
HOUSE BILL 2019

State of Washington

61st Legislature

2009 Regular Session

By Representatives McCoy, Chase, and Kenney; by request of Governor Gregoire

Read first time 02/06/09. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to creating the office of archaeology and historic
2 preservation; amending RCW 43.334.010, 43.334.020, 43.334.060,
3 43.334.070, 43.334.075, 43.334.077, 43.334.080, 27.34.020, 27.34.220,
4 27.34.230, 27.34.240, 27.34.270, 27.34.280, 27.34.330, 27.34.415,
5 27.44.055, 41.06.095, 43.17.010, 43.17.020, 68.50.645, 68.60.030,
6 68.60.055, 90.48.366, 90.48.368, 27.53.020, 27.53.030, 27.53.060,
7 27.53.080, 27.53.090, 27.53.095, 27.53.100, 27.53.110, 27.53.120,
8 27.53.130, 27.53.140, and 79A.05.075; reenacting and amending RCW
9 27.53.070; creating a new section; and repealing RCW 43.334.030,
10 43.334.040, 43.334.050, and 43.334.900.

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

12 **Sec. 1.** RCW 43.334.010 and 2005 c 333 s 1 are each amended to read
13 as follows:

14 (1) There is created (~~((a department of state government))~~) an office
15 to be known as the (~~((department))~~) office of archaeology and historic
16 preservation within the state parks and recreation commission. The
17 (~~((department))~~) office is vested with all powers and duties transferred
18 to it under this chapter and such other powers and duties as may be
19 authorized by law.

1 (2) Unless the context clearly requires otherwise, the definitions
2 in this section apply throughout this chapter.

3 (a) (~~("Department")~~) "Commission" means the state parks and
4 recreation commission.

5 (b) "Director" means the director of the state parks and recreation
6 commission.

7 (c) "Office" means the (~~(department)~~) office of archaeology and
8 historic preservation.

9 (~~((b) "Director")~~) (d) "Preservation officer" means the (~~(director~~
10 ~~of the department of archaeology and historic preservation)~~) state
11 historic preservation officer as provided for in RCW 43.334.020.

12 **Sec. 2.** RCW 43.334.020 and 2005 c 333 s 2 are each amended to read
13 as follows:

14 (~~(The executive head and appointing authority of the department is~~
15 ~~the director.)~~) The (~~(director)~~) governor shall (~~(serve as)~~) appoint
16 the state historic preservation officer(~~(, and)~~) subject to the
17 approval of the commission. The preservation officer shall report
18 directly to the commission. The preservation officer shall have a
19 background in program administration, an active involvement in historic
20 preservation, and a knowledge of the national, state, and local
21 preservation programs as they affect the state of Washington. (~~(The~~
22 ~~director shall be appointed by the governor, with the consent of the~~
23 ~~senate, and serves at the pleasure of the governor. The director shall~~
24 ~~be paid a salary to be fixed by the governor in accordance with RCW~~
25 ~~43.03.040. If a vacancy occurs in the position while the senate is not~~
26 ~~in session, the governor shall make a temporary appointment until the~~
27 ~~next meeting of the senate.)~~)

28 **Sec. 3.** RCW 43.334.060 and 2005 c 333 s 6 are each amended to read
29 as follows:

30 (1) The preservation officer shall supervise the operations of the
31 office of archaeology and historic preservation.

32 (2) Any power or duty vested in or transferred to the (~~(director)~~)
33 preservation officer by law or executive order may be delegated by the
34 (~~(director to the deputy director or)~~) preservation officer to any
35 other assistant or subordinate; but the (~~(director)~~) preservation

1 officer is responsible for the official acts of the officers and
2 employees of the ((~~department~~)) office.

3 **Sec. 4.** RCW 43.334.070 and 2005 c 333 s 7 are each amended to read
4 as follows:

5 The ((~~director~~)) preservation officer may appoint advisory
6 committees or councils as required by any federal legislation as a
7 condition to the receipt of federal funds by the ((~~department~~)) office.
8 The ((~~director~~)) preservation officer may also appoint statewide
9 committees or councils on those subject matters as are or come within
10 the ((~~department's~~)) office's responsibilities. The statewide
11 committees and councils shall have representation from both major
12 political parties and shall have substantial consumer representation.
13 The committees or councils shall be constituted as required by federal
14 law or as the ((~~director~~)) preservation officer may determine. The
15 members of the committees or councils shall hold office as follows:
16 One-third to serve one year; one-third to serve two years; and one-
17 third to serve three years. Upon expiration of the original terms,
18 subsequent appointments shall be for three years except in the case of
19 a vacancy, in which event appointment shall be only for the remainder
20 of the unexpired term for which the vacancy occurs. No member may
21 serve more than two consecutive terms.

22 Members of such state advisory committees or councils may be paid
23 their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

24 **Sec. 5.** RCW 43.334.075 and 2008 c 275 s 4 are each amended to read
25 as follows:

26 (1) The ((~~director~~)) preservation officer shall appoint a state
27 physical anthropologist. At a minimum, the state physical
28 anthropologist must have a doctorate in either archaeology or
29 anthropology and have experience in forensic osteology or other
30 relevant aspects of physical anthropology and must have at least one
31 year of experience in laboratory reconstruction and analysis. A
32 medical degree with archaeological experience in addition to the
33 experience required may substitute for a doctorate in archaeology or
34 anthropology.

35 (2) The state physical anthropologist has the primary
36 responsibility of investigating, preserving, and, when necessary,

1 removing and reintering discoveries of nonforensic skeletal human
2 remains. The state physical anthropologist is available to any local
3 governments or any federally recognized tribal government within the
4 boundaries of Washington to assist in determining whether discovered
5 skeletal human remains are forensic or nonforensic.

6 (3) The (~~director~~) preservation officer shall hire staff as
7 necessary to support the state physical anthropologist to meet the
8 objectives of this section.

9 (4) For the purposes of this section, "forensic remains" are those
10 that come under the jurisdiction of the coroner pursuant to RCW
11 68.50.010.

