

E2SHB 2624 - S COMM AMD

By Committee on Government Operations & Elections

ADOPTED 03/07/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 68.50 RCW
4 to read as follows:

5 (1) It is the duty of every person who knows of the existence and
6 location of skeletal human remains to notify the coroner and local law
7 enforcement in the most expeditious manner possible, unless such person
8 has good reason to believe that such notice has already been given.
9 Any person knowing of the existence of skeletal human remains and not
10 having good reason to believe that the coroner and local law
11 enforcement has notice thereof and who fails to give notice to the
12 coroner and local law enforcement, is guilty of a misdemeanor.

13 (2) Any person engaged in ground disturbing activity and who
14 encounters or discovers skeletal human remains in or on the ground
15 shall:

16 (a) Immediately cease any activity which may cause further
17 disturbance;

18 (b) Make a reasonable effort to protect the area from further
19 disturbance;

20 (c) Report the presence and location of the remains to the coroner
21 and local law enforcement in the most expeditious manner possible; and

22 (d) Be held harmless from criminal and civil liability arising
23 under the provisions of this section provided the following criteria
24 are met:

25 (i) The finding of the remains was based on inadvertent discovery;

26 (ii) The requirements of the subsection are otherwise met; and

27 (iii) The person is otherwise in compliance with applicable law.

28 (3) The coroner must make a determination of whether the skeletal
29 human remains are forensic or nonforensic within five business days of
30 receiving notification of a finding of such human remains provided that

1 there is sufficient evidence to make such a determination within that
2 time period. The coroner will retain jurisdiction over forensic
3 remains.

4 (a) Upon determination that the remains are nonforensic, the
5 coroner must notify the department of archaeology and historic
6 preservation within two business days. The department will have
7 jurisdiction over such remains until provenance of the remains is
8 established. A determination that remains are nonforensic does not
9 create a presumption of removal or nonremoval.

10 (b) Upon receiving notice from a coroner of a finding of
11 nonforensic skeletal human remains, the department must notify the
12 appropriate local cemeteries, and all affected tribes via certified
13 mail to the head of the appropriate tribal government, and contact the
14 appropriate tribal cultural resources staff within two business days of
15 the finding. The determination of what are appropriate local
16 cemeteries to be notified is at the discretion of the department. A
17 notification to tribes of a finding of such nonforensic skeletal human
18 remains does not create a presumption that the remains are Indian.

19 (c) The state physical anthropologist must make an initial
20 determination of whether nonforensic skeletal human remains are Indian
21 or non-Indian to the extent possible based on the remains within two
22 business days of notification of a finding of nonforensic remains. If
23 the remains are determined to be Indian, the department must notify all
24 affected tribes via certified mail to the head of the appropriate
25 tribal government within two business days and contact the appropriate
26 tribal cultural resources staff.

27 (d) The affected tribes have five business days to respond via
28 telephone or writing to the department as to their interest in the
29 remains.

30 (4) For the purposes of this section:

31 (a) "Affected tribes" are those tribes with usual and accustomed
32 areas in the jurisdiction where the remains were found, or those tribes
33 that submit to the department maps that reflect the tribe's
34 geographical area of cultural affiliation.

35 (b) "Forensic remains" are those that come under the jurisdiction
36 of the coroner pursuant to RCW 68.50.010.

37 (c) "Inadvertent discovery" has the same meaning as used in RCW
38 27.44.040.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 27.44 RCW
2 to read as follows:

3 (1) Any person who discovers skeletal human remains must notify the
4 coroner and local law enforcement in the most expeditious manner
5 possible. Any person knowing of the existence of human remains and not
6 having good reason to believe that the coroner and local law
7 enforcement has notice thereof and who fails to give notice thereof is
8 guilty of a misdemeanor.

