

US Department of the Interior
National Park Service
National Center for
Preservation Technology and Training
Publication Number 1998-13

STATE HISTORIC PRESERVATION LEGISLATION DATABASE

FINAL REPORT

4 MAY 1998

Database and Report Prepared by
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for the
**NATIONAL CONFERENCE OF
STATE HISTORIC PRESERVATION OFFICERS**

in cooperation with the
NATIONAL CONFERENCE OF STATE LEGISLATURES

under a grant from the
**NATIONAL CENTER FOR PRESERVATION TECHNOLOGY AND TRAINING,
NATIONAL PARK SERVICE**

Funding for this report was provided as a grant from the National Park Service's National Center for Preservation Technology and Training (NCPTT), Natchitoches, Louisiana. The National Center for Preservation Technology and Training promotes and enhances the preservation of prehistoric and historic resources in the United States for present and future generations through the advancement and dissemination of preservation technology and training.

NCPTT's Preservation Technology and Training Grants program develops partners in nonprofit organizations, universities and government agencies throughout the United States to complete critical preservation work and lends significant support to developments in the conservation and preservation community.

STATE HISTORIC PRESERVATION LEGISLATION DATABASE

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I. INTRODUCTION

The *State Historic Preservation Legislation Database* was developed under a grant from the National Center for Preservation Technology and Training, National Park Service, by the National Conference of State Historic Preservation Officers in cooperation with the National Conference of State Legislatures. The database contains citations and summaries of all state legislation that specifically references historic preservation, historic properties, archeological sites or culturally significant human burials. It is organized by state and can be searched using a list of specific query topics. The database contains more than 1,900 individual entries.

The *State Historic Preservation Legislation Database* currently is available on the Internet at www.ncsl.org/programs/arts/statehist_intro.htm. The database eventually will be available directly from the National Conference of State Legislature's home website at www.ncsl.org.

The content of the database was researched and written by Jeffrey Shrimpton, historic preservation consultant, for the National Conference of State Historic Preservation Officers.

II. PURPOSE

The development of sound preservation policy and legislation at the state level has become increasingly important for the protection and enhancement of the nation's historic properties. Since passage of the National Historic Preservation Act of 1966, legislation enacted at the state and local levels has surpassed federal law in providing protection and assistance to historic properties, archeological sites, and culturally significant unmarked human burials and sacred sites. This trend is likely to continue as federal resources devoted to preservation diminish, and as the federal government continues to devolve responsibility for national programs to the states.

The National Conference of State Historic Preservation Officers (NCSHPO) and the National Conference of State Legislatures (NCSL) frequently field requests from their members about state historic preservation legislation, and have identified the need for uniform, comprehensive, current, and accessible data on the subject. NCSHPO has collected state statute citations as part of its annual *Directory of State Historic Preservation Programs*, relying on the individual state historic preservation officers (SHPOs) and their staffs to compile and prepare short paragraphs describing the laws. Yet the information in this published form has proved uneven and quickly outdated.

NCSL has collected information on all newly enacted historic preservation legislation, as well as other documents from state governments, including those produced by legislative study commissions. Yet the enormous body of legislation affecting historic and archeological properties in each state has precluded NCSL from collecting this data on its own. The result is that persons seeking information on state legislation relating to historic preservation have had a difficult time finding which states have legislation relevant to their interests, and in obtaining useful information on the content of those statutes.

With the advent of the Internet and the expansion of NCSL's online information service, NCSLnet, a solution to the problem is now available. The State Historic Preservation Legislation Database provides instant access to a vast array of historic preservation legislative topics to a wide audience of historic preservation professionals, students and advocates. Over half of the State Historic Preservation Officers are now connected, with more going online each month. All state Legislatures, through NCSL, are connected. Most universities and public libraries and many local governments and nonprofit organizations also now have Internet capabilities.

