

ARCHEOLOGICAL RESOURCES AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Bradley T. Johnson

LONG TITLE

General Description:

This bill moves supervisory authority of the State Antiquities Section from the Department of Community and Economic Development to the Department of Natural Resources.

Highlighted Provisions:

This bill:

► moves the State Antiquities Section from the Division of State History to the Division of Wildlife Resources within the Department of Natural Resources.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2005.

Utah Code Sections Affected:

AMENDS:

9-9-403, as enacted by Chapter 286, Laws of Utah 1992

9-9-405, as last amended by Chapter 35, Laws of Utah 1997

17B-4-403, as last amended by Chapter 256, Laws of Utah 2003

17B-4-405, as enacted by Chapter 133, Laws of Utah 2001

53B-17-603, as last amended by Chapter 294, Laws of Utah 1994

76-9-704, as last amended by Chapter 1, Laws of Utah 2000

RENUMBERS AND AMENDS:



28 **23-27-101**, (Renumbered from 9-8-301, as last amended by Chapter 42, Laws of Utah
29 1998)

30 **23-27-102**, (Renumbered from 9-8-302, as last amended by Chapter 10, Laws of Utah
31 1997)

32 **23-27-103**, (Renumbered from 9-8-303, as last amended by Chapter 170, Laws of Utah
33 1995)

34 **23-27-104**, (Renumbered from 9-8-304, as renumbered and amended by Chapters 241
35 and 286, Laws of Utah 1992)

36 **23-27-105**, (Renumbered from 9-8-305, as last amended by Chapter 170, Laws of Utah
37 1995)

38 **23-27-106**, (Renumbered from 9-8-306, as last amended by Chapter 170, Laws of Utah
39 1995)

40 **23-27-107**, (Renumbered from 9-8-307, as last amended by Chapter 170, Laws of Utah
41 1995)

42 **23-27-108**, (Renumbered from 9-8-308, as renumbered and amended by Chapter 241,
43 Laws of Utah 1992)

44 **23-27-109**, (Renumbered from 9-8-401, as renumbered and amended by Chapters 241
45 and 286, Laws of Utah 1992)

46 **23-27-110**, (Renumbered from 9-8-402, as last amended by Chapter 170, Laws of Utah
47 1995)

48 **23-27-111**, (Renumbered from 9-8-403, as renumbered and amended by Chapter 241,
49 Laws of Utah 1992)

50 **23-27-112**, (Renumbered from 9-8-404, as last amended by Chapter 170, Laws of Utah
51 1995)

52 **23-27-113**, (Renumbered from 9-8-405, as last amended by Chapter 352, Laws of Utah
53 2004)

54 **Uncodified Material Affected:**

55 ENACTS UNCODIFIED MATERIAL



57 *Be it enacted by the Legislature of the state of Utah:*

58 Section 1. Section **9-9-403** is amended to read:

59 **9-9-403. Ownership and disposition of Native American remains -- Removal --**
60 **Discovery -- Disputes.**

61 (1) The ownership or control of Native American remains that are excavated or
62 discovered on state lands after the effective date of this part shall be in the following priority:

63 (a) first, in the lineal descendants of the Native American;

64 (b) second, if the lineal descendants cannot be ascertained, in the Indian tribe that has
65 the closest cultural affiliation with the remains and that states a claim for the remains; and

66 (c) third, if cultural affiliation of the remains cannot be reasonably ascertained and the
67 land is recognized either by a final judgment of the Indian Claims Commission or through
68 other evidence as the exclusive or joint aboriginal land of some Indian tribe, in the Indian tribe
69 that is recognized as aboriginally occupying the area in which the remains were discovered, if
70 that tribe states a claim for the remains, or in a different tribe if it can be shown by a
71 preponderance of the evidence that that different tribe has a stronger genetic or cultural
72 relationship with the remains and that different tribe states a claim for the remains.

73 (2) Native American remains not claimed under Subsection (1) shall be disposed of in
74 accordance with rules promulgated by the division consistent with Title 23, Chapter [8, Part 3]
75 27, State Antiquities Section, and in consultation with Native American groups, representatives
76 of repositories, and the review committee established under Section 9-9-405.

77 (3) The intentional removal or excavation of Native American remains from state lands
78 may be permitted only if:

79 (a) the remains are excavated or removed pursuant to a permit issued under Section
80 [~~9-8-305~~] 23-27-105;

81 (b) the remains are excavated or removed after consultation with and written consent of
82 the land owner; and

83 (c) the ownership or right of control of the disposition of the remains is determined as
84 provided in Subsections (1) and (2).

