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LEGISLATIVE DEPARTMENT

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 4752

(By ~~ME~~ Delegates Martin & Murphy)

— ● —

Passed March 10, 1990

In Effect 90 Days from Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4752**  
(By DELEGATES MARTIN AND MURPHY)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections five and seven, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto a new section, designated section six-b, all relating to requiring and providing for the issuance of permits by the director of the archives and history section of the division of culture and history for the excavation, removal, destruction, or other disturbance of historic or prehistoric ruins, burial grounds, archaeological or site, or human skeletal remains, unmarked grave, grave artifact or grave marker of archaeological significance; requiring such permits for the sale or exchange of such items; providing penalties for undertaking such activities without first obtaining such permits, for violating the terms and conditions of such permits and for withholding information regarding such prohibited activities; providing legislative findings on the need for such permits; providing process for notification of discovery of human skeletal remains in unmarked locations and subsequent disposition; providing concurrent civil penalties for persons convicted of prohibited acts involving the excavation, removal, destruction, disturbance and offering for sale or exchange of historic

or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of archaeological significance and providing for disposition of proceeds when civil damages are recovered; providing for property tax exemption for property containing unmarked grave site; providing for disposition of certain human skeletal remains and grave artifacts not subject to reburial; providing general penalties for violation of section; changing the requirement that the historical magazine of the archives and history section be published quarterly; and changing certain references to conform to Acts reorganizing the executive branch of state government.

*Be it enacted by the Legislature of West Virginia:*

That sections five and seven, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one be further amended by adding thereto a new section, designated section six-b, all to read as follows:

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 1. DIVISION OF CULTURE AND HISTORY.**

#### **§29-1-5. Archives and history section; director.**

1 (a) The purposes and duties of the archives and  
2 history division are to locate, survey, investigate,  
3 register, identify, excavate, preserve, protect, restore  
4 and recommend to the commissioner for acquisition  
5 historic, architectural, archaeological and cultural sites,  
6 structures, documents and objects worthy of preserva-  
7 tion, including human skeletal remains, graves, grave  
8 artifacts and grave markers, relating to the state of  
9 West Virginia and the territory included therein from  
10 the earliest times to the present, upon its own initiative  
11 or in cooperation with any private or public society,  
12 organization or agency; to conduct a continuing survey  
13 and study throughout the state to develop a state plan  
14 to determine the needs and priorities for the preserva-  
15 tion, restoration or development of such sites, structures,

16 documents and objects; to direct, protect, excavate,  
17 preserve, study or develop such sites, structures and  
18 documents; to review all undertakings permitted,  
19 funded, licensed or otherwise assisted, in whole or in  
20 part, by the state for the purposes of furthering the  
21 duties of the division; to carry out the duties and  
22 responsibilities enumerated in the National Historic  
23 Preservation Act of 1966, as amended, as they pertain  
24 to the duties of the division; to develop and maintain a  
25 West Virginia state register of historic places for use as  
26 a planning tool for state and local government; to  
27 operate and maintain a state library for the preservation  
28 of all public records, state papers, documents and  
29 reports of all three branches of state government  
30 including all boards, commissions, departments and  
31 agencies as well as any other private or public papers,  
32 books or documents of peculiar or historic interest or  
33 significance; to preserve and protect all battle or  
34 regimental flags borne by West Virginians and other  
35 memorabilia of historic interest; to designate appropriate  
36 monuments, tablets or markers for historic,  
37 architectural and scenic sites within the state and to  
38 arrange for the purchase, replacement, care of and  
39 maintenance of such monuments, tablets and markers  
40 and to formulate and prepare suitable copy for them; to  
41 operate and maintain a state museum, and to coordinate  
42 activities with other museums in the state; to cooperate  
43 with state and federal agencies in archaeological work;  
44 to issue permits for the excavation or removal of human  
45 skeletal remains, grave artifacts and grave markers,  
46 archaeological, and prehistoric and historic features  
47 under the provisions of section six-b of this article; to  
48 edit and publish a quarterly an historical magazine  
49 devoted to the history, biography, bibliography and  
50 genealogy of West Virginia; and to perform such other  
51 duties as may be assigned to the section by the  
52 commissioner.