Local historic preservation commissions, for instance, are a largely volunteer force greatly in need of technical assistance and current information. These commissions and their professional staffs, as well as local planning departments and city attorneys, can use this database as a readily available reference source to research current policies in other locales. In the academic community, the database can provide scholars and students in historic preservation, architecture, archeology, community planning, public history, and law with a point of departure for analysis of preservation efforts nationally while providing models for implementation locally. State Historic Preservation Officers and statewide preservation organizations will have much-needed examples to take to their Legislatures. Likewise, state legislators and their staffs will have timely, comprehensive and comparative information on laws from all of the states and territories as they deliberate statutory changes in such areas as tax incentives for historic properties, local historic district enabling legislation, protection of archeological sites, and administration of the state historic preservation program.

III. METHODOLOGY

A. Data

The State Historic Preservation Legislation Database contains a comprehensive listing and narrative summaries for all state legislation with *explicit* references to:

- historic preservation;
- historic properties;
- archeological sites or materials collected from archeological sites; or
- culturally significant unmarked human burials and sacred sites.

The database contains citations from the legislative code books from the fifty states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.¹ For the few cases where pertinent legislation has not been included in the code books, the act itself has been cited, if available. State constitution articles are also summarized where applicable. The database is organized by state, but may be cross-referenced online through a list of Query Topics or through

¹ Legislative citations for the Commonwealth of the Northern Marianas were not available for this project.

specific word searches.

All entries in the database reflect active legislation. Whether or not the states have funded or otherwise followed through on individual legislated programs has not been addressed by this project.

B. Developing the Database

There were three basic steps in developing the database:

1. Designing the format of the database;
2. Researching the legislation;
3. Establishing the list of Query Topics.

1. Designing the format of the database: An initial template was created for the database, establishing the data elements. After preliminary research into several state code books, the following data elements were selected:

- standard state abbreviation;
- name of the code book or other primary source containing the information;
- citation;
- section title;
- narrative summary;
- topics by which the particular citation may be cross-referenced.

The only data element to be excluded that was seriously considered for inclusion was the date of enactment for the legislation. Since the codes are readily amended by new legislation, a single date would be meaningless for many citations, and a series of dates would give no indication as to when specific amendments had been made.

The template was designed by NCSHPO using Microsoft Access, a database software already in use by both NCSHPO and NCSL. After the template was designed, it was sent to NCSL, which created the structure for the database and provided expert technical support for data entry throughout the course of the project.

2. Researching the legislation: This project was researched using the printed state code books at the Law Library of the Library of Congress and at the Law Library of Northeastern University, in Boston, Massachusetts. Inquiries were made into using online legislative services, such as WESTLaw, but such services were determined to be prohibitively expensive and beyond the budget of this project.

Data was researched state-by-state and was included only if it explicitly references, in some manner, historic preservation, historic properties, archeological sites, or culturally significant human burials. The listing under each of these topics in the indices of the state code books was the starting point for the research. The vast array of applicable legislation, however, required additional research under many other topics, including:

- individual state agencies, such as Natural Resources, Environmental Management, Parks and Recreation, Tourism, and even Alcohol Control and the state Gaming Commissions;
- the state capitol and other specific property types, including ghost towns, ironworks and sunken logs;
- environmental protection;
- cemeteries and the disposition of human remains;
- natural and recreational resources such as state forests or land preserves, coastal zones, and scenic trails, highways, and rivers;
- building codes, fire codes, seismic codes, energy codes, and accessibility codes;
- Main Street programs and other economic development programs;
- tax incentives, such as income tax credits or property tax relief;
- conservation easements;
- municipal and county planning and zoning;
- regulated activities that may affect historic properties, such as outdoor advertising, mining, waste disposal sites, public utility sites, and cable television installation.

3. Establishing the list of Query Topics: Query topics were designed to allow researchers to search the database by subject. All query topics relate directly to actual state legislation. None of the topics is theoretical or speculative: there are no query topics for which there is no cited legislation.