85 (4) (a) Any person who knows or has reason to know that he or she has discovered
86 Native American remains on state lands after the effective date of this part shall notify, in
87 writing, the appropriate state agency having primary management authority over the lands as
88 provided in Title 23, Chapter [8, Part 3] 27, State Antiquities Section.

89 (b) If the discovery occurred in connection with construction, mining, logging,

90 agriculture, or a related activity the person shall cease the activity in the area of the discovery,
91 make a reasonable effort to protect the remains discovered before resuming the activity, and
92 provide notice of discovery to the appropriate state agency under Subsection (4)(a).

93 (c) Following notification under Subsections (4)(a) and (b) and upon certification by
94 the head of the appropriate state agency that notification has been received the activity may
95 resume after compliance with Section 76-9-704.

96 (5) Scientific study of remains may be carried out only with approval of the owner of
97 the remains as established in Subsections (1) and (2). If ownership is unknown, prior study
98 shall be restricted to those sufficient to identify ownership. This study shall be approved only
99 in accordance with rules made by the division in consultation with the review committee
100 established under Section 9-9-405. The remains shall be retained no longer than 90 days after
101 the date of establishing ownership.

102 (6) If there are multiple requests for repatriation of any remains and the division cannot
103 clearly determine which requesting party is the most appropriate claimant, the appropriate state
104 agency having primary authority over the lands as provided in Title 23, Chapter [8, Part 3] 27,
105 State Antiquities Section, may retain the remains until the requesting parties agree upon its
106 disposition or the dispute is otherwise resolved by a court of competent jurisdiction.

107 Section 2. Section **9-9-405** is amended to read:

108 **9-9-405. Review committee.**

109 (1) There is created a Native American Remains Review Committee.

110 (2) (a) The review committee shall be composed of seven members as follows:

111 (i) four shall be appointed by the division director from nominations submitted by
112 Indian tribes; and

113 (ii) three shall be appointed by the division director from nominations submitted by
114 representatives of repositories.

115 (b) Except as required by Subsection (2)(c), as terms of current committee members
116 expire, the division director shall appoint each new member or reappointed member to a
117 four-year term.

118 (c) Notwithstanding the requirements of Subsection (2)(b), the division director shall,
119 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
120 of committee members are staggered so that approximately half of the committee is appointed

121 every two years.

122 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
123 appointed for the unexpired term.

124 (e) (i) A member shall receive no compensation or benefits for the member's services,
125 but may receive per diem and expenses incurred in the performance of the member's official
126 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
127 63A-3-107.

128 (ii) A member may decline to receive per diem and expenses for the member's service.

129 (f) The review committee shall designate one of its members as chair.

130 (3) The review committee shall:

131 (a) monitor the identification process conducted under Section 9-9-403 to ensure a fair
132 and objective consideration and assessment of all available relevant information and evidence;

133 (b) review, upon the request of any affected party, any finding relating to:

134 (i) the identity or cultural affiliation of remains; or

135 (ii) the return of these remains;

136 (c) facilitate the resolution of any disputes among Indian tribes or lineal descendants
137 and state agencies relating to the return of remains, including convening the parties to the
138 dispute if [~~deemed~~] considered desirable;

139 (d) consult with Indian tribes on matters within the scope of the work of the review
140 committee affecting these tribes;

141 (e) consult with the division in the development of rules to carry out this part;

142 (f) perform other related functions as the division may assign to the committee; and

143 (g) make recommendations, if appropriate, regarding future care of remains that are to
144 be repatriated.

145 (4) Any records and findings made by the review committee relating to the identity of
146 or cultural affiliation of any remains and the return of any remains may be admissible in any
147 action brought under this part.

148 (5) The appropriate state agency having primary authority over the lands as provided in
149 Title 23, Chapter [8, Part 3,] 27, State Antiquities Section, shall ensure that the review
150 committee have reasonable access to Native American remains under review and to associated
151 scientific and historical documents.

152 (6) The division shall provide reasonable administrative and staff support necessary for
153 the deliberations of the committee.

154 (7) The review committee shall submit an annual report to the Native American
155 Legislative Liaison Committee, created in Section 36-22-1, on the progress made, and any
156 barriers encountered, in implementing this section during the previous year.

