

# State Laws and Regulations Protecting State-Owned Historic Resources

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## [Virginia Antiquities Act](#) (§ 10.1-2300 *Code of Virginia*)

**Law applies to:** Objects of antiquity located on archaeological sites on state-controlled land (§ 10.1-2302) and human burials located in the Commonwealth (§ 10.1-2305)

**Permitting agency:** Department of Historic Resources

**Party responsible for compliance:** The state agency or individual initiating the archaeological field investigation or removal of human remains from archaeological sites.

The Virginia Antiquities Act prohibits damage to or removal of objects of antiquity from archaeological sites on all state-controlled land. This act does not restrict a state agency from construction or other land disturbing activities on its own land, but does prohibit all "relic hunting" or any archaeological field investigations without a permit from DHR. DHR is charged with coordinating all archaeological field investigations and surveys conducted on state-controlled lands (§10.1-2301; 1, 2). The department is given exclusive right and privilege to conduct field investigations on state lands, but may grant those privileges to others through a permit process (§10.1-2302 and 2303). The department also has final authority to identify and evaluate the significance of sites and objects of antiquity found on state lands (§10.1-2301; 3). Permits are issued through the department's Office of Review and Compliance.

General cemetery protection laws make it a felony to remove human remains from a grave without a court order or appropriate permit. Section 2305 of the Virginia Antiquities Act provides a permit process for archaeological field investigations involving the removal of human remains and artifacts from graves. These permits are issued through the DHR's Office of Review and Compliance.

## [Virginia Environmental Impacts Report Act](#) (§ 10.1-1188 *Code of Virginia*)

**Law applies to:** Major construction initiated by a state agency

**Coordinating agency:** Department of Environmental Quality

**Party responsible for compliance:** The state agency initiating the construction project

The Department of Environmental Quality provides comments on the environmental impacts of all major state projects (state facility construction, or acquisition of land interests for purposes of construction costing more than \$500,000 with exceptions specified by law). These comments go to the Governor through department secretaries as well as to the project proponent agency and reviewing agencies. The comments represent the findings of all state agencies with applicable responsibilities or interests. Comments are provided to the sponsoring agency in time to permit modifications necessary because of environmental impact. DHR is invited to submit comments to the Department of Environmental Quality when an environmental impact report describes a project that might affect historic properties or archaeological sites. The Secretary of Administration has approval authority as delegated by the Governor through Executive Order.

[Demolition of State-Owned Buildings](#) (§ 2.2-2402 *Code of Virginia*)

**Law applies to:** Proposed demolitions of state-owned buildings

**Reviewing agencies:** Department of Historic Resources, Art and Architecture Review Board, Division of Engineering and Buildings

**Party responsible for compliance:** The state agency initiating the demolition

The regulation provides that no building or appurtenant structure shall be removed from state-owned property unless approved by the Governor upon the advice of the Art and Architecture Review Board. The Governor further conditions approval upon the recommendation of DHR and the Department of General Services.

[Sale or Lease of Surplus State Property](#) (§ 2.2-1156 *Code of Virginia*)

**Law applies to:** Sale or lease of surplus property by a state agency

**Coordinating agency:** Secretary of Natural Resources

**Party responsible for compliance:** Department of General Services

The Department of General Services shall request the written opinion of the Secretary of Natural Resources regarding whether the sale of a state-owned property is a significant component of the Commonwealth's natural or historic resources, and if so how to protect the resource in the event of its sale. The DHR, through the Secretary of Natural Resources, shall provide comments regarding the affect that the transfer of state-owned property will have on historic and archaeological resources significant to the Commonwealth. The Department of General Services shall make the comments of the Secretary of Natural Resources known to the Governor who shall provide prior written approval before the Department may proceed to sell the property.

[The Appropriations Act](#) (§ 4-4.01 Biennial Budget Bill)

**Law applies to:** Projects or undertakings that will affect state-owned landmarks listed on the Virginia Landmarks Register

**Reviewing agencies:** Department of General Services and DHR

**Party responsible for compliance:** The state agency initiating the project

The specific provisions for review of rehabilitation and restoration projects on state-owned Registered Historic Landmarks are in the biennial Budget Bill. Guarantees that the historical and/or architectural integrity of any state-owned properties listed on the Virginia Landmarks Register and the knowledge to be gained from archaeological sites will not be adversely affected because of inappropriate changes, the heads of those agencies in charge of such properties are directed to submit all plans for significant alterations, remodeling, redecoration, restoration or repairs that may basically alter the appearance of the structure, landscaping, or demolition to DHR. Such plans shall be reviewed within thirty days and the comments of that department shall

be submitted to the Governor through the Department of General Services for use in making a final determination.

#### [Art and Architecture Review Board](#) (§ 2.2-2402 *Code of Virginia*)

**Law applies to:** Construction or rehabilitation of any building or structure to be sited on state-owned property

**Regulating agencies:** Department of General Services

**Who is responsible for compliance:** The state agency initiating the project

The director of the Department of Historic Resources sits on the Art and Architecture Review Board (Department of General Services) and, as an *ex officio* member of that board, comments on all projects brought to the board for review and comment.

