
HOUSE BILL 1090

State of Washington 61st Legislature 2009 Regular Session

By Representatives McCoy, Appleton, Chase, VanDeWege, Hunt, and Moeller

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1 AN ACT Relating to human remains; amending RCW 68.50.645,
2 27.44.055, 43.334.075, and 68.60.055; adding a new section to chapter
3 27.44 RCW; adding a new section to chapter 68.60 RCW; adding new
4 sections to chapter 43.334 RCW; and providing expiration dates.

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

6 **Sec. 1.** RCW 68.50.645 and 2008 c 275 s 1 are each amended to read
7 as follows:

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

16 (2) Any person engaged in ground disturbing activity and who
17 encounters or discovers skeletal human remains in or on the ground
18 shall:

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

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

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

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

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

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

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

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

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

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

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

1 the state anthropologist cannot determine if the remains are Indian,
2 the anthropologist must make a determination whether the nonforensic
3 skeletal human remains are ancient. If the remains are determined to
4 be ancient, the remains will be presumed to be Indian.

5 (d) If the remains are determined to be Indian, the department must
6 notify all affected Indian tribes via certified mail to the head of the
7 appropriate tribal government within two business days and contact the
8 appropriate tribal cultural resources staff. Early notification to
9 Indian tribes is encouraged and nothing in this section is intended to
10 preclude the coroner, the department, or other parties from directly
11 providing affected tribes with immediate notification of the discovery
12 of nonforensic skeletal human remains.

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

16 (f) If the nonforensic skeletal human remains are determined to be
17 Indian, the remains will be reinterred at the site of discovery unless
18 the tribe of origin indicates otherwise.

19 (4) For the purposes of this section:

20 (a) "Affected tribes" are:

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

23 (ii) Those federally recognized tribes that submit to the
24 department maps that reflect the tribe's geographical area of cultural
25 affiliation; and

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

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

30 (c) "Inadvertent discovery" has the same meaning as used in RCW
31 27.44.040.

32 (5) Nothing in this section (~~constitutes, advocates, or otherwise~~
33 ~~grants, confers, or implies federal or state recognition of those~~
34 ~~tribes that are not federally recognized pursuant to 25 C.F.R. part 83,~~
35 ~~procedures for establishing that an American Indian group exists as an~~
36 ~~Indian tribe)) precludes individuals who establish that they are lineal
37 descendants of the person whose remains have been discovered from
38 making a claim to the remains.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) The state physical anthropologist must make an initial
8 determination of whether nonforensic skeletal human remains are Indian
9 or non-Indian to the extent possible based on the remains within two
10 business days of notification of a finding of such nonforensic remains.
11 If the state anthropologist cannot determine if the remains are Indian,
12 the anthropologist must make a determination whether the nonforensic
13 skeletal human remains are ancient. If the remains are determined to
14 be ancient, the remains will be presumed to be Indian.

15 (d) If the remains are determined to be Indian, the department must
16 notify all affected Indian tribes via certified mail to the head of the
17 appropriate tribal government within two business days and contact the
18 appropriate tribal cultural resources staff. Early notification to
19 Indian tribes is encouraged and nothing in this section is intended to
20 preclude the coroner, the department, or other parties from directly
21 providing affected tribes with immediate notification of the discovery
22 of nonforensic skeletal human remains.

23 ((+d)) (e) The affected tribes have five business days to respond
24 via telephone or writing to the department as to their interest in the
25 remains.

26 (f) If the nonforensic skeletal human remains are determined to be
27 Indian, the remains will be reinterred at the site of discovery unless
28 the tribe of origin indicates otherwise.

29 (4) For the purposes of this section:

30 (a) "Affected tribes" are:

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

33 (ii) Those federally recognized tribes that submit to the
34 department maps that reflect the tribe's geographical area of cultural
35 affiliation; and

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

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

3 (c) "Inadvertent discovery" has the same meaning as used in RCW
4 27.44.040.