The list of query topics was begun with basic historic preservation activities common to many states, such as:

- administration of the state historic preservation program
- local historic district ordinances
- archeology permits
- burial site protection
- state Capitol preservation
- historical marker programs
- state register of historic places
- building codes
- state income tax incentives
- local property tax relief
- state review and compliance.

As research progressed other query topics were added to reflect the legislative data collected. As the list became longer, the topics were organized into general categories called Primary Topics and more specific subcategories called Secondary Topics. Not all Primary Topics are divided into Secondary Topics.

Each data record is assigned at least one Primary Topic. In instances where the primary topic is divided into Secondary Topics, the record is also given a Secondary Topic. Some records are categorized into as many as four Primary and Secondary topics, depending on the complexity of the legislation.

Primary topics can be queried online directly from a list provided on the first page of the database. More specific searches can be made from within the primary topic by typing in a secondary topic from a list provided.

See Appendix 1 for a list of all Query Topics used in the database.

C. Content of the Legislative summaries

Summaries were written to provide an accurate account of the content of the legislation as it pertains to historic preservation. All pertinent points regarding the historic preservation aspects of the legislation are included in the summaries; administrative details are usually excluded for the sake of brevity, but not at the expense of clarity. Citations, section titles and sources are prominently stated on each record, if the user needs to find the full text of the legislation in the code book. The actual language used in the legislation is quoted wherever practical, although extensive paraphrasing was necessary on the longer legislation. No intent has been made to interpret the intent of the legislation or to judge its effectiveness. Only the pertinent facts of the legislation as taken from the state code books are stated.

Decisions also had to be made concerning how to divide each particular piece of legislation for entry into the database. For legislation that establishes state preservation programs, such as the state historic preservation agency, the state archeology office, a burial protection program, or an underwater archeology program, individual records, with citations and summaries, are created for each section of the legislation. This level of detail is necessary to understand fully the content of such laws. Legislation establishing a state historic preservation program, for instance, may contain a series of sections that each deal with an important part of the program: establishes a commission, creates a state register, grants authority to issue permits for excavations on state land, sets up a review process for state funded undertakings, etc. Each of these topics will be entered into the database as a separate record with its own citation and summary.

Other legislation, especially when dealing with a single topic, like local historic district enabling legislation or conservation easements, will be entered as a single record with a citation that includes a range of sections. Finally, there is legislation that is not primarily about historic

preservation, but may have a specific historic preservation element. This includes state building codes, specific state agency duties, environmental review responsibilities, the creation of nature preserves or recreational trails, or laws regulating the siting of mines or public utilities. In these cases, only the section pertinent to the historic preservation element is cited, and in many cases, a subsection will be referenced in the summary text.

See Appendix 2 for sample entries from the database.

See Appendix 3 for a list of all entries in the database by state, citation and title.

IV. REVIEW

All state historic preservation officers were provided an opportunity to review the first draft of the first state to be completed, California, in December 1996. NCSHPO partners were also provided the opportunity to comment on this draft, including NCPTT, NCSL, Heritage Preservation Services at the National Park Service, the Advisory Council on Historic Preservation, the National Trust for Historic Preservation, the National Alliance of Preservation Commissions, and Preservation Action. Comments were solicited not on the specific content of the California entries, but on the form and structure of the sample entries, on the level of detail provided in each entry, and on the choice of Query Topics. All comments were taken into serious consideration and were incorporated into the project as appropriate.

As entries for each state were completed, the State Historic Preservation Officer was provided an opportunity to review the database entries for legislation in his or her respective state. Comments once again were incorporated into the database as appropriate.

V. RECOMMENDATIONS

The *State Historic Preservation Legislation Database* is only as effective as it is timely. Regular updating of the database is critical. New legislation and amendments must be added and legislation that is repealed or has expired must be deleted. NCSHPO will continue to maintain the content of the database, either through contractual services or as a responsibility of the individual state historic preservation officers.

Linkage to other preservation websites is also important to create a broad awareness of the availability of this information. All SHPO websites will be linked to this database, and other organizations, such as the National Trust for Historic Preservation, have expressed interest in creating a link to the database. Other federal agencies and national nonprofit organizations will be approached about linking the database to their websites.

