

FINAL BILL REPORT

E2SHB 2624

C 275 L 08

Synopsis as Enacted

Brief Description: Concerning human remains.

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

House Committee on State Government & Tribal Affairs

House Committee on Appropriations

Senate Committee on Government Operations & Elections

Senate Committee on Ways & Means

Background:

Three areas of Washington statute are relevant to discoveries of skeletal human remains: statutes governing the coroner's jurisdiction over human remains; the Indian Graves and Records Act; and the Abandoned and Historic Cemeteries and Historic Graves Act. Although these statutes all have provisions regarding human remains, it is not clear who makes determinations whether inadvertently discovered skeletal human remains are specifically statutorily protected, when such determinations should be made, who has jurisdiction, or what is appropriate procedure.

A private landowner may inadvertently discover human remains and be required to cover the entire cost of excavation for statutorily protected remains, as well as the removal and reinterment of such remains when necessary. For these inadvertent discoveries, it is unclear whether the individual who reports such a discovery may be subject to criminal and civil liability. Further, the state does not maintain a centralized database of known historic cemeteries and burial sites for private local governments to use to determine whether a proposed development is on or near a cemetery or burial site to prevent such inadvertent discoveries. This information is valuable with regard to Indian graves, as Indians, historically, were often buried around the perimeter of the local cemetery.

Not all counties have the capacity to quickly make determinations of whether skeletal human remains are affiliated with a crime or may be protected Indian or historic remains. In Washington, only counties with populations of 250,000 or greater may choose to have a professional medical examiner. Other counties have either elected coroners or prosecutor-coroners. Six counties have medical examiners.

- Counties with a medical examiner: Clark, King, Pierce, Snohomish, Spokane, and Whatcom.
- Counties with populations between 40,000 - 250,000 have elected coroners: Benton, Chelan, Cowlitz, Franklin, Grant, Grays Harbor, Island, Kitsap, Lewis, Mason, Skagit, Stevens, Thurston, and Walla Walla.

- Counties with populations less than 40,000 have prosecutor-coroners: Adams, Asotin, Clallam, Columbia, Douglas, Ferry, Garfield, Jefferson, Kittitas, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, San Juan, Skamania, Wahkiakum, and Whitman.

Provisions Regarding Dead Bodies.

State law requires that anyone who knows of the existence and location of a dead body coming under the jurisdiction of the coroner must immediately notify the coroner. Failing to give notice is a misdemeanor. The statutory language is "dead body" as opposed to "skeletal human remains;" the statute is not cross-referenced to those statutes that protect Indian graves or historic graves.

The Indian Graves and Records Act.

Indian graves and records are statutorily protected under the Indian Graves and Records Act. The knowing removal, mutilation, defacement, injury, or destruction of remains or goods protected under the statute is a class C felony; Indian tribes maintain a civil action against anyone who violates this statute.

Individuals who inadvertently disturb Indian human remains must reinter the remains under the supervision of the appropriate Indian tribe. The costs of such reinterment are to be paid by the Department of Archeology and Historic Preservation. Funds have not been appropriated for this purpose.

The Abandoned and Historic Cemeteries and Historic Graves Act.

State law also provides protection for abandoned and historic cemeteries and graves under the Abandoned Cemetery and Historic Cemeteries and Historic Graves Act. An abandoned cemetery means a burial ground of the human dead for which the county assessor can find no record of an owner, or where the owner is deceased and lawful conveyance of title has not been made. A historical cemetery means any burial site or ground where the human remains were buried prior to November 11, 1889, except for certified religious, state or local cemeteries. The vandalism or grave-robbing of a cemetery under this statute is also a class C felony. The knowing removal, mutilation, defacement, injury, or destruction of graves protected under the statute is also a class C felony. Individuals are also subject to a civil action.

Summary:

Guidelines and Procedures.

New sections governing the inadvertent discovery of skeletal human remains are added to statutes regarding the coroner's jurisdiction over human remains, to the Indian Graves and Records Act, and to the Abandoned and Historic Cemeteries and Historic Graves Act.

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

The coroner or medical examiner must make a determination of whether the remains are forensic or nonforensic within five days, provided that such a determination can be made in that time period based on the skeletal human remains available. Upon determination that the skeletal human remains are nonforensic, the coroner or medical examiner must notify the Department of Archeology and Historic Preservation (DAHP) within two business days. A determination that skeletal human remains are nonforensic does not create a presumption that the remains are Indian or non-Indian.

The DAHP must notify appropriate local cemeteries and affected tribes of the discovery of nonforensic skeletal human remains. Tribes must be notified via certified mail to the head of the appropriate tribal government within two business days. The DAHP must also contact the appropriate tribal cultural resources staff. The State Physical Anthropologist must make an initial determination of whether the nonforensic skeletal human remains are Indian or non-Indian within two business days. If the remains are Indian, the DAHP must notify the affected tribes within two business days via certified mail to the head of the appropriate tribal government and by contacting the appropriate tribal cultural resources staff. Affected tribes have five business days to notify the DAHP as to their interest in the remains.

The coroner or medical examiner will retain jurisdiction over all forensic human remains. The DAHP will have jurisdiction over all nonforensic remains until provenance of such remains is established.

Affected tribes are those with usual and accustomed areas in the jurisdiction where the remains were found, those that submit to the DAHP maps that reflect the tribe's geographical area of cultural affiliation, or tribes with historical and cultural affiliation in the jurisdiction where the remains were found.

Forensic remains are those that come under the jurisdiction of the coroner as defined in statute.

Inadvertent discovery has the same meaning as used in the Indian Graves and Records Act. This definition includes disturbance through construction, mining, logging, agricultural activity, or any other activity.

Cemetery and Graves Database.

The DAHP must develop and maintain a centralized database and geographic systems spatial layer of all known cemeteries and known sites of burial of human remains in Washington. The information in the database is subject to public disclosure pursuant to the Public Disclosure Act, except that information about the location of archeological sites is exempt to prevent degradation. However, exempt information is available to federal, state, and local agencies for purposes of environmental review, and to tribes to protect their ancestors and to perpetuate their cultures.

State Physical Anthropologist.

The position of the State Physical Anthropologist is created in the DAHP subject to appointment by the Director of the DAHP. The State Physical Anthropologist must:

- have a doctorate in either archeology or anthropology;

- have experience in forensic osteology or other relevant aspects of physical anthropology; and
- have at least one year's experience in laboratory reconstruction.

A medical degree with archeological experience in addition to required experience may substitute for a doctorate in archeology or anthropology.

The State Physical Anthropologist will have the primary responsibility of investigating, preserving, and, when necessary, removing and reintering skeletal human remains that are not evidence of a crime. He or she will also be available to any local government or tribal government in Washington to assist in determining whether discovered remains are forensic or nonforensic and whether non-forensic remains are Indian or non-Indian.

Professional Archeologist Qualifications.

Professional archeologists employed by state and local governments must be qualified to the federal Secretary of the Interior's standards for professional archaeologist. Archeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archeologist for a period of four years provided the employee is working toward the required qualifications. The four-year period is not subject to renewal. During the four-year period, a professional archeologist is responsible for all findings.

Account.

The Skeletal Human Remains Assistance Account (Account) is created in the custody of the treasurer. Expenditures from the Account may be authorized by the Director of Archeology and Historic Preservation only after the archeological determination and excavation, and removal and reinterment when necessary, of inadvertently discovered skeletal human remains.

Votes on Final Passage:

House	63	31	
Senate	41	5	(Senate amended)
House			(House refused to concur)
Senate	44	5	(Senate amended)
House	74	23	(House concurred)

Effective: June 12, 2008