

E2SHB 2624 - S AMD 338

By Senators McDermott, Fairley, and Roach

ADOPTED 03/12/2008

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 68.50 RCW
4 to read as follows:

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

13 (2) Any person engaged in ground disturbing activity and who
14 encounters or discovers skeletal human remains in or on the ground
15 shall:

16 (a) Immediately cease any activity which may cause further
17 disturbance;

18 (b) Make a reasonable effort to protect the area from further
19 disturbance;

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

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

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

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

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

28 (3) The coroner must make a determination of whether the skeletal
29 human remains are forensic or nonforensic within five business days of
30 receiving notification of a finding of such human remains provided that

1 there is sufficient evidence to make such a determination within that
2 time period. The coroner will retain jurisdiction over forensic
3 remains.

4 (a) Upon determination that the remains are nonforensic, the
5 coroner must notify the department of archaeology and historic
6 preservation within two business days. The department will have
7 jurisdiction over such remains until provenance of the remains is
8 established. A determination that remains are nonforensic does not
9 create a presumption of removal or nonremoval.

10 (b) Upon receiving notice from a coroner of a finding of
11 nonforensic skeletal human remains, the department must notify the
12 appropriate local cemeteries, and all affected Indian tribes via
13 certified mail to the head of the appropriate tribal government, and
14 contact the appropriate tribal cultural resources staff within two
15 business days of the finding. The determination of what are
16 appropriate local cemeteries to be notified is at the discretion of the
17 department. A notification to tribes of a finding of such nonforensic
18 skeletal human remains does not create a presumption that the remains
19 are Indian.

20 (c) The state physical anthropologist must make an initial
21 determination of whether nonforensic skeletal human remains are Indian
22 or non-Indian to the extent possible based on the remains within two
23 business days of notification of a finding of nonforensic remains. If
24 the remains are determined to be Indian, the department must notify all
25 affected Indian tribes via certified mail to the head of the
26 appropriate tribal government within two business days and contact the
27 appropriate tribal cultural resources staff.

28 (d) The affected tribes have five business days to respond via
29 telephone or writing to the department as to their interest in the
30 remains.

31 (4) For the purposes of this section:

32 (a) "Affected tribes" are:

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

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

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

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

5 (c) "Inadvertent discovery" has the same meaning as used in RCW
6 27.44.040.

7 (5) Nothing in this section constitutes, advocates, or otherwise
8 grants, confers, or implies federal or state recognition of those
9 tribes that are not federally recognized pursuant to 25 C.F.R. part 83,
10 procedures for establishing that an American Indian group exists as an
11 Indian tribe.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 27.44 RCW
13 to read as follows:

14 (1) Any person who discovers skeletal human remains must notify the
15 coroner and local law enforcement in the most expeditious manner
16 possible. Any person knowing of the existence of human remains and not
17 having good reason to believe that the coroner and local law
18 enforcement has notice thereof and who fails to give notice thereof is
19 guilty of a misdemeanor.

20 (2) Any person engaged in ground disturbing activity and who
21 encounters or discovers skeletal human remains in or on the ground
22 shall:

23 (a) Immediately cease any activity which may cause further
24 disturbance;

25 (b) Make a reasonable effort to protect the area from further
26 disturbance;

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

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

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

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

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

35 (3) The coroner must make a determination whether the skeletal
36 human remains are forensic or nonforensic within five business days of

1 receiving notification of a finding of such remains provided that there
2 is sufficient evidence to make such a determination within that time
3 period. The coroner will retain jurisdiction over forensic remains.

4 (a) Upon determination that the remains are nonforensic, the
5 coroner must notify the department of archaeology and historic
6 preservation within two business days. The department will have
7 jurisdiction over such remains until provenance of the remains is
8 established. A determination that remains are nonforensic does not
9 create a presumption of removal or nonremoval.

10 (b) Upon receiving notice from a coroner of a finding of
11 nonforensic skeletal human remains, the department must notify the
12 appropriate local cemeteries, and all affected Indian tribes via
13 certified mail to the head of the appropriate tribal government, and
14 contact the appropriate tribal cultural resources staff within two
15 business days of the finding. The determination of what are
16 appropriate local cemeteries to be notified is at the discretion of the
17 department. A notification to tribes of a finding of nonforensic
18 skeletal human remains does not create a presumption that the remains
19 are Indian.

