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PRESERVATION LAW 1976-1980: FACTION, PROPERTY RIGHTS, AND IDEOLOGY

JAMES P. BECKWITH, JR.*

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice.

James Madison
The Federalist, No. 10

I. INTRODUCTION

Since 1975 the dramatic upsurge of interest in historic preservation has continued apace.¹ The causes are many, but powerful incentives for preservation certainly stem from the celebration of the Bicentennial in 1976 as well as from the escalating transportation and building costs, fueled primarily by inflationary domestic monetary policy. As is usually the case, over time both common law and legislation come to reflect the values and interests of society, albeit in dramatically different ways. So it is with historic preservation law. Reflecting mainly the legislative dynamics of political economy, preservation law now covers a wide spectrum of interests and exerts a significant influence over the allocation of property rights in many jurisdictions.³

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1. For a discussion of state preservation law as of 1975, see Beckwith, *Developments in the Law of Historic Preservation and a Reflection on Liberty*, 12 WAKE FOREST L. REV. 93 (1976).

2. The contrast between common law and legislation has long been recognized in the work of such scholars as Friedrich Hayek. See, e.g., F. HAYEK, *THE CONSTITUTION OF LIBERTY* (1960) and F. HAYEK, *LAW, LEGISLATION AND LIBERTY* (1975-77). In recent years, however, scholars have shown great interest in theories of the efficiency of common law as opposed to legislation. See R. POSNER, *ECONOMIC ANALYSIS OF LAW* 399-418 (2d ed. 1977); Priest, *The Common Law Process and the Selection of Efficient Rules*, 6 J. LEGAL STUDIES 65 (1977); Rubin, *Why is the Common Law Efficient?* 6 J. LEGAL STUDIES 51 (1977).

3. For a summary of the more intrusive state statutes, see J. BECKWITH, *SIGNIFICANT STATE HISTORIC PRESERVATION STATUTES* (1979).

Although local, state, and federal preservation law has grown rapidly during the past four years,⁴ the single most important event was, of course, the Supreme Court's holding in *Penn Central Transportation Co. v. City of New York*⁵ that a New York City landmark ordinance⁶ enacted pursuant to a state statute⁷ did not amount to a taking of property for which compensation must be paid. Decided during a time of expanded private-law preservation accomplishments,⁸ of a general recognition of the inefficiency and incompetence of governmental regulation,⁹ and of the influence and attitudes of the new class, *Penn Central* is not without its ironies. Indeed, the Supreme Court's sanction of the expanded politicization of property rights typifies preservation law during the period and graphically illustrates a fundamental choice facing the preservation movement, indeed all of American society. Simply put, the choice is between the open society and faction, between spontaneity and politicization. On the one hand is the Madisonian model of civility, restraint, and the private law; on the other is the grim reality of coercion, incivility, and the unprincipled redistribution of wealth so characteristic of present-day governance. Many preservationists and their associates in various environmental coalitions exhibit all of the unhappy characteristics of Madisonian faction and the new class, advocating as they do the supplanting of private agreement by the public law. Ironically, all of this is done in the name of preserving reminders of a past whose moral and economic foundations in our own time are so badly eroded.

In light of these developments, this article has a dual purpose. First, the article discusses the evolution of state and local preservation law since 1975. The coverage is comprehensive and includes an appendix that is an updated revision of my compilation of legislation first published in 1976 by the National Trust for Historic Preservation in *A Guide to State Programs*.

4. For discussions of preservation law prior to 1976, see symposia at 12 WAKE FOREST L. REV. 1 (1976); 8 CONN. L. REV. 201 (1976); 36 LAW & CONTEMP. PROB. 309 (1971).

5. 438 U.S. 104 (1978).

6. N.Y. CITY CHARTER & ADMIN. CODE, ch. 8-A, § 205.10 (1976).

7. N.Y. GEN. MUNIC. LAW § 96-a (McKinney 1977).

8. For a discussion of commercial revitalization and adaptive re-use in urban areas, see Ziegler, *Large-Scale Commercial Adaptive Use: Preservation Revitalizes Old Buildings — And New Ones Too!*, 11 N.C. CENT. L.J. 234 (1980). For a discussion of the operation of revolving funds, see A. ZIEGLER, L. ADLER, & W. KIDNEY, *REVOLVING FUNDS FOR HISTORIC PRESERVATION: A MANUAL OF PRACTICE* (1975); Howard, *Revolving Funds: In the Vanguard of the Preservation Movement*, 11 N.C. CENT. L.J. 256 (1980).

9. The literature is so vast that only a few representative samples need be given. See, e.g., M. ANDERSON, *THE FEDERAL BULLDOZER* (1964); E. BANFIELD, *THE UNHEAVENLY CITY REVISITED* (1974); *THE CRISIS OF THE REGULATORY COMMISSIONS* (P. MacAvoy ed., 1970); R. POSNER, *ECONOMIC ANALYSIS OF LAW* (2d ed. 1977); B. SIEGAN, *LAND USE WITHOUT ZONING* (1972); Williams, *Legal Restrictions on Black Progress*, 21 HOW. L.J. 47 (1978).

The article has, however, a second and more compelling purpose. As a matter of social policy, the historic preservation movement is deeply in error regarding legal methodology and first principles. Most preservationists, especially those who are beneficiaries of public monies, advocate statist solutions to private problems. They prefer zoning, with its public intrusion into matters of aesthetics, over private agreement. They advocate increased public funding. Why do preservationists prefer public solutions? Do many preservationists, especially the intellectuals, advance their own self interest in governmental solutions as members of the new class? Does the historic preservation movement, with its roots in the humanities, share a historic bias against free-market capitalism and a free society? One must ask whether the state has any role to play in historic preservation beyond the enforcement of contracts and the protection of private property. If not, how can the influence of statist preservationists be overcome and the role of the state in preservation matters be reduced to its proper minimal level? In short, what is the preservation policy of a free society?

II. PUBLIC LAW: HISTORIC PRESERVATION AND THE POLICE POWER

If recent developments are any indication, then for the foreseeable future the greatest changes in preservation law will occur within the ambit of the police power to create historic districts and to designate historic landmarks. Because most of the new preservation law is statutory, it exhibits quite naturally the familiar characteristics of legislation as opposed to other forms of law, such as common law and private contracts. Briefly stated, legislation is inextricably wedded to the political process and generally reflects no presumption save that of the efficacy of whatever constituency secured its passage.¹⁰ The recent dramatic increase in public interest in preservation and in the scope and quantity of preservation law is consistent with this model.

A. *Historic District and Landmark Legislation*

At present at least forty jurisdictions authorize some form of historic district zoning,¹¹ the most frequently used public-law regulation technique. Unlike landmark designation of a single building, the focus of a historic district designation is on preserving the cumulative historical or architectural quality of an interrelated group of buildings. Like zoning controls, whose geographic and regulatory features may differ greatly in complexity from place to place, historic district statutes also vary

10. R. POSNER, *supra* note 2, at 404-07.

11. *See* statutory appendix *infra*.

widely. Since 1975¹² Alaska,¹³ the District of Columbia,¹⁴ Indiana,¹⁵ Iowa,¹⁶ Mississippi,¹⁷ and Nebraska¹⁸ passed new historic district statutes; Alabama authorized "preservation districts" in Mobile;¹⁹ North Carolina extensively revised its statute;²⁰ and Rhode Island expanded existing provisions to include East Greenwich, Coventry, and Woonsocket.²¹

The Alaska, Mississippi, and Nebraska statutes are relatively modest, and simply authorize the creation of historic districts without specifying in detail the procedures to be followed.²² The Alaska statute, however, does give some guidance as to historic criteria that would justify creating a district,²³ and the Mississippi statute requires notice of a public hearing before a district is created.²⁴ Both the Mississippi and Nebraska statutes stipulate the membership and terms of members of a local historic district commission,²⁵ and whether or not the power of eminent domain may be used.²⁶ Furthermore, in both Alaska²⁷ and Mississippi,²⁸ the local commission is required to consult with a state agency prior to creating the district.

By contrast, the District of Columbia, Indiana, and Iowa statutes are far more elaborate, containing provisions typical of their type. The historic districts may be created by local governing bodies²⁹ although Iowa authorizes their creation by majority vote in a referendum following a petition of ten percent of the residents.³⁰ As is customary in his-

12. For a discussion of historic district legislation as of 1975, see Beckwith, *supra* note 1, at 95-98.

13. ALASKA STAT. § 29-33.090 (1972 & Supp. 1979); *Id.* §§ 29.48.108-.110 (Supp. 1979); *Id.* § 41.35.180(5) (1977); *Id.* §§ 45.98.010-.070 (Supp. 1979).

14. Historic Landmark and Historic District Protection Act of 1978 (Bill 2-367, adopted Nov. 23, 1978).

15. IND. CODE ANN. §§ 18-4-22-1 to -12, -7-22-1 (Burns Supp. 1978).

16. IOWA CODE ANN. §§ 303.20-.33 (West Supp. 1979).

17. MISS. CODE ANN. §§ 39-31-1 to -9 (Supp. 1978).

18. NEB. REV. STAT. §§ 14-2001- to -2004 (1977).

19. No. 66, 1978 Ala. Acts 1751. Preservation districts, existing alongside historic districts, are intended to preserve Mobile's architectural heritage in new and growing neighborhoods with a unique character.

20. N.C. GEN. STAT. §§ 160A-395 to -399 (Supp. 1979).

21. R.I. GEN. LAWS §§ 45-24.1-14 to -16 (Supp. 1978).

22. ALASKA STAT. §§ 29.48.108-.110 (Supp. 1979); MISS. CODE ANN. § 39-13-3 (Supp. 1978); NEB. REV. STAT. §§ 14-2001 to -2002 (1977).

23. ALASKA STAT. § 29.48.110(b) (Supp. 1979).

24. MISS. CODE ANN. § 39-13-3 (Supp. 1978).

25. *Id.* § 39-13-5; NEB. REV. STAT. § 2002 (1977).

26. MISS. CODE ANN. § 39-13-9 (Supp. 1978); NEB. REV. STAT. § 14-2003 (1977).

27. ALASKA STAT. § 29.48.110 (Supp. 1979).

28. MISS. CODE ANN. § 39-13-7 (Supp. 1978).

29. District of Columbia, Historic Landmark and Historic District Protection Act of 1978, § 4(a)(3), (Nov. 28, 1978); IND. CODE ANN. § 18-7-22-3 (Burns Supp. 1978).

30. IOWA CODE ANN. § 303.21-.25 (West Supp. 1979).

toric districts,³¹ these new statutes authorize aesthetic regulation by means of a certificate of appropriateness issued by the local historic district commission.³² Denials of applications must be justified,³³ and provision is made for showings of economic hardship.³⁴

Two subsections of the District of Columbia and Indiana statutes depart from prior practice. From the standpoint of remedies, the D.C. statute is unique in that any party that demolishes a property in violation of the ordinance may be required to rebuild the property as it existed prior to the demolition.³⁵ This provision is apparently the first of its kind in the country. The Indiana statute contains an innovative recitation of design considerations to guide development in the historic districts.³⁶

In contrast to state statutes authorizing historic districts are those that authorize the local designation of individual landmarks. At least twenty states³⁷ have enacted such laws either as separate legislation or as part of a law authorizing local historic districts. Landmark designation employs the police power in the same way historic district designation does, and state landmark statutes are as diverse as those authorizing historic districts.

Prior to the *Penn Central* case isolated historic landmarks, especially those in urban areas, posed more troublesome legal questions than the larger historic districts. Since 1975 at least two jurisdictions, the District of Columbia and Mississippi, have authorized the designation of historic landmarks.³⁸ In light of the *Penn Central* decision, it is reasonable to anticipate further landmarks designation.

One state, North Carolina, experienced a total revision of existing legislation. In 1979, the North Carolina General Assembly rewrote the historic district and landmarks statutes, the revisions of which are discussed at length elsewhere.³⁹

31. See J. BECKWITH, *supra* note 3, at 2-3.

32. District of Columbia, Historic Landmark and Historic District Protection Act of 1978, §§ 5(a), 6(a), 7(a), 8(a) (Nov. 28, 1978); IND. CODE ANN. § 18-7-22-8 to -10 (Burns Supp. 1978); IOWA CODE ANN. § 303.27-30 (West Supp. 1979).

33. District of Columbia, Historic Landmark and Historic District Protection Act of 1978, §§ 5(d), 6(d), 7(d), 8(d) (Nov. 28, 1978); IND. CODE ANN. § 18-7-22-10 (Burns Supp. 1978); IOWA CODE ANN. § 303.30 (West Supp. 1979).

34. District of Columbia, Historic Landmark and Historic District Protection Act of 1978, §§ 5(e)-(g), 6(e)-(g), 7(e)-(f) (Nov. 28, 1978); IND. CODE ANN. § 18-7-22-11 (Burns Supp. 1978); IOWA CODE ANN. § 303.30 (West Supp. 1979).

35. District of Columbia, Historic Landmark and Historic District Protection Act of 1978, § 11(b) (Nov. 28, 1978).

36. IND. CODE ANN. § 18-7-22-11 (Burns Supp. 1978).

37. See statutory appendix *infra*.

38. District of Columbia, Historic Landmark and Historic District Protection Act of 1978, § 4(c)(3) (Nov. 28, 1978); MISS. CODE ANN. §§ 39-13-1 to -5 (Supp. 1979).

39. Morgan, *Reaffirmation of Local Initiative: North Carolina's 1979 Historic Preservation Legislation*, 11 N.C. CENT. L.J. 243 (1980).

B. *Constitutional Issues: Procedural Due Process and Economic Hardship*

Constitutional questions centering on historic district zoning and landmark designation have evolved significantly since 1975, with new questions arising as old ones seem settled. For example, although the propriety of using the police power for preservation purposes now seems assured, this very success has given rise to problems of procedural due process in the management of historic district and landmarks commissions.⁴⁰

By 1975 the propriety of the police power for preservation purposes was largely settled. Historic preservation was accepted as part of the "general welfare" embraced by the police power.⁴¹ While aesthetics was important, the courts tended to stress the importance of economics and commercial benefits, especially from the tourist industry.⁴²

Since 1975 state courts have continued to uphold the constitutionality of historic district legislation.⁴³ Interestingly, in *A-S-P Associates v. City of Raleigh*,⁴⁴ the North Carolina Supreme Court upheld the use of the police power⁴⁵ in a historic district that was not a tourist attraction.⁴⁶ Furthermore, the case illustrates, in a manner reminiscent of *Euclid v. Amber Realty Co.*,⁴⁷ the curious dispensation given the police power in land-use cases by courts that are prone to invoke the doctrine of substantive due process to invalidate economic regulation.

By upholding the Oakwood ordinance, the North Carolina Supreme Court went beyond the older cases. Oakwood, a late nineteenth-century neighborhood east of the state capitol,⁴⁸ was not a tourist attraction like Boston's Beacon Hill, New Orleans's Vieux Carré or Santa Fe's adobe district. Nonetheless, the court recognized that preservation was permissibly within the police power because it promoted cultural values, urban revitalization, and architectural creativity. This construction of the general welfare will become more apposite because most historic districts now being created are not tourist attractions but are, rather, part of the fabric of typical living communities, perhaps cherished by their residents but not cultivated by outside visitors. Thus, the

40. See, e.g., Stipe, *A Decade of Preservation and Preservation Law*, 11 N.C. CENT. L.J. 214 (1980).

41. Beckwith, *supra* note 1, at 101.

42. *Id.*

43. See, e.g., Figarsky v. Norwich Historic District Commission, 171 Conn. 198, 368 A.2d 163 (1976); *A-S-P Associates v. City of Raleigh*, 298 N.C. 207, 258 S.E.2d 444 (1979).

44. 298 N.C. 207, 258 S.E.2d 444 (1979).

45. *Id.* at 216, 258 S.E.2d at 450.

46. *Id.* at 210, 258 S.E.2d at 446-67.

47. 272 U.S. 365 (1926).

48. Harris, *The Oakwood Historic District*, N.C. ARCHITECT, July-Aug. 1975, at 7.

A-S-P case will strengthen the use of the police power for preservation purposes to the extent that it dispenses with the "tourist rationale."

In *Euclid*, the United States Supreme Court upheld the general zoning power. In both *Euclid* and *A-S-P*, land use regulation was upheld by a court sympathetic to substantive due process. *Euclid* was decided in 1926 at the height of the 1904-1933 substantive due process era; yet Justice Sutherland, after expounding on the increasing complexity of urban life,⁴⁹ found the question to be fairly debatable and deferred to the legislature. Sutherland's basic assumption was wrong, of course, because complexity is hardly a compelling basis for the assertion of the police power. His was the common rationalistic fallacy of believing that something must be done consciously and by design to insure an orderly society. On the contrary, given the inherent limitations of the human mind, spontaneous decentralized institutions such as the free market are essential to the creation of an orderly society that is the result of human action but not of human design.⁵⁰ The coordination problem of atomistic knowledge makes central planning impossible, and the history of the administration of zoning laws largely bears this out.⁵¹

The *A-S-P* case follows *Euclid's* relaxed standard of judicial review. It has long been observed that state courts continue to apply the doctrine of substantive due process long after its rejection by the United States Supreme Court.⁵² The Supreme Court of North Carolina has been pre-eminent in its adherence to the doctrine,⁵³ as most recently shown in *In Re Aston Park Hospital, Inc.*⁵⁴ Yet this same court in *A-S-P* had no difficulty in holding that historic preservation was a permissible use of the police power. Indeed, the court specifically declined to review the substantive wisdom of the historic district ordinance.⁵⁵ Thus the same double standard found in *Euclid* during the *Lochner* era was reasserted in North Carolina in *A-S-P* during the *Aston Park* era.

Historic preservation as a permissible objective for the use of the police power seems assured, but this very success will likely raise future problems of procedural due process. For example, while the standard

49. 272 U.S. at 386-87.

50. This insight is, of course, basic to the scholarly work of Friedrich Hayek.

51. B. SIEGAN, *supra* note 9; Gramm & Ekelund, *Land Use Planning: The Market Alternative in No Land Is an Island* 127-40 (Institute for Contemporary Studies, 1975).

52. Howard, *State Courts and Constitutional Rights in the Day of the Burger Court*, 62 VA. L. REV. 873 (1976); Paulsen, *The Persistence of Substantive Due Process in the States*, 34 MINN. L. REV. 91 (1950).

53. Howard, *supra* note 52, at 879-91; Paulsen, *supra* note 52, at 104-05; Comment, *Hospital Regulation after Aston Park: Substantive Due Process in North Carolina*, 52 N.C.L. REV. 763 (1974).

54. 282 N.C. 542, 193 S.E.2d 729 (1973).

55. 298 N.C. at 217, 258 S.E.2d at 450.

of judicial review of decisions by preservation commissions apparently is not rigorous, it is not without limits. As the standard of review articulated by Justice Braucher in *Gumley v. Board of Selectmen*⁵⁶ makes clear,⁵⁷ a complete and comprehensive record is essential to any preservation commission decision.⁵⁸ Given the lay membership of most preservation commissions, casual concern for legal formalities may be expected.

In addition to the expected state court focus on procedural due process, the *Penn Central* case insures future litigation of the issue of economic hardship. The older state court police-power cases, as well as the more recent gloss added by such cases as *A-S-P*, did not address the constitutional status of historic preservation laws under the fifth amendment of the federal Constitution. Apparently, this question has been given a definitive answer in *Penn Central*. In brief, the Court upheld the New York City Landmark Preservation Commission's refusal to allow the construction of a tall office building on the site of Grand Central Station, a designated New York City landmark. By a six to three vote, the Court held that the restrictions of the city ordinance, enacted pursuant to the state statute, did not constitute a "taking" of property for which compensation must be paid. The Court's approval of landmark regulation will certainly have a great impact on the willingness of local governments to enact such laws. In presenting their arguments in support of landmark designation, preservation interests will find their legal position enhanced. Thus, historic preservation will become an even more influential consideration in controlling the use of land.⁵⁹

To be sure, preservation will be a more influential consideration, but not one without limits. The ordinance upheld in *Penn Central* provided that certificates of appropriateness should be granted if the applicant can show that landmark designation would result in undue economic hardship, a burden not carried by the Penn Central Transportation Company. The Court held that there was no taking because the railroad had failed to show that it had been denied a reasonable economic return in light of its transferable development rights. Some state statutes and local ordinances already provide for a relaxation of

56. 371 Mass. 718, 358 N.E.2d 1011 (1977).

57. *Id.* at 724, 358 N.E.2d at 1015.

58. Indeed, as Russell Brenneman points out, the *Figarsky* case was won because of the completeness of the record made at the commission hearing. See R. BRENNEMAN, *THE DEVELOPMENT AND SIGNIFICANCE OF FIGARSKY V. NORWICH HISTORIC DISTRICT COMMISSION* (1976).

59. Such as in the preservation ordinances in the District of Columbia and in Louisville, Kentucky, which were strengthened in keeping with the *Penn Central* decision. NATIONAL TRUST FOR HISTORIC PRESERVATION, *5 LANDMARK AND HISTORIC DISTRICT COMMISSIONS* No. 1 (Feb. 1979).

requirements in cases of hardship⁶⁰ and, given the sanction by the Supreme Court, will increasingly do so in the future.⁶¹ The Court, however, left unanswered the requirements for a showing of economic hardship and left the door open for future litigation to flesh out the meaning of the term.

Although procedural due process and economic hardship will likely loom large in future preservation litigation, presumably it is clear that the police power may be used with relative confidence in the preservation of historic districts and landmarks. But if preservationists have won a major victory, it must still be asked: to be sure, the police power may be used, but at what cost and to whom? The great benefits of historic preservation are familiar enough: enhanced property values, stabilized tax bases, and the ambiance of history and tradition. But what certainty do we have that the benefits of an essentially political methodology for allocating property rights will exceed the costs? Restrictions on historic landmarks and districts usually prevent the best economic use of the property. Isolated landmarks present the most acute problems of efficient use of land, quite graphically illustrated by Grand Central Station which more than likely will never provide any services other than as a Beaux Arts structure. In a city already devastated by the politics of rent control, any further limitations on the market mechanism must be greeted with mixed feelings at best. To this observer, the holding of the *Penn Central* case is regrettable and will accelerate the politicization of economic decisions with its attendant inefficiencies and attenuation of individual autonomy.

