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SENATE BILL 6521

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State of Washington

60th Legislature

2008 Regular Session

By Senators McDermott, Fairley, Swecker, Kline, and Oemig

Read first time 01/17/08. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to human remains; amending RCW 68.50.020 and  
2 27.53.030; adding a new section to chapter 27.44 RCW; adding a new  
3 section to chapter 68.60 RCW; adding a new section to chapter 43.334  
4 RCW; adding a new section to chapter 27.34 RCW; and prescribing  
5 penalties.

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

7 **Sec. 1.** RCW 68.50.020 and 1987 c 331 s 55 are each amended to read  
8 as follows:

9 (1) It shall be the duty of every person who knows of the existence  
10 and location of ~~((a dead body coming under the jurisdiction of the~~  
11 ~~coroner as set forth in RCW 68.50.010,))~~ human remains to notify the  
12 coroner ~~((thereof))~~ or medical examiner and local law enforcement in  
13 the most expeditious manner possible, unless such person shall have  
14 good reason to believe that such notice has already been given. Any  
15 person knowing of the existence of ~~((such dead body))~~ human remains and  
16 not having good reason to believe that the coroner or medical examiner  
17 and local law enforcement has notice thereof and who ~~((shall))~~ fails to  
18 give notice to the coroner ~~((as aforesaid))~~ or medical examiner and  
19 local law enforcement, shall be guilty of a misdemeanor.

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

3       (a) Immediately cease any activity which may cause further  
4 disturbance;

5       (b) Make a reasonable effort to protect the area from further  
6 disturbance;

7       (c) Report the presence and location of the remains to the coroner  
8 or medical examiner and local law enforcement in the most expeditious  
9 manner possible; and

10       (d) Be held harmless from criminal and civil liability in the event  
11 the finding of human remains were based on an inadvertent discovery, if  
12 the requirements of this subsection are met.

13       (3) The coroner or medical examiner must make a determination of  
14 whether the remains are forensic or nonforensic within five business  
15 days of receiving notification of a finding of human remains provided  
16 that there is sufficient evidence to make such a determination within  
17 that time period. The coroner or medical examiner will retain  
18 jurisdiction over forensic remains.

19       (a) Upon determination that human remains are nonforensic, the  
20 coroner or medical examiner must notify the department of archaeology  
21 and historic preservation within two business days. The department of  
22 archaeology and historic preservation will have jurisdiction over such  
23 remains until provenance of the remains is established. A  
24 determination that remains are nonforensic does not create a  
25 presumption of removal or nonremoval.

26       (b) Upon receiving notice from a coroner or medical examiner of a  
27 finding of nonforensic human remains, the department must notify all  
28 affected Indian tribes via certified mail to the head of the  
29 appropriate tribal government and contact the appropriate tribal  
30 cultural resources staff within two business days of the finding.  
31 Affected tribes are those with usual and accustomed areas in the  
32 jurisdiction where the remains were found. A notification to tribes of  
33 a finding of nonforensic remains does not create a presumption that  
34 remains are Indian.

35       (c) The state physical anthropologist must make an initial  
36 determination of whether nonforensic remains are Indian or non-Indian  
37 to the extent possible based on the remains within two business days.  
38 If the remains are determined to be Indian, the department must notify

1 all affected Indian tribes via certified mail to the head of the  
2 appropriate tribal government within two business days and contact the  
3 appropriate tribal cultural resources staff.

4 (d) The affected tribes have five business days to respond via  
5 telephone or writing to the department as to their interest in the  
6 remains. Further processes shall be governed by chapter 27.53 RCW.

7 NEW SECTION. Sec. 2. A new section is added to chapter 27.44 RCW  
8 to read as follows:

9 (1) Any person who discovers human remains must notify the coroner  
10 or medical examiner and local law enforcement in the most expeditious  
11 manner possible. Any person knowing of the existence of human remains  
12 and not having good reason to believe that the coroner or medical  
13 examiner and local law enforcement has notice thereof and who fails to  
14 give notice thereof is guilty of a misdemeanor.