53 (b) With the advice and consent of the commission, in  
54 addition to the duties above set forth, the section shall  
55 determine the whereabouts of and require the return of  
56 furnishings, objects and documents missing from the  
57 capitol building and other state-owned or controlled

58 buildings, including, but not limited to, furnishings  
59 chosen or purchased for the capitol by its architect, Cass  
60 Gilbert. No furnishings from the capitol may be sold or  
61 disposed of except under the direction of the director of  
62 surplus state property pursuant to section three-a,  
63 article eight, chapter five-a of this code. If furnishings  
64 originally designated as capitol building furnishings  
65 have been sold or otherwise disposed of without the  
66 requisite sale procedures, such furnishings shall be  
67 returned to the capitol and, upon presentation of proof  
68 of the amount paid, the current owner shall be reim-  
69 bursed for the cost of the furnishing less any appro-  
70 priate depreciation or wear and tear.

71 (c) With the advice and consent of the archives and  
72 history commission, the commissioner shall appoint a  
73 director of the archives and history section, who shall  
74 have: (1) A graduate degree in one of the social sciences,  
75 or equivalent training and experience in the fields of  
76 West Virginia history, history, historic preservation,  
77 archaeology, or in records, library or archives manage-  
78 ment; and (2) three years' experience in administration  
79 in the fields of West Virginia history, history, historic  
80 preservation, archaeology, or in records, library or  
81 archives management. Notwithstanding these qualifica-  
82 tions, the person serving as the state historian and  
83 archivist on the date of enactment of this article shall  
84 be eligible for appointment as the director of the  
85 archives and history section. The director of the archives  
86 and history section shall serve as the state historian and  
87 archivist, and shall be the state historic preservation  
88 officer or a deputy state historic preservation officer.

89 (d) With the approval of the commissioner, the  
90 director shall establish professional positions within the  
91 section and develop appropriate organizational struc-  
92 tures to carry out the duties of the section. The director  
93 shall employ the personnel with applicable professional  
94 qualifications to fill positions within the organizational  
95 structure with the minimum professional qualifications  
96 necessary to carry out the provisions of the National  
97 Historic Preservation Act of 1966, as amended. At the  
98 minimum, the following professions shall be represented

99 within the section staff: Historian, architectural histo-  
 100 rian, a licensed architect who specializes in historical  
 101 preservation, archaeologist specializing in historic and  
 102 prehistoric archaeology, archivist, librarian and techni-  
 103 cal and clerical positions as are required.

104 (e) The director shall promulgate rules and regula-  
 105 tions with the approval of the archives and history  
 106 commission and in accordance with the state adminis-  
 107 trative procedures act concerning: (1) The professional  
 108 policies and functions of the archives and history section;  
 109 (2) the review of, and, when required, issuance of  
 110 permits for, all undertakings permitted, funded,  
 111 licensed or otherwise assisted, in whole or in part, by  
 112 the state as indicated in subsection (a) of this section,  
 113 in order to carry out the duties and responsibilities of  
 114 the section; (3) the establishment and maintenance of a  
 115 West Virginia state register of historic places, including  
 116 the criteria for eligibility of buildings, structures, sites,  
 117 districts and objects for the state register and proce-  
 118 dures for nominations to the state register and protec-  
 119 tion of nominated and listed properties; (4) the review  
 120 of historic structures in accordance with compliance  
 121 alternatives and other provisions in any state fire  
 122 regulation and shall coordinate standards with the  
 123 appropriate regulatory officials regarding their applica-  
 124 tion; (5) review of historic structures in conjunction with  
 125 existing state or local building codes, and shall coordi-  
 126 nate standards with the appropriate regulatory officials  
 127 for their application; and (6) the expenditure of funds  
 128 provided for threatened and endangered historic  
 129 properties by the voluntary check-off program estab-  
 130 lished under section fourteen, article one of this chapter  
 131 and such other rules and regulations as may be deemed  
 132 necessary to effectuate the purposes of this article.