C. *Public Preservation Agencies*

The passage of the National Historic Preservation Act of 1966⁶² and the growth of the environmental protection movement have encouraged most states to establish some form of state preservation agency.⁶³ All of them have appointed a state historic preservation officer (hereinafter referred to as SHPO) to implement state responsibilities under the 1966 Act. Most of the preservation agencies are public

60. Typical is a Virginia statute, VA. CODE ANN. § 15.1-503.2 (Supp. 1979), which allows the owner of a designated historic landmark to demolish it if he has applied to the governing body for demolition permission and, following a denial, has given the governing body a right of first refusal to buy the landmark for the required length of time, but with no executed contract of sale resulting.

61. The Illinois landmark statute was recently amended to explicitly incorporate the *Penn Central* holding so that the denial of a demolition permit for a landmark building "shall not constitute a taking . . . unless . . . [it] deprives the owner of all reasonable beneficial use or return." P.A. 81-560, 1979 Ill. Legis. Serv. 1273 (West).

62. Pub. L. No. 89-665, 80 Stat. 915-19 (codified at 16 U.S.C. §§ 470, 470a, 470b, 470c-470n).

63. For references to the relevant state statutes as of 1975, see Beckwith, *supra* note 1, at 182-87.

bodies funded through state tax revenues, but some are quasi-public organizations chartered and perhaps subsidized by the states.

The public agencies in the various states generally have similar functions:⁶⁴ acquiring and preserving historic sites and archaeological remains, accepting gifts and encouraging interest in historic preservation, conducting research and surveying historic resources, and erecting historical markers. Most states authorize the maintenance of a state register of historic places, and the head of the agency often acts as the SHPO.

Some state agencies are authorized specifically to cooperate in implementing either or both federal and local preservation laws. The relatively new statutes of a number of states, such as Alaska,⁶⁵ Indiana,⁶⁶ Kentucky,⁶⁷ and Utah,⁶⁸ explicitly provide for state participation in implementing the 1966 Act, including nominations to the National Register of Historic Places. Some states, such as Alaska⁶⁹ and Connecticut,⁷⁰ specifically authorize the state agency to consult with localities about creating historic districts, reviewing the adverse impact of proposed actions on local historic resources, and granting financial assistance in the form of loans or grants in aid.

While the state agencies basically have similar functions, they also carry out work unique to their states. For example, some states, especially in the West, link preservation activities to the state park system. To illustrate, Arizona's State Parks Board maintains the state register of historic places.⁷¹ In other states, such as Nebraska,⁷² North Carolina,⁷³ and South Carolina,⁷⁴ the agencies function as the state archives, one of the more traditional state undertakings antedating the advent of the police power.

Since 1975 there has been an increase in the number of state public agencies that deal exclusively with preservation matters. At least twelve states and one territory (Arkansas,⁷⁵ Guam,⁷⁶ Hawaii,⁷⁷ Idaho,⁷⁸

64. See generally statutory appendix *infra*.

65. ALASKA STAT. § 41.35.180 (1977).

66. IND. CODE ANN. § 14-3-3.3-3(a) (Burns Supp. 1979).

67. KY. REV. STAT. § 171.382 (1980).

68. UTAH CODE ANN. § 63-18-38 (1978).

69. ALASKA STAT. § 41.35.180(5) (1977).

70. CONN. GEN. STAT. ANN. § 7-147b(c) (1972).

71. ARIZ. REV. STAT. ANN. § 41-511.04(8) (West Supp. 1979).

72. NEB. REV. STAT. §§ 82-104 to -108 (1976).

73. N.C. GEN. STAT. §§ 121-1 to -21 (1974 & Supp. 1979); *id.* §§ 143B-92 to -110 (1978 & Supp. 1979).

74. S.C. CODE §§ 60-11-10 to -90 (1976).

75. ARK. STAT. ANN. §§ 8-904 to -913 (Supp. 1979).

76. GUAM GOV'T CODE §§ 13985-13985.14 (Supp. 1974).

77. HAWAII REV. STAT. §§ 6E-1 to -39 (1976).

78. IDAHO CODE §§ 67-4123 to -4130 (1973 & Supp. 1979).

Illinois,⁷⁹ Indiana,⁸⁰ Kansas,⁸¹ Montana,⁸² Nevada,⁸³ New Hampshire,⁸⁴ Utah,⁸⁵ Vermont,⁸⁶ and Washington⁸⁷) have created state preservation agencies. These separate agencies carry on some responsibilities (especially regarding archaeological and historic sites) formerly vested in agencies less specifically organized for preservation purposes. These agencies are increasingly assuming new responsibilities that reflect recent initiatives in preservation law, such as implementing preservation incentives of the Tax Reform Act of 1976,⁸⁸ assisting local governments in the creation of historic districts, and carrying out new and expanded state responsibilities for the preservation of historic resources. In some states, for example, the regulatory power of the agencies can be invoked to require review of public, publicly funded, or licensed projects affecting properties given special legal status by listing in the state register or by location in a state historic district.

As state preservation law becomes more complex, the tasks of state agencies become more specialized. In response to this trend, some of the more recent statutes create state preservation agencies with specialized subdivisions.⁸⁹ Growth of state preservation agencies should not be unexpected. This growth is consistent with the diffuse costs and concentrated benefits characteristic of governmental regulation generally.⁹⁰ With a growing constituency within the agencies and among owners of historic property, the preservation bureaucracy approximates the traditional model of a bureaucracy run primarily for the benefit of its members and their stronger client groups—in this case, the preservationists. As in many instances of governmental regulation, their interests are congruent. Furthermore, growth of the preservation bureaucracy will likely continue as state and local preservation initiatives accelerate in response to the sanction given by the Supreme Court in *Penn Central*.

79. ILL. ANN. STAT. ch. 127, §§ 133d1-d14 (Smith-Hurd Supp. 1979).

80. IND. CODE ANN. §§ 14-3-3.3-1 to -14 (Burns Supp. 1979).

81. KAN. STAT. §§ 75-2715 to -2725 (1977 & Supp. 1979).

82. MONT. CODE ANN. §§ 22-3-422 to -442 (1979).

83. NEV. REV. STAT. §§ 383.011-.021(1977), *as amended*, ch.102, § 1, 1979 NEV. STATS. 159; ch. 179, § 1, 1979 NEV. STATS. 269.

84. N.H. REV. STAT. ANN. §§ 227-C:1-9 (1978).

85. UTAH CODE ANN. § 63-18-2.1 (1978 & Supp. 1979).

86. VT. STAT. ANN. tit. 22, §§ 721-23, 741-43 (1978 & Supp. 1979).

87. WASH. REV. CODE §§ 43.51A.00-.140 (Supp. 1979).

88. Pub. L. No. 94-455, 90 Stat. 1520 (codified in scattered sections of 26 U.S.C.).

89. *E.g.*, the Indiana Division of Historic Preservation includes four subdivisions dealing respectively with archaeology, registration and survey, museums, and historic sites and structures. Similarly, the Iowa State Historical Department is segmented into the divisions of historical museums and archives, state historical society, and historic preservation.

90. *See* text accompanying notes 202-06 *infra*.

D. *Governmental Review of Public and Private Action*

Many kinds of actions may have an impact on historic resources. Just as governments may encounter historic property as a result of public projects, such as road construction, so too private actions may have an adverse affect. In recent years, states have been more directly involved in regulating governmental projects and, in some cases, private actions that may endanger historic structures and sites. At least twenty states now have statutes authorizing or requiring review of proposed projects that may have an impact on archaeological and historic resources.⁹¹

The earliest laws of this kind scrutinized the adverse effects of governmental projects, particularly road construction, on archaeological sites. The simplest of these statutes⁹² are permissive, and authorize cooperation among governmental agencies to minimize the adverse impact of state projects on archaeological remains. Salvage by the state archaeologist is often authorized. Some states, however, have moved beyond authorizing salvage work to requiring it. Alaska, for example, requires that if a public construction project is proposed on any historic, prehistoric, or archaeological site, the project may not commence until salvage work is completed.⁹³ If the site is discovered during construction, the state's Department of Natural Resources must be notified and its concurrence obtained for continuing the project.⁹⁴ If the required concurrence is not obtained within ninety days, the agency or person performing the construction may appeal to the governor for a final decision.⁹⁵

The National Historic Preservation Act of 1966,⁹⁶ the National Environmental Policy Act of 1969,⁹⁷ and the Department of Transportation Act of 1966⁹⁸ each set up a mechanism for reviewing the impact of federally related projects on historic structures and sites. Recent state statutes modeled after these federal laws have added a new dimension to the review of proposed public and private actions. Some states, such as Kansas⁹⁹ and Hawaii,¹⁰⁰ amended their salvage statutes to require added protective scrutiny for historic properties listed on the state or

91. See statutory appendix *infra*.

92. See, e.g., ARK. STAT. ANN. § 9-1006 (1976); GA. CODE ANN. § 40-813 (1975); IOWA CODE ANN. § 305A.5 (West Supp. 1979); ME. REV. STAT. tit. 27, § 374 (1974).

93. ALASKA STAT. § 41.35.070(c) (1977).

94. *Id.* § 41.35.070(d) (1977).

95. *Id.* § 41.35.070(e) (1977).

96. Pub. L. No. 89-665, 80 Stat. 915-17 (codified at 16 U.S.C. §§ 470-470n).

97. Pub. L. No. 91-190, 83 Stat. 852 (codified at 42 U.S.C. § 4321-4347).

98. Pub. L. 89-670, 80 Stat. 931 (codified in scattered sections of 3, 5, 10, 15, 18, 23, 29, 33, 40, 42, 49, 50 U.S.C.).

99. KAN. STAT. § 75-2724 (1977).

100. HAWAII REV. STAT. §§ 6E-8 to -10 (1976).

National Registers. The procedure in Kansas is modeled on Section 4(f) of the Department of Transportation Act. State or local governmental work in Kansas affecting a historic site may not proceed until the governor or local governing body finds that there is no feasible and prudent alternative to the project, and that it includes all possible planning to minimize harm to the site.¹⁰¹ Appeal in either case may then be had to the district court having jurisdiction in the county in which the historic site is located.¹⁰² Hawaii models its regulation on Section 106 of the National Historic Preservation Act, but also extends the scope of regulation to include private action affecting any historic property in the Hawaii Register of Historic Places.¹⁰³ To allow time for review, a landowner must notify Hawaii's Department of Land and Natural Resources of any proposed construction.¹⁰⁴ The construction may not commence or, in the event that it has already begun, continue until the department has given its concurrence or ninety days have elapsed, whichever occurs sooner.¹⁰⁵ Within the ninety days the state must either begin condemnation proceedings for the purchase of the property, permit the project to begin, or undertake salvage operations on the site.¹⁰⁶

Perhaps the 1976 Illinois statute is the state law most explicitly patterned after the National Historic Preservation Act of 1966.¹⁰⁷ It establishes the Illinois Register of Historic Places¹⁰⁸ and the Illinois Historic Sites Advisory Council,¹⁰⁹ modeled respectively after the National Register and federal Advisory Council on Historic Preservation that were created in the 1966 Act. The Illinois state historic preservation officer, who is also director of the state Department of Conservation, designates places on the state register from nominations submitted by the council.¹¹⁰ Designation as a Registered Illinois Historic Place includes an enumeration of the site's "Critical Historic Features," which thereafter may not be substantially altered or demolished without a Certificate of Compliance from the SHPO.¹¹¹ A person who wants to demolish a critical historic feature must give notice of intent to the Department of Conservation and must post notice at the site.¹¹² Within

101. KAN. STAT. § 75-2724 (1977).

102. *Id.*

103. HAWAII REV. STAT. §§ 6E-8 to -10 (1976).

104. *Id.* § 6E-8(a) (1976).

105. *Id.*

106. *Id.*

107. For a discussion of the Illinois statute see Comment, *Historic Preservation in Illinois*, 1979 SO. ILL. U.L.J. 449, 460-62.

108. ILL. ANN. STAT. ch. 127, § 133d6 (Smith-Hurd Supp. 1979).

109. *Id.* § 133d3.

110. *Id.*

111. *Id.* § 133d7.

112. *Id.* § 133d8(a).

thirty days of receipt of this notice, the SHPO or any individual may request a meeting to discuss the proposed action.¹¹³ The meeting must be held within sixty days of request, and the topics to be discussed shall include avoidance and minimization of adverse effects, methods of preserving the structure or place, and possible alternatives to the proposed action.¹¹⁴ The SHPO must help interested parties explore every possible means for substantial preservation of the registered historic place.¹¹⁵ Within thirty days of the meeting, the SHPO must issue a certificate of compliance allowing the project to proceed if it is determined (1) that the person filing notice of the proposed act has negotiated in good faith and further negotiations would not be productive, (2) that the proposed action would not have an impact significant enough to warrant further delay, or (3) that the person filing notice agrees to modifications of the proposed action specified by the SHPO.¹¹⁶ The SHPO, however, may delay issuance of a certificate for another ninety days if he finds that none of the preceding grounds for issuance have been met.¹¹⁷ During this additional delay period, the SHPO may require negotiations to continue, and photographs and measured drawings may be made as a lasting record of the site.¹¹⁸ After the ninety days have elapsed without a certificate being issued, the SHPO must issue a certificate at the applicant's request.¹¹⁹

Projects financed wholly or in part by state funds are subject to a stricter test under the Illinois law. Those projects that will have an adverse economic or environmental impact on registered historic places are not permitted at all unless the SHPO finds that (1) the project is necessary for the public benefit, (2) the project cannot be carried out practically so as to avoid the adverse effect, and (3) the adverse effect is minimized to the maximum extent feasible.¹²⁰

The growing number of state environmental laws patterned after the National Environmental Policy Act offer another kind of regulatory protection for historic properties.¹²¹ These state laws afford protection of resources to the extent that these resources are viewed as part of the environmental values governed by the statute. The purposes, stated in the preambles of such statutes or in the definitions sections, often explicitly include the protection of historic sites and values.¹²²

113. *Id.* § 133d8(b).

114. *Id.* § 133d8(c).

115. *Id.* § 133d8(d).

116. *Id.* § 133d8(d)(1).

117. *Id.* § 133d8(d)(3).

118. *Id.*

119. *Id.* § 133d8(f).

120. *Id.* § 133d9.

121. See statutory appendix *infra*.

122. A California court recently held that an environmental statute that defined "environ-

Most of the twenty states with such laws require environmental impact assessments prior to the issuance of permits when state action is involved. A few states, such as Minnesota,¹²³ also scrutinize private actions that may have an adverse environmental impact and grant standing to individuals and groups seeking to enforce the laws. Colorado authorizes designation of "areas of state interest," defined to include areas "containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance."¹²⁴ These resources include properties listed in the National Register, designated by state statute, or included in a list of historically and architecturally significant places compiled by the state historical society.¹²⁵ Once the areas of state interest are designated, permits for development are required from the local government in whose jurisdiction the development is to take place.¹²⁶

E. *State Financial Assistance*

Public funding for preservation purposes varies among the states, reflecting the political influence of preservationists and the climates of public choice prevailing in the various legislatures. Until recently most state financial assistance for historic preservation took the form of authorizations for city and county governments to appropriate funds for historical purposes, often pursuant to specific tax levies. Since 1975, however, some states, notably Alaska,¹²⁷ Colorado,¹²⁸ and South Dakota,¹²⁹ have authorized state-funded loans for preservation purposes, while Maine has authorized savings banks to invest up to five percent of their deposits in preservation-related investments in real property.¹³⁰

The South Dakota historic preservation loan fund provides loans to purchase, restore, or develop historic South Dakota structures for residential or commercial use.¹³¹ The Alaska historic district revolving loan fund is authorized to make loans for the restoration, improvement, rehabilitation, or maintenance of eligible structures.¹³² The South Dakota statute is more restrictive than that of Alaska in eligibility require-

ment" to include "objects of historic or aesthetic significance" was applicable to and required the protection of archaeological sites. *Society for Calif. Archaeology v. Butte County*, 65 Cal. App. 3d 832, 837, 135 Cal. Rptr. 679, 682 (1977).

123. MINN. STAT. § 116B.03 (1977).

124. COLO. REV. STAT. § 24-65.1-201(c) (Supp. 1979).

125. *Id.* § 24-65.1-105(b).

126. *Id.* § 24.65.1-501.

127. ALASKA STAT. §§ 45.98.010-.070 (Supp. 1979).

128. COLO. REV. STAT. §§ 7-49-101 to -118 (Supp. 1978).

129. S.D. CODIFIED LAWS ANN. §§ 1-19A-13.1 to -13.5 (Supp. 1979).

130. ME. REV. STAT. tit. 9-B, § 543 (Supp. Pamph. 1978).

131. S.D. CODIFIED LAWS ANN. § 1-19A-13.1 (Supp. 1979).

132. ALASKA STAT. § 45.98.020 (Supp. 1979).

ments and the amount of assistance available for one property. Only actual or potentially eligible National Register properties may receive loans in South Dakota,¹³³ while in Alaska loans may be made to properties (1) within a historic district established pursuant to the state enabling statute, (2) deemed "important" in state or national history, and (3) within a historic district and suitable for modification to conform to the style of the surrounding buildings in the district.¹³⁴

In South Dakota a maximum of \$25,000 may be loaned at an annual interest rate of one-fourth the prime rate for up to ninety percent of the cost of purchase, restoration, and development of a structure.¹³⁵ A property receiving a loan under this statute must be encumbered with a covenant running with the land to protect its restored features.¹³⁶ In Alaska the loans must be secured by collateral and may not exceed eighty-five percent of the appraised value of the collateral.¹³⁷ No one historic district may receive more than \$1,500,000 in loans and no one property more than \$100,000.¹³⁸ The interest rate may not exceed seven and one-half percent,¹³⁹ and the state retains a lien on the property as collateral.¹⁴⁰ The state's lien is superior to the lien of the participating financial institution,¹⁴¹ and both of these liens are superior to all other liens except those for taxes and special assessments.¹⁴² If the maintenance or rehabilitation of the historic property fails to conform to the requirements of the loan, the interest rate is increased to the maximum legal rate available under state law,¹⁴³ and a penalty is assessed equal to two percent of the balance of the loan.¹⁴⁴

Although the Colorado statute¹⁴⁵ is not explicitly for historic preservation purposes, it may be of interest to preservationists. The purpose of the statute is to stimulate the flow of private investment capital into the financing of older housing. It authorizes creation of the Colorado Older Housing Preservation Corporation, which may make mortgage loans and insurance available for the purchase, repair, or rehabilitation of an owner-occupied structure that is thirty years old or older, is used primarily as a residence, and is located in a recorded subdivision plat in which at least fifty percent of the residential housing structures are

133. S.D. CODIFIED LAWS ANN. § 1-19A-13.2 (Supp. 1979).

134. ALASKA STAT. § 45.98.020 (Supp. 1979).

135. S.D. CODIFIED LAWS ANN. § 1-19A-13.3 (Supp. 1979).

136. *Id.* § 1-19A-21.

137. ALASKA STAT. § 45.98.040(3) (Supp. 1979).

138. *Id.* § 45.98.040(1)-(2).

139. *Id.* § 45.98.040(4).

140. *Id.* § 45.98.040(6).

141. *Id.*

142. *Id.*

143. *Id.* § 45.98.060.

144. *Id.*

145. COLO. REV. STAT. §§ 7-49-101 to -118 (Supp. 1979).

thirty years old or more.¹⁴⁶

Although the mortgage program apparently has not been implemented, the prospect of being forced to extend financing for it caused Denver banks to form their own risk pool. As of March 1979, the pool had made 407 high-risk loans with no defaults. These loans, along with the work of historic district and landmark commissions, are having a significant impact on older Denver neighborhoods.¹⁴⁷

These subsidy programs are typical governmental responses to intense producer coalitions—in this case, the preservationists. Instead of preservationists bearing the full costs of indulging their tastes, preservation projects are publicly financed from general tax revenues. This transfer of wealth is consistent with a generalized view of economic regulations suggesting that, as a result of its diffuse costs and concentrated benefits, intense producer coalitions may impose the costs of their preferences on society as a whole.¹⁴⁸ Because the cost to any one person of financing the transfer payments to the preservationists is so small, it is irrational for any single taxpayer to oppose the transfer. On the other hand, the preservationists have every incentive to lobby for the subsidy because the concentrated benefits to them exceed the costs of lobbying. Subsidies to preservationists represent yet another example of the trend toward the growth of government and its attendant wealth transfers.

F. *Local Building Codes*

By their very nature historic structures exhibit the building techniques of particular periods in the past. The older a structure is, the more likely it is that its preservation or rehabilitation will conflict with local building codes, whose requirements for construction and maintenance are typically stringent. For example, building codes prevent preservation and rehabilitation efforts by requiring building materials or archaic construction techniques that are unsuitable for older historic structures and greatly increase rehabilitation costs.

Since 1975 Connecticut and Hawaii have joined California, Idaho, Massachusetts, and South Dakota in adopting statutes to reconcile preservation and building codes. Using identical language, Idaho and South Dakota authorize the governing body of any city or county to exempt historic property from applicable health or building codes to the extent that enforcement would prevent or seriously hinder its pres-

146. *Id.* § 7-49-102(2).

147. *Denver's Inner City Enjoys a Resurgence, Aided by Area's Boom, Housing Programs*, Wall St. J., Mar. 3, 1979, at 40, col. 1.

148. See text accompanying notes 190-206 *infra*.

ervation.¹⁴⁹ In 1976 Hawaii authorized the governing body of any political subdivision to modify local building code provisions for the protection, enhancement, preservation, and use of historic properties.¹⁵⁰ In 1977 Connecticut authorized revisions to the state building code to allow exemptions for historic structures as defined under state law and listed in the state register of historic places.¹⁵¹ Under Massachusetts law, the requirements of any historic district statute, ordinance, or bylaw prevails over the state building code.¹⁵² It should be noted that some local historic preservation ordinances in Massachusetts provide a similar exemption.¹⁵³ California undertakes the most ambitious approach with a separate state historical building code.¹⁵⁴ The statute authorizes the adoption of alternative rules, regulations, and standards by state agencies and local building authorities applicable to qualified historical structures¹⁵⁵ as defined under state law.¹⁵⁶

Not only do local building codes discourage rehabilitation of old buildings, they also inflate housing costs generally, frustrate design innovation, and foster corruption among local building inspectors.¹⁵⁷ Because building codes, particularly in urban areas, often are passed at the behest of construction unions in order to prevent innovation and the use of labor-saving building techniques (thus maximizing the demand for labor),¹⁵⁸ the need to relax building codes for preservation purposes appears even stronger.