12 **Sec. 6.** RCW 43.334.077 and 2008 c 275 s 7 are each amended to read
13 as follows:

14 The skeletal human remains assistance account is created in the
15 custody of the state treasurer. All appropriations provided by the
16 legislature for this purpose as well as any reimbursement for services
17 provided pursuant to chapter 275, Laws of 2008 must be deposited in the
18 account. Expenditures from the account may be used only for
19 archaeological determinations and excavations of inadvertently
20 discovered skeletal human remains, and removal and reinterment of such
21 remains when necessary. Only the (~~director or the director's~~)
22 preservation officer or preservation officer's designee may authorize
23 expenditures from the account. The account is subject to the allotment
24 procedures under chapter 43.88 RCW, but an appropriation is not
25 required for expenditures.

26 **Sec. 7.** RCW 43.334.080 and 2005 c 333 s 8 are each amended to read
27 as follows:

28 In furtherance of the policy of the state to cooperate with the
29 federal government in all of the programs under the jurisdiction of the
30 (~~department~~) office, rules as may become necessary to entitle the
31 state to participate in federal funds may be adopted, unless expressly
32 prohibited by law. Any internal reorganization carried out under the
33 terms of this chapter shall meet federal requirements that are a
34 necessary condition to state receipt of federal funds. Any section or
35 provision of law dealing with the (~~department~~) office that may be
36 susceptible to more than one construction shall be interpreted in favor

1 of the construction most likely to comply with federal laws entitling
2 this state to receive federal funds for the various programs of the
3 ~~((department))~~ office. If any law dealing with the ~~((department))~~
4 office is ruled to be in conflict with federal requirements that are a
5 prescribed condition of the allocation of federal funds to the state,
6 or to any departments or agencies thereof, the conflicting part is
7 declared to be inoperative solely to the extent of the conflict.

8 **Sec. 8.** RCW 27.34.020 and 2007 c 333 s 5 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter:

12 (1) "Advisory council" means the advisory council on historic
13 preservation.

14 (2) ~~(("Department"))~~ "Office" means the ~~((department))~~ office of
15 archaeology and historic preservation.

16 (3) "Director" means the director of the ~~((department—of
17 archaeology and historic preservation))~~ state parks and recreation
18 commission.

19 (4) "Federal act" means the national historic preservation act of
20 1966 (Public Law 89-655; 80 Stat. 915).

21 (5) "Heritage barn" means any large agricultural outbuilding used
22 to house animals, crops, or farm equipment, that is over fifty years
23 old and has been determined by the ~~((department))~~ office to: (a) Be
24 eligible for listing on the Washington heritage register or the
25 national register of historic places; or (b) have been listed on a
26 local historic register and approved by the advisory council. In
27 addition to barns, "heritage barn" includes agricultural resources such
28 as milk houses, sheds, silos, or other outbuildings, that are
29 historically associated with the working life of the farm or ranch, if
30 these outbuildings are on the same property as a heritage barn.

31 ~~((("Heritage council" means the Washington state heritage
32 council.~~

33 ~~(7))~~ "Historic preservation" includes the protection,
34 rehabilitation, restoration, identification, scientific excavation, and
35 reconstruction of districts, sites, buildings, structures, and objects
36 significant in American and Washington state history, architecture,
37 archaeology, or culture.

1 ~~((+8))~~ (7) "Preservation officer" means the state historic
2 preservation officer as provided for in RCW 43.334.020.

3 ~~((+9))~~ (8) "Project" means programs leading to the preservation
4 for public benefit of historical properties, whether by state and local
5 governments or other public bodies, or private organizations or
6 individuals, including the acquisition of title or interests in, and
7 the development of, any district, site, building, structure, or object
8 that is significant in American and Washington state history,
9 architecture, archaeology, or culture, and property used in connection
10 therewith, or for its development.

11 ~~((+10))~~ (9) "State historical agencies" means the state historical
12 societies and the ~~((department))~~ office.

13 ~~((+11))~~ (10) "State historical societies" means the Washington
14 state historical society and the eastern Washington state historical
15 society.

16 ~~((+12))~~ (11) "Cultural resource management plan" means a
17 comprehensive plan which identifies and organizes information on the
18 state of Washington's historic, archaeological, and architectural
19 resources into a set of management criteria, and which is to be used
20 for producing reliable decisions, recommendations, and advice relative
21 to the identification, evaluation, and protection of these resources.

22 **Sec. 9.** RCW 27.34.220 and 1997 c 145 s 1 are each amended to read
23 as follows:

24 The ~~((director or the director's))~~ preservation officer or the
25 preservation officer's designee is authorized:

26 (1) To promulgate and maintain the Washington heritage register of
27 districts, sites, buildings, structures, and objects significant in
28 American or Washington state history, architecture, archaeology, and
29 culture, and to prepare comprehensive statewide historic surveys and
30 plans and research and evaluation of surveyed resources for the
31 preparation of nominations to the Washington heritage register and the
32 national register of historic places, in accordance with criteria
33 approved by the advisory council established under RCW 27.34.250.
34 Nominations to the national register of historic places shall comply
35 with any standards and regulations promulgated by the United States
36 secretary of the interior for the preservation, acquisition, and

1 development of such properties. Nominations to the Washington heritage
2 register shall comply with rules adopted under this chapter.

3 (2) To establish a program of matching grants-in-aid to public
4 agencies, public or private organizations, or individuals for projects
5 having as their purpose the preservation for public benefit of
6 properties that are significant in American or Washington state
7 history, architecture, archaeology, and culture.

8 (3) To promote historic preservation efforts throughout the state,
9 including private efforts and those of city, county, and state
10 agencies.

11 (4) To enhance the effectiveness of the state preservation program
12 through the initiation of legislation, the use of varied funding
13 sources, the creation of special purpose programs, and contact with
14 state, county, and city officials, civic groups, and professionals.

15 (5) To spend funds, subject to legislative appropriation and the
16 availability of funds, where necessary to assist the Indian tribes of
17 Washington state in removing prehistoric human remains for scientific
18 examination and reburial, if the human remains have been unearthed
19 inadvertently or through vandalism and if no other public agency is
20 legally responsible for their preservation.

21 (6) To consult with the governor and the legislature on issues
22 relating to the conservation of the man-made environment and their
23 impact on the well-being of the state and its citizens.

24 (7) To charge fees for professional and clerical services provided
25 by the office.

26 (8) To adopt such rules, in accordance with chapter 34.05 RCW, as
27 are necessary to carry out RCW 27.34.200 through 27.34.280.

