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SECOND SUBSTITUTE HOUSE BILL 2624

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State of Washington                      60th Legislature                      2008 Regular Session

By House Appropriations (originally sponsored by Representatives McCoy, Kessler, Appleton, Ormsby, VanDeWege, Hunt, Kenney, Darneille, and Chase)

READ FIRST TIME 02/11/08.

1            AN ACT Relating to human remains; amending RCW 27.53.030; adding a  
2 new section to chapter 68.50 RCW; adding a new section to chapter 27.44  
3 RCW; adding a new section to chapter 68.60 RCW; adding new sections to  
4 chapter 43.334 RCW; adding a new section to chapter 27.34 RCW; creating  
5 new sections; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            NEW SECTION.    **Sec. 1.** A new section is added to chapter 68.50 RCW  
8 to read as follows:

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

17            (2) Any person engaged in ground disturbing activity and who  
18 encounters or discovers skeletal human remains in or on the ground  
19 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 in the event  
8 the finding of the remains were based on an inadvertent discovery, if  
9 the requirements of this subsection are met and the person is otherwise  
10 in compliance with applicable law.

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

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

23 (b) Upon receiving notice from a coroner of a finding of  
24 nonforensic skeletal human remains, the department must notify the  
25 appropriate local cemeteries, and all affected Indian tribes via  
26 certified mail to the head of the appropriate tribal government, and  
27 contact the appropriate tribal cultural resources staff within two  
28 business days of the finding. Affected tribes are those with usual and  
29 accustomed areas in the jurisdiction where the remains were found, or  
30 those that submit to the department maps that reflect the tribe's  
31 geographical area of cultural affiliation. A notification to tribes of  
32 a finding of such nonforensic skeletal human remains does not create a  
33 presumption that the remains are Indian.

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

1 affected Indian tribes via certified mail to the head of the  
2 appropriate tribal government within two business days and contact the  
3 appropriate 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) "Forensic remains" are those that come under the jurisdiction  
9 of the coroner pursuant to RCW 68.50.010.

10 (b) "Inadvertent discovery" has the same meaning as used in RCW  
11 27.44.040.

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

14 (1) Any person who discovers skeletal human remains must notify the  
15 coroner and local law enforcement in the most expeditious manner  
16 possible. Any person knowing of the existence of human remains and not  
17 having good reason to believe that the coroner and local law  
18 enforcement has notice thereof and who fails to give notice thereof is  
19 guilty of a misdemeanor.

20 (2) Any person engaged in ground disturbing activity and who  
21 encounters or discovers skeletal human remains in or on the ground  
22 shall:

23 (a) Immediately cease any activity which may cause further  
24 disturbance;

25 (b) Make a reasonable effort to protect the area from further  
26 disturbance;

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

29 (d) Be held harmless from criminal and civil liability in the event  
30 the finding of the remains were based on an inadvertent discovery, if  
31 the requirements of this subsection are met and the person is otherwise  
32 in compliance with applicable law.

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

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

7 (b) Upon receiving notice from a coroner of a finding of  
8 nonforensic skeletal human remains, the department must notify the  
9 appropriate local cemeteries, and all affected Indian tribes via  
10 certified mail to the head of the appropriate tribal government, and  
11 contact the appropriate tribal cultural resources staff within two  
12 business days of the finding. Affected tribes are those with usual and  
13 accustomed areas in the jurisdiction where the remains were found, or  
14 those that submit to the department maps that reflect the tribe's  
15 geographical area of cultural affiliation. A notification to tribes of  
16 a finding of nonforensic skeletal human remains does not create a  
17 presumption that the remains are Indian.

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

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

29 (4) For the purposes of this section:

30 (a) "Forensic remains" are those that come under the jurisdiction  
31 of the coroner pursuant to RCW 68.50.010.

32 (b) "Inadvertent discovery" has the same meaning as used in RCW  
33 27.44.040.

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

36 (1) Any person who discovers skeletal human remains shall notify  
37 the coroner and local law enforcement in the most expeditious manner

1 possible. Any person knowing of the existence of skeletal human  
2 remains and not having good reason to believe that the coroner and  
3 local law enforcement has notice thereof and who fails to give notice  
4 thereof is guilty of a misdemeanor.