9 (2) Any person engaged in ground disturbing activity and who
10 encounters or discovers skeletal human remains in or on the ground
11 shall:

12 (a) Immediately cease any activity which may cause further
13 disturbance;

14 (b) Make a reasonable effort to protect the area from further
15 disturbance;

16 (c) Report the presence and location of the remains to the coroner
17 and local law enforcement in the most expeditious manner possible; and

18 (d) Be held harmless from criminal and civil liability arising
19 under the provisions of this section provided the following criteria
20 are met:

21 (i) The finding of the remains was based on inadvertent discovery;

22 (ii) The requirements of the subsection are otherwise met; and

23 (iii) The person is otherwise in compliance with applicable law.

24 (3) The coroner must make a determination whether the skeletal
25 human remains are forensic or nonforensic within five business days of
26 receiving notification of a finding of such remains provided that there
27 is sufficient evidence to make such a determination within that time
28 period. The coroner will retain jurisdiction over forensic remains.

29 (a) Upon determination that the remains are nonforensic, the
30 coroner must notify the department of archaeology and historic
31 preservation within two business days. The department will have
32 jurisdiction over such remains until provenance of the remains is
33 established. A determination that remains are nonforensic does not
34 create a presumption of removal or nonremoval.

35 (b) Upon receiving notice from a coroner of a finding of
36 nonforensic skeletal human remains, the department must notify the
37 appropriate local cemeteries, and all affected tribes via certified
38 mail to the head of the appropriate tribal government, and contact the

1 appropriate tribal cultural resources staff within two business days of
2 the finding. The determination of what are appropriate local
3 cemeteries to be notified is at the discretion of the department. A
4 notification to tribes of a finding of nonforensic skeletal human
5 remains does not create a presumption that the remains are Indian.

6 (c) The state physical anthropologist must make an initial
7 determination of whether nonforensic skeletal human remains are Indian
8 or non-Indian to the extent possible based on the remains within two
9 business days of notification of a finding of such nonforensic remains.
10 If the remains are determined to be Indian, the department must notify
11 all affected tribes via certified mail to the head of the appropriate
12 tribal government within two business days and contact the appropriate
13 tribal cultural resources staff.

14 (d) The affected tribes have five business days to respond via
15 telephone or writing to the department as to their interest in the
16 remains.

17 (4) For the purposes of this section:

18 (a) "Affected tribes" are those tribes with usual and accustomed
19 areas in the jurisdiction where the remains were found, or those tribes
20 that submit to the department maps that reflect the tribe's
21 geographical area of cultural affiliation.

22 (b) "Forensic remains" are those that come under the jurisdiction
23 of the coroner pursuant to RCW 68.50.010.

24 (c) "Inadvertent discovery" has the same meaning as used in RCW
25 27.44.040.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 68.60 RCW
27 to read as follows:

28 (1) Any person who discovers skeletal human remains shall notify
29 the coroner and local law enforcement in the most expeditious manner
30 possible. Any person knowing of the existence of skeletal human
31 remains and not having good reason to believe that the coroner and
32 local law enforcement has notice thereof and who fails to give notice
33 thereof is guilty of a misdemeanor.

34 (2) Any person engaged in ground disturbing activity and who
35 encounters or discovers skeletal human remains in or on the ground
36 shall:

1 (a) Immediately cease any activity which may cause further
2 disturbance;

3 (b) Make a reasonable effort to protect the area from further
4 disturbance;

5 (c) Report the presence and location of the remains to the coroner
6 and local law enforcement in the most expeditious manner possible; and

7 (d) Be held harmless from criminal and civil liability arising
8 under the provisions of this section provided the following criteria
9 are met:

10 (i) The finding of the remains was based on inadvertent discovery;

11 (ii) The requirements of the subsection are otherwise met; and

12 (iii) The person is otherwise in compliance with applicable law.

13 (3) The coroner must make a determination whether the skeletal
14 human remains are forensic or nonforensic within five business days of
15 receiving notification of a finding of such remains provided that there
16 is sufficient evidence to make such a determination within that time
17 period. The coroner will retain jurisdiction over forensic remains.