28 **Sec. 10.** RCW 27.34.230 and 2005 c 333 s 15 are each amended to
29 read as follows:

30 The director of the state parks and recreation commission or the
31 director's designee shall:

32 (1) Receive, administer, and disburse such gifts, grants, and
33 endowments from private sources as may be made in trust or otherwise
34 for the purposes of RCW 27.34.200 (~~(through)~~) and 27.34.220 or the
35 federal act; and

36 (2) Develop and implement a cultural resource management plan.

1 **Sec. 11.** RCW 27.34.240 and 1986 c 266 s 13 are each amended to
2 read as follows:

3 The amounts made available for grants to the public agencies,
4 public or private organizations, or individuals for projects for each
5 fiscal year shall be apportioned among program applicants by the
6 director or the director's designee, with the advice of the
7 preservation officer, in accordance with needs as contained in
8 statewide archaeology and historic preservation plans developed by the
9 (~~department~~) office.

10 **Sec. 12.** RCW 27.34.270 and 1997 c 145 s 2 are each amended to read
11 as follows:

12 The advisory council shall:

13 (1) Advise the governor and the (~~department~~) office on matters
14 relating to historic preservation; recommend measures to coordinate
15 activities of state and local agencies, private institutions, and
16 individuals relating to historic preservation; and advise on the
17 dissemination of information pertaining to such activities; and

18 (2) Review and recommend nominations for the national register of
19 historic places to the preservation officer (~~and the director~~).

20 **Sec. 13.** RCW 27.34.280 and 1986 c 266 s 15 are each amended to
21 read as follows:

22 The (~~department~~) office shall provide administrative and
23 financial services to the advisory council on historic preservation
24 (~~and to the Washington state heritage council~~).

25 **Sec. 14.** RCW 27.34.330 and 2006 c 371 s 232 are each amended to
26 read as follows:

27 The Washington state historical society shall establish a
28 competitive process to solicit proposals for and prioritize heritage
29 capital projects for potential funding in the state capital budget.
30 The society shall adopt rules governing project eligibility and
31 evaluation criteria. Application for funding of specific projects may
32 be made to the society by local governments, public development
33 authorities, nonprofit corporations, tribal governments, and other
34 entities, as determined by the society. The society, with the advice
35 of leaders in the heritage field, including but not limited to

1 representatives from the office of the secretary of state, the eastern
2 Washington state historical society, and the ((department)) office of
3 archaeology and historic preservation, shall establish and submit a
4 prioritized list of heritage capital projects to the governor and the
5 legislature in the society's biennial capital budget request. The list
6 shall include a description of each project, the amount of recommended
7 state funding, and documentation of nonstate funds to be used for the
8 project. The total amount of recommended state funding for projects on
9 a biennial project list shall not exceed ten million dollars. The
10 prioritized list shall be developed through open and public meetings
11 and the amount of state funding shall not exceed thirty-three percent
12 of the total cost of the project. The nonstate portion of the total
13 project cost may include cash, the value of real property when acquired
14 solely for the purpose of the project, and in-kind contributions. The
15 ((department)) office shall not sign contracts or otherwise financially
16 obligate funds under this section until the legislature has approved a
17 specific list of projects. In contracts for grants authorized under
18 this section, the society shall include provisions requiring that
19 capital improvements be held by the grantee for a specified period of
20 time appropriate to the amount of the grant and that facilities be used
21 for the express purpose of the grant. If the grantee is found to be
22 out of compliance with provisions of the contract, the grantee shall
23 repay to the state general fund the principal amount of the grant plus
24 interest calculated at the rate of interest on state of Washington
25 general obligation bonds issued most closely to the date of
26 authorization of the grant.

27 **Sec. 15.** RCW 27.34.415 and 2008 c 275 s 6 are each amended to read
28 as follows:

29 The ((department)) office of archaeology and historic preservation
30 shall develop and maintain a centralized database and geographic
31 information systems spatial layer of all known cemeteries and known
32 sites of burials of human remains in Washington state. The information
33 in the database is subject to public disclosure, except as provided in
34 RCW 42.56.300; exempt information is available by confidentiality
35 agreement to federal, state, and local agencies for purposes of
36 environmental review, and to tribes in order to participate in

1 environmental review, protect their ancestors, and perpetuate their
2 cultures.

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

5 **Sec. 16.** RCW 27.44.055 and 2008 c 275 s 2 are each amended to read
6 as follows:

7 (1) Any person who discovers skeletal human remains must notify the
8 coroner and local law enforcement in the most expeditious manner
9 possible. Any person knowing of the existence of 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 thereof is
12 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 whether the skeletal
29 human remains are forensic or nonforensic within five business days of
30 receiving notification of a finding of such remains provided that there
31 is sufficient evidence to make such a determination within that time
32 period. The coroner will retain jurisdiction over forensic remains.

33 (a) Upon determination that the remains are nonforensic, the
34 coroner must notify the ((department)) office of archaeology and
35 historic preservation within two business days. The ((department))
36 office will have jurisdiction over such remains until provenance of the

1 remains is established. A determination that remains are nonforensic
2 does not create a presumption of removal or nonremoval.

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

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

21 (d) The affected tribes have five business days to respond via
22 telephone or writing to the ((department)) office as to their interest
23 in the remains.

24 (4) For the purposes of this section:

25 (a) "Affected tribes" are:

26 (i) Those federally recognized tribes with usual and accustomed
27 areas in the jurisdiction where the remains were found;

28 (ii) Those federally recognized tribes that submit to the
29 ((department)) office maps that reflect the tribe's geographical area
30 of cultural affiliation; and

31 (iii) Other tribes with historical and cultural affiliation in the
32 jurisdiction where the remains were found.

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

35 (c) "Inadvertent discovery" has the same meaning as used in RCW
36 27.44.040.

37 (5) Nothing in this section constitutes, advocates, or otherwise
38 grants, confers, or implies federal or state recognition of those

1 tribes that are not federally recognized pursuant to 25 C.F.R. part 83,
2 procedures for establishing that an American Indian group exists as an
3 Indian tribe.

4 **Sec. 17.** RCW 41.06.095 and 2005 c 333 s 9 are each amended to read
5 as follows:

6 In addition to the exemptions under RCW 41.06.070, this chapter
7 does not apply in the ((department)) office of archaeology and historic
8 preservation to the ((director, the director's personal secretary, the
9 deputy director, all division directors and assistant directors,))
10 preservation officer and one confidential secretary ((for each of these
11 officers)).

