

SENATE BILL REPORT

SB 6521

As Reported By Senate Committee On:
Government Operations & Elections, February 04, 2008

Title: An act relating to human remains.

Brief Description: Concerning human remains.

Sponsors: Senators McDermott, Fairley, Swecker, Kline and Oemig.

Brief History:

Committee Activity: Government Operations & Elections: 1/24/08, 2/4/08 [DPS-WM].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 6521 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline, McDermott and Pridemore.

Staff: Sharon Swanson (786-7447)

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

Under current law, a private landowner who inadvertently discover human remains may be required to cover the entire cost of excavation for statutorily protected remains, as well as removal and re-interment if necessary.

The state does not currently maintain a centralized database of known historic cemeteries and burial sites. Private local governments are unable to determine whether a proposed development is on or near a cemetery or burial site to prevent such inadvertent discoveries.

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 thousand or greater may choose to have a professional medical examiner. Other counties have either elected coroners or coroner-prosecutors. Six counties have medical examiners.

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.

Statute Regarding Dead Bodies: RCW 68.50.020 requires anyone who knows of the existence and location of a dead body coming under the jurisdiction of the coroner to notify the coroner. Failing to give notice is a misdemeanor. Additionally, the language of the statute is "dead body" as opposed to "skeletal human remains" and the statute does not cross-reference with those statutes that protect Indian graves or historic graves.

The Indian Graves and Records Act: Chapter 27.44 RCW provides protection for Indian graves and records. The knowing removal, mutilation, defacement, injury, or destruction of remains or goods protected under the statute is a Class C felony; and, Indian tribes maintain a civil action against anyone who violates this chapter. Individuals who inadvertently disturb Indian human remains must re-inter the remains under the supervision of the appropriate Indian tribe. The costs of such re-interment are to be paid by the Department of Archeology and Historic Preservation (DAHP), however, funds have not been appropriated for this purpose.

The Abandoned and Historic Cemeteries and Historic Graves Act: Chapter 68.60 RCW protects abandoned and historic cemeteries and graves. 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, or state or local cemeteries. The vandalism or grave-robbing of a cemetery under this section 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 of Bill (Recommended Substitute): New sections related to the inadvertent discovery of skeletal human remains are added to the statutes governing the coroner's jurisdiction over dead bodies and to the Indian Graves and Records Act and the Abandoned and Historic Cemeteries and Historic Graves Act.

Guidelines and Procedures: Individuals who inadvertently discover skeletal human remains must immediately call the county coroner or medical examiner and local law enforcement. Individuals who make the discovery through ground disturbing activity must cease the activity and make a reasonable effort to protect the area from further disturbance. 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 is required to 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 a determination that the skeletal remains are non-forensic, the coroner or medical examiner must notify the 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 must make an initial determination 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, or those that submit to the DAHP maps that reflect the tribe's geographical area of cultural affiliation.

Cemetery and Graves Database: The DAHP will 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 State. The information in the database is subject to exemption from public disclosure pursuant to RCW 42.56.300, but 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. 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 and analysis.

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 re-interring skeletal human remains that are not evidence of a crime. The State Physical Anthropologist will also be available to any local government or tribal government in Washington to assist in determining whether discovered remains are forensic or non-forensic and whether non-forensic remains are Indian or non-Indian.

Professional Archeologist Qualifications: Professional archeologists employed by the state must be qualified to the federal Secretary of the Interior's standards for a 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.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Substitute): Additional language is added to narrow the hold harmless provision. References to the medical examiner are removed. The determination of what are the appropriate local cemeteries to be notified is at the discretion of the Department of Archeology and Historic Preservation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This is best characterized as the call 911 bill. It lays out the initial steps that a person must take if they come across human remains. This bill is a first step in a much longer process. The bill enhances legal protections for all of our ancestors. We would not wish the trauma and horror of a grave disturbance on another nation or tribe. It has been a long, painful road for the Klallam people but soon their ancestors will be home. This type of situation must be avoided. This bill is so important. You never know where you may find remains. We have stores, highways, buildings, built right on top of our ancestors. Our responsibility is to protect our ancestors. This is a very important and very emotional issue. This subject concerns all of us as we will all become human remains. This bill is a very good bill but not a perfect bill. This issue is very complicated and will take time to resolve.

OTHER: Concerned about ceasing activity which may cause further damage and take reasonable efforts to protect the area. What does this mean? Does this mean a builder must stop all activity? For how long? We have concerns about what happens between now and the time future legislation comes out. Not sure what to do in the meantime.

Persons Testifying: PRO: Ralph Munro, Secretary of State, retired; Mike Moran, Samish Tribe, Hoh Tribe; Ruth Jim, Yakima Tribe; Frances Charles, Lower Elwha Klallam Tribe; Shawn Yanity, Stillaguamish Tribe; Dennis R. Sullivan, Lower Elwha Klallam Tribe.

OTHER: Andrew Cook, Building Industry Association of Washington; Debbie Wilke, Washington Association of County Officials.