
SENATE BILL 5938

State of Washington

60th Legislature

2007 Regular Session

By Senators Haugen, Swecker, Fairley, Kauffman, Sheldon, Roach, Shin and Rasmussen

Read first time 02/07/2007. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to human remains; amending RCW 27.44.030,
2 27.44.020, 68.60.050, 27.44.050, 27.44.901, 68.60.010, 68.60.020, and
3 68.60.030; adding new sections to chapter 27.44 RCW; recodifying RCW
4 68.60.010, 68.60.020, 68.60.030, 68.60.040, 68.60.050, and 68.60.060;
5 repealing RCW 27.44.040; and prescribing penalties.

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

7 **Sec. 1.** RCW 27.44.030 and 1989 c 44 s 1 are each amended to read
8 as follows:

9 The legislature hereby declares that:

10 (1) Native Indian (~~((burial grounds))~~) and (~~((historic))~~) other human
11 graves are acknowledged to be a finite, irreplaceable, and nonrenewable
12 cultural resource, and are an intrinsic part of the cultural heritage
13 of the people of Washington. The legislature recognizes the value and
14 importance of respecting all graves, and the spiritual significance of
15 such sites to the people of this state;

16 (2) The preservation of human remains that are discovered in the
17 course of development activities, including home building, home
18 improvement, road building, and urban infill, is a priority of the
19 state. However, in those instances where removal of any grave or

1 cemetery is necessary, removal shall be accomplished in a respectful
2 manner in accordance with the procedures of this chapter. All graves
3 and historical cemeteries are irreplaceable symbols of our heritage and
4 therefore should be treated respectfully during relocation;

5 (3) There have been reports and incidents of deliberate
6 interference with native Indian and historic graves for profit-making
7 motives;

8 ((+3)) (4) There has been careless indifference in cases of
9 accidental disturbance of sites, graves, and burial grounds;

10 ((+4) ~~Indian burial~~) (5) All burial and grave sites, cairns,
11 glyphic markings, and ((historic)) graves located on public and private
12 land are to be protected and it is therefore the legislature's intent
13 to encourage voluntary reporting and respectful handling in cases of
14 accidental disturbance and provide enhanced penalties for deliberate
15 desecration.

16 **Sec. 2.** RCW 27.44.020 and 1985 c 64 s 1 are each amended to read
17 as follows:

18 Any archaeologist or interested person may copy and examine
19 ((such)) glyphic or painted records of any tribe or peoples or examine
20 the surface of any ((such)) cairn or grave of any tribe or peoples, but
21 no ((such)) record ((or)) archaeological material, or human remains
22 from any such cairn or grave may be removed unless the same shall be
23 destined for reburial or perpetual preservation in a duly recognized
24 archaeological repository and permission for scientific research and
25 removal of specimens of such records and material has been granted by
26 the state historic preservation officer. Whenever a request for
27 permission to remove records or material is received, the ((state
28 historic preservation officer)) department of archeology and historic
29 preservation shall notify the affected Indian tribe or tribes or other
30 descendants, as applicable.

31 **Sec. 3.** RCW 68.60.050 and 1999 c 67 s 1 are each amended to read
32 as follows:

33 (1) Any person who knowingly removes, mutilates, defaces, injures,
34 or destroys any ((historic)) cairn, glyphic, or painted record of any
35 tribe or peoples, or any grave shall be guilty of a class C felony
36 punishable under chapter 9A.20 RCW. ((Persons disturbing historie

1 ~~graves through inadvertence, including disturbance through~~
2 ~~construction, shall reinter the human remains under the supervision of~~
3 ~~the office of archaeology and historic preservation. Expenses to~~
4 ~~reinter such human remains are to be provided by the office of~~
5 ~~archaeology and historic preservation to the extent that funds for this~~
6 ~~purpose are appropriated by the legislature.))~~

7 (2) Any person who sells any human remains that are known to have
8 been taken from any cairn or grave, or any cemetery or grave, is guilty
9 of a class C felony punishable under chapter 9A.20 RCW.

10 (3) Any person who intentionally fails to report the disturbance of
11 human remains under section 4 of this act is guilty of a misdemeanor.

12 (4) This section does not apply to:

13 (a) Actions permitted under chapter 27.53 RCW; or

14 (b) Actions taken in the performance of official law enforcement
15 duties.

16 ((+3)) (5) It shall be a complete defense ((in a prosecution))
17 under subsection (1) of this section if the defendant can prove by a
18 preponderance of evidence that the alleged acts were accidental or
19 inadvertent and that reasonable efforts were made to preserve the
20 remains, glyphic, painted records, or artifacts, accidentally disturbed
21 or discovered, and that the accidental discovery or disturbance was
22 properly reported under section 4 of this act.

23 NEW SECTION. Sec. 4. A new section is added to chapter 27.44 RCW
24 to read as follows:

25 (1) Persons disturbing native Indian graves or any other graves
26 through inadvertence, including disturbance through construction,
27 mining, logging, agricultural activity, or any other activity, shall
28 immediately report this disturbance to law enforcement officials.