The statutory relaxation of building codes for preservation purposes clearly creates a desirable flexibility to encourage rehabilitation. It is equally clear, however, that these enabling statutes do not go far enough. Outright abolition of governmental building codes and private enforcement of voluntary market-oriented building codes would greatly encourage the preservation of historic buildings, yet guarantee an adequate concern for safety. The promulgators of the private codes would have every incentive to insure aesthetically sound, safe, and cost-minimizing rehabilitations in keeping with the risk preferences of preservationists. As employees of private firms, inspectors would exhibit a concern for the purchaser of services—in this case, the preservationists—rather than the corruption so typical of the urban inspectors

149. IDAHO CODE § 67-4618 (Supp. 1979); S.D. CODIFIED LAWS ANN. § 1-19B-54 (1974).

150. HAWAII REV. STAT. § 6E-15 (1976).

151. CONN. GEN. STAT. ANN. §§ 19-395q, -403c, g (West Supp. 1979).

152. MASS. GEN. LAWS ANN. ch. 143, § 3A (West Supp. 1979).

153. Ch. 144, § 1, 1975 Mass. Acts 108.

154. CAL. HEALTH & SAFETY CODE §§ 18950-18960 (West Supp. 1979).

155. *Id.* § 18959.5.

156. *Id.* § 18955.

157. NATIONAL COMMISSION ON NEIGHBORHOODS WHITE HOUSE REPORT (1979).

158. R. CRASWELL, *THE FAILURE OF FEDERAL HOUSING* 20 (1977); R. POSNER, *supra* note 2, at 245.

employed by the local governmental monopoly. Innovation in code services would flourish among the competing firms, leading to lower costs for adaptive re-use of historic buildings.

III. PRIVATE PRESERVATION LAW AND VOLUNTARY AGREEMENT

Private agreements among individuals is the alternative to the police power in the allocation of property rights. Although real property law sanctions a wide variety of techniques for private planning, these devices share one important characteristic: they are the non-coercive result of private agreement and are not a result of the sovereign power of the state except in so far as remedies for breach are available in the courts. As previously discussed, however, the greatest growth in preservation law has been in the public sector and, in light of *Penn Central*, this growth will likely continue for the foreseeable future.

The private law may be employed in various ways for the preservation of historic properties. Among them are powers of termination for breach of condition,¹⁵⁹ possibilities of reverter,¹⁶⁰ easements,¹⁶¹ real covenants,¹⁶² and equitable servitudes.¹⁶³ These private-law devices have particular requirements for their creation and enforcement,¹⁶⁴ some of which impede their effectiveness as preservation devices. Particularly vulnerable are in-gross interests, such as negative facade easements and equitable servitudes.

This is not to say that the private law is irrelevant. Indeed, its underutilization is a source of concern to many. Nevertheless, even with this growth of the public law, since 1975 the private law has been significantly strengthened in six states.

To alleviate doubts about preservation easements and covenants, at least nine states,¹⁶⁵ including four since 1975,¹⁶⁶ have enacted statutes

159. Beckwith, *supra* note 1, at 127-29.

160. *Id.* at 129-30.

161. *Id.* at 130-33.

162. *Id.* at 135-38.

163. *Id.* at 138-40.

164. No attempt is made here to explain the traditional doctrines of future interests, easements, real covenants, or equitable servitudes. These traditional devices, with their advantages and drawbacks, are usually available to preservationists and their lawyers, although with wide variation among the jurisdictions. Instead, the focus of this section is quite narrow, and emphasizes only those statutes making specific changes in these private-law devices for preservation or conservation purposes. Throughout this discussion, it should be kept in mind that the traditional property law devices are still available.

165. ARK. STAT. ANN. §§ 50-1201 to -1206 (Supp. 1979); CONN. GEN. STAT. ANN. §§ 47-42a to -42c (1978); GA. CODE ANN. §§ 85-1406 to -1410 (1978); ILL. ANN. STAT. ch. 24, §§ 11-48.2-1A(2), (5), -2 (Smith-Hurd Supp. 1979); *Id.* ch. 30, §§ 401-06; LA. REV. STAT. ANN. § 9:1252 (West Supp. 1979); MASS. GEN. LAWS ANN. ch. 184, §§ 31-33 (West 1977 & Supp. 1979); N.H. REV. STAT. ANN. §§ 477:45-47 (Supp. 1979); N.C. GEN. STAT. §§ 121-34 to -42 (Supp. 1979); R.I. GEN. LAWS §§ 34-39-1 to -5 (Supp. 1979).

166. Georgia, Illinois, Louisiana, and North Carolina.

establishing the validity of "preservation restrictions." The principle virtues of preservation restrictions are its ease of creation and enforceability.¹⁶⁷

The four most recent statutes are typical of the type although they differ significantly. First, the statutes differ as to terminology, authorizing the creation of facade and conservation "easements,"¹⁶⁸ "conservation rights"¹⁶⁹ in real property, "real rights,"¹⁷⁰ and conservation and preservation "agreements."¹⁷¹ This variety of terminology illustrates the conceptual difficulties of eliminating the traditional distinctions between the various older real property devices.¹⁷² The terminology differs, but their purpose is the same: to facilitate the private encumbrance of historic property, primarily by making in-gross property rights enforceable without regard to privity or appurtenancy.¹⁷³

Although their purposes are similar, the statutes differ as to who may use these simplified conveyancing rules. Typically,¹⁷⁴ all four states authorize charitable organizations and governmental bodies to convey and enforce these interests.¹⁷⁵

North Carolina, however, goes further and authorizes any corporation or business entity to enforce preservation agreements.¹⁷⁶ This innovation is enormously important because it authorizes a for-profit firm to enforce preservation agreements, a service that could be offered to consumers for a fee. If preservationists were willing to pay for services of such a firm, then entrepreneurs might provide a private corporate alternative to a local political body. The firm would act on behalf of its customers, many of whom might not own any property appurtenant to the restricted parcels, but who, nonetheless, would favor preservation. Like any business firm,¹⁷⁷ the preservation firm would reduce the transaction costs of private planning, costs that might be high in older neighborhoods where there was no initial subdividing from a large tract of land.¹⁷⁸ As is often the case with municipal services,¹⁷⁹ a

167. Beckwith, *supra* note 1, at 141.

168. GA. CODE ANN. § 85-1407 (Supp. 1979).

169. ILL. ANN. STAT. ch. 30, § 401 (Smith-Hurd Supp. 1979).

170. LA. REV. STAT. ANN. § 9:1252 (West Supp. 1979).

171. N.C. GEN. STAT. § 121-35 (Supp. 1979).

172. *See* Beckwith, *supra* note 1, at 127-40.

173. GA. CODE ANN. § 85-1408 (1978); ILL. ANN. STAT. ch. 30, § 401(b) (Smith-Hurd Supp. 1979); LA. REV. STAT. ANN. § 9:1252(B) (West Supp. 1979); N.C. GEN. STAT. § 121-38 (Supp. 1979).

174. Beckwith, *supra* note 1, at 142-43.

175. GA. CODE ANN. § 85-1408 (1978); ILL. ANN. STAT. ch. 30, § 402 (Smith-Hurd Supp. 1979); LA. REV. STAT. ANN. § 9:1252(A) (West Supp. 1979); N.C. GEN. STAT. § 121-35(2) (Supp. 1979).

176. N.C. GEN. STAT. § 121-35(2) (Supp. 1979).

177. R. POSNER, *supra* note 2, at 289-90.

178. *Id.* at 50.

private firm might be able to enforce these preservation restrictions at less cost than traditional political controls.

In the Georgia, Illinois, and North Carolina statutes, historic preservation is linked with a concern for environmental quality. These statutes authorize the creation of conservation "easements,"¹⁸⁰ "rights,"¹⁸¹ and "agreements"¹⁸² in order to preserve natural, scenic, and open-space areas. Thus private planning is simplified for preservationists and conservationists alike. In 1976 Florida¹⁸³ enacted a similar statute solely for conservation purposes.

It should be noted that preservation restrictions have their own tax consequences. On the federal level, donation in perpetuity of preservation restrictions on historic property to charitable organizations entitles the donor to a charitable deduction for federal income tax purposes.¹⁸⁴ Encumbering historic property with a preservation restriction also affects its valuation for property tax purposes. The Georgia¹⁸⁵ and North Carolina¹⁸⁶ statutes are typical of the states that, in passing laws recognizing preservation restrictions, have also required that property tax assessors at least consider the effect of the restrictions.

In considering the choice of methodology for achieving goals of historic preservation, it is vitally important to notice that the simplification of conveyancing of property rights discussed in this section has occurred simultaneously with the expansion of zoning controls under the police power sanctioned by the *Penn Central* case. This concurrent growth of private and public methodologies graphically illustrates the contrast between decentralized private action and centralized governmental action and the economic and political consequences of the choice to be made. At this point, then, it is appropriate to consider the greater implications of the choice of legal methodology in historic preservation and of the role of preservationists in American society.

IV. FACTION, PROPERTY RIGHTS, AND IDEOLOGY

As noted, since 1975 state and local preservation law has grown considerably, with the greatest growth by far occurring through the exercise of the police power within the public law. The creation of historic dis-

179. See White, *Privatization of Municipally-Provided Services*, 2 J. LIBERTARIAN STUDIES 187 (1978).

180. GA. CODE ANN. § 85-1407(c) (1978).

181. N.C. GEN. STAT. § 121-35(1) (Supp. 1979).

182. ILL. ANN. STAT. ch. 30, § 401(a) (Smith-Hurd Supp. 1979).

183. FLA. STAT. ANN. § 704.06 (1979).

184. I.R.C. § 170(f)(3)(B)(iii).

185. GA. CODE ANN. § 85-1409 (1978).

186. N.C. GEN. STAT. § 121-40 (Supp. 1979).

tracts,¹⁸⁷ and designation of historic landmarks,¹⁸⁸ and the public funding of preservation projects and revolving funds¹⁸⁹ typify the morphology of growth of public preservation law. At first glance, those who cherish American traditions might rejoice at such a concentrated and successful effort to preserve the American past. Upon reflection, however, it becomes clear that the growth of public preservation law, far from being an example of stewardship of the past, is actually symptomatic of an ominous transformation of the law and the politicization of economic choice.

The first task then is to characterize the problem. What has happened to the law in our time? More particularly, what does preservation law purport to do and how? For whom does it purport to act and at what cost? Secondly, consider the preservationists. Who are they, and what values do they espouse? Are they the practitioners of private initiative and the common law at its best, or do many of them have a vested interest in governmental solutions? Why do so many preservationists favor statist solutions?

A. *The Rise of Entrepreneurial Coalitions and the Enthronement of Politics*

To put the contemporary preservation movement in perspective, it is instructive to consider two aspects of American life and governance first and most admirably discussed in the eighteenth century. I refer, of course, to American constitutionalism and the uniquely American affinity for local action by small groups. These characteristics, so admirable and promising in their time, have given rise in our own time to the very worst and the very best in the preservation movement.

American constitutionalism was concerned primarily with protecting the freedom of the individual and encouraging economic growth.¹⁹⁰ A free society is not without its perils, however, and James Madison, in his magnificent discussion in *The Federalist*, No. 10, cogently described the dangers resulting from special interests. He was particularly apprehensive about the influence of factions.¹⁹¹ For Madison, factionalism was the worst possible ill that could afflict a free and democratic society. While it was (and is) inescapable that various factions would have

187. See text accompanying notes 11-36 *supra*.

188. See text accompanying notes 37-38 *supra*.

189. See text accompanying notes 127-47 *supra*.

190. G. DIETZE, *THE FEDERALIST—A CLASSIC OF FEDERALISM AND FREE GOVERNMENT* (1960); F. HAYEK, *THE CONSTITUTION OF LIBERTY* 176-92 (1960).

191. Madison defined faction as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens or to the permanent and aggregate interests of the community." Madison, *The Federalist No. 10*, in *THE FEDERALIST PAPERS* 42 (W. Brock ed. 1971).

different views, Madison sought to devise a political system that would control the effects of faction.¹⁹² To this end, Madison advocated a federal government and the separation of powers. Through these vertical and horizontal restraints, he sought to prevent the monopolization of the coercive power of the state and, by increasing the costs of political entrepreneurship, to make it unprofitable for groups in society to redistribute wealth through politics.¹⁹³ For over a century these impediments worked well enough¹⁹⁴ in America and inhibited the redistributive possibilities that are inherent in any democratic society.

In addition to constitutionalism, the American propensity for local action deserves comment. The astute Frenchman, Alexis de Tocqueville, in his classic, *Democracy in America*, noted that “[i]n no country in the world has the principle of association been more successfully used or applied to a greater multitude of objects than in America. . . . [and] a vast number . . . are formed and maintained by the agency of private individuals.¹⁹⁵ De Tocqueville described an individualistic people for whom self-reliance was a paramount virtue,¹⁹⁶ and where one “looks upon the social authority with an eye of mistrust and anxiety”¹⁹⁷ and “claims its assistance only when he is unable to do without it.”¹⁹⁸

It is not surprising, then, that in this environment restraining faction and encouraging individual initiative, the latter half of the nineteenth century in the United States¹⁹⁹ and in England²⁰⁰ was a period of unparalleled growth and of minimal governmental regulation. Life expectancies increased, sanitation improved, and for the first time, the majority of people had a life relieved of medieval poverty, disease, and unending toil.

Unfortunately, our present century has brought a great transformation of interest-group politics—a transformation that has given rise to the very factionalism Madison so feared. Economic controls reminis-

192. *Id.* at 44.

193. R. POSNER, *supra* note 2, at 491-93; North, *Political Economy and Environmental Policies*, 7 *ENVIR'L LAW* 449, 453 (1977).

194. This is not to say that subsidy was totally precluded. Several railroads were notoriously successful in obtaining governmental largesse. C. CARSON, *THROTTLING THE RAILROADS* 24-37 (1971); Rand, *Notes on the History of American Free Enterprise*, in *CAPITALISM: THE UNKNOWN IDEAL* 102-09 (A. Rand ed. 1962).

195. I. A. DE TOQUEVILLE, *DEMOCRACY IN AMERICA* 198 (P. Bradley ed. 1954). For a more recent discussion of this “independent sector” separate from those of commerce or government. See R. CORNUELLE, *RECLAIMING THE AMERICAN DREAM* 20-41 (1965).

196. *Id.*

197. *Id.*

198. *Id.*

199. J. HUGHES, *THE GOVERNMENTAL HABIT* 96-145 (1977).

200. R. HARTWELL, *THE REVOLUTION IN NINETEENTH CENTURY LAW AND GOVERNMENT* (1979); T. ASHTON, *THE INDUSTRIAL REVOLUTION 1760-1830* (1964); R. HARTWELL, *THE INDUSTRIAL REVOLUTION AND ECONOMIC GROWTH* (1971).

cent of earlier mercantilism have returned,²⁰¹ and individual initiative has declined as the local associations, described by de Tocqueville, have been increasingly supplanted by the state.

Today, the political process is used robustly to redistribute wealth. Largely a result of the concentrated benefits and diffuse costs of governmental regulation,²⁰² individual producer coalitions,²⁰³ exhibiting no restraint,²⁰⁴ go to the legislature for specific things. Rational vote-maximizing politicians respond by giving them exactly what they want in return for electoral support.²⁰⁵ Thus government grows inexorably in response to the perverse incentives of political logic. Presumably there is no end to the process, until perhaps the level of inflation or of aggregate taxation required to finance governmental expansion reaches such a level that the chronic free-rider problems of public choice are overcome and the voters demand a reduction in expenditures.²⁰⁶

One must, of course, move from generalizations to specifics. Having described generally the decline of constitutional restraints and of individual initiative and the rise of political entrepreneurship, one must scrutinize the preservation movement.

It is all too apparent that many preservationists have succumbed to the vice of faction and are deeply in error regarding legal methodology. They resort to the public law in order to politicize economic choice while alleging their service of the "public interest." To be sure, preservation law produces benefits, but these benefits are far from randomly distributed. Furthermore, preservation law has become an instrument of coercion rather than a basis of private agreement. Financed on the federal level by expansionary monetary policy, subsidies to preservationists contribute (as do all transfer payments) to an inflated currency and a debilitated national defense. Regulatory costs drive up the cost of housing and displace the poor.

In their zeal to preserve, preservationists contribute to the rationalistic fallacy that through planning, government should "do something."

201. J. HUGHES, *supra* note 199, at 146-242; M. WEIDENBAUM, BUSINESS, GOVERNMENT, AND THE PUBLIC (1977).

202. A. MELTZER, WHY GOVERNMENT GROWS (1976).

203. The concentrated benefits of regulation make it natural for producers, unlike consumers, to intervene in the political process because the costs of intervention exceed the benefits obtained. It is irrational for consumers to lobby against the subsidy because the cost of doing so exceeds the tiny benefits to each consumer, and chronic free-rider problems encourage inaction. As a result, the amorphous consumer interest is systematically underrepresented.

204. Burnham, *The Breakdown of Restraint*, Wall St. J., Oct. 3, 1979, at 22, col. 1.

205. F. Hayek, *Economic Freedom and Representative Government*, in NEW STUDIES IN PHILOSOPHY, POLITICS, ECONOMICS, AND THE HISTORY OF IDEAS 107-09 (1978); A. WALTERS, THE POLITICIZATION OF ECONOMIC DECISIONS 10 (1976).

206. See, e.g., M. Friedman, *The Limitations of Tax Limitation*, in TAX LIMITATION, INFLATION & THE ROLE OF GOVERNMENT 15-17 (1978); CAL. CONST. art. 13, § 12; TENN. CONST. art. 2, § 24.

In this way, they perpetuate the widespread misconception that social orders must be the conscious result of human design (often through law) rather than the unintended, but orderly, results of spontaneous human action.

Why do preservationists believe these things about the law? Do they have a vested interest in governmental, as opposed to private, solutions? At this point, a discussion of the recent emergence of the so-called "new class"²⁰⁷ is warranted.

B. *Historic Preservation and the New Class*

The new class is the governmental-intellectual class, the tradesmen in the commerce in ideas, whose influence has grown enormously since World War II. Adept at manipulating ideas and symbols, the new class has seen its influence enormously expanded through the national communications media.²⁰⁸ The new class is affluent, well-educated, and professional, and usually locates its center of power in the state. Dependent on central government spending for its livelihood and its aspirations toward power and prestige, much of the new class is statist, and is distinguished by its "hidden agenda of self-aggrandizement, its adversarial posture against the central conceptions of our political, economic, and cultural systems, and its attempts to shortcircuit the will of the majority. . . ."²⁰⁹ By no means are all members of the new class statist, however.²¹⁰

How many preservationists are statist members of the new class? To answer this question, one must look at the various constituencies within the preservation movement.

Those with the greatest stake in the expansion of the state are those already either directly or indirectly employed in its service. Preservation professionals are employed in preservation agencies in all levels of government.²¹¹ Secondly, other preservation professionals, such as carpenters and design consultants, market restoration services to pri-

207. Although the term had its origin in the work of Milovan Djilas and has been popularized most effectively by Irving Kristol, I would refer the reader to the recent writings of Michael Novak. See, e.g., M. NOVAK, *THE AMERICAN VISION* (1978).

208. Commentators such as Michael Novak and Malcolm Muggeridge have noted the influence of media figures and their consensus of secular, statist values. M. NOVAK, *supra* note 207, at 29. The exaggerated influence of the media is in part attributable to rational voter ignorance. The rationally ignorant voter has little incentive to incur information costs because his single vote is not likely to influence the outcome of an election. Therefore he relies on information provided at no cost by the media. J. GWARTNEY, *MICROECONOMICS* 64 (1977).

209. M. NOVAK, *supra* note 207, at 31.

210. A strong counter-attack is underway. See generally, G. NASH, *THE CONSERVATIVE INTELLECTUAL MOVEMENT IN AMERICA SINCE 1945* (1976).

211. On the federal level, one finds the Heritage Conservation and Recreation Service created in 1978 as the umbrella organization of the Department of Interior. The National Trust for Historic Preservation also receives federal funding under the National Historic Preservation Act of

vate parties and governmental projects. Architects are participating in the spread of adaptive re-use of older buildings. Lawyers are discovering the existence of preservation law as part of a traditional real property and tax practice.²¹²

A third statist constituency are the citizen-preservationists, ostensibly private individuals who, like other regulated industries,²¹³ may be subsidized by public enforcement and various governmental programs. While some preservationists undoubtedly have lobbied for income-transfer programs, other may simply be responding to the incentives created by enacted law, such as the grant-in-aid program under the Historic Preservation Act of 1966.²¹⁴

The preservationist intellectuals (both academic and journalistic) form a fourth constituency of the preservation movement that supports governmental expansion. Intellectuals are attracted to socialism for many reasons,²¹⁵ and there is no reason to suppose that preservationist intellectuals are any different. Ambitious but risk-averse, the intellectual tends to be a visionary who criticizes the existing (usually capitalistic) order by recourse to an aspiration toward a vague (usually socialistic) ideal. Many preservationist intellectuals seek a new society of architectural permanence where spontaneous forces, especially the market, are restrained, usually by force.

Envious of the material rewards of the business world but loathe or unable to participate in its markets, which do not generally recognize or reward alleged moral superiority, the intellectual sees governmental expansion as the avenue to wealth, power, and prestige. Many preservationist intellectuals resent the free market and the rewards earned by the developer. With a heavy investment in human capital, however, they must market their services as administrators or consultants to that firm that will buy them. This firm is usually the state.

Academic commentators often prefer public-law solutions as a

1966. 16 U.S.C. § 470(a)(3). All of the states and territories have preservation agencies. See statutory appendix *infra*. Many municipalities also have preservation professionals on their staffs.

212. The Practicing Law Institute has just issued its first volume on historic preservation law, and several law schools were offering seminars in preservation law in the spring of 1980.

213. See R. POSNER, *supra* note 2, at 239-70.

214. 16 U.S.C. § 470 (a)-(e) (1976).

