

# Archeological and Historic Preservation Act

AS AMENDED

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This Act became law on June 27, 1960 (Public Law 86-523, 16 U.S.C. 469-469c-2) and has been amended six times. The description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code. The Act was originally known as the "Reservoir Salvage Act" when the initial legislation was enacted in 1960. With broadening amendments, the Act became known as the "Moss-Bennett Act" (after an early amendment) or the "Archeological Recovery Act."

16 U.S.C. 469,  
Purpose

## Section 1

It is the purpose of this Act [16 U.S.C. 469-469c-1] to further the policy set forth in the Act entitled, "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved August 21, 1935 [Historic Sites Act, as amended, 16 U.S.C. 461-467] by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States, or by any private person or corporation holding a license issued by any such agency or (2) any alteration of the terrain caused as a result of any Federal construction project or federally licensed activity or program.

16 U.S.C. 469(a),  
Notice of dam construction to be given Secretary of the Interior

## Section 2

Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior (hereafter referred to as the Secretary) setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided*, That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds,

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16 U.S.C. 469a-1,  
Threat of loss or  
destruction of signifi-  
cant data by Federal  
construction projects

16 U.S.C. 469a-1(a),  
Notification and  
request for preserva-  
tion of data

16 U.S.C. 469a-1(b),  
Survey of sites,  
preservation of data,  
compensation

or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

## Section 3

(a) Whenever any Federal agency finds, or is notified, in writing, by an appropriate historical or archeological authority, that its activities in connection with any Federal construction project or federally licensed project, activity, or program may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or it may, with funds appropriated for such project, program, or activity, undertake such activities. Copies of reports of any investigations made pursuant to this section shall be submitted to the Secretary, who shall make them available to the public for inspection and review.

(b) Whenever any Federal agency provides financial assistance by loan, grant, or otherwise to any private person, association, or public entity, the Secretary, if he determines that significant scientific, prehistorical, historical, or archeological data might be irrevocably lost or destroyed, may with funds appropriated expressly for this purpose conduct, with the consent of all persons, associations, or public entities having a legal interest in the property involved, a survey of the affected site and undertake the recovery, protection, and preservation of such data (including analysis and publication). The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or any nonfederally owned lands.

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16 U.S.C. 469a-2,  
Survey, data recovery,  
and compensation

16 U.S.C. 469 a-2(a),  
Survey conducted,  
preservation of data

16 U.S.C. 469a-2(b),  
Emergency projects

16 U.S.C. 469a-2(c),  
Initiation of survey

16 U.S.C. 469a-2(d),  
Compensation by  
Secretary as a result  
of delay

## Section 4

(a) The Secretary, upon notification, in writing, by any Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is being or may be irrevocably lost or destroyed by any Federal or federally assisted or licensed project, activity, or program, shall, if he determines that such data is significant and is being or may be irrevocably lost or destroyed and after reasonable notice to the agency responsible for funding or licensing such project, activity, or program, conduct or cause to be conducted a survey and other investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion, are not being, but should be, recovered and preserved in the public interest.

(b) No survey or recovery work shall be required pursuant to this section which, in the determination of the head of the responsible agency, would impede Federal or federally assisted or licensed projects or activities undertaken in connection with any emergency, including projects or activities undertaken in anticipation of, or as a result of, a natural disaster.

(c) The Secretary shall initiate the survey or recovery effort within sixty days after notification to him pursuant to subsection (a) of this section or within such time as may be agreed upon with the head of the agency responsible for funding or licensing the project, activity, or program in all other cases.

(d) The Secretary shall, unless otherwise mutually agreed to in writing, compensate any person, association, or public entity damaged as a result of delays in construction or as a result of the temporary loss of the use of private or nonfederally owned land.

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16 U.S.C. 469a-3,  
Progress reports, dis-  
position of relics, and  
coordination

16 U.S.C. 469a-3(a),  
Progress reports

16 U.S.C. 469a-3(b),  
Repositories for relics  
and specimens

16 U.S.C. 469a-3(c),  
Coordination of  
activities

16 U.S.C. 469b,  
Administration issues

## Section 5

(a) The Secretary shall keep the agency responsible for funding or licensing the project notified at all times of the progress of any survey made under sections 1 to 7 of this Act [16 U.S.C. 469-469c] or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency and the survey and recovery programs shall terminate at a time mutually agreed upon by the Secretary and the head of such agency unless extended by mutual agreement.

(b) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

(c) The Secretary shall coordinate all Federal survey and recovery activities authorized under sections 1 to 7 of this Act [16 U.S.C. 469-469c-1].

## Section 6

In the administration of sections 1 to 8 of this Act [16 U.S.C. 469-469c-1], the Secretary may—

(1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and

(2) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5 [of the United States Code]; and

(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporation or transferred to him by any Federal agency.

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16 U.S.C. 469c,  
Use of project funds  
and authorization of  
appropriation

16 U.S.C. 469c(a),  
Assistance of Federal  
agencies, 1% limit

16 U.S.C. 469c(d),  
Appropriation avail-  
ability

16 U.S.C. 469c-1,  
"State" defined

## Section 7

(a) To carry out the purposes of sections 1 to 8 of this Act [16 U.S.C. 469-469c-1], any Federal agency responsible for a construction project may assist the Secretary and/or it may transfer to him such funds as may be agreed upon, but not more than 1 per centum of the total amount authorized to be appropriated for such project, except that the 1 per centum limitation of this section shall not apply in the event that the project involves \$50,000 or less: *Provided*, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

(16 U.S.C. 469c(b), Appropriation authorization  
for data preservation, omitted)

(16 U.S.C. 469c(c), Appropriation authorization  
for surveys and investigations text, omitted)

(d) Beginning fiscal year 1979, sums appropriated for purposes of this section shall remain available until expended.

## Section 8

As used in sections 1 to 8 of this Act [16 U.S.C. 469-469c-1], the term "State" includes the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

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## Addendum

Addendum to the Archeological and Historic Preservation Act of 1974, as amended, from section 208 of the National Historic Preservation Act Amendments of 1980 [Public Law 96-515], as amended.

16 U.S.C. 469c-2,  
Costs for identifica-  
tion, surveys, evalua-  
tion, and data recovery  
Planning, not mitiga-  
tion costs

Costs chargeable  
to licensees and  
permittees

Waiver of 1% limit

### Section 208

Notwithstanding section 7(a) of this Act [16 U.S.C. 469c], or any other provision of law to the contrary—

(1) identification, surveys, and evaluation carried out with respect to historic properties within project areas may be treated for purposes of any law or rule of law as planning costs of the project and not as costs of mitigation;

(2) reasonable costs for identification, surveys, evaluation, and data recovery carried out with respect to historic properties within project areas may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit; and

(3) Federal agencies, with the concurrence of the Secretary and after notification of the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, are authorized to waive, in appropriate cases, the 1 per centum limitation contained in section 7 of this Act [16 U.S.C. 469c(a)].