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**SUBSTITUTE SENATE BILL 5353**

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**State of Washington 57th Legislature**

**2002 Regular Session**

**By** Senate Committee on State & Local Government (originally sponsored by Senators Prentice, Kline, Honeyford, Fraser, Patterson, Fairley, Costa, Regala, Jacobsen, Kohl-Welles and Swecker; by request of Department of Community, Trade, and Economic Development)

READ FIRST TIME 02/27/2001.

1 AN ACT Relating to the protection of archaeological sites; amending  
2 RCW 27.53.020, 27.53.060, and 27.53.080; adding a new section to  
3 chapter 27.53 RCW; creating a new section; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The purpose of this act is to give the  
6 department of community, trade, and economic development the authority  
7 to issue civil penalties to enforce the provisions of permits issued  
8 under RCW 27.53.060 and to take into consideration prior penalties  
9 issued under chapter 27.53 RCW and under comparable federal laws when  
10 issuing permits. Additionally, this act provides guidance to state  
11 agencies and political subdivisions of the state when approving  
12 archaeological activities on public lands.

13 **Sec. 2.** RCW 27.53.020 and 1986 c 266 s 16 are each amended to read  
14 as follows:

15 The discovery, identification, excavation, and study of the state's  
16 archaeological resources, the providing of information on  
17 archaeological sites for their nomination to the state and national  
18 registers of historic places, the maintaining of a complete inventory

1 of archaeological sites and collections, and the providing of  
2 information to state, federal, and private construction agencies  
3 regarding the possible impact of construction activities on the state's  
4 archaeological resources, are proper public functions; and the  
5 (~~Washington archaeological research center~~) office of archaeology and  
6 historic preservation, created under the authority of chapter 39.34 RCW  
7 (~~as now existing or hereafter amended~~), is hereby designated as an  
8 appropriate agency to carry out these functions. The director, in  
9 consultation with the (~~Washington archaeological research center~~)  
10 office of archaeology and historic preservation, shall provide  
11 guidelines for the selection of depositories designated by the state  
12 for archaeological resources. The legislature directs that there shall  
13 be full cooperation amongst the department, the (~~Washington~~  
14 ~~archaeological research center~~) office of archaeology and historic  
15 preservation, and other agencies of the state.

16 **Sec. 3.** RCW 27.53.060 and 1989 c 44 s 7 are each amended to read  
17 as follows:

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

29 (2) The director must obtain the consent of the private or public  
30 property owner or agency responsible for the management thereof, prior  
31 to issuance of the permit. The property owner or agency responsible  
32 for the management of such land may condition its consent on the  
33 execution of a separate agreement, lease, or other real property  
34 conveyance with the applicant as may be necessary to carry out the  
35 legal rights or duties of the public property landowner or agency.

36 (3) The director, in consultation with the affected tribes, shall  
37 develop guidelines for the issuance and processing of permits.

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

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

8       (6) When determining whether to grant or condition a permit, the  
9 director may give great weight to the final record of previous civil or  
10 criminal penalties against either the applicant, the parties  
11 responsible for conducting the work, or the parties responsible for  
12 carrying out the terms and conditions of the permit, either under this  
13 chapter or under comparable federal laws. If the director denies a  
14 permit, the applicant may request a hearing as provided for in chapter  
15 34.05 RCW.

16       NEW SECTION. Sec. 4. A new section is added to chapter 27.53 RCW  
17 to read as follows:

18       (1) Persons found to have violated this chapter, either by a  
19 knowing and willful failure to obtain a permit where required under RCW  
20 27.53.060 or by a knowing and willful failure to comply with the  
21 provisions of a permit issued by the director where required under RCW  
22 27.53.060, in addition to other remedies as provided for by law, may be  
23 subject to one or more of the following:

24       (a) Reasonable investigative costs incurred by a mutually agreed  
25 upon independent professional archaeologist investigating the alleged  
26 violation;

27       (b) Reasonable site restoration costs; and

28       (c) Civil penalties, as determined by the director, in an amount of  
29 not more than five thousand dollars per violation.

30       (2) Any person incurring the penalty may file an application for an  
31 adjudicative proceeding and may pursue subsequent review as provided in  
32 chapter 34.05 RCW and applicable rules of the department of community,  
33 trade, and economic development.

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

36       (4) The attorney general may bring an action in the name of the  
37 department in the superior court of Thurston county or of any county in

1 which the violator may do business to collect any penalty imposed under  
2 this chapter and to enforce subsection (5) of this section.

3 (5) Any and all artifacts in possession of a violator shall become  
4 the property of the state until proper identification of artifact  
5 ownership may be determined by the director.

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

9 **Sec. 5.** RCW 27.53.080 and 1986 c 266 s 19 are each amended to read  
10 as follows:

11 (1) Qualified or professional archaeologists, in performance of  
12 their duties, (~~are hereby authorized to~~) may enter upon public lands  
13 of the state of Washington and its political subdivisions after first  
14 notifying the entity responsible for managing those public lands, at  
15 such times and in such manner as not to interfere with the normal  
16 management thereof, for the purposes of doing archaeological resource  
17 location and evaluation studies, including site sampling activities.  
18 The results of such studies shall be provided to the state agency or  
19 political subdivision responsible for such lands and the office of  
20 archaeology and historic preservation and are confidential unless the  
21 director, in writing, declares otherwise. Scientific excavations are  
22 to be carried out only after appropriate agreement has been made  
23 between a professional archaeologist or an institution of higher  
24 education and the agency or political subdivision responsible for such  
25 lands. (~~Notice~~) A copy of such agreement shall be filed with the  
26 (~~Washington archaeological research center~~) office of archaeology and  
27 historic preservation and by them to the department.

28 (2) Amateur societies may engage in such activities by submitting  
29 and having approved by the responsible agency or political subdivision  
30 a written proposal detailing the scope and duration of the activity.  
31 Before approval, a proposal from an amateur society shall be submitted  
32 to the (~~Washington archaeological research center~~) office of  
33 archaeology and historic preservation for review and recommendation.  
34 The approving agency or political subdivision shall impose conditions  
35 on the scope and duration of the proposed activity necessary to protect  
36 the archaeological resources and ensure compliance with applicable  
37 federal, state, and local laws. The findings and results of activities  
38 authorized under this section shall be made known to the approving

1 agency or political subdivision approving the activities and to the  
2 office of archaeology and historic preservation.

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