215. The study of the statist intoxication and baleful influence of intellectuals is an intriguing subject in itself. Some of the more notable contributions to the literature include CAPITALISM AND THE HISTORIANS (F. Hayek ed. 1963); L. MISES, THE ANTI-CAPITALISTIC MENTALITY (1972); M. NOVAK, *supra* note 207; R. POSNER, *supra* note 2, at 548-51; J. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 145-55 (1974); CAPITALISM: SOURCES OF HOSTILITY (E. van den Haag ed. 1979); Bork, *Can Democratic Government Survive?*, in ASPECTS OF AMERICAN LIBERTY 174-86 (G. Corner ed. 1977); Coase, *Advertising and Free Speech*, 6 J. LEGAL STUDIES 1 (1977); Coase, *The Marketplace for Goods and the Market for Ideas*, 64 AM. ECON. REV. 384 (Papers & Proceedings 1974); Director, *The Parity of the Economic Market Place*, 7 J.L. & ECON. 1 (1964); Hayek, *The Intellectuals and Socialism*, 16 U. CHI. L. REV. 417 (1949); Roberts, *The Failure of the Intellectuals*, in WILL CAPITALISM SURVIVE? 51-53 (E. Lefever ed. 1979).

means of career advancement in a highly politicized society.²¹⁶ One can profitably ask whether this is true in historic preservation. In any event, as verbalists trading in the commerce in ideas, the commentators on historic preservation (who, no doubt, would object strenuously to the issuance of certificates of appropriateness for the publication of their articles) generally endorse stringent assertions of the police power over property rights in historic areas.

Among many preservationists hostility toward the free market is in part attributable to the ties of the preservation movement with the humanities. Humanists have disliked the discipline of the marketplace ever since the advent of the Industrial Revolution brought about the rise of bourgeois capitalism. Resenting the downward mobility that resulted from the loss of their feudal patrons, the humanist intellectuals repudiated the market order and embraced socialism as a means of restoring aristocratic values and their own influence and prestige. To this day, humanists often espouse aristocratic values while denouncing capitalism's alleged detraction from this lofty aspiration.²¹⁷

Preservationist intellectuals are no exception. With their roots in the aesthetic branch of humanism, they tend to deprecate commerce and its response to the subjective preferences of mass taste.²¹⁸ A concrete example might prove helpful.

Previously, it was suggested that Sir Kenneth Clark's film series and book *Civilisation* was an instructive example of the frequency with which a preference for aesthetics and preservation is closely correlated with an antipathy toward the market system.²¹⁹ This observation received striking confirmation in Lord Clark's recent autobiography²²⁰ in which he discusses his views on economics. As an undergraduate at Oxford, Lord Clark's thinking was profoundly influenced by John Ruskin, the well-known Fabian Socialist author and critic. It was Ruskin's *Unto This Last*, which attacked not only capitalism as an economic system but also modern art as a reflection of the ugliness of industrial society, which proved to be a "revelation" in Clark. It was this "beautifully simple and candid examination of the basic truths of economics"²²¹ that brought about a "complete revolution"²²² in Clark's mind.

216. For a description of a similar problem in the realm of economics see W. HUTT, POLITICALLY IMPOSSIBLE. . . ? 16-18 (1971).

217. M. FRIEDMAN, CAPITALISM AND FREEDOM 8 (1962).

218. Preservation cartoonists are forever decrying "commercial" ventures and "tacky" taste. See, e.g., Preservation News, Aug. 1975, Nov. 1975, July 1977, Sept. 1977, Apr. 1978, Nov. 1978, Jan. 1979, Feb. 1979, and June 1979.

219. Beckwith, *supra* note 1, at 149, n. 323.

220. K. CLARK, ANOTHER PART OF THE WOOD: A SELF-PORTRAIT (1975). For a discussion of this characteristic in John Ruskin see Beckwith, *supra* note 1, at 148-50.

221. *Id.* at 112.

222. *Id.*

The author of *Civilisation* closes with the following summary of the influence the Fabian intellectuals had over him:

I have retained from those years of reading a hatred of exploitation that has grown through the years. The sight of a lot of people dining in the Savoy makes me feel sick. This is an emotional, almost physical, response. . . . But somewhere in the back of my mind is a genuine hatred of Power, Display, Big Business and all that goes with it.²²³

While criticism of the Fabians is widespread,²²⁴ it suffices for our purposes to say that Lord Clark's animus toward capitalism, particularly his debilitating sense of guilt over the greater consumption made possible by an increased marginal productivity of labor,²²⁵ accounts in large measure for *Civilisation's* negative image of capitalism and the resulting erroneous conclusion that it is inimical to our artistic and architectural heritage.

C. *Historic Preservation and the Market Process*

As previously discussed, many preservationists have a vested interest in governmental regulation and exhibit a morbid view of the market process. Because of the endemic self-interest of such views, a realistic appraisal of the compatibility of the preservation movement and the market is essential.²²⁶

The preservation movement must recognize that its continued existence, as well as that of most things worth preserving in American society, depend ultimately upon the survival of democratic capitalism. Indeed, most of what preservationists revere was created as a result of the free accumulation of capital in the past. Through the coordination function of the price system,²²⁷ the market fostered the creative powers of architects and builders in the erection of countless structures. This process, however, must not be halted simply because of the fixed preferences of one time and place. If there is to be anything worth preserving in the future, today's society must be free to create those yet unbuilt structures that will be tomorrow's landmarks. This can occur only in a capitalist democracy.

Preservationists often perceive the market as a threat to historic buildings. This perception stems from a definition of landmarks that is static and unchanging and that ignores the creation of new structures. To be sure, the market is a dynamic process that rewards change and

223. *Id.*

224. See, e.g., Stigler, *Bernard Shaw, Sidney Webb, and the Theory of Fabian Socialism*, in *ESSAYS IN THE HISTORY OF ECONOMICS* (1965); Welch, *Intellectuals Have Consequences*, in *THE FUTURE THAT DOESN'T WORK* (E. Tyrrell ed. 1977).

225. The economic historian R.H. Tawney shared a similar sense of guilt. Feuer, *Some Irrational Sources of Opposition to the Market System*, in E. van den Haag, *supra* note 215, at 137.

226. For an earlier discussion see Beckwith, *supra* note 1, at 101-02.

227. Hayek, *The Use of Knowledge in Society*, 35 *AM. ECON. REV.* 519 (1945).

innovation. The history of the growth of cities shows a constant evolution of land uses often resulting in the loss of historic structures.²²⁸ At the same time, however, new structures were often built that in their time became historic. History is always evolving and cumulative and cannot be segmented.

Not all preservationists misunderstand the market process, however. The views of the commercial preservationists provide a startling contrast to the anti-market preservation mainstream. The commercial preservationists seek to preserve artifacts of a commercial and industrial society, such as service stations, diners, neon signs, and the like.²²⁹ It is intriguing to note that the mainstream preservationists who dislike the free market inevitably espouse fixed, aristocratic values, while the commercial preservationists who understand the evolving market process do not. As one commercial preservationist put it, "[t]he preservationist's instinct is to go out and freeze-dry it . . . but the commercial environment isn't fixed in time."²³⁰ These preferences echo the attraction of socialism for those who prefer a fixed, status society as opposed to the fluid mobility of capitalist societies.

Of course, while anti-capitalism is often linked with aristocratic values, an aversion to mass taste is not necessarily a bad thing. Indeed, a reverence for antiquity is an instructive and civilizing influence. On the other hand, a socialized economy for the imposition of aristocratic values by force is abundantly a bad thing. The central problem is how the tangible fabric of the past can be preserved to instruct the future without repudiating the free economy essential to the creation of a future society worth preserving.²³¹ This problem will be addressed at the conclusion of the article, but not before one proposed future course for the preservation movement is examined and rejected.

D. *The Proposed Environmentalist-Preservationist Alliance*

There are those who would have the historic preservation movement ally itself with natural environmental groups, such as the Sierra Club. They argue that it is a natural alliance between those who would preserve the built environment and those who would preserve its natural counterpart. Before any such alliance takes place, preservationists

228. E. BANFIELD, *supra* note 9, at 25-51.

229. *To Preserve or Not? That is the Question for a Neo-Neon Age*, Wall St. J., Mar. 28, 1980 at 1, col. 4.

230. *Id.* at 28, col. 1.

231. The ultimate irony would arise if, as a result of over-regulation supported by preservationists, capitalist enterprises were bankrupted, only then to be preserved as monuments by the same preservationists. Although the reasons for its closing may not necessarily have been governmental regulation, The Sloss Furnace in Birmingham, Alabama, a 118-year-old iron processing furnace, is now being converted into a museum. The Chapel Hill Newspaper, June 1, 1979 at 3A, col. 1; Kulik, *Birmingham*, Am. Preservation, Feb.-Mar. 1978, at 20.

should be aware of some of the characteristics of the environmental lobby and how notoriously inadequate government has been in managing public lands.

First, consider the environmentalists as a group. They are hardly representative of American society as a whole, being drawn primarily from a strata of leisured, educated affluence.²³² Many environmentalists are members of the new class who, having no need for upward mobility, can afford to support policies that stifle economic growth.²³³ Many environmentalists are hostile toward the free market. Adept at manipulating the political process, the environmental lobby enjoys an influence far out of proportion to its numbers, and is able to impose heavy regulatory costs on society as a whole.²³⁴ As major consumers of recreation, the environmentalists advance their own self-interest by preserving wilderness and park areas, which they preponderantly enjoy. The poor, for example, rarely visit the more remote parks, and increasing transportation costs have reduced their accessibility to the middle class.

Secondly, one must consider government's competence in environmental management. In its husbandry of natural areas, government has proved itself adept at only two things: subsidizing political powerful groups and degrading and overusing the public lands committed to its charge.

Consider, for example, governmental management of our national parks, forests, and public grazing lands. In all of these areas access is rationed at below-market prices. Subsidies are thereby conferred on park visitors,²³⁵ timber harvesters,²³⁶ and livestock ranchers.²³⁷ Furthermore, because the lands are publicly owned, no one has any incentive to carefully husband the land. As a result of the lack of private property rights, the parks are overcrowded,²³⁸ timber is overcut,²³⁹ and

232. B. FRIEDEN, *THE ENVIRONMENTAL PROTECTION HUSTLE* 130 (1979); R. SMITH, *EARTH'S RESOURCES: PRIVATE OWNERSHIP V. PUBLIC WASTE* 50-56 (1979); Baden, *Neospartan Hedonists, Adult Toy Afficianados, and the Rationing of Public Lands*, in *MANAGING THE COMMONS* 241-51 (G. Hardin & J. Baden eds. 1977); Chickering, *Land Use Controls and Low Income Groups: Why Are There No Poor People in the Sierra Club?*, in *NO LAND IS AN ISLAND* 87-91 (Institute for Contemporary Studies 1975).

233. *Stifled Growth? Industrialists Losing War of the Wilderness as Combat Rages On*, *Wall St. J.*, June 18, 1979, at 1, col. 1.

234. See generally, B. FRIEDEN, *supra* note 232; R. SMITH, *supra* note 232.

235. G. STANKEY & J. BADEN, *RATIONING WILDERNESS USE: METHODS, PROBLEMS, AND GUIDELINES* (1977).

236. Baden & Stroup, *Property Rights, Environmental Quality, and the Management of National Forests*, in *MANAGING THE COMMONS* 236-38 (G. Hardin & J. Baden eds. 1977); Stroup & Baden, *Externality, Property Rights, and the Management of Our National Forests*, 16 *J.L. & ECON.* 303 (1973).

237. Baden & Stroup, *supra* note 236 at 238-40;

238. A. ALCHIAN & W. ALLEN, *UNIVERSITY ECONOMICS* 154 (3d ed. 1972); D. NORTH & R. MILLER, *ECONOMICS OF PUBLIC ISSUES* 95-98 (2d ed. 1973).

239. Baden & Stroup, *supra* note 236; Stroup & Baden, *supra* note 236.

lands are overgrazed.²⁴⁰

Should the preservation movement ally itself with advocates of governmental incompetence and narrow self-interest? Should it ally itself with a lobby that is hostile toward a growing, free-enterprise economy, and that has a vested interest in governmental regulation and a zero growth rate? Should it ally itself with a statist lobby that imposes enormous regulatory costs on society as a whole? Should it ally itself with a lobby that holds itself out as advancing the public interest while steadfastly advancing no interest but its own?

The answer is obviously no. If the preservation movement is ever to build itself upon sound principles of political economy, it must eschew an alliance with the environmental extremists. Where then should the future lead?

V. HISTORIC PRESERVATION, PUBLIC CHOICE, AND THE FUTURE

Scholarly articles usually conclude with a prescription of what the law ought to be. Although this article is no exception, one must be realistic in assessing the likelihood of meaningful change in light of the realities of public choice. Given the incentive structure of present-day preservation law and politics, one cannot be overly sanguine about the effect that ideas will have on those who benefit from the concentrated benefits of preservation regulation and subsidies. The beneficiaries of political entrepreneurship are loathe to surrender their subsidies even if, in the aggregate, an end to transfer legislation would be beneficial to all. It may be, as Armen Alchian suggests, that education does not make much difference in the trend toward socialism so long as the incentives for transfer legislation remain intact.²⁴¹ On the other hand, such a view may be overly pessimistic, and a strategy along the lines suggested by Michael Novak²⁴² might well herald a reversal of the drift toward the omnipotent state.

At present, the preservation movement is disinclined to repudiate the state. In spite of the newly operative private revolving funds and the new preservation restriction statutes, most indications point toward a preponderant politicization. A recent front-page, new-class manifesto of political entrepreneurship for preservationists²⁴³ reveals a new, aggressive interest in the transfer of wealth so typical of the new class and political coalitions. This lack of restraint is the central political prob-

240. *Western Land Menaced by Desert*, Chapel Hill Newspaper, July 29, 1979; *See also, Recolonizing the West*, Wall St. J., Oct. 15, 1979, at 24, col. 1.

241. Alchian, *Economic Laws and Political Legislation*, in *THE INTERACTION OF ECONOMICS AND THE LAW* 142-44 (B. Siegan ed. 1977).

242. M. NOVAK, *supra* note 207, at 37-60.

243. *The Battle for the Budget*, Preservation News, May 1980, at 1, col. 1.

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lem of our time that has so degraded public discourse and the very nature of law itself. It is tragic that the transfer mentality has spread to the preservationists who make so much of their lofty ideals of preserving what is best in American society.

Given this misdirection of the preservation movement, prescriptions for beneficial change come easily. As to methodology, the preservation movement must repudiate the state and embrace the private law as the means to achieving its goals. It must eschew the use of politics and must pay the full cost of its preferences without any subsidies. Self-restraint must be the norm, and the rewards for political entrepreneurship must be ended. In short, there must be a complete and total reversal of the direction of the preservation movement.

The preservation movement must reaffirm its commitment to the survival of democratic capitalism and must recognize the endemic self-interest and statist influence of its new-class members. It must also preserve more than just the built environment. The freedom of the individual must be preserved along with Paca House and Pulaski Square. The market system and the common law at its best must be preserved along with the Battery and Beacon Hill. Only when these commitments are met will the preservation movement be worthy of its name.

**Appendix of State and Territorial Historic Preservation
Statutes and Session Laws***

Alabama

- Archaeology: ALA. CODE tit. 41, §§ 41-3-1 to -6 (1975).
- Archives and Historical Commissions: ALA. CODE tit. 41, §§ 41-6-1 to -15, -9-220 to -221, -9-240 to -250, -9-270 to -330, -9-510 to -513, -9-530 to -532 (1975 & Supp. 1979).
- Attorney-General Opinions: Since 1964 there have been approximately thirty opinions generally discussing the day-to-day activities of preservation agencies. Two opinions concern tax consequences of gifts for preservation purposes. 129 Op. Att'y Gen. 51 (1967); 138 Op. Att'y Gen. 7 (1970).
- Historic Districts: Historic district legislation in Alabama is organized by city. Formerly, what was in actuality local legislation was codified in a statutory appendix. With the publication of the new statutes, reference must be made to the original session laws. No. 100, § 1, 1967 Ala. Acts 127; No. 140, § 1, 1971 Ala. Acts 220, *as amended*, No. 581, § 1, 1973 Ala. Acts 837; No. 421, § 1, 1971 Ala. Acts 1153, *as amended*, No. 66, § 1, 1978 Ala. Acts 1751; No. 1307, § 1, 1971 Ala. Acts 2251; No. 2271, § 1, 1971 Ala. Acts 3659, *as amended*, No. 121, § 1, 1972 Ala. Acts 4360; No. 155, § 1, 1973 Ala. Acts 192; No. 207, § 1, 1973 Ala. Acts 241; No. 685, § 1, 1973 Ala. Acts 1030.
- Historic Preservation: ALA. CODE tit. 41, §§ 41-10-135 to -151 (Supp. 1979). *See also* Archives and Historical Commissions.
- Principal State Agency: ALA. CODE tit. 41, §§ 41-9-240 to -250 (1975 & Supp. 1979).
- Public Financial Assistance: ALA. CODE tit. 41, § 41-9-255 (1975); *id.* §§ 41-10-142 to -146 (Supp. 1979).
- State Parks and Historic Sites: ALA. CODE tit. 9, §§ 9-14-1 to -6 (1975).
- Taxation: ALA. CODE tit. 41, § 41-10-147 (Supp. 1979); ALA. CONST. art. XI, § 217 (*as amended by* Amendment No. 373, declared ratified Nov. 20, 1978).
- Tort Liability: ALA. CODE tit. 35, §§ 35-15-1 to -5 (1975).

* The format of this appendix is similar to one I used in *A Guide to State Programs* published in 1976 by the Preservation Press of the National Trust for Historic Preservation. This appendix, however, does not summarize legislation as does the 1976 Guide.

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Alaska

- Archaeology: ALASKA STAT. § 44.37.040 (1976).
 Archives and Historical Commissions: ALASKA STAT. §§ 44.19.461-496 (1976).
 Historic Districts: ALASKA STAT. § 29.33.090 (1972 & Supp. 1979); *id.* §§ 29.48.108-.110 (Supp. 1979); *id.* § 41.35.180(5) (1977); *id.* §§ 45.98.010-.070 (Supp. 1979).
 Historic Preservation: ALASKA STAT. §§ 41.35.010-.240 (1977).
 Historic Trails: *See* State Parks and Historic Sites.
 Principal State Agency: ALASKA STAT. §§ 41.35.110-.190 (1977).
 Public Financial Assistance: ALASKA STAT. § 41.22.010 (1977); *id.* § 41.35.040; *id.* §§ 45.98.010-.070 (Supp. 1979).
 Review of Projects: ALASKA STAT. § 41.35.070 (1977).
 State Parks and Historic Sites: ALASKA CONST. art. VIII, § 7; ALASKA STAT. §§ 41.20.010-.345 (1977); *id.* §§ 41.22.010-.030.
 Taxation: ALASKA STAT. § 29.53.025(b)(2)(C), (e) (Supp. 1979).

American Samoa

- Archaeology: *See* Archives and Historical Commissions.
 Archives and Historical Commissions: A.S. CODE tit. 3, §§ 401-407 (1973); *id.* tit. 25, §§ 1-406 (1973).
 Crimes: A.S. CODE tit. 15, § 1081 (1973).
 Environmental Quality: A.S. CODE tit. 29, §§ 1217-1218 (1973).
 State Parks and Historic Sites: A.S. CODE tit. 32, §§ 1-202 (1973).

Arizona

- Archaeology: ARIZ. REV. STAT. ANN. §§ 41-841 to -846 (1974 & Supp. 1979-1980).
 Archives and Historical Commissions: ARIZ. REV. STAT. ANN. §§ 41-821 to -825, -831 to -834 (1974); *id.* §§ 41-1331 to -1352 (Supp. 1979-1980).
 Attorney-General Opinions: Op. Att'y Gen. 74-13. Entry onto state school trust lands for archaeological exploration is controlled by director of Arizona state museum.
 Crimes: ARIZ. REV. STAT. ANN. §§ 13-707(2), -3702(A), (C), -3703(A)(1), (D) (1978). *See also* Archaeology.
 Historic and Scenic Roads: ARIZ. REV. STAT. ANN. §§ 41-512 to -517 (Supp. 1979-1980).
 Historic Districts: ARIZ. REV. STAT. ANN. § 9-462.01(A)(10) (1977).
 Principal State Agency: ARIZ. REV. STAT. ANN. §§ 41-511.02-.04 (Supp. 1979-1980).
 State Parks and Historic Sites: ARIZ. REV. STAT. ANN. §§ 41-511 to -511.20 (1974 & Supp. 1979-1980).

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Taxation: ARIZ. REV. STAT. ANN. §§ 42-139.01-.03 (Supp. Pamph. 1979).

Arkansas

Archaeology: ARK. STAT. ANN. §§ 8-801 to -808 (1976); *id.* §§ 9-1001 to -1017 (1976 & Supp. 1979).

Archives and Historical Commissions: ARK. STAT. ANN. §§ 6-201 to -208 (1976 & Supp. 1979).

Crimes: ARK. STAT. ANN. §§ 41-113(2)(a), -901(2)(a), -1101(2)(a), -2916, -2917 (1977). *See also* Archaeology.

Environmental Quality: ARK. STAT. ANN. §§ 9-1401 to -1416 (1976 & Supp. 1979).

Historic Districts: ARK. STAT. ANN. §§ 19-5001 to -5011 (1980).

Historic Preservation: ARK. STAT. ANN. §§ 14-654 to -654.3 (1979).
See also Principal State Agency.

Historic Trails: *See* State Parks and Historic Sites.

Preservation Restrictions: ARK. STAT. ANN. §§ 50-1201 to -1206 (Supp. 1979).

Principal State Agency: ARK. STAT. ANN. §§ 8-904 to -913 (Supp. 1979).

Review of Projects: ARK. STAT. ANN. § 9-1006 (1976).

State Parks and Historic Sites: ARK. STAT. ANN. §§ 8-101 to -606 (1976); *id.* §§ 9-601 to -647 (1976 & Supp. 1979).

State Register of Historic Places: ARK. STAT. ANN. §§ 8-910 to -911 (Supp. 1979).

Tort Liability: ARK. STAT. ANN. §§ 50-1101 to -1107 (1971).

California

Archaeology: CAL. PUB. RES. CODE §§ 5097-5097.97 (West 1972 & Supp. 1980).