Finally, this database could be expanded in the future by adding summaries of pertinent state

regulations relating to historic preservation and, possibly, by creating a complementary database of state historic preservation case law.

VI. ACKNOWLEDGMENTS

The following individuals assisted greatly in the completion of this project:

Jennifer Moore-Evans of NCSL for creating the database and for providing tireless technical support;

Anita Zepp of NCSHPO for helping to create the initial data entry template on Microsoft Access;

Eugene Itogawa of the California Office of Historic Preservation for his detailed review and helpful suggestions during the initial design process of the database;

Jon Fernald, head librarian at the Cargill Law Library at Northeastern University in Boston, Massachusetts, for graciously allowing access to the library's collection;

and Rebecca Shrimpton for editing and assistance in developing the list of Query Topics.

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APPENDIX 1

QUERY TOPICS

STATE HISTORIC PRESERVATION LEGISLATION DATABASE

QUERY TOPICS

Primary Query Topics are in bold. Secondary Query Topics are listed beneath each corresponding primary query topic.

ARCHEOLOGICAL ACTIVITIES

- Cave Activity
- Criteria for Evaluation of Site
- Curation / Ownership of Artifacts
- Disposition of Human Remains
- Permit / Site Investigation Authority
- Underwater Archeological Activity
- Violation / Penalty / Enforcement

BUILDING STANDARDS

- Abrasive Cleaning
- Accessibility for the Disabled
- Building Code / Fire Code
- Elevator Safety Code
- Energy Conservation Code
- Lead Paint Abatement
- Natural Disaster / Emergency Standards

DEMOLITION OF DESIGNATED HISTORIC PROPERTY—prohibition / delay

EASEMENT / PROPERTY CONTRACT

ETHNIC / RACIAL HISTORIC PRESERVATION ISSUES

- African American HP Issues
- Hispanic HP Issues
- Native American Burial / HP Issues
- Native Hawaiian Burial / HP Issues

GRANTS / LOANS

- Development Loans Applicable to HP
- Environmental Grant Program Applicable to HP
- Historic Preservation Grant Program
- Historic Preservation Loan Program
- Urban Redevelopment Grant Program Applicable to HP

HISTORICAL MARKERS

HISTORICAL SOCIETIES / NONPROFITS

HERITAGE TOURISM

LOCAL GOVERNMENT

- City / Town / Village
- County
- Housing Authority
- School District
- Urban Renewal / Development Authority

MAIN STREET PROGRAM

NATURAL / SCENIC PRESERVATION AREAS

- Coastal Zone
- Heritage Trees
- Natural Land Preserve
- Recreational Trail
- River Corridor
- Scenic Highway

PLAN—land use / comprehensive management

PRESERVATION ORDINANCE—local

PRIVATE PROPERTY ISSUES

PUBLICLY OWNED / AFFECTED HISTORIC PROPERTY—state policy

- Acquisition / Transfer
- Agency Cooperation with SHPO
- Agency Preservation Officer
- Environmental Impact Statement / Environmental Review
- Project Financing / Contracting
- Review and Compliance
- Survey / Registration / Recordation Responsibilities
- Use / Preservation / Maintenance

REGISTRATION / DESIGNATION

- Archeological Landmark / Preserve
- Heritage Area / Corridor—public / private
- Historic Homestead / Farm
- Local Designation
- National Register of Historic Places
- Reservation / Dedication of Land
- State Historical Park
- State Landmark / Memorial / Monument
- State Register of Historic Places
- Underwater Archeological Preserve

REGULATED INTRUSION ON HISTORIC PROPERTY

- Advertising
- Cable Television
- Helicopter Landing Facility
- Highway Construction / Traffic
- Landfill
- Manufactured Homes
- Mining Activity
- Nuclear / Hazardous Waste Disposal
- Overhead Utility Lines
- Power Generating Facility
- Solar Energy Panels

