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**State Government & Tribal  
Affairs Committee**

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**HB 2624**

**Brief Description:** Concerning human remains.

**Sponsors:** Representatives McCoy, Kessler, Appleton, Ormsby, VanDeWege, Hunt, Kenney, Darneille and Chase.

**Brief Summary of Bill**

- Establishes statutorily consistent guidelines and procedures for inadvertent discoveries of skeletal human remains.
- Holds harmless from criminal and civil liability individuals who inadvertently discover skeletal human remains are acting in compliance with the law.
- Requires the Department of Archeology and Historic Preservation (DAHP) to develop and maintain a centralized database of all known cemeteries and known sites of burials of human remains in Washington State.
- Creates the position of the State Physical Anthropologist in the DAHP to assist local governments in making determinations of the status of skeletal human remains; and to provide excavation services to private landowners, as well as removal and reinterment when necessary.
- Requires that professional archeologists employed by the state be qualified to the federal Secretary of the Interior's standards for a professional archeologist.

**Hearing Date:** 1/22/08

**Staff:** Colleen Kerr (786-7168).

**Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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

Under current law, a private landowner may inadvertently discover human remains and be required to cover the entire cost of excavation for statutorily protected remains, as well as removal and reinterment if necessary. For inadvertent discoveries, it is unclear whether the individual who reports such a discovery may be subject to criminal and civil liability. Further, the state does not maintain a centralized database of known historic cemeteries and burial sites for private local governments to use to determine whether a proposed development is on or near a cemetery or burial site to prevent such inadvertent discoveries.

Finally, 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.

- Counties with a Medical Examiner: Clark, King, Pierce, Snohomish, Spokane, and Whatcom.
- Counties with populations between 40,000 - 250,000 have elected coroners: Benton, Chelan, Cowlitz, Franklin, Grant, Grays Harbor, Island, Kitsap, Lewis, Mason, Skagit, Stevens, Thurston, and Walla Walla.
- Counties with populations less than 40,000 have prosecutor-coroners: Adams, Asotin, Clallam, Columbia, Douglas, Ferry, Garfield, Jefferson, Kittitas, Klickitat, Lincoln, Okanagan, Pacific, Pend Oreille, San Juan, Skamania, Wahkiakum, and Whitman.

#### Provisions 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 is 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; and, Indian tribes maintain a civil action against anyone who violates this chapter.

Individuals who inadvertently disturb Indian human remains must reinter the remains under the supervision of the appropriate Indian tribe. The costs of such reinterment are to be paid by the Department of Archeology and Historic Preservation, 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 locally 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:**

#### Guidelines and Procedures

New sections governing the inadvertent discovery of skeletal human remains are added to the statutes regarding 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.

Individuals who inadvertently discover skeletal human remains must immediately call the county coroner or medical examiner and local law enforcement. Those individuals who make the inadvertent discovery through ground disturbing activity must also cease the activity and make a reasonable effort to protect the area from further disturbance. Those individuals who are in compliance with these requirements and are otherwise in compliance with applicable law are held harmless from criminal and civil liability.

The coroner or medical examiner must make a determination of whether the remains are forensic or nonforensic within five days, provided that such a determination can be made in that time period based on the skeletal human remains available. Upon determination that the skeletal human remains are nonforensic, the coroner or medical examiner must notify the Department of Archeology and Historic Preservation (DAHP) within two business days. A determination that skeletal human remains are nonforensic 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 of whether the nonforensic 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 within two business days 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 coroner or medical examiner will retain jurisdiction over all forensic human remains. The DAHP will have jurisdiction over all nonforensic 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.

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 reintering skeletal human remains that are not evidence of a crime. He or she will also be available to any local government or tribal government in Washington to assist in determining whether discovered remains are forensic or nonforensic and whether non-forensic remains are Indian or non-Indian.

#### Professional Archeologist Qualifications

Professional archeologists employed by the state must be qualified to the federal Secretary of the Interior's standards for 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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.