Archives and Historical Commissions: CAL. GOV'T CODE §§ 12220-12232 (West 1963 & Supp. 1980); CAL. PUB. RES. CODE §§ 5120-5132 (West 1972).

Building Codes: CAL. HEALTH & SAFETY CODE §§ 18950-18960 (West Supp. 1980).

Crimes: CAL. PENAL CODE §§ 622-622½ (West 1970); *id.* § 623 (West Supp. 1980). *See also* Archaeology.

Environmental Quality: CAL. PUB. RES. CODE §§ 5093.30-.40 (West Supp. 1980); *id.* §§ 5093.50-.65, 21000-21174; *id.* §§ 6370-6378 (West 1977 & Supp. 1980).

Historic Districts: CAL. GOV'T CODE §§ 50280-50290 (West Supp. 1980); CAL. PUB. RES. CODE §§ 5031-5033 (West Supp. 1980).

Historic Landmarks: CAL. GOV'T CODE §§ 25373, 37361 (West 1968).

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- Historic Preservation: CAL. GOV'T CODE § 65303 (West Supp. 1980).
 Historic Trails: CAL. PUB. RES. CODE §§ 5050-5076 (West Supp. 1980).
See also State Park and Historic Sites.
- Principal State Agency: CAL. PUB. RES. CODE §§ 5020-5020.4 (West Supp. 1980).
- State Parks and Historic Sites: CAL. PUB. RES. CODE §§ 5001-5019.5 (West 1972 & Supp. 1980); *id.* §§ 5020-5025.2; *id.* §§ 5096.1-.101; *id.* §§ 5040-5043 (West 1972); *id.* §§ 5093.50-.65 (West Supp. 1980); *id.* §§ 6370-6378 (West 1977).
- State Register of Historic Places: CAL. PUB. RES. CODE §§ 5020.4, 5021 (West Supp. 1980).
- Taxation: CAL. REV. & TAX CODE §§ 421-430.5 (West 1970 & Supp. 1980); *id.* §§ 439-439.4 (West Supp. 1980); CAL. PUB. RES. CODE §§ 5031-5033 (West Supp. 1980); CAL. GOV'T CODE §§ 50280-50290 (West Supp. 1980).
- Tort Liability: CAL. CIV. CODE § 846 (West Supp. 1980).

Colorado

- Archaeology: COLO. REV. STAT. §§ 24-80-401 to -410 (1973).
- Archives and Historical Commissions: COLO. REV. STAT. §§ 24-80-101 to -112 (1973 & Supp. 1979); *id.* §§ -201 to -213 (1973); *id.* §§ -301 to -307.
- Attorney-General Opinions: Op. Att'y Gen. (Dec. 27, 1974).
- Crimes: COLO. REV. STAT. § 18-4-501 (1973); *id.* § 24-80-801 (1973).
See also Archaeology and Historic Districts.
- Environmental Quality: COLO. REV. STAT. §§ 24-65.1-101 to -502 (Supp. 1979); *id.* §§ 29-20-101 to -107; *id.* § -21-101 (1977 & Supp. 1979).
- Historic Districts: COLO. REV. STAT. §§ 24-80-1201 to -1202 (1973).
- Historic Preservation: COLO. REV. STAT. §§ 24-80.1-101 to -108 (Supp. 1979).
- Historic Trails: COLO. REV. STAT. §§ 33-42-101 to -112 (1973 & Supp. 1979).
- Preservation Restrictions: COLO. REV. STAT. §§ 31-25-201, -301 (1977); *id.* §§ 38-30.5-101 to -110 (Supp. 1979).
- Principal State Agency: COLO. REV. STAT. §§ 24-80-201 to -213 (1973).
- Public Financial Assistance: COLO. REV. STAT. §§ 7-49-101 to -118 (Supp. 1979).
- Review of Projects: COLO. REV. STAT. §§ 24-65.1-101 to -502 (Supp. 1979).
- State Parks and Historic Sites: COLO. REV. STAT. §§ 24-80-501 to -502 (1973).

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- State Register of Historic Places: COLO. REV. STAT. §§ 24-80.1-101 to -108 (Supp. 1979).
Taxation: COLO. REV. STAT. § 39-1-104(5), -5-105 (Supp. 1979); No. 572, § 1, 1977 Colo. Sess. Laws 1541.
Tort Liability: COLO. REV. STAT. §§ 33-41-101 to -106 (1973 & Supp. 1979).

Connecticut

- Archives and Historical Commissions: *See* Principal State Agency.
Building Codes: CONN. GEN. STAT. ANN. §§ 19-395t, -403(c), (g) (West Supp. 1980).
Crimes: *See* Historic Districts.
Environmental Quality: CONN. GEN. STAT. ANN. §§ 7-131a to -131n (West 1972 & Supp. 1980); *id.* §§ 22a-1 to -45 (West 1975 & Supp. 1980).
Historic Districts: CONN. GEN. STAT. ANN. §§ 7-147a to -147l (West 1972 & Supp. 1980).
Historic Trails: CONN. GEN. STAT. ANN. §§ 23-66 to -72 (West 1975 & Supp. 1980).
Preservation Restrictions: CONN. GEN. STAT. ANN. §§ 47-42a to -42c (West 1978).
Principal State Agency: CONN. GEN. STAT. ANN. §§ 10-321 to -321g (West 1977 & Supp. 1980).
Public Financial Assistance: No. 77-47, § 8, 1977 Conn. Spec. Acts 54.
Quasi-Public Nonprofit Organization: Spec. Act 75-93, § 1, 1975 Conn. Pub. Acts 94.
Review of Projects: CONN. GEN. STAT. ANN. § 10-321(b)(13) (West 1977 & Supp. 1980).
State Parks and Historic Sites: CONN. GEN. STAT. ANN. §§ 4-133 to -135 (West 1960 & Supp. 1980); *id.* § 13a-252 (West Supp. 1980); *id.* §§ 23-4 to -27 (West 1975 & Supp. 1980); *id.* § 47-18 (West 1960).
State Register of Historic Places: CONN. GEN. STAT. ANN. § 10-321(b)(2) (West 1977 & Supp. 1980).
Taxation: CONN. GEN. STAT. ANN. § 12-81(7) (West Supp. 1980); *id.* §§ 12-127a, -347 (West 1972); *id.* § 7-131b.
Tort Liability: CONN. GEN. STAT. ANN. §§ 52-557f to -557i (West Supp. 1980). *See also* Historic Trails.

Delaware

- Archaeology: DEL. CODE ANN. tit. 7, §§ 5301-5306, 5401 (1974).
Archives and Historical Commissions: DEL. CODE ANN. tit. 29, §§ 401-423, 501-536, 571-574 (1974 & Supp. 1978).

Civil Liability: *See* Archaeology and State Parks and Historic Sites.
 Crimes: *See* Archaeology and State Parks and Historic Sites.
 Principal State Agency: DEL. CODE ANN. tit. 29, §§ 551-574 (1974).
 Public Financial Assistance: DEL. CODE ANN. tit. 29, § 554 (1974).
 State Parks and Historic Sites: *See* Principal State Agency.
 Tort Liability: DEL. CODE ANN. tit. 7, §§ 5901-5907 (1974).

District of Columbia

Historic Districts: D.C. CODE ENCYCL. §§ 5-801 to -805 (West 1966);
 Historic Landmark and Historic District Protection Act of 1978
 (Bill 2-367, adopted Nov. 28, 1978).
 Historic Landmarks: D.C. CODE ENCYCL. § 5-410 (West 1966); His-
 toric Landmark and Historic District Protection Act of 1978 (Bill
 2-367, adopted Nov. 28, 1978).
 State Parks and Historic Sites: D.C. CODE ENCYCL. §§ 1-1001 to -1013,
 8-103 to -171 (West 1966 & Supp. 1970 & Supp. 1978-1979); *id.*
 § 5-410 (West 1966); *id.* §§ 9-101 to -501 (West 1966 & Supp. 1978-
 1979).
 Taxation: D.C. CODE ENCYCL. §§ 47-651 to -654 (West Supp. 1978-
 1979); *id.* §§ 47-801a to -837 (West 1968 & Supp. 1970 & Supp.
 1978-1979).

Florida

Archaeology: FLA. STAT. ANN. §§ 267.11-.14 (West 1975). *See also*
 Environmental Quality and State Parks and Historic Sites.
 Archives and Historical Commissions: FLA. STAT. ANN. § 267.051
 (West 1975).
 Attorney-General Opinions: Op. Att'y Gen. 069-43 (June 26, 1969).
 Authority of Florida Board of Parks and Historic Memorials over
 state park not subject to county zoning laws.
 Crimes: *See* Archaeology.
 Environmental Quality: FLA. STAT. ANN. §§ 380.012-.25 (West 1975 &
 Supp. 1979).
 Historic Districts: FLA. STAT. ANN. §§ 266.01-.07 (West 1975) (St. Au-
 gustine); *id.* §§ 266.101-.108 (Pensacola); *id.* §§ 266.110-.117 (Tal-
 lahassee); *id.* §§ 266.201-.208 (West 1975 & Supp. 1979) (Key
 West); *id.* §§ 266.301-.308 (Boca Raton); *id.* §§ 266.401-.410 (West
 Supp. 1979) (Tampa); *id.* §§ 267.0615-.0616; Ch. 73-408, § 1, 1973
 Fla. Laws 46 (Bradford County).
 Preservation Restrictions: FLA. STAT. ANN. § 704.06 (West 1979).
 Principal State Agency: FLA. STAT. ANN. §§ 267.061-.0616 (West 1975
 & Supp. 1979).

- Public Financial Assistance: FLA. STAT. ANN. § 267.0617 (West Supp. 1979).
 State Parks and Historic Sites: FLA. STAT. ANN. §§ 275.011-.315 (West 1974 & Supp. 1979).
 Tort Liability: FLA. STAT. ANN. §§ 375.251 (West 1975 & Supp. 1979).

Georgia

- Archaeology: GA. CODE ANN. §§ 40-813a to -814a (1975); *id.* §§ 43-2501 to -2508 (1978).
 Archives and Historical Commissions: GA. CODE ANN. §§ 23-2601 to -2606 (1971); *id.* §§ 40-801 to -812, -801a to -812a (1975 & Supp. 1979).
 Attorney-General Opinions: Op. Att'y Gen. 71-139 tax exemption of preservation organization; 76-50 not essential that land subject to conservation easement be within historic district; 79-14 expenses authorized for members and employees of Historic Chattahoochee Commission.
 Crimes: GA. CODE ANN. 40-9910 (1975); *id.* §§ 43-9915, -9916 (1978).
 Environmental Quality: GA. CODE ANN. §§ 17-901 to -905 (1971 & Supp. 1979); *id.* §§ 43-1201 to -1207 (1978); *id.* §§ -2601 to -2607 (Supp. 1979).
 Historic Districts: No. 196, § 1, 1968 Ga. Laws 1591 (Savannah); No. 268, § 1, 1968 Ga. Laws 1826, *as amended*, No. 241, § 1, 1972 Ga. Laws 1515 (Atlanta); No. 206, § 1, 1970 Ga. Laws 1078 (Augusta).
 Historic Preservation: GA. CODE ANN. §§ 43-120 to -138 (1978); *id.* §§ 43-2301 to -2308. *See also* Archives and Historical Commissions.
 Historic Trails: GA. CODE ANN. §§ 43-1501 to -1507 (1978).
 Preservation Restrictions: GA. CODE ANN. §§ 85-1406 to -1410 (1978 & Supp. 1979).
 Principal State Agency: GA. CODE ANN. §§ 40-801a to -814a (1975 & Supp. 1979).
 State Parks and Historic Sites: *See* Historic Preservation.
 Taxation: GA. CODE ANN. § 85-1409 (1978).
 Tort Liability: GA. CODE ANN. §§ 105-403 to -409 (1968).

Guam

- Archaeology: GUAM GOV'T CODE §§ 13985.11, .15-.28, .29-.35 (Supp. 1974).
 Archives and Historical Commissions: GUAM GOV'T CODE §§ 13985.36-.40 (Supp. 1974).
 Crimes: GUAM GOV'T CODE §§ 13985.25, .27, .28, .35 (Supp. 1974); GUAM PENAL CODE § 622a (1970).

- Environmental Quality: GUAM GOV'T CODE §§ 26300-26306 (Supp. 1974).
 Historic Preservation: *See* Principal State Agency.
 Principal State Agency: GUAM GOV'T CODE §§ 13985-13985.14 (Supp. 1974).
 Public Financial Assistance: GUAM GOV'T CODE § 13985.2(5) (Supp. 1974).
 Review of Projects: GUAM GOV'T CODE §§ 13985.11, .23, .41 (Supp. 1974).
 State Register of Historic Places: GUAM GOV'T CODE § 13985.2(2) (Supp. 1974).

Hawaii

- Archaeology: HAWAII REV. STAT. § 6E-7 (1976).
 Attorney General Opinions: Op. Att'y Gen. (Oct. 26, 1979). Properties placed on Hawaii Register of Historic Places without notification to property owner have not been validly registered and should be removed prior to possible resubmission of application that meets due process requirements.
 Building Codes: HAWAII REV. STAT. § 6E-15 (1976).
 Crimes: HAWAII REV. STAT. §§ 6E-11 to -12 (1976).
 Environmental Quality: HAWAII REV. STAT. §§ 201-30(6), 344-1 to -4 (1976).
 Historic Districts: HAWAII REV. STAT. §§ 46-4.5, 246-34 (1976).
 Historic Preservation: HAWAII CONST. art. VIII, § 5; HAWAII REV. STAT. §§ 6-16 to -16.9 (1976 & Supp. 1979); *id.* §§ 58-1 to -5. *See also* Principal State Agency.
 Preservation Restrictions: HAWAII REV. STAT. § 6E-15 (1976).
 Principal State Agency: HAWAII REV. STAT. §§ 6E-1 to -39 (1976).
 Review of Projects: HAWAII REV. STAT. §§ 6E-8 to -10 (1976).
 State Register of Historic Places: HAWAII REV. STAT. § 6E-3(4) (1976).
 Taxation: HAWAII REV. STAT. § 246-34 (1976).

Idaho

- Archaeology: IDAHO CODE §§ 67-4118 to -4122 (1973).
 Archives and Historical Commissions: IDAHO CODE §§ 67-4123 to -4130 (1973 & Supp. 1979); *id.* § 31-864 (Supp. 1979).
 Building Codes: IDAHO CODE § 67-4618 (Supp. 1979).
 Civil Liability: IDAHO CODE § 67-4118 (1973).
 Crimes: IDAHO CODE § 18-7021 (1979); *id.* §§ 67-4118, -4122 (1973).
See also State Parks and Historic Sites.
 Historic Districts: IDAHO CODE §§ 67-4607 to -4612 (Supp. 1979).
 Historic Landmarks: IDAHO CODE §§ 67-4614 to -4616 (Supp. 1979).

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- Historic Preservation: IDAHO CODE §§ 67-4601 to -4619 (Supp. 1979).
 Historic Trails: *See* State Parks and Historic Sites.
 Preservation Restrictions: IDAHO CODE § 67-4612 to -4613 (Supp. 1979).
 Principal State Agency: IDAHO CODE §§ 67-4123 to -4130 (1973 & Supp. 1979).
 Public Financial Assistance: IDAHO CODE § 31-864 (Supp. 1979).
 State Parks and Historic Sites: IDAHO CODE §§ 67-4113 to -4118 (1973 & Supp. 1979); *id.* §§ 67-4201 to -4236, -4301 to -4312.
 Tort Liability: IDAHO CODE § 36-1604 (1977).

Illinois

- Archaeology: ILL. ANN. STAT. ch. 127, §§ 133C1-133C6 (Smith-Hurd 1967 & Supp. 1979).
 Archives and Historical Commissions: ILL. ANN. STAT. ch. 24 §§ 11-47-1 to -2, -48-1 to -3 (Smith-Hurd 1962); *id.* ch. 34, § 412 (Smith-Hurd 1960); *id.* § 2481 (Smith-Hurd Supp. 1979); *id.* ch. 81, §§ 70-71 (Smith-Hurd 1966); *id.* ch. 116, §§ 43.4-47.1 (Smith-Hurd Supp. 1979); *id.* ch. 128, §§ 13-17 (Smith-Hurd 1953 & Supp. 1979); *id.* §§ 18-20 (Smith-Hurd Supp. 1979).
 Civil Liability: ILL. ANN. STAT. ch. 127, § 133d12 (Smith-Hurd Supp. 1979).
 Crimes: *See* Archaeology.
 Historic Districts: ILL. ANN. STAT. ch. 24, §§ 11-48.2-1 to -7 (Smith-Hurd Supp. 1979), *as amended*, P.A. 81-560, 1979 Ill. Legis. Serv. 1273 (West).
 Historic Landmarks: ILL. ANN. STAT. ch. 24, § 11-48.2-2, -5 (Smith-Hurd Supp. 1979), *as amended*, P.A. 81-560, 1979 Ill. Legis. Serv. 1273 (West).
 Preservation Restrictions: ILL. ANN. STAT. ch. 24, §§ 11-48.2-1A(2), (5), -2 (Smith-Hurd Supp. 1979); *id.* ch. 30, §§ 401-406.
 Principal State Agency: ILL. ANN. STAT. ch. 127, §§ 133d1-133d14 (Smith-Hurd Supp. 1979).
 Review of Projects: ILL. ANN. STAT. ch. 127, §§ 133d8-133d9 (Smith-Hurd Supp. 1979).
 State Parks and Historic Sites: ILL. ANN. STAT. ch. 19, §§ 37.11-24 (Smith-Hurd 1972 & Supp. 1979); *id.* ch. 34, § 303 (Smith-Hurd Supp. 1979); *id.* ch. 57½, §§ 101-121 (Smith-Hurd 1972 & Supp. 1979); *id.* ch. 105, § 325a (Smith-Hurd 1952); *id.* §§ 465-551 (Smith-Hurd 1952 & Supp. 1979); *id.* ch. 127, §§ 200-21 to -34 (Smith-Hurd 1967 & Supp. 1979); *id.* ch. 128, §§ 31-33 (Smith-Hurd Supp. 1979).

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- State Register of Historic Places: ILL. ANN. STAT. ch. 127, § 133d6 (Smith-Hurd Supp. 1979).
 Taxation: ILL. ANN. STAT. ch. 24, § 11-48.2-6 (Smith-Hurd Supp. 1979).
 Tort Liability: ILL. ANN. STAT. ch. 70, §§ 31-37 (Smith-Hurd Supp. 1979).

Indiana

- Archaeology: IND. CODE ANN. §§ 14-3-3.3-4 to -5 (Burns Supp. 1979).
 Archives and Historical Commissions: IND. CODE ANN. §§ 17-3-86-1 to -11 (Burns 1974).
 Crimes: IND. CODE ANN. §§ 14-3-3.3-9, 18-4-22-10.1 (Burns Supp. 1979).
 Historic Districts: IND. CODE ANN. §§ 18-4-22-1 to -12 (Burns Supp. 1979); *id.* §§ -24-1 to -25 (Burns 1974); *id.* §§ -7-22-1 to -11 (Burns Supp. 1979).
 Historic Preservation: IND. CODE ANN. §§ 14-3-3.3-1 to -14 (Burns Supp. 1979); *id.* § 17-1-14-11(1)(B).
 Preservation Restrictions: IND. CODE ANN. § 14-3-3.3-12 (Burns Supp. 1979).
 Principal State Agency: *See* Historic Preservation.
 Review of Projects: IND. CODE ANN. §§ 14-3-3.3-5, -11 (Burns Supp. 1979).
 State Parks and Historic Sites: IND. CODE ANN. §§ 14-6-1-1 to -28-4 (Burns 1973 & Supp. 1979); *id.* §§ 17-2-55-1 to -3 (Burns 1974); *id.* §§ 18-5-15-1, -7-5-99.
 State Register of Historic Places: IND. CODE ANN. §§ 14-3-3.3-6(b), -10 (Burns Supp. 1979).
 Tort Liability: IND. CODE ANN. § 14-2-6-3 (Burns 1973).

Iowa

- Archaeology: IOWA CODE ANN. §§ 305A.1-9 (West Supp. 1979-1980).
 Archives and Historical Commissions: IOWA CODE ANN. §§ 303.1-.15 (West Supp. 1979-1980); *id.* §§ 304.1-.17; *id.* § 358B.17 (West 1977).
 Attorney-General Opinions: Op. Att'y Gen. (Glenn) (Nov. 19, 1976) municipality must establish historic districts under IOWA CODE ANN. §§ 303.20-.33 and not through general zoning power for aesthetic purposes; (Spencer) (Apr. 26, 1977) discussion of landowner liability for injuries under IOWA CODE ANN. §§ 111C.1-.7.
 Environmental Quality: IOWA CODE ANN. §§ 27A.1-.6 (West 1978); *id.* §§ 108A.1-.7 (West Supp. 1979-1980); *id.* §§ 111A.1-.10; *id.* §§ 111B.1-13; *id.* §§ 111D.1-5.

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Historic Districts: IOWA CODE ANN. §§ 303.20-.33 (West Supp. 1979-1980).

Principal State Agency: IOWA CODE ANN. §§ 303.1-.15 (West Supp. 1979-1980).

Review of Projects: IOWA CODE ANN. § 305A.5 (West Supp. 1979-1980).

State Parks and Historic Sites: IOWA CODE ANN. §§ 111.1-.49 (West 1949 & Supp. 1979-1980).

State Register of Historic Places: IOWA CODE ANN. §§ 303.5(9), .8(3) (West Supp. 1979-1980).

Tort Liability: IOWA CODE ANN. §§ 111C.1-.7 (West Supp. 1979-1980).

Kansas

Archaeology: KAN. STAT. ANN. §§ 74-5401 to -5408 (1972 & Supp. 1979).

Archives and Historical Commissions: KAN. STAT. ANN. §§ 75-2701 to -2714 (1977 & Supp. 1979).

Attorney-General Opinions: VI Op. Att'y Gen. 692 (Apr. 16, 1969) exemption from taxation of building used for historical purposes; Op Att'y Gen. (Dec. 11, 1979) enactment of, or amendment to, a municipal zoning ordinance is not a "project" within the meaning of KAN. STAT. ANN. § 75-2724 requiring opportunity for historic preservation officer to comment.

Crimes: *See* Archaeology.

Historic Preservation: KAN. STAT. ANN. §§ 75-2715 to -2725 (1977).