157 Section 3. Section **17B-4-403** is amended to read:

158 **17B-4-403. Project area plan requirements.**

159 (1) Each project area plan and draft project area plan shall:

160 (a) describe the boundaries of the project area;

161 (b) contain a general statement of the land uses, layout of principal streets, population
162 densities, and building intensities of the project area and how they will be affected by the
163 redevelopment, economic development, or education housing development;

164 (c) state the standards that will guide the redevelopment, economic development, or
165 education housing development;

166 (d) show how the purposes of this chapter will be attained by the redevelopment,
167 economic development, or education housing development;

168 (e) be consistent with the general plan of the community in which the project area is
169 located and show that the redevelopment, economic development, or education housing
170 development will conform to the community's general plan;

171 (f) if the agency board made a finding of blight under Subsection 17B-4-601(4)(b):

172 (i) describe how the redevelopment will reduce or eliminate blight in the project area;

173 and

174 (ii) if the agency is to have the power of eminent domain under the project area plan:

175 (A) provide record owners of property located within the redevelopment project area
176 and their tenants reasonable opportunities to participate in the redevelopment if the record
177 property owner or tenant enters into a participation agreement with the agency;

178 (B) state that the agency has adopted or will adopt guidelines setting forth and
179 governing the opportunities of record property owners and tenants to participate in the
180 redevelopment, as required by Subsection 17B-4-402(1)(h)(iv); and

181 (C) include a plan for the relocation of any families and persons who will be
182 temporarily or permanently displaced from housing facilities in the redevelopment project area;

183 (g) if the project area plan is for economic development, describe how the economic
184 development will create additional jobs;

185 (h) if the project area plan is for education housing development, describe how the
186 education housing development will meet the needs of the community in which the project area
187 is located;

188 (i) describe any specific project or projects that are the object of the proposed
189 redevelopment, economic development, or education housing development;

190 (j) identify how private developers, if any, will be selected to undertake the
191 redevelopment, economic development, or education housing development and identify each
192 private developer currently involved in the redevelopment, economic development, or
193 education housing development process;

194 (k) contain a time limit of no more than three years after adoption of the project area
195 plan for the agency to commence implementation of the project area plan, unless the project
196 area plan is adopted again as if it were an amended project area plan under Section 17B-4-411;

197 (l) if the project area plan authorizes the use of eminent domain, contain a time limit of
198 no more than five years after the effective date of the project area plan for the agency to
199 commence acquisition of property through the use of eminent domain;

200 (m) if the project area plan provides for tax increment to be paid to the agency:

201 (i) contain a time limit of no more than 25 years for tax increment to be paid to the
202 agency from the project area unless the taxing entity committee consents to a longer period;
203 and

204 (ii) contain a provision that the project area may not exceed 100 acres of private real
205 property unless:

206 (A) the agency obtains the consent of the taxing entity committee; or

207 (B) the project area is a superfund site;

208 (n) state the reasons for the selection of the project area;

209 (o) describe the physical, social, and economic conditions existing in the project area;

210 (p) provide a financial analysis describing the proposed method of financing the
211 proposed redevelopment, economic development, or education housing development;

212 (q) describe any tax incentives offered private entities for facilities located in the
213 project area;

214 (r) contain the report and state any recommendations of the community's planning
215 commission;

216 (s) include an analysis, as provided in Subsection (2), of whether adoption of the
217 project area plan is:

218 (i) for a redevelopment project area plan, necessary and appropriate to reduce or
219 eliminate blight; or

220 (ii) for an economic development or education housing development project area plan,
221 beneficial under a benefit analysis;

222 (t) if any of the existing buildings or uses in the project area are included in or eligible
223 for inclusion in the National Register of Historic Places or the State Register, state that the
224 agency shall comply with Subsection [~~9-8-404~~] 23-27-112(1) as though the agency were a state
225 agency; and

226 (u) include other information that the agency determines to be necessary or advisable.

227 (2) Each analysis under Subsection (1)(s)(ii) shall consider:

228 (a) the benefit of any financial assistance or other public subsidy proposed to be
229 provided by the agency, including:

230 (i) an evaluation of the reasonableness of the costs of economic development or
231 education housing development;

232 (ii) efforts the agency has made or will make to maximize private investment;

233 (iii) the rationale for use of tax increment, including an analysis of whether the
234 proposed development might reasonably be expected to occur in the foreseeable future solely
235 through private investment; and

236 (iv) an estimate of the total amount of tax increment that will be expended in
237 undertaking economic development or education housing development and the length of time
238 for which it will be expended; and

239 (b) the anticipated public benefit to be derived from the economic development or
240 education housing development, including:

241 (i) the beneficial influences upon the tax base of the community;

242 (ii) the associated business and economic activity likely to be stimulated; and

243 (iii) in the case of economic development, the number of jobs or employment
244 anticipated to be generated or preserved.

