WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED

Con. Sub. for
HOUSE BILL No. 4752

(By Delegate Martint Murphy)

Passed March 19, 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.

(a) The purposes and duties of the archives and history division are to locate, survey, investigate, register, identify, excavate, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures, documents and objects worthy of preservation, including human skeletal remains, graves, grave artifacts and grave markers, relating to the state of West Virginia and the territory included therein from the earliest times to the present, upon its own initiative or in cooperation with any private or public society, organization or agency; to conduct a continuing survey and study throughout the state to develop a state plan to determine the needs and priorities for the preservation, restoration or development of such sites, structures,
documents and objects; to direct, protect, excavate, preserve, study or develop such sites, structures and documents; to review all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state for the purposes of furthering the duties of the division; to carry out the duties and responsibilities enumerated in the National Historic Preservation Act of 1966, as amended, as they pertain to the duties of the division; to develop and maintain a West Virginia state register of historic places for use as a planning tool for state and local government; to operate and maintain a state library for the preservation of all public records, state papers, documents and reports of all three branches of state government including all boards, commissions, departments and agencies as well as any other private or public papers, books or documents of peculiar or historic interest or significance; to preserve and protect all battle or regimental flags borne by West Virginians and other memorabilia of historic interest; to designate appropriate monuments, tablets or markers for historic, architectural and scenic sites within the state and to arrange for the purchase, replacement, care of and maintenance of such monuments, tablets and markers and to formulate and prepare suitable copy for them; to operate and maintain a state museum, and to coordinate activities with other museums in the state; to cooperate with state and federal agencies in archaeological work; to issue permits for the excavation or removal of human skeletal remains, grave artifacts and grave markers, archaeological, and prehistoric and historic features under the provisions of section six-b of this article; to edit and publish a quarterly an historical magazine devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform such other duties as may be assigned to the section by the commissioner.

(b) With the advice and consent of the commission, in addition to the duties above set forth, the section shall determine the whereabouts of and require the return of furnishings, objects and documents missing from the capitol building and other state-owned or controlled
buildings, including, but not limited to, furnishings chosen or purchased for the capitol by its architect, Cass Gilbert. No furnishings from the capitol may be sold or disposed of except under the direction of the director of surplus state property pursuant to section three-a, article eight, chapter five-a of this code. If furnishings originally designated as capitol building furnishings have been sold or otherwise disposed of without the requisite sale procedures, such furnishings shall be returned to the capitol and, upon presentation of proof of the amount paid, the current owner shall be reimbursed for the cost of the furnishing less any appropriate depreciation or wear and tear.

(c) With the advice and consent of the archives and history commission, the commissioner shall appoint a director of the archives and history section, who shall have: (1) A graduate degree in one of the social sciences, or equivalent training and experience in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives management; and (2) three years' experience in administration in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives management. Notwithstanding these qualifications, the person serving as the state historian and archivist on the date of enactment of this article shall be eligible for appointment as the director of the archives and history section. The director of the archives and history section shall serve as the state historian and archivist, and shall be the state historic preservation officer or a deputy state historic preservation officer.

(d) With the approval of the commissioner, the director shall establish professional positions within the section and develop appropriate organizational structures to carry out the duties of the section. The director shall employ the personnel with applicable professional qualifications to fill positions within the organizational structure with the minimum professional qualifications necessary to carry out the provisions of the National Historic Preservation Act of 1966, as amended. At the minimum, the following professions shall be represented
within the section staff: Historian, architectural historian, a licensed architect who specializes in historical preservation, archaeologist specializing in historic and prehistoric archaeology, archivist, librarian and technical and clerical positions as are required.

(e) The director shall promulgate rules and regulations with the approval of the archives and history commission and in accordance with the state administrative procedures act concerning: (1) The professional policies and functions of the archives and history section; (2) the review of, and, when required, issuance of permits for, all undertakings permitted, funded, licensed or otherwise assisted, in whole or in part, by the state as indicated in subsection (a) of this section, in order to carry out the duties and responsibilities of the section; (3) the establishment and maintenance of a West Virginia state register of historic places, including the criteria for eligibility of buildings, structures, sites, districts and objects for the state register and procedures for nominations to the state register and protection of nominated and listed properties; (4) the review of historic structures in accordance with compliance alternatives and other provisions in any state fire regulation and shall coordinate standards with the appropriate regulatory officials regarding their application; (5) review of historic structures in conjunction with existing state or local building codes, and shall coordinate standards with the appropriate regulatory officials for their application; and (6) the expenditure of funds provided for threatened and endangered historic properties by the voluntary check-off program established under section fourteen, article one of this chapter and such other rules and regulations as may be deemed 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.

