

HOUSE BILL REPORT

SHB 1189

As Passed House:

February 1, 2002

Title: An act relating to the protection of archaeological sites.

Brief Description: Enforcing protection of archaeological sites.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Lantz (co-prime sponsor), Dunn (co-prime sponsor), Edmonds, Hunt, Dunshee, Ogden, Kenney and Wood; by request of Department of Community, Trade, and Economic Development).

Brief History:

Committee Activity:

Judiciary: 1/30/01, 2/22/01 [DPS].

Floor Activity:

Passed House: 2/1/02, 87-9.

Brief Summary of Substitute Bill

- Authorizes the director of the Office of Community Development to impose a civil penalty of up to \$5,000 for any violation of the archaeological sites and resources law.
- Allows the director of the Office of Community Development, when determining whether to grant or condition a permit, to give great weight to the applicant's record of previous civil or criminal violations of archaeological resource laws.
- Requires archaeologists who are conducting resource location and evaluation studies on public lands to notify the entity that is responsible for managing the lands.
- Requires an agency to condition an amateur society's study of a site on public lands to protect the resource and ensure compliance with the law.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Carrell, Republican Co-Chair; Lantz,

Democratic Co-Chair; Hurst, Democratic Vice Chair; Dickerson, Esser, Lovick and McDermott.

Minority Report: Do not pass. Signed by 3 members: Representatives Lambert, Republican Vice Chair; Boldt and Casada.

Staff: Edie Adams (786-7180).

Background:

The state's archaeological sites and resources law contains provisions for the identification, protection, inventory, excavation, and study of the state's archaeological resources. The Office of Archaeology and Historic Preservation, located within the Office of Community Development (OCD), is the agency that carries out these responsibilities.

A person or entity must obtain a permit from the director of the OCD before removing, altering, digging, or excavating archaeological objects or sites, glyptics or painted records of tribes or people, or native Indian cairns or graves. The director must obtain the consent of the private or public property owner or agency responsible for management of the land before issuing the permit. Guidelines for the issuance and processing of permits are contained in rules adopted by the OCD.

A person or entity that knowingly removes, alters, digs, excavates, damages, defaces, or destroys any historic or prehistoric archaeological resource or site, or removes any archaeological object from a site, without a written permit from the director, is guilty of a misdemeanor. If the violation occurs with respect to Indian graves or cairns, glyptic or painted records of tribes or peoples, or historic graves, the violation is a class C felony. This provision does not apply to the removal of artifacts from the surface of the ground which are not historic archaeological resources or sites.

Qualified and professional archaeologists may enter on public lands for the purpose of doing archaeological resource location and evaluation studies. Scientific excavations may be carried out only upon agreement between the archaeologist or a higher education institution and the agency or political subdivision that is responsible for the public lands.

Summary of Substitute Bill:

The director of the OCD may impose a civil penalty of up to \$5,000 for a violation of the chapter on archaeological sites and resources. A person who violates the chapter is subject also to reasonable investigative and site restoration costs.

A person who incurs a penalty may request an adjudicative proceeding and subsequent

review under the Administrative Procedure Act. Any penalty imposed by final order is due upon service of the final order. The attorney general may bring an action to recover the penalty imposed and to enforce a requirement that all artifacts in the possession of the violator become the property of the state until proper ownership can be determined. A penalty overturned on appeal entitles the appealing party to fees and other expenses, including attorneys fees.

When a person or entity applies for a permit, the director must give great weight to the applicant's record of previous civil or criminal violations under state or federal archaeological resource laws in determining whether to grant or condition the permit. A denial of a permit may be appealed under the provisions of the Administrative Procedure Act.

An archaeologist conducting archaeological resource location and evaluation studies on public lands must first notify the entity that is responsible for managing those lands. In addition, the results of these studies must be made known to the Office of Archaeology and Historic Preservation and are confidential unless the director of the OCD declares in writing otherwise.

Amateur societies that engage in archaeological studies on public lands are subject to conditions designed to protect the archaeological resource and ensure compliance with the law. The results of these studies must be made known to the agency and the Office of Archaeology and Historic Preservation.

References to "Washington Archaeological Research Center" are replaced with "Office of Archaeology and Historic Preservation."

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: Archaeological sites are important resources. The department needs the authority to issue a civil penalty when someone intentionally and knowingly disturbs a site without a permit or in violation of a permit. Local law enforcement agencies often don't prosecute these violations, and the department currently cannot even deny a permit to someone for past violations. Sixty-six percent of permits are out of compliance. The Office of Archaeology and Historic Preservation needs to be better staffed. This is a human rights issue to Native Americans relating to the sanctity of the dead. Grave robbing is a huge black market problem. All means available should be used to protect Native American sites.

Testimony Against: There is a need for clarification with this bill. The violation section does not define who can violate the provision. It is unclear what is meant by reasonable investigative and restorative costs. The deletion of the current exemption from criminal liability for removal of surface artifacts is a concern.

Testified: (In support) Dr. Allyson Brooks, state historic preservation officer; John Williams, Governor's Advisory Council on Historic Preservation; Kimberly Craven, Governor's Office of Indian Affairs; Dawn P. Vyvyan, attorney; and Bruce Tower, Spokane Indian Tribe.

(Opposed) Steve Gano, Trend West; and Kristen Sawin, Association of Washington Business.