245 Section 4. Section **17B-4-405** is amended to read:

246 **17B-4-405. Existing and historic buildings and uses.**

247 If any of the existing buildings or uses in a project area are included in or eligible for
248 inclusion in the National Register of Historic Places or the State Register, the agency shall
249 comply with Subsection [~~9-8-404~~] 23-27-112(1) as though the agency were a state agency.

250 Section 5. Section **23-27-101**, which is renumbered from Section 9-8-301 is
251 renumbered and amended to read:

252 **CHAPTER 27. STATE ANTIQUITIES SECTION**

253 [~~9-8-301~~]. **23-27-101. Purpose.**

254 (1) The Legislature declares that the general public and the beneficiaries of the school
255 and institutional land grants have an interest in the preservation and protection of the state's
256 archaeological and anthropological resources and a right to the knowledge derived and gained
257 from scientific study of those resources.

258 (2) (a) The Legislature finds that policies and procedures for the survey and excavation
259 of archaeological resources from school and institutional trust lands are consistent with the
260 school and institutional land grants, if these policies and procedures insure that primary
261 consideration is given, on a site or project specific basis, to the purpose of support for the
262 beneficiaries of the school and institutional land grants.

263 (b) The Legislature finds that the preservation, placement in a repository, curation, and
264 exhibition of specimens found on school or institutional trust lands for scientific and
265 educational purposes is consistent with the school and institutional land grants.

266 (c) The Legislature finds that the preservation and development of sites found on
267 school or institutional trust lands for scientific or educational purposes, or the disposition of
268 sites found on school or institutional trust lands, after consultation between the division and the
269 School and Institutional Trust Lands Administration to determine the appropriate level of data
270 recovery or implementation of other appropriate preservation measures, for preservation,
271 development, or economic purposes, is consistent with the school and institutional land grants.

272 (d) The Legislature declares that specimens found on lands owned or controlled by the
273 state or its subdivisions may not be sold.

274 (3) It is the purpose of this [~~part and Part 4~~] chapter to provide that the survey,
275 excavation, curation, study, and exhibition of the state's archaeological and anthropological

276 resources be undertaken in a coordinated, professional, and organized manner for the general
277 welfare of the public and beneficiaries alike.

278 Section 6. Section **23-27-102**, which is renumbered from Section 9-8-302 is
279 renumbered and amended to read:

280 ~~[9-8-302]~~. **23-27-102. Definitions.**

281 As used in this ~~[part and Part 4]~~ chapter:

282 (1) "Agency" means a department, division, office, bureau, board, commission, or
283 other administrative unit of the state.

284 (2) "Archaeological resources" means all material remains and their associations,
285 recoverable or discoverable through excavation or survey, that provide information pertaining
286 to the historic or prehistoric peoples of the state.

287 (3) "Board" means the Wildlife Board created in Section 23-14-2.

288 ~~[(3)]~~ (4) "Collection" means a specimen and the associated records documenting the
289 specimen and its recovery.

290 ~~[(4)]~~ (5) "Curation" means management and care of collections according to standard
291 professional museum practice, which may include inventorying, accessioning, labeling,
292 cataloging, identifying, evaluating, documenting, storing, maintaining, periodically inspecting,
293 cleaning, stabilizing, conserving, exhibiting, exchanging, or otherwise disposing of original
294 collections or reproductions, and providing access to and facilities for studying collections.

295 ~~[(5)]~~ (6) "Curation facility" is defined as provided in Section 53B-17-603.

296 (7) "Division" means the Division of Wildlife Resources created in Section 23-14-1.

297 ~~[(6)]~~ (8) "Excavate" means the recovery of archaeological resources.

298 ~~[(7)]~~ (9) "Museum" means the Utah Museum of Natural History.

299 ~~[(8)]~~ (10) "Repository" is defined as provided in Section 53B-17-603.

300 ~~[(9)]~~ (11) "School and institutional land grants" means the transfer of properties
301 pursuant to Sections 6, 8, and 12 of the Utah Enabling Act and Article XX, Utah Constitution.

302 ~~[(10)]~~ (12) "School and institutional trust lands" are those properties defined in Section
303 53C-1-103.

304 ~~[(11)]~~ (13) "Section" means the State Antiquities Section.

305 ~~[(12)]~~ (14) "Site" means any petroglyphs, pictographs, structural remains, location of
306 archaeological deposits, or other location which is the source of specimens.

307 [~~(13)~~] (15) "Specimen" means all man-made artifacts and remains of an archaeological
 308 or anthropological nature found on or below the surface of the earth, excluding structural
 309 remains.