**§29-1-6b. Protection of human skeletal remains, grave  
 artifacts and grave markers; permits for  
 excavation and removal; penalties.**

1 (a) *Legislative findings and purpose.*

2 The Legislature finds that there is a real and growing  
 3 threat to the safety and sanctity of unmarked human

4 graves in West Virginia and the existing laws of the  
5 state do not provide equal or adequate protection for all  
6 such graves. As evident by the numerous incidents in  
7 West Virginia which have resulted in the desecration of  
8 human remains and vandalism to grave markers, there  
9 is an immediate need to protect the graves of earlier  
10 West Virginians from such desecration. Therefore, the  
11 purpose of this article is to assure that all human burials  
12 be accorded equal treatment and respect for human  
13 dignity without reference to ethnic origins, cultural  
14 backgrounds, or religious affiliations.

15 The Legislature also finds that those persons engaged  
16 in the scientific study or recovery of artifacts which  
17 have been acquired in accordance with the law are  
18 engaged in legitimate and worthy scientific and educa-  
19 tional activities. Therefore, this legislation is intended to  
20 permit the appropriate pursuit of those lawful activities.

21 Finally, this legislation is not intended to interfere  
22 with the normal activities of private property owners,  
23 farmers, or those engaged in the development, mining  
24 or improvement of real property.

25 (b) *Definitions.*

26 For the purposes of this section:

27 (1) "Human skeletal remains" means the bones, teeth,  
28 hair or tissue of a deceased human body;

29 (2) "Unmarked grave" means any grave or location  
30 where a human body or bodies have been buried or  
31 deposited for at least fifty years and the grave or  
32 location is not in a publicly or privately maintained  
33 cemetery or in the care of a cemetery association, or is  
34 located within such cemetery or in such care and is not  
35 commonly marked;

36 (3) "Grave artifact" means any items of human  
37 manufacture or use that are associated with the human  
38 skeletal remains in a grave;

39 (4) "Grave marker" means any tomb, monument,  
40 stone, ornament, mound, or other item of human  
41 manufacture that is associated with a grave;

42 (5) "Person" includes the federal and state govern-  
43 ments and any political subdivision of this state; and

44 (6) "Disturb" means the excavating, removing, expos-  
45 ing, defacing, mutilating, destroying, molesting, or  
46 desecrating in any way of human skeletal remains,  
47 unmarked graves, grave artifacts or grave markers.

48 (c) *Acts prohibited; penalties.*

49 (1) No person may excavate, remove, destroy, or  
50 otherwise disturb any historic or prehistoric ruins,  
51 burial grounds, archaeological site, or human skeletal  
52 remains, unmarked grave, grave artifact or grave  
53 marker of historical significance unless such person has  
54 a valid permit issued to him or her by the director of  
55 archives and history: *Provided*, That the supervising  
56 archaeologist of an archaeological investigation being  
57 undertaken in compliance with the federal Archaeolog-  
58 ical Resources Protection Act (Public Law 96-95 at 16  
59 USC 470(aa)) and regulations promulgated thereunder  
60 shall not be required to obtain such permit, but shall  
61 notify the director of archives and history that such  
62 investigation is being undertaken and file reports as are  
63 required of persons issued a permit under this section:  
64 *Provided, however*, That projects being undertaken in  
65 compliance with section 106 of the National Historic  
66 Preservation Act of 1966, as amended, or subsection (a),  
67 section five of this article shall not be required to obtain  
68 such permit for excavation, removal, destruction or  
69 disturbance of historic or prehistoric ruins or archeolog-  
70 ical sites.