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

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

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

21 (c) Report the presence and location of the remains to the coroner  
22 or medical examiner and local law enforcement in the most expeditious  
23 manner possible; and

24 (d) Be held harmless from criminal and civil liability in the event  
25 the finding of human remains were based on an inadvertent discovery, if  
26 the requirements of this subsection are met.

27 (3) The coroner or medical examiner must make a determination  
28 whether the remains are forensic or nonforensic within five business  
29 days of receiving notification of a finding of human remains provided  
30 that there is sufficient evidence to make such a determination within  
31 that time period. The coroner or medical examiner will retain  
32 jurisdiction over forensic remains.

33 (a) Upon determination that human remains are nonforensic, the  
34 coroner or medical examiner must notify the department of archaeology  
35 and historic preservation within two business days. The department of  
36 archaeology and historic preservation will have jurisdiction over such

1 remains until provenance of the remains is established. A  
2 determination that remains are nonforensic does not create a  
3 presumption of removal or nonremoval.

4 (b) Upon receiving notice from a coroner or medical examiner of a  
5 finding of nonforensic human remains, the department must notify all  
6 affected Indian tribes via certified mail to the head of the  
7 appropriate tribal government and contact the appropriate tribal  
8 cultural resources staff within two business days of the finding.  
9 Affected tribes are those with usual and accustomed areas in the  
10 jurisdiction where the remains were found. A notification to tribes of  
11 a finding of nonforensic remains does not create a presumption that  
12 remains are Indian.

13 (c) The state physical anthropologist must make an initial  
14 determination of whether nonforensic remains are Indian or non-Indian  
15 to the extent possible based on the remains within two business days.  
16 If the remains are determined to be Indian, the department must notify  
17 all affected Indian tribes via certified mail to the head of the  
18 appropriate tribal government within two business days and contact the  
19 appropriate tribal cultural resources staff.

20 (d) The affected tribes have five business days to respond via  
21 telephone or writing to the department as to their interest in the  
22 remains. Further processes shall be governed by chapter 27.53 RCW.

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

25 (1) Any person who discovers human remains shall notify the coroner  
26 or medical examiner and local law enforcement in the most expeditious  
27 manner possible. Any person knowing of the existence of human remains  
28 and not having good reason to believe that the coroner or medical  
29 examiner and local law enforcement has notice thereof and who fails to  
30 give notice thereof is guilty of a misdemeanor.

31 (2) Any person engaged in ground disturbing activity and who  
32 encounters or discovers human remains in or on the ground shall:

33 (a) Immediately cease any activity which may cause further  
34 disturbance;

35 (b) Make a reasonable effort to protect the area from further  
36 disturbance;

1 (c) Report the presence and location of the remains to the coroner  
2 or medical examiner and local law enforcement in the most expeditious  
3 manner possible; and

4 (d) Be held harmless from criminal and civil liability in the event  
5 the finding of human remains were based on an inadvertent discovery, if  
6 the requirements of this subsection are met.

7 (3) The coroner or medical examiner must make a determination  
8 whether the remains are forensic or nonforensic within five business  
9 days of receiving notification of a finding of human remains provided  
10 that there is sufficient evidence to make such a determination within  
11 that time period. The coroner or medical examiner will retain  
12 jurisdiction over forensic remains.

13 (a) Upon determination that human remains are nonforensic, the  
14 coroner or medical examiner must notify the department of archaeology  
15 and historic preservation within two business days. The department of  
16 archaeology and historic preservation will have jurisdiction over such  
17 remains until provenance of the remains is established. A  
18 determination that remains are nonforensic does not create a  
19 presumption of removal or nonremoval.

20 (b) Upon receiving notice from a coroner or medical examiner of a  
21 finding of nonforensic human remains, the department must notify all  
22 affected Indian tribes via certified mail to the head of the  
23 appropriate tribal government and contact the appropriate tribal  
24 cultural resources staff within two business days of the finding.  
25 Affected tribes are those with usual and accustomed areas in the  
26 jurisdiction where the remains were found. A notification to tribes of  
27 a finding of nonforensic remains does not create a presumption that  
28 remains are Indian.