310 [~~(14)~~] "~~State historic preservation officer~~" means that position mentioned in ~~16 U.S.C.~~
 311 ~~Sec. 470a of the National Historic Preservation Act of 1966, as amended.~~]

312 [~~(15)~~] (16) "Survey" means surface investigations of archaeological resources.

313 Section 7. Section **23-27-103**, which is renumbered from Section 9-8-303 is
 314 renumbered and amended to read:

315 **[9-8-303]. 23-27-103. State Antiquities Section.**

316 (1) There is created within the division the State Antiquities Section.

317 (2) The division is the authority of the state for the protection and orderly development
 318 of archaeological and anthropological resources.

319 Section 8. Section **23-27-104**, which is renumbered from Section 9-8-304 is
 320 renumbered and amended to read:

321 **[9-8-304]. 23-27-104. Antiquities section duties.**

322 (1) The section is responsible for:

323 (a) the stimulation of research, study, and activities in the field of antiquities;

324 (b) the marking, protection, and preservation of sites;

325 (c) the collection, preservation, and administration of specimens until they are placed
 326 in a repository or curation facility;

327 (d) the administration of site survey and excavation records; and

328 (e) the editing and publication of antiquities records.

329 (2) The section shall cooperate with local, state, and federal agencies and all interested
 330 persons to achieve the purposes of this [~~part and Part 4~~] chapter.

331 Section 9. Section **23-27-105**, which is renumbered from Section 9-8-305 is
 332 renumbered and amended to read:

333 **[9-8-305]. 23-27-105. Permit required to survey or excavate on state lands --**

334 **Ownership of collections and resources -- Revocation or suspension of permits --**

335 **Criminal penalties.**

336 (1) (a) (i) Before any person may survey or excavate for archaeological resources on
 337 any lands owned or controlled by the state or its subdivisions, other than school or institutional

338 trust lands, that person shall obtain a permit from the division.

339 (ii) The division may enter into memoranda of agreement to issue permits, project
340 numbers, or to retain other data for federal lands and Native American lands within the state.

341 (b) Application for a permit shall be made on a form furnished by the section.

342 (c) The division shall make rules for the issuance of permits specifying or requiring:

343 (i) minimum permittee qualifications;

344 (ii) duration;

345 (iii) for excavation permits, proof of permission from the landowner to enter the
346 property for the purposes of the permit;

347 (iv) for excavation permits, research designs that provide for the recovery of the
348 maximum amount of [~~historic, scientific,~~] archaeological[;] and anthropological[; ~~and~~
349 ~~educational~~] information, in addition to the physical recovery of specimens and the reporting of
350 archaeological information meeting current standards of scientific rigor;

351 (v) the need, if any, to submit data obtained in the course of field investigations to the
352 division;

353 (vi) proof of consultation with the appropriate Native American tribe, if necessary;

354 (vii) proof of consultation with the museum regarding curation of collections;

355 (viii) for excavation permits, proof of consultation with other agencies that may
356 manage other legal interests in the land; and

357 (ix) other information the division considers necessary.

358 (d) All archaeological work shall be carried out under the supervision of the state
359 archaeologist, which shall be under the direction of the director.

360 (e) A person may not remove from the state, prior to placement in a repository or
361 curation facility, any specimen, site, or portion of any site from lands owned or controlled by
362 the state or its subdivisions, other than school or institutional trust lands, without permission
363 from the division, and prior consultation with the landowner and any other agencies managing
364 other interests in the land.

365 (2) (a) Before any person may survey or excavate for archaeological resources on
366 school or institutional trust lands, that person shall obtain a permit from the School and
367 Institutional Trust Lands Administration.

368 (b) The School and Institutional Trust Lands Administration may, by rule, delegate the

369 authority to issue either survey or excavation permits, or both, for archaeological resources to
370 the ~~[Division of State History]~~ division.

371 (c) Application for a permit shall be made on a form furnished by the School and
372 Institutional Trust Lands Administration.

373 (d) Issuance of a permit is an undertaking requiring consultation with the state ~~[historic~~
374 ~~preservation officer]~~ archeologist pursuant to Section ~~[9-8-404]~~ 23-27-112.

375 (e) The School and Institutional Trust Lands Administration shall enact rules for the
376 issuance of permits specifying or requiring:

377 (i) minimum permittee qualifications;

378 (ii) duration;

379 (iii) the need to submit data obtained in the course of field investigations to the
380 administration;

381 (iv) proof of consultation with the appropriate Native American tribe, if necessary;

382 (v) proof of consultation with the museum regarding curation of collections; and

383 (vi) other information the School and Institutional Trust Lands Administration
384 considers necessary.