71 A person who, either by himself or through an agent,  
72 intentionally excavates, removes, destroys or otherwise  
73 disturbs any historic or prehistoric ruins, burial  
74 grounds or archaeological site, or unmarked grave,  
75 grave artifact or grave marker of historical significance  
76 without first having been issued a valid permit by the  
77 director of archives and history, or who fails to comply  
78 with the terms and conditions of such permit, is guilty  
79 of a misdemeanor, and, upon conviction, shall be fined  
80 not less than one hundred dollars nor more than five  
81 hundred dollars, and may be imprisoned in the county



82 jail for not less than ten days nor more than six months  
83 or both fined and imprisoned.

84 A person who, either by himself or through an agent,  
85 intentionally excavates, removes, destroys or otherwise  
86 disturbs human skeletal remains of historical signifi-  
87 cance without first having been issued a valid permit  
88 by the director of archives and history, or who fails to  
89 comply with the terms and conditions relating to  
90 disinterment or displacement of human skeletal remains  
91 of such permit, is guilty of the felony of disinterment  
92 or displacement of a dead human body or parts thereof  
93 under section fourteen, article eight, chapter sixty-one  
94 of this code and, upon conviction, shall be confined in  
95 the state penitentiary not less than two nor more than  
96 five years.

97 A person who intentionally withholds information  
98 about the excavation, removal, destruction, or other  
99 disturbance of any historic or prehistoric ruins, burial  
100 grounds, archaeological site, or human skeletal remains,  
101 unmarked grave, grave artifact or grave marker of  
102 historical significance is guilty of a misdemeanor and,  
103 upon conviction, shall be fined not more than one  
104 hundred dollars, and may be imprisoned in the county  
105 jail not more than ten days.

106 (2) No person may offer for sale or exchange any  
107 human skeletal remains, grave artifact or grave marker  
108 obtained in violation of this section.

109 A person who, either by himself or through an agent,  
110 offers for sale or exchange any human skeletal remains,  
111 grave artifact or grave marker obtained in violation of  
112 this section is guilty of a misdemeanor and, upon  
113 conviction, shall be fined not less than one thousand  
114 dollars nor more than five thousand dollars, and may be  
115 imprisoned in the county jail not less than six months  
116 nor more than one year.

117 (3) Each instance of excavation, removal, destruction,  
118 disturbance or offering for sale or exchange under (1)  
119 and (2) of this subsection shall constitute a separate  
120 offense.

121 (d) *Notification of discovery of human skeletal remains*  
122 *in unmarked locations.*

123 Within forty-eight hours of the discovery of human  
124 skeletal remains, grave artifact or grave marker in an  
125 unmarked grave on any publicly or privately owned  
126 property the person making such discovery shall notify  
127 the county sheriff of the discovery and its location. If the  
128 human remains, grave artifact or grave marker appear  
129 to be from an unmarked grave, the sheriff shall  
130 promptly, and prior to any further disturbance or  
131 removal of the remains, notify the director of archives  
132 and history. The director shall cause an on-site inspec-  
133 tion of the disturbance to be made to determine the  
134 potential for archaeological significance of the site:  
135 *Provided*, That when the discovery is made by an  
136 archaeological investigation permitted under state or  
137 federal law, the supervising archaeologist shall notify  
138 the director of archives and history directly.

139 If the director of archives and history determines that  
140 the site has no archaeological significance, the removal,  
141 transfer and disposition of the remains shall be subject  
142 to the provisions of article thirteen, chapter thirty-seven  
143 of this code, and the director shall notify the circuit  
144 court of the county wherein the site is located.

