

# Archaeological and Historic Preservation Act of 1974

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## TITLE 16--CONSERVATION

### CHAPTER 1A--HISTORIC SITES, BUILDINGS, OBJECTS, AND ANTIQUITIES

#### SUBCHAPTER I--GENERAL PROVISIONS

**Sec. 469.** Preservation of historical and archeological data  
threatened by dam construction or alterations of terrain

It is the purpose of sections 469 to 469c-1 of this title to further the policy set forth in sections 461 to 467 of this title, 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.

(Pub. L. 86-523, Sec. 1, June 27, 1960, 74 Stat. 220; Pub. L. 93-291, Sec. 1(1), May 24, 1974, 88 Stat. 174.)

#### Amendments

1974--Pub. L. 93-291 designated existing provisions as cl. (1) and added cl. (2).

**Sec. 469a.** Notice of dam construction to be given Secretary of  
the Interior by United States agencies

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

(Pub. L. 86-523, Sec. 2, formerly Sec. 2(a), June 27, 1960, 74 Stat. 220, renumbered and amended Pub. L. 93-291, Sec. 1(2), (5), May 24, 1974, 88 Stat. 174, 175.)

#### Amendments

1974--Pub. L. 93-291 struck out designation ``a)' before and, in the resulting unlettered provisions, inserted ``(hereafter referred to as the Secretary)' after ``Secretary of the Interior''. Subsecs. (b) to (e) were disposed of as follows: subsec. (b) was transferred and amended, and as so transferred and amended, is set out as sections 469a-1 and 469a-2 of this title, subsecs. (c) and (e) were redesignated as subsecs. (a) and (b), respectively, of section 469a-3 of this title, and subsec. (d) was struck out.

#### Transfer of Functions

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with system activities requiring coordination and approval under sections 469 to 469c of this title and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with sections 469 to 469c of this title with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, Secs. 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

**Sec. 469a-1.** Threat of irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data by Federal construction projects; notice to Secretary of the Interior; survey; recovery, preservation, and protection of data

(a) Notification and request for preservation of data

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) Survey of site; preservation of data; compensation

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.

(Pub. L. 86-523, Sec. 3, as added Pub. L. 93-291, Sec. 1(3), May 24, 1974, 88 Stat. 174.)

#### Prior Provisions

A prior section 3 of Pub. L. 86-523 was renumbered section 6 and is classified to section 469b of this title.

#### Transfer of Functions

For transfer of certain enforcement functions of Secretary or other official in Department of the Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent

transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 469a of this title.

**Sec. 469a-2.** Survey by Secretary of the Interior; recovery and preservation of data; compensation for delays in construction and for temporary loss of use of land

(a) Survey conducted; preservation of data

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) Emergency projects

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) Initiation of survey

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) Compensation by Secretary

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.

(Pub. L. 86-523, Sec. 4, as added Pub. L. 93-291, Sec. 1(3), May 24, 1974, 88 Stat. 174.)

Prior Provisions

A prior section 4 of Pub. L. 86-523 was renumbered section 7 and is classified to section 469c of this title.

Transfer of Functions

For transfer of certain enforcement functions of Secretary or other official in Department of the Interior and Secretary or other official

in Department of Agriculture to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 469a of this title.

**Sec. 469a-3.** Progress reports by Secretary of the Interior on surveys and work undertaken as result of surveys; disposition of relics and specimens recovered; coordination of survey and recovery activities; annual report

(a) Progress reports to funding or licensing agency

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 469 to 469c of this title 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) Disposition of relics and specimens

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) Coordination of activities; annual report

The Secretary shall coordinate all Federal survey and recovery activities authorized under sections 469 to 469c-1 of this title.

(Pub. L. 86-523, Sec. 5, formerly Sec. 2(c), (e), June 27, 1960, 74 Stat. 220, renumbered and amended Pub. L. 93-291, Sec. 1(4), (6), (7), May 24, 1974, 88 Stat. 175; Pub. L. 96-205, title VI, Sec. 608(b)(1), Mar. 12, 1980, 94 Stat. 92; Pub. L. 103-437, Sec. 6(d)(27), Nov. 2, 1994, 108 Stat. 4584; Pub. L. 104-333, div. I, title VIII, Sec. 814(d)(2)(B), Nov. 12, 1996, 110 Stat. 4196.)

#### Amendments

1996--Subsec. (c). Pub. L. 104-333 inserted period after ``469c-1 of this title'' and struck out at end ``and shall submit an annual report at the end of each fiscal year to the Committee on Natural Resources of the House of Representatives and Committee on Energy and Natural Resources of the Senate indicating the scope and effectiveness of the program, the specific projects surveyed and the results produced, and the costs incurred by the Federal Government as a result thereof.''

1994--Subsec. (c). Pub. L. 103-437 substituted ``Natural Resources'' for ``Interior and Insular Affairs'' after ``Committee on''.

1980--Subsec. (c). Pub. L. 96-205 substituted references to the House Committee on Interior and Insular Affairs and Senate Committee on Energy and Natural Resources, for reference to Interior and Insular Affairs Committees of the Congress.

1974--Subsec. (a). Pub. L. 93-291, Sec. 1(4), (6), redesignated subsec. (c) of section 469a of this title as subsec. (a) of this section and substituted ``agency responsible for funding or licensing the

project'' for ``instigating agency'' and ``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'' for ``agency''.