385 (f) A person may not remove from the state, prior to placement in a repository or
386 curation facility, any specimen, site, or portion of any site from school or institutional trust
387 lands without permission from the School and Institutional Trust Lands Administration,
388 granted after consultation with the ~~[Division of State History]~~ division.

389 (3) (a) Collections recovered from school and institutional trust lands shall be owned
390 by the respective trust.

391 (b) Collections recovered from lands owned or controlled by the state or its
392 subdivisions, other than school or institutional trust lands, shall be owned by the state.

393 (c) The repository or curation facility for collections from lands owned or controlled by
394 the state or its subdivisions shall be designated pursuant to Section 53B-17-603.

395 (4) The permitting agency may revoke or suspend a permit if the permittee fails to
396 conduct a survey or excavation pursuant to law, the rules enacted by the permitting agency, or
397 permit provisions.

398 (5) (a) Any person violating this section is guilty of a class B misdemeanor.

399 (b) A person convicted of violating this section, or the rules promulgated by the

400 [~~Division of State History~~] division or the School and Institutional Trust Lands Administration
401 under this section, shall, in addition to any other penalties imposed, forfeit to the state or the
402 respective trust all archaeological resources discovered by or through the person's efforts.

403 Section 10. Section **23-27-106**, which is renumbered from Section 9-8-306 is
404 renumbered and amended to read:

405 **[9-8-306]. 23-27-106. Archaeological or anthropological landmarks.**

406 (1) (a) Sites of significance may be recommended to and approved by the board as state
407 archaeological or anthropological landmarks.

408 (b) No privately owned site or site on school or institutional trust lands may be so
409 designated without the written consent of the owner.

410 (2) A person may not excavate upon a privately owned designated landmark without a
411 permit from the division.

412 (3) Before any alteration is commenced on a designated landmark, three months' notice
413 of intent to alter the site shall be given the division.

414 Section 11. Section **23-27-107**, which is renumbered from Section 9-8-307 is
415 renumbered and amended to read:

416 **[9-8-307]. 23-27-107. Report of discovery on state or private lands.**

417 (1) Any person who discovers any archaeological resources on lands owned or
418 controlled by the state or its subdivisions shall promptly report the discovery to the division.

419 (2) Any person who discovers any archaeological resources on privately owned lands
420 shall promptly report the discovery to the division.

421 (3) Field investigations shall be discouraged except in accordance with this [~~part and~~
422 ~~Part 4~~] chapter.

423 (4) Nothing in this section may be construed to authorize any person to survey or
424 excavate for archaeological resources.

425 Section 12. Section **23-27-108**, which is renumbered from Section 9-8-308 is
426 renumbered and amended to read:

427 **[9-8-308]. 23-27-108. Forgery or false labeling of specimens unlawful.**

428 (1) It is unlawful to reproduce, rework, or forge any specimen or make any object,
429 whether copied or not, or falsely label, describe, identify, or offer for sale or exchange any
430 object, with intent to represent it as an original and genuine specimen.

431 (2) No person may offer for sale or other exchange any object with knowledge that it
432 was collected or excavated in violation of this part.

433 Section 13. Section **23-27-109**, which is renumbered from Section 9-8-401 is
434 renumbered and amended to read:

435 ~~[9-8-401]~~. **23-27-109. Purpose.**

436 ~~[The]~~ For purposes of Sections 23-27-110 through 23-27-113, the Legislature
437 determines and declares that the public has a vital interest in all antiquities, historic and
438 prehistoric ruins, and historic sites, buildings, and objects which, when neglected, desecrated,
439 destroyed or diminished in aesthetic value, result in an irreplaceable loss to the people of this
440 state.

441 Section 14. Section **23-27-110**, which is renumbered from Section 9-8-402 is
442 renumbered and amended to read:

443 ~~[9-8-402]~~. **23-27-110. State register -- Division duties.**

444 (1) As used in ~~[this part]~~ Sections 23-27-110 through 23-27-113, "State Register"
445 means a register of cultural sites and localities, historic and prehistoric sites, and districts,
446 buildings, and objects significant in Utah history.

447 (2) The division shall:

448 (a) constitute the ~~[historic]~~ archeological preservation agency for this state;

449 (b) establish a state register for the orderly identification and recognition of the state's
450 cultural resources; and

451 (c) provide for participation in the National Historic Preservation Program.