145 If the director of archives and history determines that  
146 the site has a potential for archaeological significance,  
147 the director shall take such action as is reasonable,  
148 necessary and prudent, including consultation with  
149 appropriate private or public organizations, to preserve  
150 and advance the culture of the state in accordance with  
151 the the powers and duties granted to the director,  
152 including the issuance of a permit for the archaeological  
153 excavation or removal of the remains. If the director  
154 determines that the issuance of a permit for the  
155 archaeological excavation or removal of the remains is  
156 not reasonable, necessary or prudent, the director shall  
157 provide written reasons to the applicant for not issuing  
158 the permit.

159 (e) *Issuance of permits.*

160 All permits issued by the director of archives and

161 history for the disturbance of human skeletal remains,  
162 grave artifacts, or grave markers shall at a minimum  
163 address the following conditions: (1) The methods by  
164 which descendents of proven kinship to the deceased are  
165 notified prior to the disturbance; (2) the respectful  
166 manner in which the remains, artifacts or markers are  
167 to be removed and handled; (3) the need for any  
168 scientific analysis of the remains, artifacts or markers  
169 and the duration of those studies; (4) the way in which  
170 the remains may be reburied in consultation with any  
171 descendents of proven kinship, when available; and (5)  
172 such other conditions as the director may deem neces-  
173 sary. Expenses accrued in meeting the permit condi-  
174 tions shall be borne by the permit applicant, except in  
175 cases where the deceasedes' descendents or sponsors are  
176 willing to share or assume the costs. A permit to disturb  
177 human skeletal remains, grave artifacts or grave  
178 markers will be issued only after alternatives to  
179 disturbance and other mitigative measures have been  
180 considered.

181 In addition, a person applying for a permit to excavate  
182 or remove human skeletal remains, grave artifacts,  
183 grave markers, or any historic or prehistoric features of  
184 archaeological significance must:

185 (1) Provide a detailed statement to the director of  
186 archives and history giving the reasons and objectives  
187 for excavation or removal and the benefits expected to  
188 be obtained from the contemplated work;

189 (2) Provide data and results of any excavation, study  
190 or collection in annual reports to the director of archives  
191 and history and submit a final report to the director  
192 upon completion of the excavation; and

193 (3) Obtain the prior written permission of the owner  
194 if the site of such proposed excavation is on privately  
195 owned land.

196 Such permits shall be issued for a period of two years  
197 and may be renewed at expiration. The permits are not  
198 transferable but other persons who have not been issued  
199 a permit may work under the direct supervision of the  
200 person holding the permit. The person or persons to

201 whom a permit was issued must carry the permit while  
202 exercising the privileges granted and must be present  
203 at the site whenever work is being done.

204 Notwithstanding any other penalties to which a  
205 person may be subject under this section for failing to  
206 comply with the terms and conditions of a permit, the  
207 permit of a person who violates any of the provisions of  
208 this subsection shall be revoked.

209 As permits are issued, the director of archives and  
210 history shall maintain a catalogue of unmarked grave  
211 locations throughout the state.

212 (f) *Property tax exemption for unmarked grave sites.*

213 To serve as an incentive for the protection of un-  
214 marked graves, the owner, having evidence of the  
215 presence of unmarked graves on his or her property,  
216 may apply to the director of archives and history for a  
217 determination as to whether such is the case. Upon  
218 making such a determination in the affirmative, the  
219 director of archives and history shall provide written  
220 certification to the land owner that the site containing  
221 the graves is a cemetery and as such is exempt from  
222 property taxation upon presentation of the certification  
223 to the county assessor. The area of the site to receive  
224 property tax exempt status shall be determined by the  
225 director of archives and history. Additionally, a prop-  
226 erty owner may establish protective easements for the  
227 location of unmarked graves.

228 (g) *Additional provisions for enforcement; civil penal-*  
229 *ties; rewards for information.*

230 (1) The prosecuting attorney of the county in which  
231 a violation of any provision of this section is alleged to  
232 have occurred may be requested by the director of  
233 archives and history to initiate criminal prosecutions or  
234 to seek civil damages, injunctive relief and any other  
235 appropriate relief. The director of archives and history  
236 shall cooperate with the prosecuting attorney in resolv-  
237 ing such allegations.