REGULATED REUSE OF HISTORIC PROPERTY

- Affordable Housing
- Brewpub
- Gambling Casino

RESTRICTED / CONFIDENTIAL INFORMATION

STATE AGENCY / INSTITUTION

- Alcohol Control
- Arts / Culture / Humanities Council
- College / University
- Corrections
- Department of State
- Economic Development / Commerce
- Education / Higher Education
- Environmental Affairs / Management / Protection
- Gaming Commission
- General Services / Public Buildings or Works / Capital Planning
- Governor's Office
- Health
- Housing / Community Development
- Mining / Reclamation
- Native American / Indian Affairs Commission
- Natural Resources / Conservation
- Parks / Recreation
- Pollution Control
- Public Utilities
- Revenue / Taxation
- State Lands Commission / Office
- Tourism
- Transportation / Highways
- Water Resources
- Youth Conservation Corps

STATE HISTORIC PRESERVATION ENTITY

- Burial Sites Board / Commission
- Capitol / Capital City Commission
- Civil War / Military Sites Commission
- Folklife Commission
- Heritage Area Authority / Board / Council
- State Advisory Council on Historic Preservation
- State Archeologist / Archeology Program
- State Commission / Authority / Trust / Board--property specific
- State Historic Preservation Officer
- State Preservation Agency / Commission / Trust
- State Review Board
- State Underwater Archeology Commission / Board

STATE REVENUE SOURCES FOR PRESERVATION

- Automobile License Plates
- Gaming / Gambling Proceeds
- Lottery Proceeds
- State Archeology Fund
- State Capitol funding
- State Historic Preservation Fund
- Taxing Authority

SPECIFIC HISTORIC PROPERTY TYPE

- Aircraft
- Bank
- Barn / Farm Structure
- Battlefield
- Canal
- Capitol / Capital City
- Cemetery / Gravestone
- College / University
- County Courthouse
- Distillery
- Exploration / Pioneer Trail
- Fort
- Ghost Town
- Governor's Mansion
- Historic House
- Hospital
- Hotel
- Industrial Property
- Ironworks
- Lighthouse
- Logs--sunken
- Market
- Mission
- Prison
- Railroad
- School
- Ship / Boat
- Stone Wall
- Tavern
- Theater
- Underground Railroad

TAX INCENTIVES

- Business Tax Credit
- Community Contribution Tax Credit
- Franchise Tax Credit
- Income Tax Credit
- Income Tax Deduction
- Property Tax Relief
- Sales Tax Exemption

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APPENDIX 2

SAMPLE DATABASE ENTRIES

APPENDIX 2

SAMPLE DATABASE ENTRIES

<i>State</i>	<i>Source</i>	<i>Citation</i>	<i>Title</i>
ALABAMA	Code of Alabama	§28-4A-1	Alabama Brewpub Act
ARKANSAS	Arkansas Code	§13-6-201 through §13-6-216	Arkansas Archeological Survey
CALIFORNIA	California Public Resources Code	§ 5028	Natural disaster damage
COLORADO	Colorado Constitution	Art. 18, §9	Limited gaming permitted
GEORGIA	Official Code of Georgia	§44-10-20 through §44-10-31	Georgia Historic Preservation Act: historic preservation ordinances
MARYLAND	Code of Maryland	Art. 83B, §5-401 through §5-406	Commission on Indian Affairs
MASSACHUSETTS	Massachusetts General Laws	Ch. 9, §26B through §26D	State register of historic places
OHIO	Ohio Revised Code	§1506.30 through §1506.37	Submerged lands preserves
PUERTO RICO	Laws of Puerto Rico	Title 18 §1560	Council for the Protection of the Land Archeological Patrimony: earth moving activities—authorization required
TEXAS	Texas Government Code	§ 442.008	Historic courthouses
VIRGINIA	Code of Virginia	§58.1- 339.2	Historic rehabilitation tax credit
WISCONSIN	Wisconsin Statutes	§943.014	Demolition of historic building without authorization