452 Section 15. Section **23-27-111**, which is renumbered from Section 9-8-403 is
453 renumbered and amended to read:

454 ~~[9-8-403]~~. **23-27-111. Placement on State or National Register.**

455 The board shall notify owners of sites, buildings, structures, or objects before placing
456 those sites, buildings, structures, or objects on the State Register or nominating them to the
457 National Register.

458 Section 16. Section **23-27-112**, which is renumbered from Section 9-8-404 is
459 renumbered and amended to read:

460 ~~[9-8-404]~~. **23-27-112. Agency responsibilities -- State historic preservation**
461 **officer to include antiquities section comments.**

462 (1) Before expending any state funds or approving any undertaking, each state agency
463 shall:

464 (a) take into account the effect of the undertaking on any district, site, building,
465 structure, or specimen that is included in or eligible for inclusion in the National Register of
466 Historic Places, or the State Register; and

467 (b) allow the state [~~historic preservation officer~~] archeologist a reasonable opportunity
468 to comment with regard to the undertaking or expenditure.

469 (2) (a) The state [~~historic preservation officer~~] archeologist shall include the comments
470 of the section in all responses.

471 (b) The section may include advice on ways to maximize the amount of [~~historic;~~
472 ~~scientific;~~] archaeological[;] and anthropological[; ~~and educational~~] information recovered, in
473 addition to the physical recovery of specimens and the reporting of archaeological information
474 at current standards of scientific rigor.

475 Section 17. Section **23-27-113**, which is renumbered from Section 9-8-405 is
476 renumbered and amended to read:

477 ~~[9-8-405].~~ **23-27-113. Federal funds -- Agreements on standards and**
478 **procedures.**

479 By following the procedures and requirements of Title 63, Chapter 38e, Federal Funds
480 Procedures, the division may accept and administer federal funds provided under the provisions
481 of the National Historic Preservation Act of 1966, the Land and Water Conservation Act as
482 amended, and subsequent legislation directed toward the encouragement of historic
483 preservation, and to enter into those agreements on professional standards and procedures
484 required by participation in the National Historic Preservation Act of 1966 and the National
485 Register Office.

486 Section 18. Section **53B-17-603** is amended to read:

487 **53B-17-603. Curation and deposit of specimens.**

488 (1) For purposes of this section:

489 (a) "Collections" is defined as provided in Section [~~9-8-302~~] 23-27-102.

490 (b) "Curation facility" means:

491 (i) the museum;

492 (ii) an accredited facility meeting federal curation standards; or

- 493 (iii) an appropriate state park.
- 494 (c) "Museum" means the Utah Museum of Natural History.
- 495 (d) "Repository" means:
- 496 (i) a facility designated by the museum through memoranda of agreement; or
- 497 (ii) a place of reburial.
- 498 (e) "School and institutional trust lands" are those properties defined in Section
- 499 53C-1-103.
- 500 (2) The museum shall make rules to ensure the adequate curation of all collections
- 501 from lands owned or controlled by the state or its subdivisions. The rules shall:
- 502 (a) conform to, but not be limited by, federal curation policy;
- 503 (b) recognize that collections recovered from school and institutional trust lands are
- 504 owned by the respective trust, and shall be made available for exhibition as the beneficiaries of
- 505 the respective trust may request, subject to museum curation policy and the curation facility's
- 506 budgetary priorities;
- 507 (c) recognize that any collections obtained in exchange for collections found on school
- 508 and institutional trust lands shall be owned by the respective trust; and
- 509 (d) recognize that if, at its discretion, the curation facility makes and sells
- 510 reproductions derived from collections found on school or institutional trust lands, any monies
- 511 obtained from these sales shall be given to the respective trust, but the curation facility may
- 512 retain monies sufficient to recover the direct costs of preparation for sale and a reasonable fee
- 513 for handling the sale.
- 514 (3) (a) The museum may enter into memoranda of agreement with other repositories
- 515 located in and outside the state to act as its designee for the curation of collections.
- 516 (b) In these memoranda, the museum may delegate some or all of its authority to
- 517 curate.
- 518 (4) (a) All collections recovered from lands owned or controlled by the state or its
- 519 subdivisions shall be deposited at the museum, a curation facility, or at a repository within a
- 520 reasonable time after the completion of field work.
- 521 (b) The museum shall make rules establishing procedures for selection of the
- 522 appropriate curation facility or repository.
- 523 (c) The rules shall consider:

524 (i) whether the permittee, authorized pursuant to Section [9-8-305] 23-27-105, is a
525 curation facility;