Principal State Agency: *See* Historic Preservation.

Review of Projects: KAN. STAT. ANN. §§ 75-2724 to -2725 (1977).

State Parks and Historic Sites: KAN. STAT. ANN. §§ 19-1927 to -1928a (1974); *id.* §§ 76-2001 to -2048 (1977 & Supp. 1979).

State Register of Historic Places: KAN. STAT. ANN. §§ 75-2720(b),(d), -2721(b) (1977).

Tort Liability: KAN. STAT. ANN. §§ 58-3201 to -3207 (1976).

Kentucky

Archaeology: KY. REV. STAT. §§ 164.705-.735 (1980).

Archives and Historical Commissions: KY. REV. STAT. §§ 171.311-.340, .385-.395, .410-.990 (1980). *See also* Principal State Agency.

Attorney General Opinions: Op. Att'y Gen. 72-537, 75-80, 75-328, 76-178, 78-10. Discussions of the implementation and enforcement of the Kentucky archaeology statute.

Crimes: *See* Archaeology.

Environmental Quality: KY. REV. STAT. §§ 146.200-.990 (1980).

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- Historic Districts: KY. REV. STAT. § 100.127(3), .203(1)(e) (Supp. 1978); *id.* § 100.201 (1971).
 Historic Trails: *See* State Parks and Historic Sites.
 Principal State Agency: KY. REV. STAT. §§ 171.381-.384 (1980).
 State Parks and Historic Sites: KY. REV. STAT. §§ 148.001-.991 (1980).
 State Register of Historic Places: KY. REV. STAT. § 171.381(4)(d) (1980).
 Tort Liability: KY. REV. STAT. § 150.645 (1980).

Louisiana

- Archaeology: LA. REV. STAT. ANN. §§ 41:1601 to :1613 (West Supp. 1980).
 Archives and Historical Commissions: LA. CONST. art. IV § 7; LA. REV. STAT. ANN. §§ 17:1541 to :1543 (West 1963); *id.* §§ 44:404 to :430 (West Supp. 1980).
 Attorney-General Opinions: Op. Att'y Gen. (Dec. 21, 1966). Discussion of the effect of federal preservation statutes.
 Crimes: *See* Archaeology and Historic Districts.
 Environmental Quality: LA. REV. STAT. ANN. §§ 56:1841 to :1849 (West Supp. 1980).
 Historic Districts: LA. CONST. art. XII, § 4; *id.* art. VI, § 17; LA. CONST. of 1921, art. 14, § 22A; LA. REV. STAT. ANN. §§ 25:731 to :767 (West 1975 & Supp. 1980); *id.* §§ 33:4571 to :4573 (West Supp. 1980).
 Historic Landmarks: LA. REV. STAT. ANN. §§ 25:751 to :767 (West 1975 & Supp. 1980).
 Historic Preservation: LA. REV. STAT. ANN. §§ 25:801 to :812 (West 1975 & Supp. 1980); *id.* § 36:209(H)(I) (West Spec. Pamph. 1980).
 Preservation Restrictions: LA. REV. STAT. ANN. § 9:1252 (West Supp. 1980).
 Principal State Agency: *See* Historic Preservation.
 State Parks and Historic Sites: LA. REV. STAT. ANN. § 48:271 (West Supp. 1980); *id.* §§ 56:1681.1 to 1732 (West 1952 & Supp. 1980).
 Taxation: LA. REV. STAT. ANN. § 47:305.14 (West Supp. 1980).
 Tort Liability: LA. REV. STAT. ANN. § 9:2795 (West Supp. 1980).

Maine

- Archaeology: ME. REV. STAT. ANN. tit. 22, § 4720 (Supp. Pamph. 1965-1979); *id.* tit. 27, §§ 361, 371-374 (1974).
 Archives and Historical Commissions: ME. REV. STAT. ANN. tit. 5, §§ 91-97 (1979); *id.* tit. 27, §§ 81-89 (1974); *id.* §§ 261-267 (1974 & Supp. 1979-1980).
 Attorney-General Opinions: Op. Att'y Gen. (June 23, 1967) title to

shipwrecks within three-mile territorial limit; (Jan. 11, 1971) jurisdiction of state park agency in preservation matters.

Crimes: *See* Archives and Historical Commissions; State Parks and Historic Sites.

Environmental Quality: ME. REV. STAT. ANN. tit. 5, §§ 3310-3314 (1979); *id.* tit. 12, §§ 681-689 (1974 & Supp. 1979-1980).

Historic Preservation: *See* Principal State Agency.

Historic Trails: *See* State Parks and Historic Sites.

Principal State Agency: ME. REV. STAT. ANN. tit. 27, §§ 501-510 (1974 & Supp. 1979-1980).

Public Financial Assistance: ME. REV. STAT. ANN. tit. 9-B, § 543 (Supp. Pamph. 1979).

Review of Projects: ME. REV. STAT. ANN. tit. 27, § 374 (1974).

State Parks and Historic Sites: ME. REV. STAT. ANN. tit. 12, §§ 601-608 (1974 & Supp. Pamph. 1974-1979); *id.* tit. 33, § 1357 (Supp. 1979-1980).

State Register of Historic Places: ME. REV. STAT. ANN. tit. 27, § 504(3) (1974).

Tort Liability: ME. REV. STAT. ANN. tit. 12, §§ 3001-3005 (1974); *id.* tit. 14, § 8103(2)(F)(2) (1980).

Maryland

Archaeology: MD. NAT. RES. CODE ANN. §§ 2-301 to -310 (1974 & Supp. 1979).

Archives and Historical Commissions: MD. ANN. CODE art. 41, § 360 (1968); *id.* §§ 365-374A (1978 & Supp. 1979).

Attorney-General Opinions: OP. ATT'Y GEN. (Jan. 18, 1973) local preservation law not binding on state agencies; (Mar. 3, 1975) state enabling law for historic zoning not applicable to chartered counties; (June 20, 1975) funding of utility lines in historic districts; (Sept. 6, 1977) standards for deletion of property from historic district; (Oct. 28, 1977) constitutionality of state funding for historic religious properties.

Environmental Quality: MD. NAT. RES. CODE ANN. §§ 3-201 to -206 (1974 & Supp. 1979); *id.* §§ 8-401 to -410 (Supp. 1979).

Historic Districts: MD. ANN. CODE art. 25A, § 5(BB) (Supp. 1979); *id.* art. 66B, §§ 2.12, 8.01-15 (1978); *id.* art. 66D, § 8-101(c).

Historic Trails: MD. NAT. RES. CODE ANN. § 5-1001 (1974).

Preservation Restrictions: MD. ANN. CODE art. 66B, § 8.04 (1978); *id.* art. 78A, § 14C (1975); MD. REAL PROP. CODE ANN. § 2-118 (1974 & Supp. 1979).

Principal State Agency: MD. ANN. CODE art. 41, §§ 181A-181KA (1978 & Supp. 1979).

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- Public Financial Assistance: MD. ANN. CODE art. 41, § 181-I-1 (1978).
 State Parks and Historic Sites: MD. ANN. CODE art. 41, §§ 407-408 (1978); *id.* art. 78A, §§ 14A-14B (1975 & Supp. 1979).
 State Register of Historic Places: MD. ANN. CODE art. 41, § 181KA (1978).
 Taxation: MD. ANN. CODE art. 81, § 9(h) (1975); *id.* § 12E (1975 & Supp. 1979); *id.* §§ 12G, 281A (Supp. 1979).
 Tort Liability: MD. NAT. RES. CODE ANN. §§ 5-1101 to -1108 (1974).

Massachusetts

- Archaeology: MASS. GEN. LAWS ANN. ch. 6, §§ 179-180 (West 1976).
 Archives and Historical Commissions: MASS. GEN. LAWS ANN. ch. 9, § 2A (West 1976); *id.* §§ 26-28 (West 1976 & Supp. 1979); *id.* ch. 36, § 14A, ch. 40, § 8D, ch. 79, § 5A, ch. 81, § 13B, ch. 180, § 4(b) (West Supp. 1979).
 Attorney-General Opinions: OP. ATT'Y GEN. 100 (Apr. 7, 1967). Powers of Massachusetts Historic Commission to administer funds from federal government.
 Building Codes: MASS. GEN. LAWS ANN. ch. 143, § 3A (West Supp. 1979); Ch. 144, § 1, 1975 Mass. Acts 108.
 Crimes: MASS. GEN. LAWS ANN. ch. 266, § 95 (West Supp. 1979).
 Environmental Quality: MASS. GEN. LAWS ANN. ch. 12, § 11D (West 1976); *id.* ch. 21A, §§ 1-14 (West Supp. 1979).
 Historic Districts: MASS. GEN. LAWS ANN. ch. 40C, §§ 1-17 (West 1979) (general authorization for local historic districts). Ch. 616, § 1, 1955 Mass. Acts 513, *as amended*, Ch. 314, § 1, 1958 Mass. Acts 170, Ch. 315, § 1, 1958 Mass. Acts 171, *as amended*, Ch. 622, § 1, 1963 Mass. Acts 473, *as amended*, Ch. 429, § 1, 1965 Mass. Acts 229 (Beacon Hill); Ch. 395, § 1, 1970 Mass. Acts 237, *as amended*, Ch. 708, § 1, 1972 Mass. Acts 605 (Nantucket); Ch. 447, § 1, 1956 Mass. Acts 295, *as amended*, Ch. 185, § 1, 1958 Mass. Acts 92, *as amended*, Ch. 579, § 1, 1966 Mass. Acts 531 (Lexington); Ch. 345, § 1, 1960 Mass. Acts 237 (Concord); Ch. 40, § 1, 1963 Mass. Acts 20 (Sudbury); Ch. 118, § 1, 1964 Mass. Acts 64 (Bedford); Ch. 48, § 1, 1965 Mass. Acts 20 (Chatham); Ch. 101, § 1, 1965 Mass. Acts 57 (Marblehead); Ch. 694, § 1, 1965 Mass. Acts 474 (Yarmouth); Ch. 211, § 1, 1966 Mass. Acts 159 (Peter-sham); Ch. 502, § 1, 1966 Mass. Acts 464 (Hingham); Ch. 654, § 1, 1975 Mass. Acts 693 (Falmouth).
 Historic Preservation: MASS. CONST. arts. XLIX, LI.
 Historic Trails: MASS. GEN. LAWS ANN. ch. 132, §§ 38-39 (West 1974 & Supp. 1979).

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Preservation Restrictions: MASS. GEN. LAWS ANN. ch. 184, §§ 31-33 (West 1977 & Supp. 1979).

Principal State Agency: MASS. GEN. LAWS ANN. ch. 9, §§ 26-28 (West 1976 & Supp. 1979).

Review of Projects: MASS. GEN. LAWS ANN. ch. 121B, § 48 (West Supp. 1979).

State Parks and Historic Sites: MASS. GEN. LAWS ANN. ch. 8, §§ 1-21 (West 1976 & Supp. 1979); *id.* ch. 40, § 5(13) (West 1958); *id.* ch. 81 § 7M (West Supp. 1979); *id.* ch. 132A, §§ 1-18 (West 1974 & Supp. 1979).

Tort Liability: MASS. GEN. LAWS ANN. ch. 21, § 17C (West 1973).

Michigan

Archaeology: MICH. COMP. LAWS ANN. §§ 299.51-.55 (1967).

Archives and Historical Commissions: MICH. COMP. LAWS ANN. §§ 399.1-.61, 399.161-.172 (1976 & Supp. 1979); *id.* § 450.163-.167 (1973 & Supp. 1979).

Attorney-General Opinions: OP. ATT'Y GEN. (Mar. 6, 1975).

Crimes: *See* Archaeology and State Parks and Historic Sites.

Environmental Quality: MICH. COMP. LAWS ANN. §§ 281.761-.776 (1979); *id.* §§ 554.701-.719 (Supp. 1979).

Historic Districts: MICH. COMP. LAWS ANN. §§ 399.201-.212, 125.1679 (1976) (downtown development authority).

Historic Trials: *See* State Parks and Historic Sites.

Principal State Agency: MICH. COMP. LAWS ANN. §§ 399.1-.61, .151-.152 (1976 & Supp. 1979); *id.* §§ .111-.113 (Supp. 1979).

State Parks and Historic Sites: MICH. COMP. LAWS ANN. §§ 318.3-.409 (1967 & Supp. 1979).

Tort Liability: MICH. COMP. LAWS ANN. § 300.201 (Supp. 1979).

Minnesota

Archaeology: MINN. STAT. ANN. §§ 138.31-.42 (West 1979).

Archives and Historical Commissions: MINN. STAT. ANN. §§ 138.161-.25 (West 1979); *id.* §§ 190.095, 416.05 (West Supp. 1980); *id.* § 471.93 (West 1977).

Attorney-General Opinions: OP. ATT'Y GEN. 477b-3 (May 25, 1967) discusses types of legislation appropriate for accomplishing preservation goals; OP. ATT'Y GEN. 59a-35 (Apr. 18, 1978) discusses uses of funds under MINN. STAT. ANN. § 471.193.

Crimes: *See* Archaeology.

Environmental Quality: MINN. STAT. ANN. §§ 116B.01-.13, 116C.01-.34, 116D.01-.07, 116G.01-.14 (West 1977).

Historic Districts: MINN. STAT. ANN. §§ 138.71-.75 (West 1979).

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- Historic Landmarks: MINN. STAT. ANN. § 471.193 (West 1977).
 Historic Trails: MINN. STAT. ANN. §§ 84.029(2) (West 1977); *id.* §§ 85.015 -.017 (West 1977 & Supp. 1980); *id.* § 85.021, 86A.05(4), 93.45 (West 1977); *id.* § 160.06 (West 1960).
 Principal State Agency: MINN. STAT. ANN. §§ 138.01-.09, .51-.68 (West 1979 & Supp. 1980).
 Public Financial Assistance: MINN. STAT. ANN. § 471.93 (West 1977).
 Review of Projects (Environmental): MINN. STAT. ANN. §§ 116B.01-.13, 116D.01-.07 (West 1977).
 State Parks and Historic Sites: MINN. STAT. ANN. § 15.50 (West 1977 & Supp. 1980); *id.* §§ 138.01-.09, .51-.68.
 State Register of Historic Places: MINN. STAT. ANN. § 138.53 (West 1979).
 Tort Liability: MINN. STAT. ANN. §§ 87.01-.03 (West 1977).

Mississippi

- Archaeology: MISS. CODE ANN. §§ 39-7-1 to -39 (1973).
 Archives and Historic Commissions: MISS. CODE ANN. §§ 39-5-1 to -65 (1973 & Supp. 1979).
 Crimes: MISS. CODE ANN. § 97-7-9 (1973).
 Historic Districts: MISS. CODE ANN. §§ 39-13-1 to -9 (Supp. 1979).
 Historic Landmarks: MISS. CODE ANN. §§ 39-13-1 to -5 (Supp. 1979).
 Principal State Agency: MISS. CODE ANN. §§ 39-5-1 to -65 (1973 & Supp. 1979).
 State Parks and Historic Sites: MISS. CODE ANN. §§ 29-5-1 to -97, 55-3-1 to -105 (1973 & Supp. 1979); *id.* § 55-15-43 (Supp. 1979).
 Taxation: MISS. CODE ANN. §§ 27-11-5, -43(1)(f), -31-1(d) (Supp. 1979).

Missouri

- Archaeology: *See* Environmental Quality.
 Archives and Historical Commissions: MO. ANN. STAT. §§ 183.010-.030, 184.010-388 (Vernon 1965 & Supp. 1980); *id.* § 352.040 (Vernon 1966).
 Crimes: MO. ANN. STAT. § 577.073(3) (Vernon 1979).
 Environmental Quality: MO. ANN. STAT. §§ 67.870-.910 (Vernon Supp. 1980).
 Historic Districts: MO. ANN. STAT. §§ 89.020-.040 (Vernon 1971).
 Historic Preservation: MO. CONST. art. 3, § 48.
 Principal State Agency: MO. ANN. STAT. §§ 253.010-.375 (Vernon 1963 & Supp. 1980).
 State Parks and Historic Sites: MO. ANN. STAT. §§ 8.020, .100 (Vernon 1969); *id.* §§ 253.010-.375 (Vernon 1963 & Supp. 1980).

Montana

- Archaeology: MONT. REV. CODES ANN. § 22-3-432 (1979).
 Archives and Historical Commissions: MONT. REV. CODES ANN. §§ 22-3-101 to -221 (1979).
 Crimes: MONT. REV. CODES ANN. §§ 22-3-442, 23-1-106(2) (1979).
 Environmental Quality: MONT. REV. CODES ANN. § 22-3-433 (1979).
 Historic Preservation: MONT. CONST. art. IX, § 4.
 Preservation Restrictions: MONT. REV. CODES ANN. §§ 76-6-101 to -211 (1979).
 Principal State Agency: MONT. REV. CODES ANN. §§ 2-15-1512, 22-3-101 to -112, -3-421 to -442, 90-1-102 (1979).
 Review of Projects: MONT. REV. CODES ANN. §§ 22-3-433 to -435 (1979).
 State Parks and Historic Sites: MONT. REV. CODES ANN. §§ 23-1-101 to -202 (1979).
 Tort Liability: MONT. REV. CODES ANN. §§ 70-16-301 to -302 (1979).

Nebraska

- Archaeology: NEB. REV. STAT. § 39-1363 (1974).
 Archives and Historical Commissions: NEB. REV. STAT. §§ 14-102(27), 15-210, 16-251 (1977); *id.* §§ 51-501 to -513 (1974), *as amended*, L.B.187, § 180, 1979 Neb. Laws 667-68; *id.* §§ 72-720 to -730 (1976); *id.* §§ 82-101 to -130 (1976); *id.* § 84-1214.01 (1976).
 Historic Districts: NEB. REV. STAT. §§ 19-901 to -915, 23-114.03(14) (1977).
 Principal State Agency: NEB. REV. STAT. §§ 82-101 to -130 (1976).
 Public Financial Assistance: NEB. REV. STAT. §§ 23-351 to -355.01 (1977), *as amended*, L.B. 187, § 115, 1979 Neb. Laws 622.
 State Parks and Historic Sites: NEB. REV. STAT. §§ 23-351 to -355.01 (1977), *as amended*, L.B. 187, § 115, 1979 Neb. Laws 622; *id.* §§ 72-407 to -425 (1976).
 Tort Liability: NEB. REV. STAT. §§ 37-1001 to -1008 (1974).

Nevada

- Archaeology: NEV. REV. STAT. §§ 381.195-.227 (1977).
 Archives and Historical Commissions: NEV. REV. STAT. §§ 86.010-.080 (1973); *id.* §§ 225.065-.070, 239.010-.330, 382.010-.090 (1977).
 Crimes: NEV. REV. STAT. §§ 206.025, .180, .190, .320 (1973); *id.* § 407.250 (1977).
 Historic Districts: NEV. REV. STAT. §§ 384.010-.210 (1977), *as amended*, Ch. 372, § 1, 1979 Nev. Stats. 738.
 Principal State Agency: NEV. REV. STAT. §§ 383.011-.121 (1977), *as*

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amended, Ch. 102, § 1, 1979 Nev. Stats. 159; Ch. 179, § 1, 1979 Nev. Stats. 269.

Review of Projects: NEV. REV. STAT. § 383.121 (1977).

State Parks and Historic Sites: NEV. REV. STAT. §§ 331.130-.140 (1977); *id.* §§ 407.011-.217 (1977), *as amended*, Ch. 180, § 1, 1979 Nev. Stats. 272; Nev. Rev. Stat. § 408.950 (1977).

State Register of Historic Places: Ch. 180, § 1, 1979 Nev. Stats. 272.

Taxation: NEV. REV. STAT. § 244.377 (1977); *id.* §§ 361A.010-.280, *as amended*, Ch. 142, § 1, 1979 Nev. Stats. 208.

Tort Liability: Nev. Rev. Stat. § 41.510 (1975).

New Hampshire

Archives and Historical Commissions: N.H. REV. STAT. ANN. §§ 8-B:1-23 (1970 & Supp. 1979); *id.* § 31:4-XX (1970); *id.* §§ 227-A:1-5 (1977).

Environmental Quality: N.H. REV. STAT. ANN. §§ 253:17-18 (1977).

Historic Districts: N.H. REV. STAT. ANN. §§ 31:89-a to -l (1970 & Supp. 1979).

Historic Trails: N.H. REV. STAT. ANN. §§ 216-D:1-4, 216-F:1-5 (1977).

Preservation Restrictions: N.H. REV. STAT. ANN. §§ 477:45-47 (Supp. 1979).

Principal State Agency: N.H. REV. STAT. ANN. §§ 227-C:1-9 (1977).

State Parks and Historic Sites: N.H. REV. STAT. ANN. § 4:8-a (Supp. 1979); *id.* § 31:4-XLIII (1970); *id.* §§ 216-A:1-6 (1977); *id.* §§ 218:5-16 (1977 & Supp. 1979); *id.* §§ 227D:1-6, 243:1-6, 249:38-a to 43 (1977).

Tort Liability: N.H. REV. STAT. ANN. § 212:34 (Supp. 1979).

New Jersey

Archaeology: *See* Archives and Historical Commissions.

Archives and Historical Commissions: N.J. STAT. ANN. §§ 15:3-1, :6-2 (West 1939); *id.* §§ 18A:73-1 to -48 (West 1968 & Supp. 1979-1980); *id.* §§ 40:33A-1 to -6 (West Supp. 1979-1980); *id.* §§ 40A:12-15(g), -21(f) (West Pamphlet 1979); *id.* §§ 45:17A-5(b)(2) (West 1978); *id.* §§ 52:3-5, -7 (West 1970); *id.* §§ 56:2-1 to -9 (West 1964).

Environmental Quality: N.J. STAT. ANN. §§ 13:8-45 to -63, :8A-19 to -55 (West 1979).

Historic Trails: N.J. STAT. ANN. §§ 13:8-29 to -44 (West 1979).

Principal State Agency: N.J. STAT. ANN. §§ 13:1B-15.100-.132 (West 1979).

Review of Projects: N.J. STAT. ANN. § 13:1B-15.131 (West 1979).

