

SENATE BILL REPORT

E2SHB 2624

As Reported By Senate Committee On:
Government Operations & Elections, February 28, 2008
Ways & Means, March 03, 2008

Title: An act relating to human remains.

Brief Description: Concerning human remains.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives McCoy, Kessler, Appleton, Ormsby, VanDeWege, Hunt, Kenney, Darneille and Chase).

Brief History: Passed House: 2/15/08, 63-31.

Committee Activity: Government Operations & Elections: 2/26/08, 2/28/08 [DPA-WM].
Ways & Means: 3/3/08 [DPA(GO), w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, Kline, McDermott and Pridemore.

Staff: Sharon Swanson (786-7447)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Government Operations & Elections.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Brandland, Carrell, Fairley, Hatfield, Hobbs, Keiser, Oemig, Rasmussen, Regala, Rockefeller and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Parlette and Schoesler.

Staff: Maria Hovde (786-7710)

Background: Three areas of Washington statute are relevant to discoveries of skeletal human remains: statutes governing the coroner's jurisdiction over dead bodies; the Indian Graves and Records Act; and the Abandoned and Historic Cemeteries and Historic Graves Act. Although the statutes all have provisions regarding human remains, it is not clear who makes determinations of whether inadvertently discovered skeletal human remains are specifically

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statutorily protected, when such determinations should be made, who has jurisdiction, or what is appropriate procedure.

Under current law, a private landowner who inadvertently discovers human remains may be required to cover the entire cost of excavation for statutorily protected remains, as well as removal and re-interment if necessary. The state does not currently maintain a centralized database of known historic cemeteries and burial sites. Private local governments are unable to determine whether a proposed development is on or near a cemetery or burial site to prevent such inadvertent discoveries. Not all counties have the capacity to quickly make determinations of whether skeletal human remains are affiliated with a crime or may be protected Indian or historic remains. In Washington, only counties with populations of 250,000 or greater may choose to have a professional medical examiner. Other counties have either elected coroners or coroner-prosecutors. Six counties have medical examiners.

Statute Regarding Dead Bodies. RCW 68.50.020 requires anyone who knows of the existence and location of a dead body coming under the jurisdiction of the coroner to notify the coroner. Failing to give notice is a misdemeanor. Additionally, the language of the statute is "dead body" as opposed to "skeletal human remains," and the statute does not cross-reference with those statutes that protect Indian graves or historic graves.

The Indian Graves and Records Act. Chapter 27.44 RCW provides protection for Indian graves and records. The knowing removal, mutilation, defacement, injury, or destruction of remains or goods protected under the statute is a Class C felony; Indian tribes maintain a civil action against anyone who violates this chapter. Individuals who inadvertently disturb Indian human remains must re-inter the remains under the supervision of the appropriate Indian tribe. The costs of such re-interment are to be paid by the Department of Archeology and Historic Preservation (DAHP); however, funds have not been appropriated for this purpose.

The Abandoned and Historic Cemeteries and Historic Graves Act. Chapter 68.60 RCW protects abandoned and historic cemeteries and graves. An abandoned cemetery means a burial ground of the human dead for which the county assessor can find no record of an owner, or where the owner is deceased and lawful conveyance of title has not been made. A historical cemetery means any burial site or ground where the human remains were buried prior to November 11, 1889, except for certified, religious, or state or local cemeteries. The vandalism or grave-robbing of a cemetery under this section is also a Class C felony. The knowing removal, mutilation, defacement, injury, or destruction of graves protected under the statute is also a Class C felony. Individuals are also subject to a civil action.

Summary of Bill (Recommended Amendments): New sections related to the inadvertent discovery of skeletal human remains are added to the statutes governing the coroner's jurisdiction over dead bodies, and to the Indian Graves and Records Act, and the Abandoned and Historic Cemeteries and Historic Graves Act.

