

# HOUSE BILL REPORT

## SHB 2724

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### As Passed Legislature

**Title:** An act relating to the exemption of information concerning archaeological resources and traditional cultural places from public disclosure.

**Brief Description:** Exempting information concerning archaeological resources and traditional cultural places from public disclosure.

**Sponsors:** House Committee on Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Ortiz-Self, Appleton, Walkinshaw, Sawyer, Ryu, Roberts, Stanford and Wylie).

#### **Brief History:**

##### **Committee Activity:**

Community Development, Housing & Tribal Affairs: 2/4/14, 2/5/14 [DPS].

##### **Floor Activity:**

Passed House: 2/13/14, 97-0.

Senate Amended.

Passed Senate: 3/7/14, 47-2.

House Concurred.

Passed House: 3/10/14, 98-0.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Creates an exemption from the Public Records Act for certain information regarding archaeological resources and traditional cultural places obtained by certain agencies, or shared between certain agencies or with tribes.

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### HOUSE COMMITTEE ON COMMUNITY DEVELOPMENT, HOUSING & TRIBAL AFFAIRS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Appleton, Chair; Sawyer, Vice Chair; Johnson, Ranking Minority Member; Gregerson, Hope, Robinson, Santos and Young.

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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.*

**Minority Report:** Do not pass. Signed by 1 member: Representative Holy, Assistant Ranking Minority Member.

**Staff:** Sean Flynn (786-7124).

**Background:**

Department of Archaeology and Historic Preservation.

The Department of Archaeology and Historic Preservation (DAHP) maintains a complete inventory of archaeological resource sites and collections within the state. Archaeological resources include historic and prehistoric objects, structures, artifacts, implements, and locations pertaining, but not limited to, American Indian or aboriginal sites.

The DAHP gathers information about archeological sites and resources by conducting studies and evaluations on public lands and through investigation with permission on private lands. The DAHP also receives information about archaeological sites and resources from professional archaeologists practicing in the state.

The DAHP maintains a complete inventory of archaeological sites and collections. The DAHP also maintains the Washington Heritage Register (Register) that contains an official listing of all documented sites and property in the state that have historical, architectural, archeological, engineering, and cultural significance. Listing on the Register does not have a legal effect, but can be used to identify resources that may be affected by certain state or local actions.

Archaeological Resource Protections.

The disturbance of an archeological resource or site on public or private lands requires a written permit issued by the DAHP. The removal, excavation, or damage of an archeological resource without a permit is a class C felony.

The DAHP must notify an affected tribe when potential Indian skeletal remains are discovered within the tribe's usual and accustomed areas. The intentional removal of an Indian grave or glyphic record is a class C felony.

Department of Archaeology and Historic Preservation - Agency Information Sharing.

The DAHP is responsible for sharing the information in its archaeological resource inventory with state, federal, and private construction agencies regarding the possible impact that construction activities may have on archaeological resources. The DAHP manages its inventory through a geographic information system database that helps agencies plan around archaeological and historic sites to avoid protected resources. In order to protect against the abuse of such information from potential looting or vandalism, the DAHP requires agencies to enter into a memorandum of understanding in order to access the database. The DAHP also enters into such agreements with tribes to access, as well as share, archaeological information for purposes of resource protection.

The DAHP shares information with agencies that are required to consider the impact of activities on archaeological, historical, or cultural resources. For example, regulations under the State Environmental Protection Act (SEPA) require agencies to consider cultural and

historic resource impacts when determining whether any proposed major action would have a significant adverse effect on the environment.

Regulations under the Forest Practices Act require the Department of Natural Resources to notify tribes when it receives an application for timber-related activities and other forest practices in an area where the tribe has an identified cultural resource. In addition, watershed analyses that determine the cumulative effects of forest practices must assess the impact on cultural resources within the area.

Finally, local shoreline master programs that regulate land use activities, pursuant to the Shoreline Management Act, must include policies to protect and mitigate damage to historic, archeological, and cultural resources, including notice provided to the DAHP and affected tribes.

#### Public Records Act.

The Public Records Act (PRA) requires that all state and local government agencies make all records available for public inspection and copying unless they fall within certain statutory exemptions. Exemptions are narrowly construed in order to promote public access to government information.

Certain exemptions are made for the purpose of protecting archaeological sites from looting and depredation. One exemption applies to records and maps identifying the location of archaeological sites. Another exemption applies to records and maps that identify archaeological or historic sites or traditional sites used by a tribe that are obtained through a watershed analysis.

#### **Summary of Substitute Bill:**

An exemption from the PRA is created for any site forms, reports, specific fields, and tables relating to site form data within a database, and geographic information systems spatial layers, that are related to historical archaeological resources, archeological resources, or traditional cultural places obtained by a state agency or local government, or shared between a state agency, local government, or tribal government.

A local government or state agency must respond to a public records request by a property owner for archaeological or cultural information that is exempt from disclosure by providing instructions for how the owner may contact the DAHP to obtain locality information on archaeological and cultural resources.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

#### **Staff Summary of Public Testimony:**

(In support) Washington has some of the most protective laws regarding archeological resources on both public and private lands. Much tribal knowledge is handed down orally without written records. Indians did not always live on reservations, and there are burial grounds in many places around the state. Sometimes, agencies have removed traditional burial sites but have not disclosed that to the tribe.

This bill is a cost savings measure to help developers avoid sensitive locations in planning so that projects will not be stalled or civil penalties incurred when sites are discovered. It creates assurances for tribes relating to the security of sensitive information and helps ensure timely and thorough collaboration with local governments. Tribes have concerns regarding sensitive tribal information being subject to public disclosure requests and this bill provides assurances both to tribes and local governments by exempting this information from public disclosure. This will encourage local governments to enter into data sharing agreements that will help protect them from liability for inadvertent disclosure of sensitive data. It is also important for state agencies with land management responsibilities to be able to share information with tribes to identify culturally sensitive resource sites.

When tribes with cultural, archeological, and traditional sites located in Washington provide reports to the DAHP, this information needs to be protected against looting. Tribes spend much time working on data sharing agreements to protect the information. The language in the PRA exemption should cover any information, not limited to records or maps.

In 2012 the Department of Ecology was directed to update SEPA rules through recommendations of an advisory committee. This bill addresses concerns from some local representatives on the committee about entering into information sharing agreements with the DAHP while still being subject to public records requests for archeological resources. The current exemptions cover reports and maps, but the DAHP provides predictive models to other agencies, which some local governments believe may not be included in that language.

It is important to use the best information available for development planning purposes. Proposed categorical exemptions from SEPA review will leave tribes without the ability to participate in the process of reviewing development sites. This bill provides more opportunities for tribes to share information directly with local governments while maintaining protections around the disclosure of that information.

(With concerns) This bill is drafted too broadly, referring to any information and any agency without qualification. The bill should be tied to the DAHP as the agency and its database as the information that is being shared. Any agency includes schools, libraries, and museums.

(Opposed) None.

**Persons Testifying:** (In support) Representative Ortiz-Self, prime sponsor; Naomi Stacy, Confederated Tribes of the Umatilla Indian Reservation; Tom Clingman, Department of Ecology; Ruth Jim and Dawn Vyvyan, Yakama Nation; Carl Schroeder, Association of Washington Cities; Allyson Brooks, Department of Archeology and Historic Preservation; and Mary Verner, Department of Natural Resources.

(With concerns) Rowland Thompson, Allied Daily Newspapers of Washington.

**Persons Signed In To Testify But Not Testifying:** None.