12 **Sec. 18.** RCW 43.17.010 and 2007 c 341 s 46 are each amended to
13 read as follows:

14 There shall be departments of the state government which shall be
15 known as (1) the department of social and health services, (2) the
16 department of ecology, (3) the department of labor and industries, (4)
17 the department of agriculture, (5) the department of fish and wildlife,
18 (6) the department of transportation, (7) the department of licensing,
19 (8) the department of general administration, (9) the department of
20 community, trade, and economic development, (10) the department of
21 veterans affairs, (11) the department of revenue, (12) the department
22 of retirement systems, (13) the department of corrections, (14) the
23 department of health, (15) the department of financial institutions,
24 (16) ((the department of archaeology and historic preservation, (17))
25 the department of early learning, and ((+18)) (17) the Puget Sound
26 partnership, which shall be charged with the execution, enforcement,
27 and administration of such laws, and invested with such powers and
28 required to perform such duties, as the legislature may provide.

29 **Sec. 19.** RCW 43.17.020 and 2007 c 341 s 47 are each amended to
30 read as follows:

31 There shall be a chief executive officer of each department to be
32 known as: (1) The secretary of social and health services, (2) the
33 director of ecology, (3) the director of labor and industries, (4) the
34 director of agriculture, (5) the director of fish and wildlife, (6) the
35 secretary of transportation, (7) the director of licensing, (8) the

1 director of general administration, (9) the director of community,
2 trade, and economic development, (10) the director of veterans affairs,
3 (11) the director of revenue, (12) the director of retirement systems,
4 (13) the secretary of corrections, (14) the secretary of health, (15)
5 the director of financial institutions, (16) (~~the director of the~~
6 ~~department of archaeology and historic preservation, (17))~~) the
7 director of early learning, and (~~(18))~~ (17) the executive director of
8 the Puget Sound partnership.

9 Such officers, except the director of fish and wildlife, shall be
10 appointed by the governor, with the consent of the senate, and hold
11 office at the pleasure of the governor. The director of fish and
12 wildlife shall be appointed by the fish and wildlife commission as
13 prescribed by RCW 77.04.055.

14 **Sec. 20.** RCW 68.50.645 and 2008 c 275 s 1 are each amended to read
15 as follows:

16 (1) It is the duty of every person who knows of the existence and
17 location of skeletal human remains to notify the coroner and local law
18 enforcement in the most expeditious manner possible, unless such person
19 has good reason to believe that such notice has already been given.
20 Any person knowing of the existence of skeletal human remains and not
21 having good reason to believe that the coroner and local law
22 enforcement has notice thereof and who fails to give notice to the
23 coroner and local law enforcement, is guilty of a misdemeanor.

24 (2) Any person engaged in ground disturbing activity and who
25 encounters or discovers skeletal human remains in or on the ground
26 shall:

27 (a) Immediately cease any activity which may cause further
28 disturbance;

29 (b) Make a reasonable effort to protect the area from further
30 disturbance;

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

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

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

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

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

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

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

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

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

32 (d) The affected tribes have five business days to respond via
33 telephone or writing to the ((department)) office as to their interest
34 in the remains.

35 (4) For the purposes of this section:

36 (a) "Affected tribes" are:

37 (i) Those federally recognized tribes with usual and accustomed
38 areas in the jurisdiction where the remains were found;

1 (ii) Those federally recognized tribes that submit to the
2 ((department)) office maps that reflect the tribe's geographical area
3 of cultural affiliation; and

4 (iii) Other tribes with historical and cultural affiliation in the
5 jurisdiction where the remains were found.

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

8 (c) "Inadvertent discovery" has the same meaning as used in RCW
9 27.44.040.

10 (5) Nothing in this section constitutes, advocates, or otherwise
11 grants, confers, or implies federal or state recognition of those
12 tribes that are not federally recognized pursuant to 25 C.F.R. part 83,
13 procedures for establishing that an American Indian group exists as an
14 Indian tribe.

15 **Sec. 21.** RCW 68.60.030 and 2005 c 365 s 150 are each amended to
16 read as follows:

17 (1)(a) The ~~((archaeological and historical division of the~~
18 ~~department of community, trade, and economic development))~~ office of
19 archaeology and historic preservation may grant by nontransferable
20 certificate authority to maintain and protect an abandoned cemetery
21 upon application made by a preservation organization which has been
22 incorporated for the purpose of restoring, maintaining, and protecting
23 an abandoned cemetery. Such authority shall be limited to the care,
24 maintenance, restoration, protection, and historical preservation of
25 the abandoned cemetery, and shall not include authority to make
26 burials. In order to activate a historical cemetery for burials, an
27 applicant must apply for a certificate of authority to operate a
28 cemetery from the state cemetery board.

29 (b) Those preservation and maintenance corporations that are
30 granted authority to maintain and protect an abandoned cemetery shall
31 be entitled to hold and possess burial records, maps, and other
32 historical documents as may exist. Maintenance and preservation
33 corporations that are granted authority to maintain and protect an
34 abandoned cemetery shall not be liable to those claiming burial rights,
35 ancestral ownership, or to any other person or organization alleging to
36 have control by any form of conveyance not previously recorded at the
37 county auditor's office within the county in which the abandoned

1 cemetery exists. Such organizations shall not be liable for any
2 reasonable alterations made during restoration work on memorials,
3 roadways, walkways, features, plantings, or any other detail of the
4 abandoned cemetery.

5 (c) Should the maintenance and preservation corporation be
6 dissolved, the (~~archaeological and historical division of the~~
7 ~~department of community, trade, and economic development~~) office of
8 archaeology and historic preservation shall revoke the certificate of
9 authority.

10 (d) Maintenance and preservation corporations that are granted
11 authority to maintain and protect an abandoned cemetery may establish
12 care funds.

13 (2) Except as provided in subsection (1) of this section, the
14 (~~department of community, trade, and economic development~~) office of
15 archaeology and historic preservation may, in its sole discretion,
16 authorize any Washington nonprofit corporation that is not expressly
17 incorporated for the purpose of restoring, maintaining, and protecting
18 an abandoned cemetery, to restore, maintain, and protect one or more
19 abandoned cemeteries. The authorization may include the right of
20 access to any burial records, maps, and other historical documents, but
21 shall not include the right to be the permanent custodian of original
22 records, maps, or documents. This authorization shall be granted by a
23 nontransferable certificate of authority. Any nonprofit corporation
24 authorized and acting under this subsection is immune from liability to
25 the same extent as if it were a preservation organization holding a
26 certificate of authority under subsection (1) of this section.