5 (5) Nothing in this section (~~constitutes, advocates, or otherwise~~
6 ~~grants, confers, or implies federal or state recognition of those~~
7 ~~tribes that are not federally recognized pursuant to 25 C.F.R. part 83,~~
8 ~~procedures for establishing that an American Indian group exists as an~~
9 ~~Indian tribe)) precludes individuals who establish that they are lineal
10 descendants of the person whose remains have been discovered from
11 making a claim to the remains.~~

12 **Sec. 3.** RCW 43.334.075 and 2008 c 275 s 4 are each amended to read
13 as follows:

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

22 (2) The state physical anthropologist has the primary
23 responsibility of investigating, preserving, and, when necessary,
24 removing and reintering discoveries of nonforensic skeletal human
25 remains. The state physical anthropologist is available to any local
26 governments or any federally recognized tribal government within the
27 boundaries of Washington to assist in determining whether discovered
28 skeletal human remains are forensic or nonforensic. Any removal or
29 reintering of human remains that are determined to be Indian shall be
30 carried out under the control and supervision of the tribe of origin
31 pursuant to chapters 27.44, 68.50, and 68.60 RCW.

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

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

1 **Sec. 4.** RCW 68.60.055 and 2008 c 275 s 3 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) The state physical anthropologist must make an initial
8 determination of whether nonforensic skeletal human remains are Indian
9 or non-Indian to the extent possible based on the remains within two
10 business days of notification of a finding of such nonforensic remains.
11 If the state anthropologist cannot determine if the remains are Indian,
12 the anthropologist must make a determination whether the nonforensic
13 skeletal human remains are ancient. If the remains are determined to
14 be ancient, the remains will be presumed to be Indian.

15 (d) If the remains are determined to be Indian, the department must
16 notify all affected Indian tribes via certified mail to the head of the
17 appropriate tribal government within two business days and contact the
18 appropriate tribal cultural resources staff. Early notification to
19 Indian tribes is encouraged and nothing in this section is intended to
20 preclude the coroner, the department, or other parties from directly
21 providing affected tribes with immediate notification of the discovery
22 of nonforensic skeletal human remains.

23 ((+d)) (e) The affected tribes have five business days to respond
24 via telephone or writing to the department as to their interest in the
25 remains.

26 (f) If the nonforensic skeletal human remains are determined to be
27 Indian, the remains will be reinterred at the site of discovery unless
28 the tribe of origin indicates otherwise.

- 29 (4) For the purposes of this section:
- 30 (a) "Affected tribes" are:
 - 31 (i) Those federally recognized tribes with usual and accustomed
32 areas in the jurisdiction where the remains were found;
 - 33 (ii) Those federally recognized tribes that submit to the
34 department maps that reflect the tribe's geographical area of cultural
35 affiliation; and
 - 36 (iii) Other tribes with historical and cultural affiliation in the
37 jurisdiction where the remains were found.

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

3 (c) "Inadvertent discovery" has the same meaning as used in RCW
4 27.44.040.

5 (5) Nothing in this section (~~constitutes, advocates, or otherwise~~
6 ~~grants, confers, or implies federal or state recognition of those~~
7 ~~tribes that are not federally recognized pursuant to 25 C.F.R. part 83,~~
8 ~~procedures for establishing that an American Indian group exists as an~~
9 ~~Indian tribe)) precludes individuals who establish that they are lineal
10 descendants of the person whose remains have been discovered from
11 making a claim to the remains.~~

12 NEW SECTION. Sec. 5. A new section is added to chapter 27.44 RCW
13 to read as follows:

14 (1) Persons in possession of nonforensic skeletal human remains who
15 relinquish the remains to local law enforcement or the coroner by
16 January 1, 2010, are exempt from liability under RCW 68.50.645.

17 (2) This section does not apply to persons in possession of
18 nonforensic skeletal human remains who are involved in criminal
19 prosecution or civil litigation regarding the remains as of the
20 effective date of this act.

21 (3) This section expires January 1, 2010.

22 NEW SECTION. Sec. 6. A new section is added to chapter 68.60 RCW
23 to read as follows:

24 (1) Persons in possession of nonforensic skeletal human remains who
25 relinquish the remains to local law enforcement or the coroner by
26 January 1, 2010, are exempt from liability under RCW 68.50.645.

27 (2) This section does not apply to persons in possession of
28 nonforensic skeletal human remains who are involved in criminal
29 prosecution or civil litigation regarding the remains as of the
30 effective date of this act.

31 (3) This section expires January 1, 2010.

32 NEW SECTION. Sec. 7. The director shall develop an incentive
33 program to encourage landowners to allow the reinterrment of Indian
34 skeletal human remains and to allow the tribal members access to the
35 reinterrment site for ceremonial and religious purposes.

1 NEW SECTION. **Sec. 8.** The director shall adopt the necessary rules
2 to implement this act and chapter 275, Laws of 2008.

3 NEW SECTION. **Sec. 9.** Sections 7 and 8 of this act are each added
4 to chapter 43.334 RCW.

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