#### [Cave Protection Act](#) (§ 10.1-1000 *Code of Virginia*)

**Law applies to:** Caves and rockshelters located in the Commonwealth

**Regulating agencies:** Department of Conservation and Recreation (Natural Heritage Division)

**Party responsible for compliance:** Any agency or individual involved in the research within caves in the Commonwealth

The Cave Protection Act protects from vandalism all geological, biological, and historic features in caves regardless of ownership. A permit is required from the Department of Conservation and Recreation, Natural Heritage Division, for research within caves and rock shelters. The concurrence of DHR is required before the issuance of a permit.

#### [Underwater Archaeology Permits](#) (§ 10.1-2214 *Code of Virginia*)

**Law applies to:** All underwater properties on bottomlands owned by the Commonwealth

**Regulating agencies:** Virginia Marine Resources Commission

**Party responsible for compliance:** Any agency or individual planning to explore or recover objects underwater

The permitting process protects underwater historical properties, including shipwrecks and submerged terrestrial sites. Permits for either exploration or recovery are required from Virginia Marine Resources Commission. DHR is consulted prior to issuance of the permits and determines which properties are historic.

### **State Burial Law**

#### [Permit Required for the Archaeological Excavation of Human Remains](#) (§ 10.1-2305)

A permit from the Director of the Department of Historic Resources is required for archaeological recovery of all human skeletal remains and associated artifacts from any unmarked grave, regardless of the age of the burial or archaeological site or ownership of the property. If the grave is part of a formally chartered cemetery, the recovery must also conform to the requirements of § [57-38.1](#) (“Proceedings by landowner for removal of remains from abandoned family graveyards”) and § [57-39](#) (“Proceedings by heir at law or descendants for removal of ancestor’s remains from abandoned family graveyard”). If the grave is not part of a formally chartered cemetery, the recovery is exempt from these requirements. The Department shall also be considered an interested party in any court proceedings considering the abandonment of historically significant, legally constituted cemeteries and burial grounds. A permit from the Director of DHR will be required if such proceedings result in a court-ordered removal involving the use of archaeologists.

[Action for injury to cemetery property](#) (§ 8.01-44.6)

Allows recovery of damages sustained due to willful or malicious destruction, mutilation, defacement or removal of any cemetery element.

[Plat of proposed subdivision and site plans to be submitted for approval](#) (§ 15.2-2258)

Persons wishing to subdivide property in any area where subdivision ordinances apply must include the location of any human graves or cemeteries within that property on the plat.

[Trespass at night upon any cemetery](#) (§ 18.2-125)

Prohibits entrance to any cemetery, its grounds or parking/driving areas at night for any purpose other than to visit the gravesite of a family member (Class 4 misdemeanor).

[Violation of sepulture; defilement of dead human body](#) (§ 18.2-126)

Prohibits unlawful removal of all or part of a buried human body (Class 4 felony). Also prohibits willful and intentional defilement of a dead human body (Class 6 felony).

[Injuries to churches, church property, cemeteries, burial grounds, etc.](#) (§ 18.2-127)

Prohibits unauthorized damage to or destruction of plants, trees, funerary monuments and offerings, church buildings, fences, walls, etc.

[Roads not to be established through a cemetery or seminary of learning without owners’ consent](#) (§ 33.1-241)

Prohibits construction of roads through cemetery property without permission.

[Designating areas unsuitable for coal surface mining](#) (§ 45.1-252)

Coal surface mining cannot be conducted within 100 feet of a cemetery.

[Access to cemeteries located on private property; cause of action for injunctive relief](#) (§ 57-27.1)

Mandates access to cemeteries on private land for visitation, maintenance and genealogical purposes, with reasonable notice to landowner. Visitor assumes all liability.

[Abandoned cemeteries may be condemned; removal of bodies](#) (§ 57-36)

Local governments may condemn abandoned or neglected cemeteries through eminent domain and use the land for other purposes.

[Proceedings by landowner for removal of remains from abandoned family graveyard](#) (§ 57-38.1)

Landowners may petition the county or city circuit court for permission to remove and relocate human burials located in cemeteries in which there have been no burials for at least 25 years and upon which there are no reservations of rights.

[Proceedings by heir at law or descendant for removal of ancestor's remains from abandoned family cemetery](#) (§ 57-38.2)

Heir or descendant may petition the county or city circuit court for permission to remove and relocate an ancestor's remains from a cemetery in which there have been no burials for at least 25 years.

[Proceedings for removal of remains and sale of land vacated](#) (§ 57-39)

Owners or trustees of neglected or disused cemeteries and potter's fields may petition the county or city circuit court for permission to relocate the remains and sell the property. In the case of a potter's field, the court may mandate that the proceeds be used for charitable purposes.

[Improvement of abandoned and neglected graveyards](#) (§ 57-39.1)

Owners of land adjacent to abandoned or neglected cemeteries may petition the court for

permission to return the cemetery to a suitable condition.