27 (3) The (~~department of community, trade, and economic~~
28 ~~development~~) office of archaeology and historic preservation shall
29 establish standards and guidelines for granting certificates of
30 authority under subsections (1) and (2) of this section to assure that
31 any restoration, maintenance, and protection activities authorized
32 under this subsection are conducted and supervised in an appropriate
33 manner.

34 **Sec. 22.** RCW 68.60.055 and 2008 c 275 s 3 are each amended to read
35 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 arising
15 under the provisions of this section provided the following criteria
16 are met:

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

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

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

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

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

31 (b) Upon receiving notice from a coroner of a finding of
32 nonforensic skeletal human remains, the ((department)) office must
33 notify the appropriate local cemeteries, and all affected Indian tribes
34 via certified mail to the head of the appropriate tribal government,
35 and contact the appropriate tribal cultural resources staff within two
36 business days of the finding. The determination of what are
37 appropriate local cemeteries to be notified is at the discretion of the

1 ((department)) office. A notification to tribes of a finding of such
2 nonforensic skeletal human remains does not create a presumption that
3 the remains are Indian.

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

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

15 (4) For the purposes of this section:

16 (a) "Affected tribes" are:

17 (i) Those federally recognized tribes with usual and accustomed
18 areas in the jurisdiction where the remains were found;

19 (ii) Those federally recognized tribes that submit to the
20 ((department)) office maps that reflect the tribe's geographical area
21 of cultural affiliation; and

22 (iii) Other tribes with historical and cultural affiliation in the
23 jurisdiction where the remains were found.

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

26 (c) "Inadvertent discovery" has the same meaning as used in RCW
27 27.44.040.

28 (5) Nothing in this section constitutes, advocates, or otherwise
29 grants, confers, or implies federal or state recognition of those
30 tribes that are not federally recognized pursuant to 25 C.F.R. part 83,
31 procedures for establishing that an American Indian group exists as an
32 Indian tribe.

33 **Sec. 23.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read
34 as follows:

35 The department, in consultation with the departments of fish and
36 wildlife and natural resources, and the parks and recreation
37 commission, shall adopt rules establishing a compensation schedule for

1 the discharge of oil in violation of this chapter and chapter 90.56
2 RCW. The amount of compensation assessed under this schedule shall be
3 no less than one dollar per gallon of oil spilled and no greater than
4 one hundred dollars per gallon of oil spilled. The compensation
5 schedule shall reflect adequate compensation for unquantifiable damages
6 or for damages not quantifiable at reasonable cost for any adverse
7 environmental, recreational, aesthetic, or other effects caused by the
8 spill and shall take into account:

9 (1) Characteristics of any oil spilled, such as toxicity,
10 dispersibility, solubility, and persistence, that may affect the
11 severity of the effects on the receiving environment, living organisms,
12 and recreational and aesthetic resources;

13 (2) The sensitivity of the affected area as determined by such
14 factors as: (a) The location of the spill; (b) habitat and living
15 resource sensitivity; (c) seasonal distribution or sensitivity of
16 living resources; (d) areas of recreational use or aesthetic
17 importance; (e) the proximity of the spill to important habitats for
18 birds, aquatic mammals, fish, or to species listed as threatened or
19 endangered under state or federal law; (f) significant archaeological
20 resources as determined by the (~~department~~) office of archaeology and
21 historic preservation; and (g) other areas of special ecological or
22 recreational importance, as determined by the department; and

23 (3) Actions taken by the party who spilled oil or any party liable
24 for the spill that: (a) Demonstrate a recognition and affirmative
25 acceptance of responsibility for the spill, such as the immediate
26 removal of oil and the amount of oil removed from the environment; or
27 (b) enhance or impede the detection of the spill, the determination of
28 the quantity of oil spilled, or the extent of damage, including the
29 unauthorized removal of evidence such as injured fish or wildlife.

30 **Sec. 24.** RCW 90.48.368 and 2007 c 347 s 2 are each amended to read
31 as follows:

32 (1) The department shall adopt rules establishing a formal process
33 for preassessment screening of damages resulting from spills to the
34 waters of the state causing the death of, or injury to, fish, animals,
35 vegetation, or other resources of the state. The rules shall specify
36 the conditions under which the department shall convene a preassessment
37 screening committee. The preassessment screening process shall occur

1 concurrently with reconnaissance activities. The committee shall use
2 information obtained from reconnaissance activities as well as any
3 other relevant resource and resource use information. For each
4 incident, the committee shall determine whether a damage assessment
5 investigation should be conducted, or, whether the compensation
6 schedule authorized under RCW 90.48.366 and 90.48.367 should be used to
7 assess damages. The committee may accept restoration or enhancement
8 projects or studies proposed by the liable parties in lieu of some or
9 all of: (a) The compensation schedule authorized under RCW 90.48.366
10 and 90.48.367; or (b) the claims from damage assessment studies
11 authorized under RCW 90.48.142.

12 (2) A preassessment screening committee may consist of
13 representatives of the departments of ecology, (~~archaeology and~~
14 ~~historic preservation,~~) fish and wildlife, health, and natural
15 resources, the office of archaeology and historic preservation and the
16 parks and recreation commission, as well as other federal, state, and
17 local agencies, and tribal and local governments whose presence would
18 enhance the reconnaissance or damage assessment aspects of spill
19 response. The department shall chair the committee and determine which
20 representatives will be needed on a spill-by-spill basis.

21 (3) The committee shall consider the following factors when
22 determining whether a damage assessment study authorized under RCW
23 90.48.367 should be conducted: (a) Whether evidence from
24 reconnaissance investigations suggests that injury has occurred or is
25 likely to occur to publicly owned resources; (b) the potential loss in
26 services provided by resources injured or likely to be injured and the
27 expected value of the potential loss; (c) whether a restoration project
28 to return lost services is technically feasible; (d) the accuracy of
29 damage quantification methods that could be used and the anticipated
30 cost-effectiveness of applying each method; (e) the extent to which
31 likely injury to resources can be verified with available
32 quantification methods; and (f) whether the injury, once quantified,
33 can be translated into monetary values with sufficient precision or
34 accuracy.

