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**State Government & Tribal Affairs**  
**Committee**

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**HB 1090**

**Brief Description:** Concerning human remains.

**Sponsors:** Representatives McCoy, Appleton, Chase, VanDeWege, Hunt and Moeller.

**Brief Summary of Bill**

- Creates a presumption that nonforensic skeletal human remains that are determined to be ancient are Indian nonforensic skeletal human remains.
- Provides that Indian nonforensic skeletal human remains will be reinterred at the site of discovery unless the tribe of origin indicates otherwise.
- Creates an amnesty period for the relinquishment of nonforensic skeletal human remains under certain circumstances.
- Directs the Director of the Department of Archaeology and Historic Preservation (DAHP) to develop a landowner incentive program for the reinterment of and access to Indian nonforensic skeletal human remains.
- Authorizes the DAHP to adopt rules to implement the Human Remains Program.

**Hearing Date:** 1/22/09

**Staff:** Tracey O'Brien (786-7196)

**Background:**

Last session, the Legislature enacted E2SHB 2624 which updated the statutes governing the discoveries of skeletal human remains. New sections governing the inadvertent discovery of skeletal human remains were added to statutes regarding the coroner's jurisdiction over human remains, to the Indian Graves and Records Act, and to the Abandoned and Historic Cemeteries and Historic Graves Act.

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*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.*

Individuals who inadvertently discover skeletal human remains must immediately call the county coroner or medical examiner and local law enforcement. Those individuals who make the inadvertent discovery through ground disturbing activity must also cease the activity and make a reasonable effort to protect the area from further disturbance. Those 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 must make a determination of whether the remains are forensic or nonforensic within five days, provided that such a determination can be made in that time period based on the skeletal human remains available. Upon determination that the skeletal human remains are nonforensic, the coroner or medical examiner must notify the Department of Archeology and Historic Preservation (DAHP) within two business days. A determination that skeletal human remains are nonforensic 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 nonforensic 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 (State Anthropologist) must make an initial determination of whether the nonforensic 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 nonforensic 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, those that submit to the DAHP maps that reflect the tribe's geographical area of cultural affiliation, or tribes with historical and cultural affiliation in the jurisdiction where the remains were found.

Forensic remains are those that come under the jurisdiction of the coroner as defined in statute.

Inadvertent discovery has the same meaning as used in the Indian Graves and Records Act. This definition includes disturbance through construction, mining, logging, agricultural activity, or any other activity.

### **Summary of Bill:**

The State Anthropologist still must make an initial determination of whether nonforensic skeletal human remains are Indian or non-Indian; however, if the State Anthropologist cannot determine if the remains are Indian, then the anthropologist must make a determination whether the nonforensic skeletal human remains are ancient. If the remains are determined to be ancient, they will be presumed to be Indian. Indian nonforensic skeletal human remains will be reinterred at the site of discovery unless the tribe of origin indicates otherwise.

Early notification to Indian tribes is encouraged. In fact, nothing precludes the coroner, the DAHP or other parties from directly providing affected tribes with immediate notification of the discovery of nonforensic human remains.

Language disclaiming the recognition of non-federally recognized Indian tribes is removed. Instead, nothing in the law precludes individuals who establish that they are lineal descendants of the person whose remains have been discovered from making a claim to the remains.

Persons in possession of nonforensic skeletal human remains who relinquish the remains to local law enforcement or the coroner by January 1, 2010, will not be charged with a misdemeanor for failure to give notice previously. However, this exemption does not apply to persons in possession of nonforensic skeletal human remains who are involved in criminal prosecution or civil litigation regarding the remains as of the effective date of this act.

The director of the DAHP must develop an incentive program to encourage landowners to allow the reinterment of Indian skeletal human remains and to allow the tribal members access to the reinterment site for ceremonial and religious purposes. In addition, the director is given rulemaking authority in order to implement the human remains program.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.