29 (2) Within forty-eight hours of the determination by law
30 enforcement officials that the human remains are not evidence that a
31 crime has been committed, of which the human remains are evidence, the
32 law enforcement officials, medical examiner, or the county coroner
33 shall report the disturbance to the department of archaeology and
34 historic preservation.

35 (3) The department of archaeology and historic preservation shall
36 report the disturbance to the cemetery board or to the appropriate
37 Indian tribe or other appropriate descendants.

1 (4) The removal of the remains shall be by permit from and under
2 the supervision of the department of archaeology and historic
3 preservation.

4 (5) Reinterment of the human remains shall be under the supervision
5 of the appropriate Indian tribe or other descendants, as applicable,
6 and the department of archaeology and historic preservation. Expenses
7 to reinter such human remains shall be provided by the department of
8 archaeology and historic preservation to the extent that funds for this
9 purpose are appropriated by the legislature.

10 **Sec. 5.** RCW 27.44.050 and 1989 c 44 s 3 are each amended to read
11 as follows:

12 (1) Apart from any criminal prosecution, any person, including an
13 Indian tribe or enrolled member thereof, shall have a civil action to
14 secure an injunction, damages, or other appropriate relief against any
15 person who is alleged to have violated RCW ((27.44.040)) 68.60.050 (as
16 recodified by this act). The action must be brought within two years
17 of the discovery of the violation by the plaintiff. The action may be
18 filed in the superior or tribal court of the county in which the grave,
19 cairn, remains, or artifacts are located, or in the superior court of
20 the county within which the defendant resides.

21 (2) Any conviction pursuant to RCW ((27.44.040)) 68.60.050 (as
22 recodified by this act) shall be prima ((~~facie~~)) facie evidence in an
23 action brought under this section.

24 (3) If the plaintiff prevails:

25 (a) The court may award reasonable attorneys' fees to the
26 plaintiff;

27 (b) The court may grant injunctive or such other equitable relief
28 as is appropriate, including forfeiture of any artifacts or remains
29 acquired or equipment used in the violation. The court shall order the
30 disposition of any items forfeited as the court sees fit, including the
31 reinterment of human remains;

32 (c) The plaintiff shall recover imputed damages of five hundred
33 dollars or actual damages, whichever is greater. Actual damages
34 include special and general damages, which include damages for
35 emotional distress;

36 (d) The plaintiff may recover punitive damages upon proof that the
37 violation was willful. Punitive damages may be recovered without proof

1 of actual damages. All punitive damages shall be paid by the defendant
2 to the ((office)) department of archaeology and historic preservation
3 for the purposes of ((Indian-historic)) grave preservation, as
4 appropriate to the remains or artifacts, and to cover the cost of
5 reinterment expenses by the ((office)) department; and

6 (e) An award of imputed or punitive damages may be made only once
7 for a particular violation by a particular person, but shall not
8 preclude the award of such damages based on violations by other persons
9 or on other violations.

10 (4) If the defendant prevails, the court may award reasonable
11 attorneys' fees to the defendant.

12 **Sec. 6.** RCW 27.44.901 and 1989 c 44 s 11 are each amended to read
13 as follows:

14 This ((act)) chapter is to be liberally construed to achieve the
15 legislature's intent.

16 **Sec. 7.** RCW 68.60.010 and 1990 c 92 s 1 are each amended to read
17 as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

20 (1) ((~~"Abandoned cemetery" means a burial ground of the human dead~~
21 ~~in [for] which the county assessor can find no record of an owner; or~~
22 ~~where the last known owner is deceased and lawful conveyance of the~~
23 ~~title has not been made; or in which a cemetery company, cemetery~~
24 ~~association, corporation, or other organization formed for the~~
25 ~~purposes of burying the human dead has either disbanded, been~~
26 ~~administratively dissolved by the secretary of state, or otherwise~~
27 ~~ceased to exist, and for which title has not been conveyed~~)) "Cemetery"
28 means a parcel of land recorded within the records of the county
29 assessor that is identifiable and unique as a location of human remains
30 and that is intentionally set aside for the exclusive purpose of
31 interring human remains.

32 (2) "Grave" means a burial site or ground, located outside a
33 cemetery, that contains human remains.

34 (3) "Historical cemetery" means ((~~any burial site or grounds which~~
35 ~~contain within them human remains buried prior to November 11, 1889;~~
36 ~~except that~~)) (a) cemeteries holding a valid certificate of authority

1 to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries
2 owned or operated by any recognized religious denomination that
3 qualifies for an exemption from real estate taxation under RCW
4 84.36.020 on any of its churches or the ground upon which any of its
5 churches are or will be built, and (c) cemeteries controlled or
6 operated by a coroner, county, city, town, or cemetery district shall
7 not be considered historical cemeteries.