35 (4) When a resource damage assessment is required for an oil spill
36 in the waters of the state, as defined in RCW 90.56.010, the state
37 trustee agency responsible for the resource and habitat damaged shall

1 conduct the damage assessment and pursue all appropriate remedies with
2 the responsible party.

3 (5) Oil spill damage assessment studies authorized under RCW
4 90.48.367 may only be conducted if the committee, after considering the
5 factors enumerated in subsection (3) of this section, determines that
6 the damages to be investigated are quantifiable at a reasonable cost
7 and that proposed assessment studies are clearly linked to
8 quantification of the damages incurred.

9 (6) As new information becomes available, the committee may
10 reevaluate the scope of damage assessment using the factors listed in
11 subsection (3) of this section and may reduce or expand the scope of
12 damage assessment as appropriate.

13 (7) The preassessment screening process shall provide for the
14 ongoing involvement of persons who may be liable for damages resulting
15 from an oil spill. The department may negotiate with a potentially
16 liable party to perform restoration and enhancement projects or studies
17 which may substitute for all or part of the compensation authorized
18 under RCW 90.48.366 and 90.48.367 or the damage assessment studies
19 authorized under RCW 90.48.367.

20 (8) For the purposes of this section and RCW 90.48.367, the cost of
21 a damage assessment shall be considered "reasonable" when the
22 anticipated cost of the damage assessment is expected to be less than
23 the anticipated damage that may have occurred or may occur.

24 **Sec. 25.** RCW 27.53.020 and 2005 c 333 s 19 are each amended to
25 read as follows:

26 The discovery, identification, excavation, and study of the state's
27 archaeological resources, the providing of information on
28 archaeological sites for their nomination to the state and national
29 registers of historic places, the maintaining of a complete inventory
30 of archaeological sites and collections, and the providing of
31 information to state, federal, and private construction agencies
32 regarding the possible impact of construction activities on the state's
33 archaeological resources, are proper public functions; and the
34 ((department)) office of archaeology and historic preservation, created
35 under the authority of chapter 43.334 RCW, is hereby designated as an
36 appropriate ((agency)) office to carry out these functions. The
37 ((director)) preservation officer shall provide guidelines for the

1 selection of depositories designated by the state for archaeological
2 resources. The legislature directs that there shall be full
3 cooperation amongst the (~~department~~) office and other agencies of the
4 state.

5 **Sec. 26.** RCW 27.53.030 and 2008 c 275 s 5 are each amended to read
6 as follows:

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

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

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

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

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

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

23 ~~(6))~~ "Historic" means peoples and cultures who are known through
24 written documents in their own or other languages. As applied to
25 underwater archaeological resources, the term historic shall include
26 only those properties which are listed in or eligible for listing in
27 the Washington State Register of Historic Places (RCW 27.34.220) or the
28 National Register of Historic Places as defined in the National
29 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
30 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

31 ~~((7))~~ (6) "Prehistoric" means peoples and cultures who are
32 unknown through contemporaneous written documents in any language.

33 (7) "Preservation officer" means the state historical preservation
34 officer as provided for in RCW 43.334.020.

35 (8) "Professional archaeologist" means a person with qualifications
36 meeting the federal secretary of the interior's standards for a
37 professional archaeologist. Archaeologists not meeting this standard

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

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

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

18 (11) "Commission" means the state parks and recreation commission.

19 **Sec. 27.** RCW 27.53.060 and 2002 c 211 s 3 are each amended to read
20 as follows:

21 (1) On the private and public lands of this state it shall be
22 unlawful for any person, firm, corporation, or any agency or
23 institution of the state or a political subdivision thereof to
24 knowingly remove, alter, dig into, or excavate by use of any
25 mechanical, hydraulic, or other means, or to damage, deface, or destroy
26 any historic or prehistoric archaeological resource or site, or remove
27 any archaeological object from such site, except for Indian graves or
28 cairns, or any glyptic or painted record of any tribe or peoples, or
29 historic graves as defined in chapter 68.05 RCW, disturbances of which
30 shall be a class C felony punishable under chapter 9A.20 RCW, without
31 having obtained a written permit from the ((~~director~~)) preservation
32 officer for such activities.

33 (2) The ((~~director~~)) preservation officer must obtain the consent
34 of the private or public property owner or agency responsible for the
35 management thereof, prior to issuance of the permit. The property
36 owner or agency responsible for the management of such land may
37 condition its consent on the execution of a separate agreement, lease,

1 or other real property conveyance with the applicant as may be
2 necessary to carry out the legal rights or duties of the public
3 property landowner or agency.

4 (3) The (~~director~~) preservation officer, in consultation with the
5 affected tribes, shall develop guidelines for the issuance and
6 processing of permits.

7 (4) Such written permit and any agreement or lease or other
8 conveyance required by any public property owner or agency responsible
9 for management of such land shall be physically present while any such
10 activity is being conducted.

11 (5) The provisions of this section shall not apply to the removal
12 of artifacts found exposed on the surface of the ground which are not
13 historic archaeological resources or sites.

14 (6) When determining whether to grant or condition a permit, the
15 (~~director~~) preservation officer may give great weight to the final
16 record of previous civil or criminal penalties against either the
17 applicant, the parties responsible for conducting the work, or the
18 parties responsible for carrying out the terms and conditions of the
19 permit, either under this chapter or under comparable federal laws. If
20 the (~~director~~) preservation officer denies a permit, the applicant
21 may request a hearing as provided for in chapter 34.05 RCW. When the
22 state parks and recreation commission requests a hearing under this
23 subsection, an administrative law judge assigned by the office of
24 administrative hearings shall conduct the hearing. The decision of the
25 administrative law judge is the final agency order.

26 **Sec. 28.** RCW 27.53.070 and 2005 c 333 s 21 and 2005 c 274 s 243
27 are each reenacted and amended to read as follows:

28 It is the declared intention of the legislature that field
29 investigations on privately owned lands should be discouraged except in
30 accordance with both the provisions and spirit of this chapter and
31 persons having knowledge of the location of archaeological sites or
32 resources are encouraged to communicate such information to the
33 (~~department~~) office. Such information shall not constitute a public
34 record which requires disclosure pursuant to the exception authorized
35 in chapter 42.56 RCW to avoid site depredation.