20 (c) The state physical anthropologist must make an initial
21 determination of whether nonforensic skeletal human remains are Indian
22 or non-Indian to the extent possible based on the remains within two
23 business days of notification of a finding of such nonforensic remains.
24 If the remains are determined to be Indian, the department must notify
25 all affected Indian tribes via certified mail to the head of the
26 appropriate tribal government within two business days and contact the
27 appropriate tribal cultural resources staff.

28 (d) The affected tribes have five business days to respond via
29 telephone or writing to the department as to their interest in the
30 remains.

31 (4) For the purposes of this section:

32 (a) "Affected tribes" are:

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

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

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

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

5 (c) "Inadvertent discovery" has the same meaning as used in RCW
6 27.44.040.

7 (5) Nothing in this section constitutes, advocates, or otherwise
8 grants, confers, or implies federal or state recognition of those
9 tribes that are not federally recognized pursuant to 25 C.F.R. part 83,
10 procedures for establishing that an American Indian group exists as an
11 Indian tribe.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 68.60 RCW
13 to read as follows:

14 (1) Any person who discovers skeletal human remains shall notify
15 the coroner and local law enforcement in the most expeditious manner
16 possible. Any person knowing of the existence of skeletal human
17 remains and not having good reason to believe that the coroner and
18 local law enforcement has notice thereof and who fails to give notice
19 thereof is guilty of a misdemeanor.

20 (2) Any person engaged in ground disturbing activity and who
21 encounters or discovers skeletal human remains in or on the ground
22 shall:

23 (a) Immediately cease any activity which may cause further
24 disturbance;

25 (b) Make a reasonable effort to protect the area from further
26 disturbance;

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

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

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

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

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

35 (3) The coroner must make a determination whether the skeletal
36 human remains are forensic or nonforensic within five business days of

1 receiving notification of a finding of such remains provided that there
2 is sufficient evidence to make such a determination within that time
3 period. The coroner will retain jurisdiction over forensic remains.

4 (a) Upon determination that the remains are nonforensic, the
5 coroner must notify the department of archaeology and historic
6 preservation within two business days. The department will have
7 jurisdiction over such remains until provenance of the remains is
8 established. A determination that remains are nonforensic does not
9 create a presumption of removal or nonremoval.

10 (b) Upon receiving notice from a coroner of a finding of
11 nonforensic skeletal human remains, the department must notify the
12 appropriate local cemeteries, and all affected Indian tribes via
13 certified mail to the head of the appropriate tribal government, and
14 contact the appropriate tribal cultural resources staff within two
15 business days of the finding. The determination of what are
16 appropriate local cemeteries to be notified is at the discretion of the
17 department. A notification to tribes of a finding of such nonforensic
18 skeletal human remains does not create a presumption that the remains
19 are Indian.

20 (c) The state physical anthropologist must make an initial
21 determination of whether nonforensic skeletal human remains are Indian
22 or non-Indian to the extent possible based on the remains within two
23 business days of notification of a finding of such nonforensic remains.
24 If the remains are determined to be Indian, the department must notify
25 all affected Indian tribes via certified mail to the head of the
26 appropriate tribal government within two business days and contact the
27 appropriate tribal cultural resources staff.

28 (d) The affected tribes have five business days to respond via
29 telephone or writing to the department as to their interest in the
30 remains.

31 (4) For the purposes of this section:

32 (a) "Affected tribes" are:

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

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

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

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

5 (c) "Inadvertent discovery" has the same meaning as used in RCW
6 27.44.040.

7 (5) Nothing in this section constitutes, advocates, or otherwise
8 grants, confers, or implies federal or state recognition of those
9 tribes that are not federally recognized pursuant to 25 C.F.R. part 83,
10 procedures for establishing that an American Indian group exists as an
11 Indian tribe.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.334 RCW
13 to read 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.

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

31 (4) For the purposes of this section, "forensic remains" are those
32 that come under the jurisdiction of the coroner pursuant to RCW
33 68.50.010.

34 **Sec. 5.** RCW 27.53.030 and 2005 c 333 s 20 are each amended to read
35 as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Archaeology" means systematic, scientific study of man's past
4 through material remains.

5 (2) "Archaeological object" means an object that comprises the
6 physical evidence of an indigenous and subsequent culture including
7 material remains of past human life including monuments, symbols,
8 tools, facilities, and technological by-products.

9 (3) "Archaeological site" means a geographic locality in
10 Washington, including but not limited to, submerged and submersible
11 lands and the bed of the sea within the state's jurisdiction, that
12 contains archaeological objects.