238 (2) Persons convicted of any prohibited act involving  
239 the excavation, removal, destruction, disturbance or

240 offering for sale or exchange of historic or prehistoric  
241 ruins, burial grounds, archaeological site, human  
242 skeletal remains, unmarked grave, grave artifact or  
243 grave marker under the provisions of subdivisions (1)  
244 and (2), subsection (c) of this section shall also be liable  
245 for civil damages to be assessed by the prosecuting  
246 attorney in consultation with the director of archives  
247 and history.

248 Civil damages may include:

249 (i) Forfeiture of any and all equipment used in  
250 disturbing the protected unmarked graves or grave  
251 markers;

252 (ii) any and all costs incurred in cleaning, restoring,  
253 analyzing, accessioning and curating the recovered  
254 material;

255 (iii) any and all costs associated with recovery of data,  
256 and analyzing, publishing, accessioning and curating  
257 materials when the prohibited activity is so extensive as  
258 to preclude the restoration of the unmarked burials or  
259 grave markers;

260 (iv) any and all costs associated with restoring the  
261 land to its original contour or the grave marker to its  
262 original condition;

263 (v) any and all costs associated with reinterment of  
264 the human skeletal remains; and

265 (vi) any and all costs associated with the determina-  
266 tion and collection of the civil damages.

267 When civil damages are recovered, the proceeds, less  
268 the costs of the prosecuting attorney associated with the  
269 determination and collection such damages, shall be  
270 deposited into the endangered historic properties fund  
271 created in section fourteen of this article and may be  
272 expended by the director of archives and history for  
273 archaeological programs at the state level, including the  
274 payment of rewards for information leading to the  
275 arrest and conviction of persons violating the provisions  
276 of subdivisions (1) and (2), subsection (c) of this section.

277 (3) The director of archives and history is authorized

278 to offer and pay rewards of up to one thousand dollars  
279 from funds on deposit in the endangered historic  
280 properties fund for information leading to the arrest and  
281 conviction of persons who violate the provisions of  
282 subdivisions (1) and (2), subsection (c) of this section.

283 (h) *Disposition of remains and artifacts not subject to*  
284 *reburial.*

285 All human skeletal remains and grave artifacts found  
286 in unmarked graves on public or private land, and not  
287 subject to reburial, under the provisions of subsection (e)  
288 of this section, are held in trust for the people of West  
289 Virginia by the state and are under the jurisdiction of  
290 the director of archives and history. All materials  
291 collected and not reburied through this section shall be  
292 maintained with dignity and respect, for the people of  
293 the state under the care of the West Virginia state  
294 museum.

**§29-1-7. Protection of historic and prehistoric sites;  
penalties.**

1 Historic and prehistoric landmarks, sites and dis-  
2 tricts, identified by the archives and history section, on  
3 lands owned or leased by the state, or on private lands  
4 where investigation and development rights have been  
5 acquired by the state by lease or contract, shall not be  
6 disturbed, or destroyed except as permitted under  
7 sections five and six-b of this article.

8 Any person violating the provisions of this section  
9 shall be guilty of a misdemeanor, and, upon conviction  
10 thereof, shall be fined not more than five hundred  
11 dollars, or imprisoned in the county jail not more than  
12 six months, or both fined and imprisoned.

Enr. Com. Sub. for H. B. 4752] 14

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Frederic L. Parsons*  
Chairman Senate Committee

*Brian V. Kelly*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Albert W. Blane*  
Clerk of the Senate

*Donald F. Kipp*  
Clerk of the House of Delegates

*Neil Purdette*  
President of the Senate

*Bob Cole*  
Speaker of the House of Delegates

The within is approved this the 27<sup>th</sup> day of March, 1990.

*Anton Caperton*  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/22/90

Time

4:10 pm