

HOUSE BILL REPORT

2SHB 1090

As Passed House:

March 5, 2009

Title: An act relating to human remains.

Brief Description: Concerning human remains.

Sponsors: House Committee on General Government Appropriations (originally sponsored by Representatives McCoy, Appleton, Chase, Van De Wege, Hunt and Moeller).

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/22/09, 2/20/09 [DPS];

General Government Appropriations: 2/26/09 [DP2S(w/o sub SGTA)].

Floor Activity

Passed House: 3/5/09, 97-0.

Brief Summary of Second Substitute Bill

- Authorizes the Department of Archeology and Historic Preservation to adopt rules to implement the Human Remains Program.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

Staff: Tracey O'Brien (786-7196)

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on State Government & Tribal Affairs. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member;

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.

Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Steve Smith (786-7178)

Background:

Last session, the Legislature enacted E2SHB 2624 which updated the statutes governing the discoveries of skeletal human remains. New sections governing the inadvertent discovery of skeletal human remains were 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 non-forensic 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 non-forensic, 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 non-forensic 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 non-forensic 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 (State Anthropologist) must make an initial determination of whether the non-forensic 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 non-forensic 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.

Summary of Second Substitute Bill:

The Director of the DAHP is given rule-making authority in order to implement the human remains program.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (State Government & Tribal Affairs):

(In support) A number of state projects have been impeded by the discovery of skeletal human remains that were Indian. We need to get the rules in place to encourage an archeologist to be involved with the planning process and to work with the local tribes. As a result of last year's bill, skeletons are literally starting to come out of people's closets. We need to develop a process to handle these remains.

(In support with concerns) This bill is going in the right direction. Reinterment at the site of discovery being the default and the landowner incentive program are two good policies. We need to figure out how to deal with the remains that are "coming out of people's closets." The large fiscal note is a cause of great concern.

(With concerns) Reinterment at the place of discovery is not only the desire of the Tribes, but it is a sacred issue. On the other hand, it creates a risk of having to shut down an entire project due to the discovery of human remains. In addition, the requirement to reinter in place could be a takings issue for the local landowner. The proposed changes for lineal descendants seem to require DNA testing and that is not acceptable. There are definitely grey areas in current law that could benefit from rule-making.

(Neutral) There is an assumption that the human remains will be found with artifacts or other archeological evidence that will help determine age and origin. Those types of remains are the easiest to deal with. What is challenging us are the more "random" remains—a femur or jaw bone on its own. Some of these remains may not even be from Washington. How do we determine the origin of these remains and how do we deal with the remains of a certain origin in a respectful manner? The fiscal note reflects many of the challenges the bill creates such as determining the age of the remains and lineal descendants. In addition, the DAHP's Assistant Attorney General is concerned about potential takings issues with the statutory preference for reinterment. Also, rule-making is expensive.

(Opposed) None.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) The incentive for this, as well as last year's legislation, came from disappointment with the experience of previous human remains discoveries throughout the state. These discoveries incurred large costs for the state, and involved unclear communication between tribes, governments, and developers. Local governments, tribes, and other interested organizations need to become involved in the very early planning stages before ground is broken so that inadvertent discoveries could be averted. Many tribes have extensive knowledge of these locations and this legislation would enforce proper communication between project managers and tribes. This is the third year that we have been working on human remains and completing rulemaking for this program.

(Opposed) None.

Persons Testifying (State Government & Tribal Affairs): (In support) Representative McCoy, prime sponsor; and Michael Moran, Umatilla Tribe.

(In support with concerns) Miguel Perez-Gibson, Colville Tribes.

(With concerns) Dawn Vyvyan, Yakama Tribe; Megan White, Washington State Department of Transportation; and Tammy Fellin, Association of Washington Cities.

(Neutral) Allyson Brooks, Department of Archaeology and Historic Preservation.

Persons Testifying (General Government Appropriations): John McCoy, prime sponsor; and Mike Moran, Hoh, Samish, and Umatilla Tribes.

Persons Signed In To Testify But Not Testifying (State Government & Tribal Affairs): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations): None.