State Parks and Historic Sites: N.J. STAT. ANN. §§ 13:1B-15.100-.132,

:13A-1 to -15 (West 1979); *id.* § 27:7A-16 (West Supp. 1979-1980); *id.* §§ 40:32-6, :60-25.53 (West 1967); *id.* § 54:40-55 (West 1960).
 State Register of Historic Places: N.J. STAT. ANN. §§ 13:1B-15.128-.132 (West 1979).
 Taxation: N.J. STAT. ANN. § 54:4-3.3 (West 1960); *id.* §§ 54:4-3.6, -3.52 to .54 (West Supp. 1979-1980); *id.* §§ 54:32B-9(f)(3)(B)-(C).
 Tort Liability: N.J. STAT. ANN. §§ 2A:42A-2 to -5, :53A-7 to -9 (West Supp. 1979-1980).

New Mexico

Archaeology: N.M. STAT. ANN. §§ 18-6-9 to -12 (1978 & Supp. 1979).
 Archives and Historical Commissions: N.M. STAT. ANN. §§ 18-3-1 to -8 (1978 & Supp. 1979); *id.* §§ 18-4-1 to -6 (1978).
 Attorney-General Opinions: Op. Att'y Gen. 71-100 (Aug. 18, 1971).
 Historic District Act empowers any county or municipality otherwise empowered to adopt and enforce zoning ordinances to create zoning districts designated as historic areas.
 Crimes: *See* Historic Trails and Principal State Agency.
 Environmental Quality: N.M. STAT. ANN. §§ 67-13-1 to -16 (1978).
 Historic Districts: N.M. STAT. ANN. §§ 3-22-1 to -5 (1978).
 Historic Trails: N.M. STAT. ANN. §§ 16-3-1 to -9 (1978).
 Principal State Agency: N.M. STAT. ANN. §§ 18-6-1 to -17 (1978 & Supp. 1979).
 State Parks and Historic Sites: N.M. STAT. ANN. §§ 16-2-1 to -32, 21-8-27, 67-9-5 (1978).
 State Register of Historic Places: N.M. STAT. ANN. § 18-6-5(B) (Supp. 1979).
 Taxation: N.M. STAT. ANN. § 18-6-13 (1978).
 Tort Liability: N.M. STAT. ANN. § 16-3-9 (1978).

New York

Archaeology: N.Y. EDUC. LAW §§ 233-234 (McKinney 1969); N.Y. INDIAN LAW § 12-a (McKinney Supp. 1979-1980).
 Archives and Historical Commissions: N.Y. EDUC. LAW §§ 140-150 (McKinney 1969 & Supp. 1979-1980); N.Y. EST., POWERS, & TRUSTS LAW § 8-1.4(b)(6) (McKinney Supp. 1979-1980); N.Y. EXEC. LAW § 172-a(2)(b) (McKinney Supp. Pamph. 1972-1979); N.Y. GEN. MUNIC. LAW §§ 72, 77-a (McKinney 1977); N.Y. NOT-FOR-PROFIT CORP. LAW § 1408 (McKinney 1970 & Supp. 1979-1980).
 Crimes: N.Y. PENAL LAW § 170.45 (McKinney 1975).
 Environmental Quality: N.Y. ENVIRONMENTAL CONSERVATION LAW § 3-0301(1)(p) (McKinney 1973); *id.* §§ 15-2701 to -2723 (McKin-

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ney Supp. 1979-1980); *id.* §§ 45-0101 to -0117 (McKinney 1973 & Supp. 1979-1980); N.Y. EXEC. LAW § 721 (McKinney Supp. Pamph. 1972-1979); N.Y. PUB. AUTH. LAW §§ 2000-2010 (McKinney 1970 & Supp. 1970-1979).

Historic Districts: N.Y. GEN. MUNIC. LAW § 96-a (McKinney 1977); N.Y. PUB. AUTH. LAW §§ 1900-1920 (McKinney 1970); N.Y. TOWN LAW § 64(17-a)(McKinney Supp. 1979).

Historic Landmarks: N.Y. GEN. MUNIC. LAW § 96-a (McKinney 1977); N.Y. TOWN LAW § 64(17-a) (McKinney Supp. 1979); N.Y. VILLAGE LAW § 7-700 (McKinney 1973).

Historic Trails: N.Y. PARKS & REC. LAW § 3.09(7-a) (McKinney Pamph. 1979).

Principal State Agency: N.Y. PARKS & REC. LAW §§ 11.01-.09, 19.01-.13 (McKinney Pamph. 1979).

Review of Projects: N.Y. TRANSP. LAW § 14-a (McKinney 1975).

State Parks and Historic Sites: N.Y. PARKS & REC. LAW §§ 3.01-.21, 5.09-.09, 7.01-.11, 9.01-.09, 11.01-.09, 13.01-.27, 15.01-17.11, 19.01-.13, 20.01-.03 (McKinney Pamph. 1979); N.Y. TRANSP. LAW § 14-a (McKinney 1975).

State Register of Historic Places: N.Y. PARKS & REC. LAW §§ 11.09(3), 19.03(3) (McKinney Pamph. 1979).

Taxation: N.Y. GEN. MUNIC. LAW § 96-a (McKinney 1977); N.Y. REAL PROP. TAX LAW §§ 400, 444 (McKinney Supp. 1979-1980); *id.* § 421 (McKinney 1972); N.Y. TAX LAW §§ 1116(d)(3)(A)-(C) (McKinney 1975).

Tort Liability: N.Y. GEN. OBLIG. LAW § 9-103 (McKinney 1978 & Supp. 1979-1980).

North Carolina

Archaeology: N.C. GEN. STAT. §§ 70-1 to -4 (1975); *id.* §§ 121-22 to -27 (1974 & Supp. 1979); *id.* § 136-42.1 (Supp. 1979); *id.* §§ 143-31.2, 143B-66 (1978).

Archives and Historical Commissions: N.C. GEN. STAT. §§ 121-1 to -21 (1974 & Supp. 1979); *id.* §§ 143B-92 to -110 (1978 & Supp. 1979).

Attorney-General Opinions: Op. Att'y Gen. (Apr. 7, 1964; Jan. 8, 1976). Municipal historic district designation not applicable to state property.

Co-operative Use: N.C. GEN. STAT. § 146-23.1 (1978).

Crimes: *See* Archaeology.

Eminent Domain: N.C. GEN. STAT. §§ 153A-159(7), 160A-241(7) (Supp. 1979).

- Environmental Quality: N.C. GEN. STAT. §§ 113A-1 to -10, -30 to -43 (1978); *id.* §§ 113A-100 to -128, -151 to -159 (1978 & Supp. 1979).
 Historic Districts: N.C. GEN. STAT. §§ 160A-395 to -399 (Supp. 1979).
 Historic Landmarks: N.C. GEN. STAT. §§ 160A-399.1 to -399.13 (Supp. 1979).
 Historic Trails: N.C. GEN. STAT. §§ 113A-72 to -94 (1978 & Supp. 1979).
 Preservation Restrictions: N.C. GEN. STAT. §§ 121-34 to -42 (Supp. 1979).
 Principal State Agency: N.C. GEN. STAT. §§ 121-1 to -13 (1974 & Supp. 1979).
 Restoration Contracts (Private Funds): N.C. GEN. STAT. § 143-135.2 (1978).
 Review of Projects: N.C. GEN. STAT. §§ 121-12(a), 136-42.1 (1974 & Supp. 1979).
 State Parks and Historic Sites: N.C. GEN. STAT. §§ 113-29 to -44 (1978); *id.* §§ 121-4(7) (Supp. 1979); *id.* §§ 136-42.2 to -43.1 (1974 & Supp. 1979); *id.* §§ 143-260.6 to .9 (1978).
 Taxation: N.C. GEN. STAT. § 105-278 (1979); *id.* § 160A-399.5(6) (Supp. 1979).
 Tort Liability: N.C. GEN. STAT. §§ 113-120.5-.6 (Supp. 1979).

North Dakota

- Archaeology: N.D. CENT. CODE §§ 38-09-01.1-.2 (1972); *id.* §§ 55-03-01 to -07 (1972 & Supp. 1979).
 Archives and Historical Commissions: N.D. CENT. CODE §§ 11-11-52 to -53 (1976); *id.* §§ 11-32-01 to -03 (1976 & Supp. 1979); *id.* §§ 55-01-01 to -11, -02-01 to -08 (1972 & Supp. 1979); *id.* §§ 55-09-01 to -06 (1972).
 Attorney-General Opinions: Op. Att'y Gen. (Dec. 12, 1963; Apr. 18, 1968). Permit not required for archaeological excavation on state-owned land. 1963 opinion also discusses requirements for excavation on state-owned land.
 Crimes: N.D. CENT. CODE § 55-10-13 (Supp. 1979).
 Environmental Quality: N.D. CENT. CODE § 49-22-09(9) (Supp. 1979).
 Principal State Agency: N.D. CENT. CODE §§ 55-10-01 to -13 (1972 & Supp. 1979).
 Public Financial Assistance: N.D. CENT. CODE § 11-11-53 (1976).
 Review of Projects: N.D. CENT. CODE § 55-10-08(2) (Supp. 1979).
 State Parks and Historic Sites: N.D. CENT. CODE §§ 48-10-01 to -02 (1978 & Supp. 1979); *id.* §§ 55-04-01 to -03, -05-01 to -03, -06-01 to -02 (1972); *id.* §§ 55-08-01 to -14, -10-01 to -13 (1972 & Supp. 1979).

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State Register of Historic Places: N.D. CENT. CODE §§ 55-10-03 to -06 (1972).

Taxation: *See* Archives and Historical Commissions.

Tort Liability: N.D. CENT. CODE §§ 53-08-01 to -06 (1974).

Ohio

Archives and Historical Commissions: OHIO REV. CODE ANN. § 111.08 (Anderson 1978); *id.* §§ 149.01-.99 (Anderson 1978 & Supp. 1979); *id.* §§ 307.23-.25, 345.17 (Anderson 1979).

Attorney-General Opinions: Op. Att'y Gen. 2516 (1953). County historical society may use funds received under OHIO REV. CODE ANN. § 307.23 to preserve historic house and may use the house to display its collection of relics.

Civil Liability: *See* Crimes.

Crimes: OHIO REV. CODE ANN. §§ 155.05, .99 (Anderson 1978).

Environmental Quality: OHIO REV. CODE ANN. §§ 1501.16-.19, 1517.01-.99 (Anderson 1978).

Historic Landmarks: OHIO REV. CODE ANN. § 713.02 (Anderson 1976).

Historic Trails: OHIO REV. CODE ANN. §§ 1519.01-.99 (Anderson 1978).

Principal State Agency: OHIO REV. CODE ANN. §§ 149.01-.99 (Anderson 1978 & Supp. 1979), *as amended*, File 462, § 1, 1979 Ohio Legis. Bull. 26.

Public Financial Assistance: OHIO REV. CODE ANN. §§ 307.23-.25 (Anderson 1979).

State Parks and Historic Sites: OHIO REV. CODE ANN. §§ 155.21-.27 (Anderson 1978); *id.* § 713.02 (Anderson 1976); *id.* §§ 1541.01-.10, 1743.06-.07 (Anderson 1978); *id.* § 5511.05 (Anderson Supp. 1979).

Taxation: OHIO REV. CODE ANN. § 5709.18 (Anderson Supp. 1979).

Tort Liability: OHIO REV. CODE ANN. §§ 1533.18-.181 (Anderson 1979).

Oklahoma

Archaeology: OKLA. STAT. ANN. tit. 70, § 3309 (West 1972); *id.* tit. 74, §§ 241, 1828 (West Supp. 1979-1980).

Archives and Historical Commissions: OKLA. STAT. ANN. tit. 53, §§ 1-349 (West 1969 & Supp. 1979-1980); *id.* tit. 74, § 72 (West 1965); *id.* §§ 564-576 (West 1976 & Supp. 1979-1980).

Crimes: *See* Archaeology; Archives and Historical Commissions; State Parks and Historic Sites.

Energy Conservation (Exemption): OKLA. STAT. ANN. tit. 61, § 152(3)(b) (West Supp. 1979-1980).

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- Environmental Quality: OKLA. STAT. ANN. tit. 82, §§ 1451-1469 (West Supp. 1979-1980).
 Historic Trails: OKLA. STAT. ANN. tit. 74, §§ 3451-3458 (West 1976 & Supp 1979-1980).
 Principal State Agency: OKLA. STAT. ANN. tit. 53, §§ 1-23 (West 1969 & Supp. 1979-1980).
 Public Financial Assistance: OKLA. STAT. ANN. tit. 53, § 19 (West Supp. 1979-1980).
 State Parks and Historic Sites: OKLA. STAT. ANN. tit. 73, §§ 1-214 (West 1965 & Supp. 1979-1980); *id.* tit. 74, § 7 (West 1965); *id.* §§ 344.19-358.92 (West 1965 & Supp. 1979-1980).
 Taxation: OKLA. STAT. ANN. tit. 68, §§ 2404.1-.5 (West Supp. 1979-1980).
 Tort Liability: OKLA. STAT. ANN. tit. 2, § 1301-315 (West 1973).

Oregon

- Archaeology: OR. REV. STAT. §§ 273.705-.742 (1977).
 Archives and Historic Commissions: OR. REV. STAT. §§ 358.110-405, .710-.770 (1977).
 Cooperative Use: OR. REV. STAT. §§ 276.093-.097 (1977).
 Environmental Quality: OR. REV. STAT. §§ 273.562-.597, 390.310-.368, .410-.460, .805-.990 (1977).
 Historic Trails: OR. REV. STAT. §§ 376.205-.220, .605 (1975); *id.* §§ 390.950-.989 (1977).
 Occupational Health and Safety (Exemption): OR. REV. STAT. § 654.170 (1977).
 Preservation Restrictions: OR. REV. STAT. §§ 271.710-.750 (1977).
 Principal State Agency: OR. REV. STAT. §§ 390.010-.290 (1977).
 State Parks and Historic Sites: OR. CONST. art. IX, § 3; OR. REV. STAT. §§ 226.110-.400 (1971); *id.* §§ 266.010-.590 (1975); *id.* §§ 276.001-.108, 377.505-.545, 390.010-.290 (1977).
 Taxation: OR. REV. STAT. §§ 308.740-.790, 358.475-.565 (1977).
 Tort Liability: OR. REV. STAT. §§ 105.655-.680 (1977).

Pennsylvania

- Archaeology: PA. STAT. ANN. tit. 71, §§ 1047.1a-.1o (Purdon Supp. 1979-1980).
 Archives and Historical Commissions: PA. STAT. ANN. tit. 16, §§ 1928-1931, 2355-2370, 5128-5130, 5555-5579 (Purdon 1956 & Supp. 1979-1980); *id.* tit. 47, § 5-505.3 (Purdon Supp. 1979-1980); *id.* tit. 54, §§ 41-48 (Purdon 1964); *id.* tit. 71, §§ 716 to 718-3 (Purdon 1962 & Supp. 1979-1980); *id.* §§ 1042-1047.1 (Purdon 1962); *id.* § 104 (Purdon Supp. 1979-1980); *id.* tit. 72, § 302(22).

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- Crimes: PA. STAT. ANN. tit. 18, § 5509 (Purdon 1973); *id.* tit. 71, § 1047.1k (Purdon Supp. 1979-1980).
- Environmental Quality: PA. STAT. ANN. tit. 16, §§ 11941-11947 (Purdon Supp. 1979-1980); *id.* tit. 32, §§ 5001-5121.
- Historic Districts: PA. STAT. ANN. tit. 53, §§ 8001-8006 (Purdon 1972).
- Historic Preservation: PA. CONST. art. 1, § 27; *id.* art. 8, § 15.
- Historic Trails: PA. STAT. ANN. tit. 64, §§ 801-805 (Purdon 1979-1980).
- Principal State Agency: PA. STAT. ANN. tit. 71, §§ 1042-1047.1o (Purdon 1972 & Supp. 1979-1980).
- Review of Projects: PA. STAT. ANN. tit. 71, § 512(15) (Purdon Supp. 1979-1980); *id.* §§ 1047-li-j.
- State Parks and Historic Sites: PA. STAT. ANN. tit. 15, § 1322(F) (Purdon Supp. 1979-1980); *id.* tit. 16, §§ 1995, 1999; *id.* tit. 24, § 7-707(10); *id.* tit. 32, §§ 821-1193 (Purdon 1967); *id.* tit. 44, § 35; *id.* tit. 53, §§ 37403(61), 46202(48), 56562, 65760; *id.* tit. 71, § 512(15) (Purdon Supp. 1979-1980); *id.* tit. 71, § 770.1 (Purdon 1962); *id.* §§ 1051-1060.233 (Purdon 1962 & Supp. 1979-1980); *id.* tit. 72, §§ 3946.1-22 (Purdon 1968).
- State Register of Historic Places: PA. STAT. ANN. § 1047.1g (Purdon Supp. 1979-1980).
- Taxation: PA. STAT. ANN. tit. 72, § 3402-303(B)(7) (Purdon 1964).
- Tort Liability: PA. STAT. ANN. tit. 68, §§ 477-1 to -8 (Purdon Supp. 1979-1980).

Puerto Rico

- Archives and Historical Commissions: P.R. LAWS ANN. tit. 18, §§ 1191-1203c (1974 & Supp. 1978).
- Environmental Quality: P.R. LAWS ANN. tit. 12, §§ 1121-1142 (Supp. 1978).
- Historic Districts: P.R. LAWS ANN. tit. 17, § 214a (1972); *id.* tit. 18, § 1198(8) (Supp. 1978); *id.* tit. 23, §§ 161-166 (1964 & Supp. 1978).
- Historic Landmarks: P.R. LAWS ANN. tit. 23, § 167 (Supp. 1978).
- Historic Preservation: P.R. CONST. art. VI, § 19.
- Principal State Agency: P.R. LAWS ANN. tit. 18, §§ 1191-1203c (1974 & Supp. 1978).
- State Parks and Historic Sites: P.R. LAWS ANN. tit. 15, §§ 1-55 (1972 & Supp. 1978).
- State Register of Historic Places: P.R. LAWS ANN. tit. 23, § 167 (Supp. 1978).
- Taxation: P.R. LAWS ANN. tit. 13, § 3022(26) (1978).

Rhode Island

- Archaeology: R.I. GEN. LAWS §§ 42-45.1-1 to -13 (1977 & Supp. 1979).

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- Archives and Historical Commissions: R.I. GEN. LAWS §§ 29-2-1 to -6 (1968 & Supp. 1979).
- Historic Districts: R.I. GEN. LAWS §§ 45-24.1-1 to -15 (1970 & Supp. 1979). Newport, Warwick, Providence, Cranston, Smithfield, North Smithfield, East Greenwich, Coventry, and Woonsocket are authorized specifically to regulate historic properties.
- Historic Trails: R.I. GEN. LAWS §§ 32-5-1 to -2 (Supp. 1979).
- Preservation Restrictions: R.I. GEN. LAWS §§ 34-39-1 to -5 (Supp. 1979).
- Principal State Agency: R.I. GEN. LAWS §§ 42-45-1 to -9 (1977 & Supp. 1979).
- Review of Projects: R.I. GEN. LAWS §§ 42-45-5(b), -45.1-7 (1977).
- State Parks and Historic Sites: R.I. GEN. LAWS §§ 30-28-1 to -9 (1968); *id.* §§ 32-1-2 to -18, -2-1 to -14 (1968 & Supp. 1979); *id.* §§ 32-3-1 to -12, -4-1 to -15 (1968).
- State Register of Historic Places: R.I. GEN. LAWS § 42-45-5(b) (1977).
- Tort Liability: R.I. GEN. LAWS §§ 32-6-1 to -7 (Supp. 1979).

South Carolina

- Archaeology: S.C. CODE §§ 54-7-210 to -280 (Supp. 1979); *id.* § 60-13-210 (1976).
- Archives and Historical Commissions: S.C. CODE §§ 51-13-510 to -540, -610 to -620 (1976); *id.* §§ -910 to -960, -19-10 to -20 (Supp. 1979); *id.* §§ 60-11-10 to -80, -13-10 to -50 (1976). Many local commissions are established by session law.
- Historical commissions (by county):
- Aiken: No. 339, 1959 S.C. Acts 639.
 - Allendale: No. 448, 1967 S.C. Acts 644.
 - Beaufort: No. 1730, 1972 S.C. Acts 3388.
 - Calhoun: No. 757, 1952 S.C. Acts 1911, *as amended*, No. 124, 1971 S.C. Acts 99, *as amended*, No. 497, 1976 S.C. Acts 1496.
 - Camden (in Kershaw County): No. 308, 1969 S.C. Acts 373, *as amended*, No. 549, 1971 S.C. Acts 1039.
 - Cherokee: No. 606, 1973 S.C. Acts. 1098, *as amended*, No. 996, 1974 S.C. Acts 2171.
 - Chester: No. 1049, 1958 S.C. Acts 2217, *as amended*, No. 1238, 1966 S.C. Acts 3096, *as amended*, No. 735, 1978 S.C. Acts 2386.
 - Darlington: No. 570, 1965 S.C. Acts 1180, *as amended*, No. 248, 1967 S.C. Acts 341, *as amended*, No. 319, 1977 S.C. Acts 955.
 - Fairfield: No. 1079, 1958 S.C. Acts 2322.
 - Florence City-County: No. 426, 1973 S.C. Acts 762.
 - Georgetown: No. 23, 1967 S.C. Acts 24, *as amended*, No. 62, 1973

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S.C. Acts 66, *as amended*, No. 332, 1977 S.C. Acts 967, *as amended*, No. 761, 1978 S.C. Acts 2435.

Lancaster: No. 123, 1953 S.C. Acts 148, *as amended*, No. 239, 1963 S.C. Acts 271.

Lee: No. 237, 1949 S.C. Acts 381.

McCormick: No. 92, 1971 S.C. Acts 74, *as amended*, No. 201, 1975 S.C. Acts 239, *as amended*, No. 726, 1976 S.C. Acts 2176.

Newberry: No. 678, 1965 S.C. Acts 1630.

Orangeburg: No. 315, 1967 S.C. Acts 434.

Union: No. 840, 1966 S.C. Acts 2155, *as amended*, No. 939, 1970 S.C. Acts 2037.

York: No. 540, 1959 S.C. Acts 1367.

Historical Commissions (by site):

Cokesbury: No. 487, 1969 S.C. Acts 848, *as amended*, No. 133, 1971 S.C. Acts 106, No. 595, 1971 S.C. Acts 1100.

