

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2624

Chapter 275, Laws of 2008

60th Legislature
2008 Regular Session

HUMAN REMAINS

EFFECTIVE DATE: 06/12/08

Passed by the House March 12, 2008
Yeas 74 Nays 23

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 12, 2008
Yeas 44 Nays 5

BRAD OWEN

President of the Senate

Approved March 31, 2008, 2:25 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2624** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

April 1, 2008

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2624

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Appropriations (originally sponsored by Representatives McCoy, Kessler, Appleton, Ormsby, VanDeWege, Hunt, Kenney, Darneille, and Chase)

READ FIRST TIME 02/11/08.

1 AN ACT Relating to human remains; amending RCW 27.53.030; adding a
2 new section to chapter 68.50 RCW; adding a new section to chapter 27.44
3 RCW; adding a new section to chapter 68.60 RCW; adding new sections to
4 chapter 43.334 RCW; adding a new section to chapter 27.34 RCW; creating
5 new sections; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 68.50 RCW
8 to read as follows:

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

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

1 (a) Immediately cease any activity which may cause further
2 disturbance;

3 (b) Make a reasonable effort to protect the area from further
4 disturbance;

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

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

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

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

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

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

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

25 (b) Upon receiving notice from a coroner of a finding of
26 nonforensic skeletal human remains, the department must notify the
27 appropriate local cemeteries, and all affected Indian tribes via
28 certified mail to the head of the appropriate tribal government, and
29 contact the appropriate tribal cultural resources staff within two
30 business days of the finding. The determination of what are
31 appropriate local cemeteries to be notified is at the discretion of the
32 department. A notification to tribes of a finding of such nonforensic
33 skeletal human remains does not create a presumption that the remains
34 are Indian.

35 (c) The state physical anthropologist must make an initial
36 determination of whether nonforensic skeletal human remains are Indian
37 or non-Indian to the extent possible based on the remains within two
38 business days of notification of a finding of nonforensic remains. If

1 the remains are determined to be Indian, the department must notify all
2 affected Indian tribes via certified mail to the head of the
3 appropriate tribal government within two business days and contact the
4 appropriate tribal cultural resources staff.

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

8 (4) For the purposes of this section:

9 (a) "Affected tribes" are:

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

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

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

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

19 (c) "Inadvertent discovery" has the same meaning as used in RCW
20 27.44.040.

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

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

28 (1) Any person who discovers skeletal human remains must notify the
29 coroner and local law enforcement in the most expeditious manner
30 possible. Any person knowing of the existence of human remains and not
31 having good reason to believe that the coroner and local law
32 enforcement has notice thereof and who fails to give notice thereof is
33 guilty of a misdemeanor.

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

1 (a) Immediately cease any activity which may cause further
2 disturbance;

3 (b) Make a reasonable effort to protect the area from further
4 disturbance;

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

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

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

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

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

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

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

24 (b) Upon receiving notice from a coroner of a finding of
25 nonforensic skeletal human remains, the department must notify the
26 appropriate local cemeteries, and all affected Indian tribes via
27 certified mail to the head of the appropriate tribal government, and
28 contact the appropriate tribal cultural resources staff within two
29 business days of the finding. The determination of what are
30 appropriate local cemeteries to be notified is at the discretion of the
31 department. A notification to tribes of a finding of nonforensic
32 skeletal human remains does not create a presumption that the remains
33 are Indian.

34 (c) The state physical anthropologist must make an initial
35 determination of whether nonforensic skeletal human remains are Indian
36 or non-Indian to the extent possible based on the remains within two
37 business days of notification of a finding of such nonforensic remains.
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.

7 (4) For the purposes of this section:

8 (a) "Affected tribes" are:

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

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

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

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

18 (c) "Inadvertent discovery" has the same meaning as used in RCW
19 27.44.040.

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

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

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

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

36 (a) Immediately cease any activity which may cause further
37 disturbance;

1 (b) Make a reasonable effort to protect the area from further
2 disturbance;

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

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

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

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

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

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

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

22 (b) Upon receiving notice from a coroner of a finding of
23 nonforensic skeletal human remains, the department must notify the
24 appropriate local cemeteries, and all affected Indian tribes via
25 certified mail to the head of the appropriate tribal government, and
26 contact the appropriate tribal cultural resources staff within two
27 business days of the finding. The determination of what are
28 appropriate local cemeteries to be notified is at the discretion of the
29 department. A notification to tribes of a finding of such nonforensic
30 skeletal human remains does not create a presumption that the remains
31 are Indian.