29 (c) The state physical anthropologist must make an initial  
30 determination of whether nonforensic remains are Indian or non-Indian  
31 to the extent possible based on the remains within two business days.  
32 If the remains are determined to be Indian, the department must notify  
33 all affected Indian tribes via certified mail to the head of the  
34 appropriate tribal government within two business days and contact the  
35 appropriate tribal cultural resources staff.

36 (d) The affected tribes have five business days to respond via  
37 telephone or writing to the department as to their interest in the  
38 remains. Further processes shall be governed by chapter 27.53 RCW.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 43.334 RCW  
2 to read as follows:

3        (1) The director shall appoint a state physical anthropologist. At  
4 a minimum, the state physical anthropologist must have a doctorate in  
5 either archaeology or anthropology and have experience in forensic  
6 osteology or other relevant aspects of physical anthropology and must  
7 have at least one year of experience in laboratory reconstruction and  
8 analysis. A medical degree with archaeological experience in addition  
9 to the experience required may substitute for a doctorate in  
10 archaeology or anthropology.

11        (2) The state physical anthropologist has the primary  
12 responsibility of investigating, preserving, and, when necessary,  
13 reinterring discoveries of human remains that are not evidence of a  
14 crime. The state physical anthropologist is available to any local  
15 governments or any federally recognized tribal government within the  
16 boundaries of Washington to assist in determining whether discovered  
17 human remains are forensic or archaeological.

18        (3) The director shall hire staff as necessary to support the state  
19 physical anthropologist to meet the objectives of this section. The  
20 director shall contract with the Washington state patrol for laboratory  
21 space.

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

24        The definitions in this section apply throughout this chapter  
25 unless the context clearly requires otherwise.

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

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

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

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

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

3 (6) "Historic" means peoples and cultures who are known through  
4 written documents in their own or other languages. As applied to  
5 underwater archaeological resources, the term historic shall include  
6 only those properties which are listed in or eligible for listing in  
7 the Washington State Register of Historic Places (RCW 27.34.220) or the  
8 National Register of Historic Places as defined in the National  
9 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-  
10 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

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

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

16 ~~(9) "Qualified archaeologist" means a person who has had formal~~  
17 ~~training and/or experience in archaeology over a period of at least~~  
18 ~~three years, and has been certified in writing to be a qualified~~  
19 ~~archaeologist by two professional archaeologists)) with qualifications  
20 meeting the federal secretary of the interior's standards for a  
21 professional archaeologist. Archaeologists not meeting this standard  
22 may be conditionally employed by working under the supervision of a  
23 professional archaeologist for a period of four years provided the  
24 employee is pursuing qualifications necessary to meet the federal  
25 secretary of the interior's standards for a professional archaeologist.  
26 During this four-year period, the professional archaeologist is  
27 responsible for all findings. The four-year period is not subject to  
28 renewal.~~

29 ~~((+10+))~~ (9) "Amateur society" means any organization composed  
30 primarily of persons who are not professional archaeologists, whose  
31 primary interest is in the archaeological resources of the state, and  
32 which has been certified in writing by two professional archaeologists.

33 ~~((+11+))~~ (10) "Historic archaeological resources" means those  
34 properties which are listed in or eligible for listing in the  
35 Washington State Register of Historic Places (RCW 27.34.220) or the  
36 National Register of Historic Places as defined in the National  
37 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-  
38 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 27.34 RCW  
2 to read as follows:

3        The department of archaeology and historic preservation shall  
4 develop and maintain a centralized database and geographic information  
5 systems spatial layer of all known cemeteries and known sites of  
6 burials of human remains in Washington state.    The information in the  
7 database is subject to the public disclosure exemption provided in RCW  
8 42.56.300, but is available by confidentiality agreement to federal,  
9 state, and local agencies for purposes of environmental review, and to  
10 tribes in order to participate in environmental review, protect their  
11 ancestors, and perpetuate their cultures.

12        Information provided to state and local agencies under this section  
13 and subject to RCW 42.56.300 shall continue to be exempt from public  
14 disclosure while in possession or control of a state or local agency.

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