation.

(d) If the Department of Natural and Cultural Resources determines that a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, the Department of Natural and Cultural Resources, before issuing the permit, shall notify and consult with, insofar as possible, a local representative of an appropriate religious or cultural group. If the religious or cultural site pertains to Native Americans, the Department of Natural and Cultural Resources shall notify the Executive Director of the North Carolina Commission of Indian Affairs. The Executive Director of the North Carolina Commission of Indian Affairs shall notify and consult with the Eastern Band of Cherokee or other appropriate tribal group or community. Such notification shall include, but not be limited to, the following:

- (1) The location and schedule of the forthcoming investigation;
- (2) Background data concerning the nature of the study; and
- (3) The purpose of the investigation and the expected results.

(e) A permit issued under this section may be suspended by the Department of Natural and Cultural Resources upon the determination that the permit holder has violated any condition of the permit. (1991, c. 461, s. 2; 2015-241, s. 14.30(s).)

**§ 70-52. Rule-making authority.**

The Department of Natural and Cultural Resources may adopt rules to implement this Article. (1991, c. 461, s. 2; 2015-241, s. 14.30(s).)