Subsec. (b). Pub. L. 93-291, Sec. 1(6), redesignated subsec. (e) of section 469a of this title as subsec. (b) of this section.

Subsec. (c). Pub. L. 93-291, Sec. 1(7), added subsec. (c).

#### Transfer of Functions

For transfer of certain enforcement functions of Secretary or other official in Department of the Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 469a of this title.

**Sec. 469b.** Administration; contracts or agreements; services of experts, consultants, or organizations; acceptance of funds

In the administration of sections 469 to 469c-1 of this title, 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; 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.

(Pub. L. 86-523, Sec. 6, formerly Sec. 3, June 27, 1960, 74 Stat. 221, renumbered and amended Pub. L. 93-291, Sec. 1(8), May 24, 1974, 88 Stat. 175.)

#### Amendments

1974--Par. (2). Pub. L. 93-291 substituted ``obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5'' for ``procure the temporary or intermittent services of experts or consultants or organizations thereof as provided in section 55a of title 5''.

Par. (3). Pub. L. 93-291 substituted ``or corporation or transferred to him by any Federal agency'' for ``or corporations holding a license issued by an agency of the United States for the construction of a dam or other type of water or power control project''.

#### Transfer of Functions

For transfer of certain enforcement functions of Secretary or other official in Department of the Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 469a of this title.

**Sec. 469c.** Assistance to Secretary of the Interior by Federal agencies responsible for construction projects; authorization of appropriations

(a) Assistance of Federal agencies

To carry out the purposes of sections 469 to 469c-1 of this title, 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.

(b) Authorization of appropriations for preservation of data

For the purposes of section 469a-1(b) of this title, there are authorized to be appropriated such sums as may be necessary, but not more than \$500,000 in fiscal year 1974; \$1,000,000 in fiscal year 1975; \$1,500,000 in fiscal year 1976; \$1,500,000 in fiscal year 1977; \$1,500,000 in fiscal year 1978; \$500,000 in fiscal year 1979; \$1,000,000 in fiscal year 1980; \$1,500,000 in fiscal year 1981; \$1,500,000 in fiscal year 1982; and \$1,500,000 in fiscal year 1983.

(c) Authorization of appropriations for surveys and investigations

For the purposes of section 469a-2(a) of this title, there are authorized to be appropriated not more than \$2,000,000 in fiscal year 1974; \$2,000,000 in fiscal year 1975; \$3,000,000 in fiscal year 1976; \$3,000,000 in fiscal year 1977; \$3,000,000 in fiscal year 1978; \$3,000,000 in fiscal year 1979; \$3,000,000 in fiscal year 1980; \$3,500,000 in fiscal year 1981; \$3,500,000 in fiscal year 1982; and \$4,000,000 in fiscal year 1983.

(d) Availability of appropriations

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

(Pub. L. 86-523, Sec. 7, formerly Sec. 4, June 27, 1960, 74 Stat. 221, renumbered and amended Pub. L. 93-291, Sec. 1(9), May 24, 1974, 88 Stat. 175; Pub. L. 95-625, title VI, Sec. 603, Nov. 10, 1978, 92 Stat. 3518.)

Amendments

1978--Subsec. (b). Pub. L. 95-625, Sec. 603(a), (b), authorized appropriation of \$500,000 for fiscal year 1979, \$1,000,000 for fiscal year 1980, and \$1,500,000 for fiscal years 1981 through 1983.

Subsec. (c). Pub. L. 95-625, Sec. 603(a), (c), authorized appropriation of \$3,000,000 for fiscal years 1979, and 1980, \$3,500,000 for fiscal years 1981, and 1982, and \$4,000,000 for fiscal year 1983.

Subsec. (d). Pub. L. 95-625, Sec. 603(a), (d), added subsec. (d).

1974--Subsec. (a). Pub. L. 93-291 added subsec. (a).

Subsecs. (b), (c). Pub. L. 93-291 designated existing unlettered provisions as subsecs. (b) and (c), and in subsecs. (b) and (c) as so designated substituted provisions making separate authorizations of appropriations for purposes of sections 469a-1(b) and 469a-2(a) of this title and covering fiscal years 1974, 1975, 1976, 1977, and 1978 for provisions making a general authorization of appropriations of whatever sums as might be necessary to carry out the purposes of sections 469 to 469c of this title.

#### Transfer of Functions

For transfer of certain enforcement functions of Secretary or other official in Department of the Interior and Secretary or other official in Department of Agriculture to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 469a of this title.

**Sec. 469c-1.** ``State'' defined

As used in sections 469 to 469c-1 of this title, 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.

(Pub. L. 86-523, Sec. 8, as added Pub. L. 96-205, title VI, Sec. 608(b)(2), Mar. 12, 1980, 94 Stat. 92.)

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

**Sec. 469c-2.** Costs for identification, surveys, evaluation and data recovery with respect to historic properties

Notwithstanding section 469c(a) of this title, 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 469c(a) of this title.

(Pub. L. 96-515, title II, Sec. 208, Dec. 12, 1980, 94 Stat. 2997; Pub. L. 103-437, Sec. 6(d)(28), Nov. 2, 1994, 108 Stat. 4584.)

Amendments

1994--Par. (3). Pub. L. 103-437 substituted ``Natural Resources'' for ``Interior and Insular Affairs'' after ``Committee on''.

Change of Name

Committee on Natural Resources of House of Representatives treated as referring to Committee on Resources of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.