Long Bluff: No. 1794, 1972 S.C. Acts 3563.

Star Fort and Old Ninety Six: No. 556, 1963 S.C. Acts 1090, *as amended*, No. 1547, 1968 S.C. Acts 3588, *as amended*, No. 840, 1976 S.C. Acts 2412.

Williamsburg: No. 508, 1969 S.C. Acts 870.

Museum Commissions (by county):

Lexington: No. 1353, 1968 S.C. Acts 3144.

Pickens: No. 35, 1969 S.C. Acts 39.

Environmental Quality: S.C. CODE §§ 51-5-10 to -170 (1976); *id.* §§ -7-10 to -140 (Supp. 1979).

Historic Districts: S.C. CODE §§ 5-23-310 to -340, 6-11-650 (1976).

Historic Preservation Commissions (by county):

Abbeville: No. 902, 1964 S.C. Acts 2123, *as amended*, No. 881, 1968 S.C. Acts 2243.

Barnwell: No. 367, 1965 S.C. Acts 600, *as amended*, No. 9, 1973 S.C. Acts 6.

Berkeley: No. 141, 1967 S.C. Acts 195.

Chesterfield: No. 304, 1971 S.C. Acts 402, No. 919, 1971 S.C. Acts 2050.

Clarendon: No. 190, 1967 S.C. Acts 256.

Dillon: No. 1027, 1966 S.C. Acts 2625.

Greenville: No. 833, 1970 S.C. Acts 1901.

Horry: No. 130, 1965 S.C. Acts 173, *as amended*, No. 1479, 1972 S.C. Acts 2717.

Laurens: No. 879, 1966 S.C. Acts 2210, *as amended*, No. 888, 1968 S.C. Acts 2253, *as amended*, No. 995, 1970 S.C. Acts 2281.

Marlboro: No. 185, 1967 S.C. Acts 243.

Spartanburg: No. 1220, 1968 S.C. Acts 2795, *as amended*, No. 13, 1973 S.C. Acts 9, No. 334, 1973 S.C. Acts. 411.

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Principal State Agency: S.C. CODE §§ 60-11-10 to -80 (1976).
 State Parks and Historic Sites: S.C. CODE §§ 51-1-10 to -90, -3-10 to -160 (1976 & Supp. 1979); *id.* § 4-17-20 (1976).
 Lancaster County: No. 754, 1940 S.C. Acts 1612.
 Taxation: S.C. CODE § 12-21-2420(9) (1976).
 Tort Liability: S.C. CODE §§ 27-3-10 to -70 (1976).

South Dakota

Archaeology: S.D. CODIFIED LAWS ANN. §§ 1-20-17 to -37 (1974 & Supp. 1979); *id.* § 31-5-19 (1976).
 Archives and Historical Commissions: S.D. CODIFIED LAWS ANN. §§ 1-18-1.1 to -32.1, -18B-1 to -13 (1974 & Supp. 1979); *id.* §§ 1-18C-1 to -13 (Supp. 1979); *id.* §§ 1-45-18 to -23.1 (1974 & Supp. 1979).
 Building Codes: S.D. CODIFIED LAWS ANN. § 1-19B-54 (1974).
 Crimes: *See* Archaeology.
 Environmental Quality: S.D. CODIFIED LAWS ANN. §§ 34A-9-1 to -13 (1977).
 Historic Districts: S.D. CODIFIED LAWS ANN. §§ 1-19B-33 to -50 (1974).
 Historic Landmarks: S.D. CODIFIED LAWS ANN. §§ 1-19B-13 to -31 (1974).
 Public Financial Assistance: S.D. CODIFIED LAWS ANN. §§ 1-19A-13.1 to -13.5 (Supp. 1979).
 Preservation Restrictions: S.D. CODIFIED LAWS ANN. § 1-19B-16 (1974).
 Principal State Agency: S.D. CODIFIED LAWS ANN. §§ 1-19A-1 to -19 (1974 & Supp. 1979).
 State Parks and Historic Sites: S.D. CODIFIED LAWS ANN. §§ 1-19-1 to -8 (1974); *id.* §§ 7-26-1 to -7, 9-38-1 to -104 (1967 & Supp. 1979); *id.* § 31-5-8.1 (Supp. 1979); *id.* §§ 41-17-1 to -20 (1977 & Supp. 1979); *id.* §§ 41-18-1 to -25 (1977).
 State Register of Historic Places: S.D. CODIFIED LAWS ANN. § 1-19A-5 (1974).
 Review of Projects: S.D. CODIFIED LAWS ANN. § 31-5-19 (1976).
 Taxation: S.D. CODIFIED LAWS ANN. § 1-19A-20 (Supp. 1979); *id.* § 1-19B-25 (1974); *id.* §§ 9-3-22 to -27 (Supp. 1979).
 Tort Liability: S.D. CODIFIED LAWS ANN. § 20-9-5 (1979).

Tennessee

Archaeology: TENN. CODE ANN. §§ 11-6-101 to -115 (1980).
 Archives and Historical Commissions: TENN. CODE ANN. §§ 4-11-101

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- to -110, -12-101 to -111 (1979); *id.* § 5-901(21) (Supp. 1979); *id.* § 5-1801 (1971); *id.* §§ 10-1-101 to -204 (1980); *id.* § 18-113 (1955).
Crimes: TENN. CODE ANN. § 39-4535 (1975).
Environmental Quality: TENN. CODE ANN. §§ 11-13-101 to -117, -14-101 to -203 (1980).
Historic Districts: TENN. CODE ANN. § 13-7-401 (1980).
Historic Trails: TENN. CODE ANN. §§ 11-11-101 to -120 (1980).
Preservation Restrictions: TENN. CODE ANN. §§ 11-15-101 to -108 (1980).
Principal State Agency: TENN. CODE ANN. §§ 4-11-101 to -208 (1979).
State Parks and Historic Sites: TENN. CODE ANN. §§ 5-906 to -908 (1971 & Supp. 1979); *id.* §§ 11-3-101 to -116, -21-101 to -109 (1980); *id.* §§ 54-580 to -583, -2501 to -2516 (Supp. 1979).
State Register of Historic Places: TENN. CODE ANN. §§ 4-11-201 to -208 (1979).
Taxation: TENN. CODE ANN. § 11-15-105 (1980); *id.* §§ 67-519 to -521 (1976 & Supp. 1979).
Tort Liability: TENN. CODE ANN. §§ 11-10-101 to -103 (1980); *id.* §§ 51-801 to -805 (1977).

Texas

- Archaeology:** TEX. NAT. RES. CODE ANN. §§ 191.001-.174 (Vernon 1978); *id.* §§ 201.001-.043 (Vernon Supp. 1979); TEX. REV. CIV. STAT. ANN. art. 6145-6 (Vernon 1970).
Archives and Historical Commissions: TEX. NAT. RES. CODE §§ 181.011-.103 (Vernon 1978 & Supp. 1979); *id.* §§ 182.001-.045 (Vernon 1978); TEX. REV. CIV. STAT. ANN. arts. 250-260 (Vernon 1973); *id.* art. 678m, §§ 15-16 (Vernon 1964); *id.* arts. 5434, 5439, 5441, 5443, 5445-5446(a) (Vernon 1958 & Supp. 1979); *id.* art. 6145 (Vernon 1970 & Supp. 1979); *id.* art. 6145.1 (Vernon Supp. 1979).
Attorney-General Opinions: Op. Att'y Gen. M-826 (1971). Requirement of six-months notice by county to Texas State Historical Survey Committee contained in 1971 legislation is not comprehended with the Antiquities Code. H-620 (1975). Discusses sites of "historic interest" concluding that the term "historic interest" is not impermissibly vague. H-866 (1976). Facade easements are valid in Texas and may be granted to the Texas Historical Commission. H-1100 (1977). Texas Historical Commission may promulgate rule providing for special election to fill vacancy in office of chairman, and may make it applicable to term of present chairman; in absence of such rule, vice chairman should serve as acting chairman.
Crimes: TEX. NAT. RES. CODE ANN. § 191.171 (Vernon 1978).

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- Environmental Quality: TEX. NAT. RES. CODE ANN. §§ 33.001-.176 (Vernon 1978).
Historic Districts: TEX. REV. CIV. STAT. ANN. art. 1011a (Vernon 1963); *id.* art. 6145-4 (Vernon 1970).
Public Financial Assistance: TEX. REV. CIV. STAT. ANN. art. 1066d (Vernon Supp. 1979).
Principal State Agency: TEX. REV. CIV. STAT. ANN. art. 6145 (Vernon Supp. 1979).
Review of Projects: TEX. REV. CIV. STAT. ANN. art. 6145 § 12(2) (Vernon Supp. 1979).
State Parks and Historic Sites: TEX. CONST. art. 16, § 39; TEX. NAT. RES. CODE ANN. §§ 13.001-.313 (Vernon 1976 & Supp. 1979); TEX. REV. CIV. STAT. ANN. art. 678M, § 16A (Vernon 1964); *id.* art. 2372r-1 (Vernon 1971 & Supp. 1979); *id.* art. 5421q (Vernon Supp. 1979); *id.* arts. 6079e-6079f, 6080-6081; 6081t, 6144g, 6145-2, -5 (Vernon 1970 & Supp. 1979).
State Register of Historic Places: TEX. REV. CIV. STAT. ANN. art. 6145, § 12(1) (Vernon Supp. 1979).
Taxation: TEX. PROP. TAX CODE §§ 11.18(c)(1)(D), .24 (Vernon Pamph. 1979).
Tort Liability: TEX. REV. CIV. STAT. ANN. art. 1b (Vernon 1969).

Trust Territory of the Pacific Islands

- Archaeology: *See* Historic Districts; State Parks and Historic Sites.
Archives and Historical Commissions: *See* State Parks and Historic Sites.
Historic Districts: TRUST TERR. CODE tit. 51, §§ 3(o), 5(d) (Supp. 1973).
Principal State Agency: TRUST TERR. CODE tit. 67, §§ 251-256 (1970).
State Parks and Historic Sites: TRUST TERR. CODE tit. 67, §§ 251-256 (1970).

Utah

- Archaeology: UTAH CODE ANN. §§ 63-18-24 to -28 (1978).
Archives and Historical Commissions: UTAH CODE ANN. §§ 63-2-59 to -91 (1978 & Supp. 1979); *id.* § 63-11-56 (1978).
Crimes: UTAH CODE ANN. §§ 63-18-29 to -31 (1978).
Environmental Quality: UTAH CODE ANN. §§ 63-28-1 to -10 (1978 & Supp. 1979).
Historic Districts: UTAH CODE ANN. §§ 11-18-1 to -6 (1973); *id.* §§ 63-9-30 to -42 (1978).
Preservation Restrictions: UTAH CODE ANN. §§ 63-18a-1 to -6 (1978).

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- Principal State Agency: UTAH CODE ANN. §§ 63-18-2.1 to -4, -33 (1978 & Supp. 1979).
 Public Financial Assistance: UTAH CODE ANN. § 63-18-38 (1978).
 Review of Projects: UTAH CODE ANN. § 63-18-37 (1978).
 State Parks and Historic Sites: UTAH CODE ANN. §§ 63-11-1 to -63 (1978 & Supp. 1979); *id.* §§ 63-18-2.1 to -38 (1978 & Supp. 1979).
 State Register of Historic Places: UTAH CODE ANN. §§ 63-18-32, -36 (1978).
 Taxation: UTAH CODE ANN. § 63-18a-6 (1978).

Vermont

- Archaeology: VT. STAT. ANN. tit. 22, §§ 761-767, 781-782 (1978).
 Archives and Historical Commissions: VT. STAT. ANN. tit. 11, § 196 (1973); *id.* tit. 22, §§ 281-285, 451-457 (1978 & Supp. 1979).
 Crimes: VT. STAT. ANN. tit. 13, § 2023 (Supp. 1979); *id.* tit. 22, § 791 (1978); *id.* §§ 2601-2609 (Supp. 1979).
 Environmental Quality: VT. STAT. ANN. tit. 10, §§ 421-425, 6001-6091 (1973 & Supp. 1979).
 Historic Districts: VT. STAT. ANN. tit. 24, § 4407(6) (1975); *id.* tit. 29, §§ 181-185 (Supp. 1979).
 Preservation Restrictions: VT. STAT. ANN. tit. 22, § 723(b) (1978).
 Principal State Agency: VT. STAT. ANN. tit. 22, §§ 721-723, 741-743 (1978 & Supp. 1979).
 Public Financial Assistance: VT. STAT. ANN. tit. 22, § 723(b)(4) (1978).
 Review of Projects: VT. STAT. ANN. tit. 19, § 1624a (1968); *id.* tit. 22, §§ 743, 767 (1978 & Supp. 1979).
 State Parks and Historic Sites: VT. STAT. ANN. tit. 19, § 1624a (1968); *id.* tit. 29, §§ 154-155 (1970).
 State Register of Historic Places: VT. STAT. ANN. tit. 22, § 723(a)(3) (Supp. 1979); *id.* § 742(a)(1), (b)(1) (1978).
 Tort Liability: VT. STAT. ANN. tit. 10, § 5212 (1973); *id.* tit. 13, §§ 3769-3770 (1974).

Virgin Islands

- Archives and Historical Commissions: V.I. CODE ANN. tit. 3, §§ 16-21 (Supp. 1979).
 Crimes: V.I. CODE ANN. tit. 32, § 94 (1976).
 Historic Districts: V.I. CODE ANN. tit. 29, §§ 280-288 (1976); *id.* tit. 32, §§ 91-94.
 Principal State Agency: V.I. CODE ANN. tit. 29, § 281 (1976).
 State Parks and Historic Sites: V.I. CODE ANN. tit. 32, §§ 1-62 (1976 & Supp. 1979).
 State Register of Historic Places: V.I. CODE ANN. tit. 29, § 282 (1976).

Taxation: V.I. CODE ANN. tit. 33, §§ 2355-2355f (Supp. 1979).

Virginia

- Archaeology: VA. CODE §§ 10-146 to -150.16 (1978 & Supp. 1979).
 Archives and Historical Commissions: VA. CODE §§ 10-135, -144, -145.5 (1978); *id.* §§ 15.1-18.1:1, -25, -281 (1973 & Supp. 1979).
 Crimes: VA. CODE §§ 10-145.8, .10, .13 to .16 (1978 & Supp. 1979); *id.* § 18.2-107 (Supp. 1979); *id.* §§ 18.2-137 to -138 (1975).
 Environmental Quality: VA. CODE §§ 10-151 to -186 (1978 & Supp. 1979).
 Historic Districts: VA. CODE §§ 10-138.2, -141 (1978); *id.* §§ 15.1-489(5), -503.2 (Supp. 1979).
 Historic Trails: VA. CODE § 10-21.3:1 (1978); *id.* § 15.1-274.1 (Supp. 1979).
 State Parks and Historic Sites: VA. CONST. art. XI, §§ 1-2; VA. CODE §§ 9-84.1 to .10, -96 to -99, 10-18 to -21.3:1, -176 (1978); *id.* §§ 33.1-62 to -66, -223 (1976).
 Preservation Restrictions: VA. CODE §§ 10-138(e), -142 (1978).
 Principal State Agency: VA. CODE §§ 10-135 to -145.10 (1978 & Supp. 1979).
 State Register of Historic Places: VA. CODE § 10-138(b) (1978).
 Taxation: VA. CONST. art. X, §§ 6(a)(6),(h); VA. CODE §§ 10-139 to -140, -145.10, -155 (1978); *id.* §§ 58-12(7)-(8), (12)-(13), (15), -12.4, .12, .29, .32, .37, .77, .90-.92, -760.2 to .3, -769.4 to .16 (1974 & Supp. 1979).
 Tort Liability: VA. CODE § 10-150.18 (Supp. 1979); *id.* § 29-130.2 (1979).

Washington

- Archaeology: WASH. REV. CODE ANN. §§ 27.44.010-.020 (1970 & Supp. 1980); *id.* §§ 27.53.010-.900 (Supp. 1980).
 Archives and Historical Commissions: WASH. REV. CODE ANN. §§ 9.68.015, .100 (1977); *id.* §§ 27.28.010-.040 (1970 & Supp. 1980); *id.* §§ 27.32.010-.030 (Supp. 1980); *id.* §§ 27.36.010-.070, 48.010-.030 (1970 & Supp. 1980); *id.* §§ 40.14.010-.180 (1972 & Supp. 1980).
 Crimes: WASH. REV. CODE ANN. § 9.68.015 (1977); *id.* § 27.44.010 (1970); *id.* § 27.53.090 (Supp. 1980); *id.* §§ 40.16.010-.030 (1972).
 Environmental Quality: WASH. REV. CODE ANN. §§ 43.51.900-.930 (1970); *id.* §§ 43.97.010-.050, 47.39.010-.910 (1970 & Supp. 1980); *id.* §§ 79.70.010-.900 (Supp. 1980).
 Historic Trails: WASH. REV. CODE ANN. §§ 67.32.010-.140 (Supp. 1980).

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- Preservation Restrictions: WASH. REV. CODE ANN. §§ 84.34.010-.921 (Supp. 1980).
 Principal State Agency: WASH. REV. CODE ANN. §§ 43.51A.010-.140 (Supp. 1980).
 State Parks and Historic Sites: WASH. REV. CODE ANN. §§ 43.51.010-.375 (1970 & Supp. 1980); *id.* § 47.12.250 (1970).
 Taxation: WASH. REV. CODE ANN. §§ 35.21.755, 84.34.010-.921, .36.060 (Supp. 1980).
 Tort Liability: WASH. REV. CODE ANN. §§ 4.24.200-.210 (Supp. 1980).

West Virginia

- Archaeology: W. VA. CODE §§ 20-7A-1 to -6 (1978); *id.* § 29-1-7 (1980).
 Archives and Historical Commissions: W. VA. CODE §§ 5-8-1 to -20, 5A-4A-1 to -3 (1979); *id.* §§ 8-26A-1 to -6 (1976 & Supp. 1979); *id.* § 57-1-7c (Supp. 1979).
 Attorney General Opinions: OP. ATT'Y GEN. (June 24, 1977).
 Crimes: W. VA. CODE § 20-7A-2 (1978); *id.* § 29-1-7 (1980).
 Environmental Quality: W. VA. CODE § 20-5B-1 to -17 (1978).
 Historic Districts: W. VA. CODE §§ 8-26A-3(7)-(8), -5 (1976).
 Historic Landmarks: W. VA. CODE § 8-26A-2 (1976).
 State Parks and Historic Sites: W. VA. CODE §§ 5A-4A-1 to -3 (1979 & Supp. 1979); *id.* §§ 8-26A-1 to -6 (1976 & Supp. 1979); *id.* § 8-32-1 (Supp. 1979); *id.* §§ 20-4-1 to -13 (1978 & Supp. 1979).
 Preservation Restrictions: W. VA. CODE § 8-26A-4 (1976).
 Principal State Agency: W. VA. CODE §§ 29-1-1 to -13 (Supp. 1979).
 State Register of Historic Places: W. VA. CODE § 8-26A-3(2) (1976).
 Taxation: W. VA. CODE § 8-26A-5 (1976).
 Tort Liability: W. VA. CODE §§ 19-25-1 to -6 (1977); *id.* § 20-7A-6 (1978).

Wisconsin

- Archaeology: WIS. STAT. ANN. § 27.012 (West 1973 & Supp. 1979).
 Archives and Historical Commissions: WIS. STAT. ANN. § 16.61 (West 1972 & Supp. 1979); *id.* § 19.21(5) (West 1972); *id.* § 19.23 (West 1972 & Supp. 1979); *id.* §§ 44.01-.21 (West 1979 & Supp. 1979); *id.* § 59.07(31)-(32) (West 1957 & Supp. 1979); *id.* § 86.19(4) (West Supp. 1979).
 Attorney General Opinions: 59 Op. Att'y Gen. 18 (Jan. 16, 1970).
 Crimes: WIS. STAT. ANN. § 27.012(7) (West 1973 & Supp. 1979).
 Environmental Quality: WIS. STAT. ANN. § 30.26 (West 1973); *id.* §§ 30.27, 83.42 (West Supp. 1979).
 Historic Trails: WIS. STAT. ANN. § 83.42 (West Supp. 1979).

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- Preservation Restrictions: WIS. STAT. ANN. § 61.34(3)-(3m) (West Supp. 1979); *id.* § 62.22 (West 1957 & Supp. 1979).
- Principal State Agency: WIS. STAT. ANN. § 15.705 (West Supp. 1979); *id.* § 44.22 (West 1979).
- Review of Projects: WIS. STAT. ANN. § 15.705(1) (West Supp. 1979); *id.* § 44.22(5), (7)-(8) (West 1979).
- State Parks and Historic Sites: WIS. STAT. ANN. § 16.855(18) (West Supp. 1979); *id.* § 23.30 (West 1973); *id.* §§ 27.01-99 (West 1973 & Supp. 1979); *id.* §§ 60.18(15), 61.34(3)-(3m) (West Supp. 1979); *id.* § 176.05(21)(h)-(j) (West 1974 & Supp. 1979).
- State Register of Historic Places: WIS. STAT. ANN. § 15.705(2) (West Supp. 1979); *id.* § 44.22(6)(b) (West 1979).
- Taxation: WIS. STAT. ANN. § 70.11(4) (West 1969); *id.* § 70.11(20) (West Supp. 1979).
- Tort Liability: WIS. STAT. ANN. § 29.68 (West 1973 & Supp. 1979).

Wyoming

- Archaeology: WYO. STAT. §§ 35-11-401(d)(iv), 36-1-114 to -116 (1977).
- Archives and Historical Commissions: WYO. STAT. §§ 9-3-901 to -988 (1977 & Supp. 1979); *id.* §§ 17-7-101 to -116, 18-10-101 to -219 (1977).
- Crimes: WYO. STAT. §§ 9-3-988, 36-1-116 (1977).
- Principal State Agency: WYO. STAT. §§ 36-4-101 to -121 (1977 & Supp. 1979).
- State Parks and Historic Sites: WYO. STAT. §§ 9-8-101 to -130, -140, 18-9-101 to -202 (1977); *id.* §§ 36-4-101 to -121, -8-101 to -801 (1977 & Supp. 1979).
- Tort Liability: WYO. STAT. §§ 34-19-101 to -106 (1977).