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 State Bureau of Investigation 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 State Bureau of Investigation. 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); 2023-134, s. 19F.4(ww).)

§ 70-14. Rulemaking 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; 2025-25, s. 29(6).)

§ 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.