18 (a) Upon determination that the remains are nonforensic, the
19 coroner must notify the department of archaeology and historic
20 preservation within two business days. The department will have
21 jurisdiction over such remains until provenance of the remains is
22 established. A determination that remains are nonforensic does not
23 create a presumption of removal or nonremoval.

24 (b) Upon receiving notice from a coroner of a finding of
25 nonforensic skeletal human remains, the department must notify the
26 appropriate local cemeteries, and all affected tribes via certified
27 mail to the head of the appropriate tribal government, and contact the
28 appropriate tribal cultural resources staff within two business days of
29 the finding. The determination of what are appropriate local
30 cemeteries to be notified is at the discretion of the department. A
31 notification to tribes of a finding of such nonforensic skeletal human
32 remains does not create a presumption that the remains are Indian.

33 (c) The state physical anthropologist must make an initial
34 determination of whether nonforensic skeletal human remains are Indian
35 or non-Indian to the extent possible based on the remains within two
36 business days of notification of a finding of such nonforensic remains.
37 If the remains are determined to be Indian, the department must notify

1 all affected tribes via certified mail to the head of the appropriate
2 tribal government within two business days and contact the appropriate
3 tribal cultural resources staff.

4 (d) The affected tribes have five business days to respond via
5 telephone or writing to the department as to their interest in the
6 remains.

7 (4) For the purposes of this section:

8 (a) "Affected tribes" are those tribes with usual and accustomed
9 areas in the jurisdiction where the remains were found, or those tribes
10 that submit to the department maps that reflect the tribe's
11 geographical area of cultural affiliation.

12 (b) "Forensic remains" are those that come under the jurisdiction
13 of the coroner pursuant to RCW 68.50.010.

14 (c) "Inadvertent discovery" has the same meaning as used in RCW
15 27.44.040.

16 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.334 RCW
17 to read as follows:

18 (1) The director shall appoint a state physical anthropologist. At
19 a minimum, the state physical anthropologist must have a doctorate in
20 either archaeology or anthropology and have experience in forensic
21 osteology or other relevant aspects of physical anthropology and must
22 have at least one year of experience in laboratory reconstruction and
23 analysis. A medical degree with archaeological experience in addition
24 to the experience required may substitute for a doctorate in
25 archaeology or anthropology.

26 (2) The state physical anthropologist has the primary
27 responsibility of investigating, preserving, and, when necessary,
28 removing and reinterring discoveries of nonforensic skeletal human
29 remains. The state physical anthropologist is available to any local
30 governments or any tribal government within the boundaries of
31 Washington to assist in determining whether discovered skeletal human
32 remains are forensic or nonforensic.

33 (3) The director shall hire staff as necessary to support the state
34 physical anthropologist to meet the objectives of this section.

35 (4) For the purposes of this section, "forensic remains" are those
36 that come under the jurisdiction of the coroner pursuant to RCW
37 68.50.010.

1 **Sec. 5.** RCW 27.53.030 and 2005 c 333 s 20 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Archaeology" means systematic, scientific study of man's past
6 through material remains.

7 (2) "Archaeological object" means an object that comprises the
8 physical evidence of an indigenous and subsequent culture including
9 material remains of past human life including monuments, symbols,
10 tools, facilities, and technological by-products.

11 (3) "Archaeological site" means a geographic locality in
12 Washington, including but not limited to, submerged and submersible
13 lands and the bed of the sea within the state's jurisdiction, that
14 contains archaeological objects.

15 (4) "Department" means the department of archaeology and historic
16 preservation, created in chapter 43.334 RCW.

17 (5) "Director" means the director of the department of archaeology
18 and historic preservation, created in chapter 43.334 RCW.

19 (6) "Historic" means peoples and cultures who are known through
20 written documents in their own or other languages. As applied to
21 underwater archaeological resources, the term historic shall include
22 only those properties which are listed in or eligible for listing in
23 the Washington State Register of Historic Places (RCW 27.34.220) or the
24 National Register of Historic Places as defined in the National
25 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
26 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

27 (7) "Prehistoric" means peoples and cultures who are unknown
28 through contemporaneous written documents in any language.