8 ~~((3) "Historic grave" means a grave or graves that were placed
9 outside a cemetery dedicated pursuant to this chapter and to chapter
10 68.24 RCW, prior to June 7, 1990, except Indian graves and burial
11 cairns protected under chapter 27.44 RCW.))~~

12 (4) ~~(("Cemetery" has the meaning provided in RCW 68.04.040(2)))~~
13 "Human remains" means a set of one human's remains or intermingled sets
14 of more than one human's remains, whether or not the set or sets are
15 complete human skeletons, together with all man-made things attached to
16 or found in the immediate vicinity of the remains.

17 **Sec. 8.** RCW 68.60.020 and 1999 c 367 s 3 are each amended to read
18 as follows:

19 Any ~~((cemetery, abandoned cemetery,))~~ historical cemetery~~((,))~~ or
20 ~~((historic))~~ grave that has not been dedicated pursuant to RCW
21 68.24.030 and 68.24.040 ~~((shall))~~ may be ~~((considered permanently))~~
22 dedicated ((and subject to RCW 68.24.070)) pursuant to RCW 68.24.030
23 and 68.24.040 with the consent of the landowner. Removal of dedication
24 may only be made pursuant to RCW 68.24.090 and 68.24.100.

25 **Sec. 9.** RCW 68.60.030 and 2005 c 365 s 150 are each amended to
26 read as follows:

27 (1)(a) The ~~((archaeological and historical division of the
28 department of community, trade, and economic development))~~ department
29 of archaeology and historic preservation may grant by nontransferable
30 certificate authority to maintain and protect ~~((an abandoned cemetery))~~
31 a grave or graves upon application made by a preservation organization
32 which has been incorporated for the purpose of restoring, maintaining,
33 and protecting ~~((an abandoned cemetery))~~ graves. Such authority shall
34 be limited to the care, maintenance, restoration, protection, and
35 historical preservation of the ~~((abandoned cemetery))~~ grave, and shall
36 not include authority to make burials. In order to activate a

1 historical cemetery for burials, an applicant must apply for a
2 certificate of authority to operate a cemetery from the state cemetery
3 board.

4 (b) Those preservation and maintenance corporations that are
5 granted authority to maintain and protect (~~(an abandoned cemetery)~~)
6 graves shall be entitled to hold and possess burial records, maps, and
7 other historical documents as may exist. Maintenance and preservation
8 corporations that are granted authority to maintain and protect (~~(an~~
9 ~~abandoned cemetery)~~) graves shall not be liable to those claiming
10 burial rights, ancestral ownership, or to any other person or
11 organization alleging to have control by any form of conveyance not
12 previously recorded at the county auditor's office within the county in
13 which the (~~(abandoned cemetery)~~) grave exists. Such organizations
14 shall not be liable for any reasonable alterations made during
15 restoration work on memorials, roadways, walkways, features, plantings,
16 or any other detail of the (~~(abandoned cemetery)~~) grave.

17 (c) Should the maintenance and preservation corporation be
18 dissolved, the (~~(archaeological and historical division of the~~
19 ~~department of community, trade, and economic development)~~) department
20 of archaeology and historic preservation shall revoke the certificate
21 of authority.

22 (d) Maintenance and preservation corporations that are granted
23 authority to maintain and protect (~~(an abandoned cemetery)~~) graves may
24 establish care funds.

25 (2) Except as provided in subsection (1) of this section, the
26 department of (~~(community, trade, and economic development)~~)
27 archaeology and historic preservation may, in its sole discretion,
28 authorize any Washington nonprofit corporation that is not expressly
29 incorporated for the purpose of restoring, maintaining, and protecting
30 (~~(an abandoned cemetery)~~) graves, to restore, maintain, and protect one
31 or more (~~(abandoned cemeteries)~~) graves. The authorization may include
32 the right of access to any burial records, maps, and other historical
33 documents, but shall not include the right to be the permanent
34 custodian of original records, maps, or documents. This authorization
35 shall be granted by a nontransferable certificate of authority. Any
36 nonprofit corporation authorized and acting under this subsection is
37 immune from liability to the same extent as if it were a preservation

1 organization holding a certificate of authority under subsection (1) of
2 this section.

3 (3) The department of (~~community, trade, and economic~~
4 ~~development~~) archaeology and historic preservation shall establish
5 standards and guidelines for granting certificates of authority under
6 subsections (1) and (2) of this section to assure that any restoration,
7 maintenance, and protection activities authorized under this subsection
8 are conducted and supervised in an appropriate manner.

9 NEW SECTION. Sec. 10. RCW 27.44.040 (Protection of Indian
10 graves--Penalty) and 1989 c 44 s 2 are each repealed.

11 NEW SECTION. Sec. 11. The following sections are each recodified
12 as sections in chapter 27.44 RCW:

13 RCW 68.60.010

14 RCW 68.60.020

15 RCW 68.60.030

16 RCW 68.60.040

17 RCW 68.60.050

18 RCW 68.60.060

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