5 (2) Any person engaged in ground disturbing activity and who  
6 encounters or discovers skeletal human remains in or on the ground  
7 shall:

8 (a) Immediately cease any activity which may cause further  
9 disturbance;

10 (b) Make a reasonable effort to protect the area from further  
11 disturbance;

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

14 (d) Be held harmless from criminal and civil liability in the event  
15 the finding of the remains were based on an inadvertent discovery, if  
16 the requirements of this subsection are met and the person is otherwise  
17 in compliance with applicable law.

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

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

29 (b) Upon receiving notice from a coroner of a finding of  
30 nonforensic skeletal human remains, the department must notify the  
31 appropriate local cemeteries, and all affected Indian tribes via  
32 certified mail to the head of the appropriate tribal government, and  
33 contact the appropriate tribal cultural resources staff within two  
34 business days of the finding. Affected tribes are those with usual and  
35 accustomed areas in the jurisdiction where the remains were found, or  
36 those that submit to the department maps that reflect the tribe's  
37 geographical area of cultural affiliation. A notification to tribes of

1 a finding of such nonforensic skeletal human remains does not create a  
2 presumption that the remains are Indian.

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

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

14 (4) For the purposes of this section:

15 (a) "Forensic remains" are those that come under the jurisdiction  
16 of the coroner pursuant to RCW 68.50.010.

17 (b) "Inadvertent discovery" has the same meaning as used in RCW  
18 27.44.040.

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

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

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

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

1 (4) For the purposes of this section, "forensic remains" are those  
2 that come under the jurisdiction of the coroner pursuant to RCW  
3 68.50.010.

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

6 The definitions in this section apply throughout this chapter  
7 unless the context clearly requires otherwise.

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

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

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

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

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

22 (6) "Historic" means peoples and cultures who are known through  
23 written documents in their own or other languages. As applied to  
24 underwater archaeological resources, the term historic shall include  
25 only those properties which are listed in or eligible for listing in  
26 the Washington State Register of Historic Places (RCW 27.34.220) or the  
27 National Register of Historic Places as defined in the National  
28 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-  
29 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

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

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

35 ~~(9) "Qualified archaeologist" means a person who has had formal~~  
36 ~~training and/or experience in archaeology over a period of at least~~  
37 ~~three years, and has been certified in writing to be a qualified~~

1 ~~archaeologist by two professional archaeologists))~~ with qualifications  
2 meeting the federal secretary of the interior's standards for a  
3 professional archaeologist. Archaeologists not meeting this standard  
4 may be conditionally employed by working under the supervision of a  
5 professional archaeologist for a period of four years provided the  
6 employee is pursuing qualifications necessary to meet the federal  
7 secretary of the interior's standards for a professional archaeologist.  
8 During this four-year period, the professional archaeologist is  
9 responsible for all findings. The four-year period is not subject to  
10 renewal.

11 ((+10)) (9) "Amateur society" means any organization composed  
12 primarily of persons who are not professional archaeologists, whose  
13 primary interest is in the archaeological resources of the state, and  
14 which has been certified in writing by two professional archaeologists.

15 ((+11)) (10) "Historic archaeological resources" means those  
16 properties which are listed in or eligible for listing in the  
17 Washington State Register of Historic Places (RCW 27.34.220) or the  
18 National Register of Historic Places as defined in the National  
19 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-  
20 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

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

23 The department of archaeology and historic preservation shall  
24 develop and maintain a centralized database and geographic information  
25 systems spatial layer of all known cemeteries and known sites of  
26 burials of human remains in Washington state. The information in the  
27 database is subject to public disclosure, except as provided in RCW  
28 42.56.300; exempt information is available by confidentiality agreement  
29 to federal, state, and local agencies for purposes of environmental  
30 review, and to tribes in order to participate in environmental review,  
31 protect their ancestors, and perpetuate their cultures.

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

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

36 The skeletal human remains assistance account is created in the



1 custody of the state treasurer. All appropriations provided by the  
2 legislature for this purpose as well as any reimbursement for services  
3 provided pursuant to this act must be deposited in the account.  
4 Expenditures from the account may be used only for archaeological  
5 determination, excavations of inadvertently discovered skeletal human  
6 remains, and removal and reintering when necessary. Only the director  
7 or the director's designee may authorize expenditures from the account.  
8 The account is subject to the allotment procedures under chapter 43.88  
9 RCW, but an appropriation is not required for expenditures.

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

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

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