Guidelines and Procedures. Individuals who inadvertently discover skeletal human remains must immediately call local law enforcement. Individuals who make the discovery through ground disturbing activity must cease the activity and make a reasonable effort to protect the area from further disturbance. Individuals who are in compliance with these requirements, and are otherwise in compliance with applicable law, are held harmless from criminal and civil

liability. A determination that skeletal human remains are non-forensic does not create a presumption that the remains are Indian or non-Indian.

The DAHP must notify appropriate local cemeteries and affected tribes of the discovery of non-forensic skeletal human remains. Tribes must be notified via certified mail to the head of the appropriate tribal government within two business days. The DAHP must also contact the appropriate tribal cultural resources staff.

The State Physical Anthropologist must make an initial determination whether the non-forensic skeletal human remains are Indian or non-Indian within two business days. If the remains are Indian, the DAHP must notify the affected tribes within two business days via certified mail to the head of the appropriate tribal government and by contacting the appropriate tribal cultural resources staff. Affected tribes have five business days to notify the DAHP as to their interest in the remains.

The DAHP will have jurisdiction over all non-forensic remains until provenance of such remains is established. Affected tribes are those with usual and accustomed areas in the jurisdiction where the remains were found, or those that submit to the DAHP maps that reflect the tribe's geographical area of cultural affiliation.

Cemetery and Graves Database. The DAHP will develop and maintain a centralized database and geographic systems spatial layer of all known cemeteries and known sites of burial of human remains in Washington State. The information in the database is subject to exemption from public disclosure pursuant to RCW 42.56.300, but is available to federal, state, and local agencies for purposes of environmental review, and to tribes to protect their ancestors and to perpetuate their cultures.

State Physical Anthropologist. The position of the State Physical Anthropologist is created in the DAHP subject to appointment by the Director. The State Physical Anthropologist must:

- have a doctorate in either archeology or anthropology;
- have experience in forensic osteology or other relevant aspects of physical anthropology; and
- have at least one year's experience in laboratory reconstruction and analysis.

A medical degree with archeological experience in addition to required experience may substitute for a doctorate in archeology or anthropology.

The State Physical Anthropologist will have the primary responsibility of investigating, preserving, and when necessary, removing and re-interring skeletal human remains that are not evidence of a crime. The State Physical Anthropologist will also be available to any local government or tribal government in Washington to assist in determining whether discovered remains are forensic or non-forensic and whether non-forensic remains are Indian or non-Indian.

Professional Archeologist Qualifications. Professional archeologists employed must be qualified to the federal Secretary of the Interior's standards for a professional archaeologist. Archeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archeologist for a period of four years provided the employee is working toward the required qualifications. The four-year period is not subject to renewal. During the four-year period, a professional archeologist is responsible for all findings.

The skeletal human remains assistance account is created in the custody of the state treasurer. Expenditures from the account may be used only for archaeological determinations and excavations of inadvertently discovered skeletal human remains, and removal and reinterment of such remains when necessary.

DAHP must communicate with the appropriate committees of the Legislature by November 15, 2009, and biennially thereafter, regarding the numbers of inadvertent discoveries of skeletal human remains and other associated activities pursuant to this act.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Amendments): Removes all references to medical examiners. The striking amendment creates the "skeletal human remains assistance account" in the custody of the state treasurer. Requires the DAHP communicate with the appropriate committees of the Legislature by November 15, 2009, and biennially thereafter, regarding the numbers of inadvertent discoveries of human remains. The striking amendment contains a null and void clause and removes language from the bill requiring that an affected tribe be federally recognized to be covered under the bill.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Second Substitute Bill (Government Operations & Elections): PRO: This bill is the first of several. This bill is simply a call 911 notice bill. Several meetings have been held and much discussion has taken place. This bill is the result of a great deal of work and compromise. The first step is to get all relevant RCW's in alignment so people know what to do when they discover human remains. The bill has timelines and notice provisions clearly laid out. This is a good bill and a good first step.

Persons Testifying (Government Operations & Elections): PRO: Representative McCoy, prime sponsor; Michael Moran, Hoh & Quinault Tribes.

Staff Summary of Public Testimony (Ways & Means): None.

Persons Testifying (Ways & Means): No one.