13 (4) "Department" means the department of archaeology and historic
14 preservation, created in chapter 43.334 RCW.

15 (5) "Director" means the director of the department of archaeology
16 and historic preservation, created in chapter 43.334 RCW.

17 (6) "Historic" means peoples and cultures who are known through
18 written documents in their own or other languages. As applied to
19 underwater archaeological resources, the term historic shall include
20 only those properties which are listed in or eligible for listing in
21 the Washington State Register of Historic Places (RCW 27.34.220) or the
22 National Register of Historic Places as defined in the National
23 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
24 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

25 (7) "Prehistoric" means peoples and cultures who are unknown
26 through contemporaneous written documents in any language.

27 (8) "Professional archaeologist" means a person (~~(who has met the~~
28 ~~educational, training, and experience requirements of the society of~~
29 ~~professional archaeologists.~~

30 ~~(9) "Qualified archaeologist" means a person who has had formal~~
31 ~~training and/or experience in archaeology over a period of at least~~
32 ~~three years, and has been certified in writing to be a qualified~~
33 ~~archaeologist by two professional archaeologists)) with qualifications
34 meeting the federal secretary of the interior's standards for a
35 professional archaeologist. Archaeologists not meeting this standard
36 may be conditionally employed by working under the supervision of a
37 professional archaeologist for a period of four years provided the
38 employee is pursuing qualifications necessary to meet the federal~~

1 secretary of the interior's standards for a professional archaeologist.
2 During this four-year period, the professional archaeologist is
3 responsible for all findings. The four-year period is not subject to
4 renewal.

5 ((+10)) (9) "Amateur society" means any organization composed
6 primarily of persons who are not professional archaeologists, whose
7 primary interest is in the archaeological resources of the state, and
8 which has been certified in writing by two professional archaeologists.

9 ((+11)) (10) "Historic archaeological resources" means those
10 properties which are listed in or eligible for listing in the
11 Washington State Register of Historic Places (RCW 27.34.220) or the
12 National Register of Historic Places as defined in the National
13 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
14 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

15 NEW SECTION. Sec. 6. A new section is added to chapter 27.34 RCW
16 to read as follows:

17 The department of archaeology and historic preservation shall
18 develop and maintain a centralized database and geographic information
19 systems spatial layer of all known cemeteries and known sites of
20 burials of human remains in Washington state. The information in the
21 database is subject to public disclosure, except as provided in RCW
22 42.56.300; exempt information is available by confidentiality agreement
23 to federal, state, and local agencies for purposes of environmental
24 review, and to tribes in order to participate in environmental review,
25 protect their ancestors, and perpetuate their cultures.

26 Information provided to state and local agencies under this section
27 is subject to public disclosure, except as provided in RCW 42.56.300.

28 NEW SECTION. Sec. 7. A new section is added to chapter 43.334 RCW
29 to read as follows:

30 The skeletal human remains assistance account is created in the
31 custody of the state treasurer. All appropriations provided by the
32 legislature for this purpose as well as any reimbursement for services
33 provided pursuant to this act must be deposited in the account.
34 Expenditures from the account may be used only for archaeological
35 determinations and excavations of inadvertently discovered skeletal
36 human remains, and removal and reinterment of such remains when

1 necessary. Only the director or the director's designee may authorize
2 expenditures from the account. The account is subject to the allotment
3 procedures under chapter 43.88 RCW, but an appropriation is not
4 required for expenditures.

5 NEW SECTION. **Sec. 8.** The department of archaeology and historic
6 preservation must communicate with the appropriate committees of the
7 legislature by November 15, 2009, and biennially thereafter, regarding
8 the numbers of inadvertent discoveries of skeletal human remains and
9 other associated activities pursuant to this act.

10 NEW SECTION. **Sec. 9.** If specific funding for the purposes of this
11 act, referencing this act by bill or chapter number, is not provided by
12 June 30, 2008, in the omnibus appropriations act, this act is null and
13 void."

E2SHB 2624 - S AMD

By Senators McDermott, Fairley, and Roach

ADOPTED 03/12/2008

14 On page 1, line 1 of the title, after "remains;" strike the
15 remainder of the title and insert "amending RCW 27.53.030; adding a new
16 section to chapter 68.50 RCW; adding a new section to chapter 27.44
17 RCW; adding a new section to chapter 68.60 RCW; adding new sections to
18 chapter 43.334 RCW; adding a new section to chapter 27.34 RCW; creating
19 new sections; and prescribing penalties."

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