32 (c) The state physical anthropologist must make an initial
33 determination of whether nonforensic skeletal human remains are Indian
34 or non-Indian to the extent possible based on the remains within two
35 business days of notification of a finding of such nonforensic remains.
36 If the remains are determined to be Indian, the department must notify
37 all affected Indian tribes via certified mail to the head of the

1 appropriate tribal government within two business days and contact the
2 appropriate tribal cultural resources staff.

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

6 (4) For the purposes of this section:

7 (a) "Affected tribes" are:

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

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

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

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

17 (c) "Inadvertent discovery" has the same meaning as used in RCW
18 27.44.040.

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

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

26 (1) The director shall appoint a state physical anthropologist. At
27 a minimum, the state physical anthropologist must have a doctorate in
28 either archaeology or anthropology and have experience in forensic
29 osteology or other relevant aspects of physical anthropology and must
30 have at least one year of experience in laboratory reconstruction and
31 analysis. A medical degree with archaeological experience in addition
32 to the experience required may substitute for a doctorate in
33 archaeology or anthropology.

34 (2) The state physical anthropologist has the primary
35 responsibility of investigating, preserving, and, when necessary,
36 removing and reinterring discoveries of nonforensic skeletal human
37 remains. The state physical anthropologist is available to any local

1 governments or any federally recognized tribal government within the
2 boundaries of Washington to assist in determining whether discovered
3 skeletal human remains are forensic or nonforensic.

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

6 (4) For the purposes of this section, "forensic remains" are those
7 that come under the jurisdiction of the coroner pursuant to RCW
8 68.50.010.

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

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

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

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

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

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

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

27 (6) "Historic" means peoples and cultures who are known through
28 written documents in their own or other languages. As applied to
29 underwater archaeological resources, the term historic shall include
30 only those properties which are listed in or eligible for listing in
31 the Washington State Register of Historic Places (RCW 27.34.220) or the
32 National Register of Historic Places as defined in the National
33 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
34 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

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

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

4 ~~(9) "Qualified archaeologist" means a person who has had formal~~
5 ~~training and/or experience in archaeology over a period of at least~~
6 ~~three years, and has been certified in writing to be a qualified~~
7 ~~archaeologist by two professional archaeologists)) with qualifications~~
8 meeting the federal secretary of the interior's standards for a
9 professional archaeologist. Archaeologists not meeting this standard
10 may be conditionally employed by working under the supervision of a
11 professional archaeologist for a period of four years provided the
12 employee is pursuing qualifications necessary to meet the federal
13 secretary of the interior's standards for a professional archaeologist.
14 During this four-year period, the professional archaeologist is
15 responsible for all findings. The four-year period is not subject to
16 renewal.

17 ~~((+10))~~ (9) "Amateur society" means any organization composed
18 primarily of persons who are not professional archaeologists, whose
19 primary interest is in the archaeological resources of the state, and
20 which has been certified in writing by two professional archaeologists.

21 ~~((+11))~~ (10) "Historic archaeological resources" means those
22 properties which are listed in or eligible for listing in the
23 Washington State Register of Historic Places (RCW 27.34.220) or the
24 National Register of Historic Places as defined in the National
25 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
26 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

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

29 The department of archaeology and historic preservation shall
30 develop and maintain a centralized database and geographic information
31 systems spatial layer of all known cemeteries and known sites of
32 burials of human remains in Washington state. The information in the
33 database is subject to public disclosure, except as provided in RCW
34 42.56.300; exempt information is available by confidentiality agreement
35 to federal, state, and local agencies for purposes of environmental
36 review, and to tribes in order to participate in environmental review,
37 protect their ancestors, and perpetuate their cultures.

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

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.334 RCW
4 to read as follows:

5 The skeletal human remains assistance account is created in the
6 custody of the state treasurer. All appropriations provided by the
7 legislature for this purpose as well as any reimbursement for services
8 provided pursuant to this act must be deposited in the account.
9 Expenditures from the account may be used only for archaeological
10 determinations and excavations of inadvertently discovered skeletal
11 human remains, and removal and reinterment of such remains when
12 necessary. Only the director or the director's designee may authorize
13 expenditures from the account. The account is subject to the allotment
14 procedures under chapter 43.88 RCW, but an appropriation is not
15 required for expenditures.

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

21 NEW SECTION. **Sec. 9.** If specific funding for the purposes of this
22 act, referencing this act by bill or chapter number, is not provided by
23 June 30, 2008, in the omnibus appropriations act, this act is null and
24 void.

Passed by the House March 12, 2008.

Passed by the Senate March 12, 2008.

Approved by the Governor March 31, 2008.

Filed in Office of Secretary of State April 1, 2008.