526 (ii) the appropriateness of reburial;

527 (iii) the proximity of the curation facility or repository to the point of origin of the
528 collection;

529 (iv) the preference of the owner of the land on which the collection was found;

530 (v) the nature of the collection and the repository's or curation facility's ability and
531 desire to curate the collection in question, and ability to maximize the scientific, educational,
532 and cultural benefits for the people of the state and the school and institutional trusts;

533 (vi) selection of a second curation facility or repository, if the original repository or
534 curation facility becomes unable to curate the collections under its care; and

535 (vii) establishment of an arbitration process for the resolution of disputes over the
536 location of a curation facility or repository, which shall include an ultimate arbitration authority
537 consisting of the landowner, the state archaeologist or paleontologist, and a representative from
538 the governor's office.

539 (d) The repository or curation facility may charge a curation fee commensurate with the
540 costs of maintaining those collections, except that a fee may not be charged to the respective
541 trust for collections found on school or institutional trust lands.

542 (5) The repository or curation facility shall make specimens available through loans to
543 museums and research institutions in and out of the state when, in the opinion of the repository
544 or curation facility:

545 (a) the use of the specimens is appropriate; and

546 (b) arrangements are made for safe custodianship of the specimens.

547 (6) The museum shall comply with the procedures of Title 63, Chapter 46a, Utah
548 Administrative Rulemaking Act, regarding publication of its rules in the Utah State Bulletin
549 and the Utah Administrative Code.

550 Section 19. Section **76-9-704** is amended to read:

551 **76-9-704. Abuse or desecration of a dead human body -- Penalties.**

552 (1) For purposes of this section, "dead human body" includes any part of a human body
553 in any stage of decomposition, including ancient human remains.

554 (2) A person is guilty of abuse or desecration of a dead human body if the person

555 intentionally and unlawfully:

556 (a) fails to report the finding of a dead human body to a local law enforcement agency;

557 (b) disturbs, moves, removes, conceals, or destroys a dead human body or any part of
558 it;

559 (c) disinters a buried or otherwise interred dead human body, without authority of a
560 court order;

561 (d) dismembers a dead human body to any extent, or damages or detaches any part or
562 portion of a dead human body; or

563 (e) commits, or attempts to commit upon any dead human body sexual penetration or
564 intercourse, object rape, sodomy, or object sodomy, as these acts are described in Chapter 5,
565 Offenses Against the Person.

566 (3) A person does not violate this section if when that person directs or carries out
567 procedures regarding a dead human body, that person complies with:

568 (a) Title [9] 23, Chapter [~~8, Part 3;~~] 27, State Antiquities Section;

569 (b) Title 26, Chapter 4, Utah Medical Examiner Act;

570 (c) Title 26, Chapter 28, Uniform Anatomical Gift Act;

571 (d) Title 53B, Chapter 17, Part 3, Use of Dead Bodies for Medical Purposes;

572 (e) Title 58, Chapter 9, Funeral Services Licensing Act; or

573 (f) Title 58, Chapter 67, Utah Medical Practice Act, which concerns licensing to
574 practice medicine.

575 (4) (a) Failure to report the finding of a dead human body as required under Subsection
576 (2)(a) is a class B misdemeanor.

577 (b) Abuse or desecration of a dead human body as described in Subsections (2)(b)
578 through (e) is a third degree felony.

579 Section 20. **Legislative intent.**

580 To implement the requirements of this bill, it is the intent of the Legislature that,
581 beginning July 1, 2005, all funds appropriated to the Division of State History to fund the State
582 Antiquities Section be transferred to the Division of Wildlife Resources.

583 Section 21. **Effective date.**

584 This bill takes effect on July 1, 2005.

Legislative Review Note

as of 2-10-05 8:14 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill would move the antiquities program from the Department of Community and Economic Development to the Department of Natural Resources. This involves the transfer of the permitting process and the state archeologist responsibilities. This would involve a transfer of \$90,000 in General Fund. However, because the legislation does not move the State Historical Preservation Office which is tied to the permitting process there will be a loss of \$570,000 in Federal Funds and a loss of \$50,000 in dedicated credits associated with passage of the bill. This includes \$110,000 for the Local Certified Government grant program. The state will also lose the Federal Investment Tax Credit Program.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Federal Funds	(\$570,000)	(\$570,000)	\$0	\$0
Dedicated Credits	(\$50,000)	(\$50,000)	\$0	\$0
TOTAL	(\$620,000)	(\$620,000)	\$0	\$0

Individual and Business Impact

No fiscal impact.