1 **Sec. 29.** RCW 27.53.080 and 2005 c 333 s 22 are each amended to
2 read as follows:

3 (1) Qualified or professional archaeologists, in performance of
4 their duties, may enter upon public lands of the state of Washington
5 and its political subdivisions after first notifying the entity
6 responsible for managing those public lands, at such times and in such
7 manner as not to interfere with the normal management thereof, for the
8 purposes of doing archaeological resource location and evaluation
9 studies, including site sampling activities. The results of such
10 studies shall be provided to the state agency or political subdivision
11 responsible for such lands and the ((~~department~~)) office and are
12 confidential unless the ((~~director~~)) preservation officer, in writing,
13 declares otherwise. Scientific excavations are to be carried out only
14 after appropriate agreement has been made between a professional
15 archaeologist or an institution of higher education and the agency or
16 political subdivision responsible for such lands. A copy of such
17 agreement shall be filed with the ((~~department~~)) office.

18 (2) Amateur societies may engage in such activities by submitting
19 and having approved by the responsible agency or political subdivision
20 a written proposal detailing the scope and duration of the activity.
21 Before approval, a proposal from an amateur society shall be submitted
22 to the ((~~department~~)) office for review and recommendation. The
23 approving agency or political subdivision shall impose conditions on
24 the scope and duration of the proposed activity necessary to protect
25 the archaeological resources and ensure compliance with applicable
26 federal, state, and local laws. The findings and results of activities
27 authorized under this section shall be made known to the approving
28 agency or political subdivision approving the activities and to the
29 ((~~department~~)) office.

30 **Sec. 30.** RCW 27.53.090 and 1986 c 266 s 20 are each amended to
31 read as follows:

32 Any person, firm, or corporation violating any of the provisions of
33 this chapter shall be guilty of a misdemeanor. Each day of continued
34 violation of any provision of this chapter shall constitute a distinct
35 and separate offense. Offenses shall be reported to the appropriate
36 law enforcement agency or to the ((~~director~~)) preservation officer.

1 **Sec. 31.** RCW 27.53.095 and 2005 c 333 s 23 are each amended to
2 read as follows:

3 (1) Persons found to have violated this chapter, either by a
4 knowing and willful failure to obtain a permit where required under RCW
5 27.53.060 or by a knowing and willful failure to comply with the
6 provisions of a permit issued by the ((~~director~~)) preservation officer
7 where required under RCW 27.53.060, in addition to other remedies as
8 provided for by law, may be subject to one or more of the following:

9 (a) Reasonable investigative costs incurred by a mutually agreed
10 upon independent professional archaeologist investigating the alleged
11 violation;

12 (b) Reasonable site restoration costs; and

13 (c) Civil penalties, as determined by the ((~~director~~)) preservation
14 officer, in an amount of not more than five thousand dollars per
15 violation.

16 (2) Any person incurring the penalty may file an application for an
17 adjudicative proceeding and may pursue subsequent review as provided in
18 chapter 34.05 RCW and applicable rules of the ((~~department~~))
19 commission. When the state parks and recreation commission requests an
20 adjudicative proceeding under this subsection, an administrative law
21 judge assigned by the office of administrative hearings shall conduct
22 the hearing. The decision of the administrative law judge is the final
23 agency order.

24 (3) Any penalty imposed by final order following an adjudicative
25 proceeding becomes due and payable upon service of the final order.

26 (4) The attorney general may bring an action in the name of the
27 ((~~department~~)) commission in the superior court of Thurston county or
28 of any county in which the violator may do business to collect any
29 penalty imposed under this chapter and to enforce subsection (5) of
30 this section.

31 (5) Any and all artifacts in possession of a violator shall become
32 the property of the state until proper identification of artifact
33 ownership may be determined by the ((~~director~~)) preservation officer.

34 (6) Penalties overturned on appeal entitle the appealing party to
35 fees and other expenses, including reasonable attorneys' fees, as
36 provided in RCW 4.84.350.

1 **Sec. 32.** RCW 27.53.100 and 1988 c 124 s 5 are each amended to read
2 as follows:

3 Persons, firms, corporations, institutions, or agencies which
4 discover a previously unreported historic archaeological resource on
5 state-owned aquatic lands and report the site or location of such
6 resource to the (~~department~~) office shall have a right of first
7 refusal to future salvage permits granted for the recovery of that
8 resource, subject to the provisions of RCW 27.53.110. Such right of
9 first refusal shall exist for five years from the date of the report.
10 Should another person, firm, corporation, institution, or agency apply
11 for a permit to salvage that resource, the reporting entity shall have
12 sixty days to submit its own permit application and exercise its first
13 refusal right, or the right shall be extinguished.

14 **Sec. 33.** RCW 27.53.110 and 1988 c 124 s 6 are each amended to read
15 as follows:

16 The (~~director~~) preservation officer is hereby authorized to enter
17 into contracts with (~~other~~) state agencies or institutions and with
18 qualified private institutions, persons, firms, or corporations for the
19 discovery and salvage of state-owned historic archaeological resources.
20 Such contracts shall include but are not limited to the following terms
21 and conditions:

22 (1) Historic shipwrecks:

23 (a) The contract shall provide for fair compensation to a salvor.
24 "Fair compensation" means an amount not less than ninety percent of the
25 appraised value of the objects recovered following successful
26 completion of the contract.

27 (b) The salvor may retain objects with a value of up to ninety
28 percent of the appraised value of the total objects recovered, or cash,
29 or a combination of objects and cash. In no event may the total of
30 objects and cash exceed ninety percent of the total appraised value of
31 the objects recovered. A salvor shall not be entitled to further
32 compensation from any state sources.

33 (c) The contract shall provide that the state will be given first
34 choice of which objects it may wish to retain for display purposes for
35 the people of the state from among all the objects recovered. The
36 state may retain objects with a value of up to ten percent of the
37 appraised value of the total objects recovered. If the state chooses

1 not to retain recovered objects with a value of up to ten percent of
2 the appraised value, the state shall be entitled to receive its share
3 in cash or a combination of recovered objects and cash so long as the
4 state's total share does not exceed ten percent of the appraised value
5 of the objects recovered.

6 (d) The contract shall provide that both the state and the salvor
7 shall have the right to select a single appraiser or joint appraisers.

8 (e) The contract shall also provide that title to the objects shall
9 pass to the salvor when the permit is issued. However, should the
10 salvor fail to fully perform under the terms of the contract, title to
11 all objects recovered shall revert to the state.