29 (8) "Professional archaeologist" means a person (~~who has met the~~
30 ~~educational, training, and experience requirements of the society of~~
31 ~~professional archaeologists.~~

32 ~~(9) "Qualified archaeologist" means a person who has had formal~~
33 ~~training and/or experience in archaeology over a period of at least~~
34 ~~three years, and has been certified in writing to be a qualified~~
35 ~~archaeologist by two professional archaeologists)) with qualifications
36 meeting the federal secretary of the interior's standards for a
37 professional archaeologist. Archaeologists not meeting this standard
38 may be conditionally employed by working under the supervision of a~~

1 professional archaeologist for a period of four years provided the
2 employee is pursuing qualifications necessary to meet the federal
3 secretary of the interior's standards for a professional archaeologist.
4 During this four-year period, the professional archaeologist is
5 responsible for all findings. The four-year period is not subject to
6 renewal.

7 ((+10)) (9) "Amateur society" means any organization composed
8 primarily of persons who are not professional archaeologists, whose
9 primary interest is in the archaeological resources of the state, and
10 which has been certified in writing by two professional archaeologists.

11 ((+11)) (10) "Historic archaeological resources" means those
12 properties which are listed in or eligible for listing in the
13 Washington State Register of Historic Places (RCW 27.34.220) or the
14 National Register of Historic Places as defined in the National
15 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
16 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

17 NEW SECTION. Sec. 6. A new section is added to chapter 27.34 RCW
18 to read as follows:

19 The department of archaeology and historic preservation shall
20 develop and maintain a centralized database and geographic information
21 systems spatial layer of all known cemeteries and known sites of
22 burials of human remains in Washington state. The information in the
23 database is subject to public disclosure, except as provided in RCW
24 42.56.300; exempt information is available by confidentiality agreement
25 to federal, state, and local agencies for purposes of environmental
26 review, and to tribes in order to participate in environmental review,
27 protect their ancestors, and perpetuate their cultures.

28 Information provided to state and local agencies under this section
29 is subject to public disclosure, except as provided in RCW 42.56.300.

30 NEW SECTION. Sec. 7. A new section is added to chapter 43.334 RCW
31 to read as follows:

32 The skeletal human remains assistance account is created in the
33 custody of the state treasurer. All appropriations provided by the
34 legislature for this purpose as well as any reimbursement for services
35 provided pursuant to this act must be deposited in the account.
36 Expenditures from the account may be used only for archaeological

1 determinations and excavations of inadvertently discovered skeletal
2 human remains, and removal and reinterment of such remains when
3 necessary. Only the director or the director's designee may authorize
4 expenditures from the account. The account is subject to the allotment
5 procedures under chapter 43.88 RCW, but an appropriation is not
6 required for expenditures.

7 NEW SECTION. **Sec. 8.** The department of archaeology and historic
8 preservation must communicate with the appropriate committees of the
9 legislature by November 15, 2009, and biennially thereafter, regarding
10 the numbers of inadvertent discoveries of skeletal human remains and
11 other associated activities pursuant to this act.

12 NEW SECTION. **Sec. 9.** If specific funding for the purposes of this
13 act, referencing this act by bill or chapter number, is not provided by
14 June 30, 2008, in the omnibus appropriations act, this act is null and
15 void."

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By Committee on Government Operations & Elections

ADOPTED 03/07/2008

16 On page 1, line 1 of the title, after "remains;" strike the
17 remainder of the title and insert "amending RCW 27.53.030; adding a new
18 section to chapter 68.50 RCW; adding a new section to chapter 27.44
19 RCW; adding a new section to chapter 68.60 RCW; adding new sections to
20 chapter 43.334 RCW; adding a new section to chapter 27.34 RCW; creating
21 new sections; and prescribing penalties."

EFFECT: Removes the requirement that an affected tribe be
federally recognized to be covered under the bill.

--- END ---