12 (2) Historic aircraft:

13 (a) The contract shall provide that historic aircraft belonging to
14 the state of Washington may only be recovered if the purpose of that
15 salvage operation is to recover the aircraft for a museum, historical
16 society, nonprofit organization, or governmental entity.

17 (b) Title to the aircraft may only be passed by the state to one of
18 the entities listed in (a) of this subsection.

19 (c) Compensation to the salvor shall only be derived from the sale
20 or exchange of the aircraft to one of the entities listed in (a) of
21 this subsection or such other compensation as one of the entities
22 listed in (a) of this subsection and the salvor may arrange. The
23 salvor shall not have a claim to compensation from state funds.

24 (3) Other historic archaeological resources: The ~~((director))~~
25 preservation officer, in his or her discretion, may negotiate the terms
26 of such contracts.

27 **Sec. 34.** RCW 27.53.120 and 1988 c 124 s 7 are each amended to read
28 as follows:

29 The salvor shall agree to mitigate any archaeological damage which
30 occurs during the salvage operation. The ~~((department))~~ office shall
31 have access to all property recovered from historic archaeological
32 sites for purposes of scholarly research and photographic documentation
33 for a period to be agreed upon by the parties following completion of
34 the salvage operation. The ~~((department))~~ office shall also have the
35 right to publish scientific papers concerning the results of all
36 research conducted as project mitigation.

1 The ((~~director~~)) preservation officer has the right to refuse to
2 issue a permit for salvaging an historic archaeological resource if
3 that resource would be destroyed beyond mitigation by the proposed
4 salvage operation. Any agency, institution, person, firm, or
5 corporation which has been denied a permit because the resource would
6 be destroyed beyond mitigation by their method of salvage shall have a
7 right of first refusal for that permit at a future date should
8 technology be found which would make salvage possible without
9 destroying the resource. Such right of first refusal shall be in
10 effect for sixty days after the ((~~director~~)) preservation officer has
11 determined that salvage can be accomplished by a subsequent applicant
12 without destroying the resource.

13 No person, firm, or corporation may conduct such salvage or
14 recovery operation herein described without first obtaining such
15 contract.

16 **Sec. 35.** RCW 27.53.130 and 1995 c 399 s 17 are each amended to
17 read as follows:

18 The ((~~department~~)) office shall publish annually and update as
19 necessary a list of those areas where permits are required to protect
20 historic archaeological sites on aquatic lands.

21 **Sec. 36.** RCW 27.53.140 and 1995 c 399 s 18 are each amended to
22 read as follows:

23 The ((~~department~~)) state parks and recreation commission in
24 consultation with the preservation officer shall have such rule-making
25 authority as is necessary to carry out the provisions of this chapter.

26 **Sec. 37.** RCW 79A.05.075 and 1999 c 249 s 306 are each amended to
27 read as follows:

28 No provision of law relating to the commission shall prevent the
29 commission from delegating to the director such powers and duties of
30 the commission as they may deem proper, except that the commission may
31 not delegate supervision of the state historic preservation officer.

32 NEW SECTION. **Sec. 38.** (1) The department of archaeology and
33 historic preservation is hereby abolished and its powers, duties, and

1 functions are hereby transferred to the office of archaeology and
2 historic preservation within the state parks and recreation commission.

3 (2)(a) All reports, documents, surveys, books, records, files,
4 papers, or written material in the possession of the department of
5 archaeology and historic preservation shall be delivered to the custody
6 of the state parks and recreation commission. All cabinets, furniture,
7 office equipment, motor vehicles, and other tangible property employed
8 by the department of archaeology and historic preservation shall be
9 made available to the state parks and recreation commission for use by
10 the office of archaeology and historic preservation. All funds,
11 credits, or other assets held by the department of archaeology and
12 historic preservation shall be assigned to the state parks and
13 recreation commission for use by the office of archaeology and historic
14 preservation.

15 (b) Any appropriations made to the department of archaeology and
16 historic preservation shall, on the effective date of this section, be
17 transferred and credited to the state parks and recreation commission.

18 (c) If any question arises as to the transfer of any personnel,
19 funds, books, documents, records, papers, files, equipment, or other
20 tangible property used or held in the exercise of the powers and the
21 performance of the duties and functions transferred, the director of
22 financial management shall make a determination as to the proper
23 allocation and certify the same to the state agencies concerned.

24 (3) All employees of the department of archaeology and historic
25 preservation are transferred to the jurisdiction of the state parks and
26 recreation commission. All employees classified under chapter 41.06
27 RCW, the state civil service law, are assigned to the state parks and
28 recreation commission to perform their usual duties upon the same terms
29 as formerly, without any loss of rights, subject to any action that may
30 be appropriate thereafter in accordance with the laws and rules
31 governing state civil service.

32 (4) All rules and all pending business before the department of
33 archaeology and historic preservation shall be continued and acted upon
34 by the state parks and recreation commission. All existing contracts
35 and obligations shall remain in full force and shall be performed by
36 the state parks and recreation commission.

37 (5) The transfer of the powers, duties, functions, and personnel of

1 the department of archaeology and historic preservation shall not
2 affect the validity of any act performed before the effective date of
3 this section.

4 (6) If apportionments of budgeted funds are required because of the
5 transfers directed by this section, the director of financial
6 management shall certify the apportionments to the agencies affected,
7 the state auditor, and the state treasurer. Each of these shall make
8 the appropriate transfer and adjustments in funds and appropriation
9 accounts and equipment records in accordance with the certification.

10 (7) Nothing contained in this section may be construed to alter any
11 existing collective bargaining unit or the provisions of any existing
12 collective bargaining agreement until the agreement has expired or
13 until the bargaining unit has been modified by action of the public
14 employment relations commission as provided by law.

15 NEW SECTION. **Sec. 39.** The following acts or parts of acts are
16 each repealed:

- 17 (1) RCW 43.334.030 (Director powers and duties) and 2005 c 333 s 3;
18 (2) RCW 43.334.040 (Departmental divisions) and 2005 c 333 s 4;
19 (3) RCW 43.334.050 (Deputy director--Department personnel director--
20 Assistant directors) and 2005 c 333 s 5; and
21 (4) RCW 43.334.900 (Transfer of powers, duties, and functions) and
22 2005 c 333 s 12.

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