(a) Legislative findings and purpose.

The Legislature finds that there is a real and growing threat to the safety and sanctity of unmarked human
graves in West Virginia and the existing laws of the state do not provide equal or adequate protection for all such graves. As evident by the numerous incidents in West Virginia which have resulted in the desecration of human remains and vandalism to grave markers, there is an immediate need to protect the graves of earlier West Virginians from such desecration. Therefore, the purpose of this article is to assure that all human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations.

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

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

(b) Definitions.

For the purposes of this section:

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

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

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

(4) “Grave marker” means any tomb, monument, stone, ornament, mound, or other item of human manufacture that is associated with a grave;
(5) "Person" includes the federal and state governments and any political subdivision of this state; and

(6) "Disturb" means the excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way of human skeletal remains, unmarked graves, grave artifacts or grave markers.

(c) Acts prohibited; penalties.

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

A person who, either by himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any historic or prehistoric ruins, burial grounds or archaeological site, or unmarked grave, grave artifact or grave marker of historical significance without first having been issued a valid permit by the director of archives and history, or who fails to comply with the terms and conditions of such permit, is guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five 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.
(d) Notification of discovery of human skeletal remains in unmarked locations.

Within forty-eight hours of the discovery of human skeletal remains, grave artifact or grave marker in an unmarked grave on any publicly or privately owned property the person making such discovery shall notify the county sheriff of the discovery and its location. If the human remains, grave artifact or grave marker appear to be from an unmarked grave, the sheriff shall promptly, and prior to any further disturbance or removal of the remains, notify the director of archives and history. The director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site: Provided, That when the discovery is made by an archaeological investigation permitted under state or federal law, the supervising archaeologist shall notify the director of archives and history directly.

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

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

(e) Issuance of permits.

All permits issued by the director of archives and
history for the disturbance of human skeletal remains, grave artifacts, or grave markers shall at a minimum address the following conditions: (1) The methods by which descendents of proven kinship to the deceased are notified prior to the disturbance; (2) the respectful manner in which the remains, artifacts or markers are to be removed and handled; (3) the need for any scientific analysis of the remains, artifacts or markers and the duration of those studies; (4) the way in which the remains may be reburied in consultation with any descendents of proven kinship, when available; and (5) such other conditions as the director may deem necessary. Expenses accrued in meeting the permit conditions shall be borne by the permit applicant, except in cases where the deceasedes’ descendents or sponsors are willing to share or assume the costs. A permit to disturb human skeletal remains, grave artifacts or grave markers will be issued only after alternatives to disturbance and other mitigative measures have been considered.

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

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

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

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

Such permits shall be issued for a period of two years and may be renewed at expiration. The permits are not transferable but other persons who have not been issued a permit may work under the direct supervision of the person holding the permit. The person or persons to
whom a permit was issued must carry the permit while exercising the privileges granted and must be present at the site whenever work is being done.

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

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

(f) Property tax exemption for unmarked grave sites.

To serve as an incentive for the protection of unmarked graves, the owner, having evidence of the presence of unmarked graves on his or her property, may apply to the director of archives and history for a determination as to whether such is the case. Upon making such a determination in the affirmative, the director of archives and history shall provide written certification to the land owner that the site containing the graves is a cemetery and as such is exempt from property taxation upon presentation of the certification to the county assessor. The area of the site to receive property tax exempt status shall be determined by the director of archives and history. Additionally, a property owner may establish protective easements for the location of unmarked graves.

(g) Additional provisions for enforcement; civil penalties; rewards for information.

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

(2) Persons convicted of any prohibited act involving the excavation, removal, destruction, disturbance or
Civil damages may include:

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

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

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

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

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

(vi) any and all costs associated with the determination and collection of the civil damages.

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

(3) The director of archives and history is authorized
to offer and pay rewards of up to one thousand dollars from funds on deposit in the endangered historic properties fund for information leading to the arrest and conviction of persons who violate the provisions of subdivisions (1) and (2), subsection (c) of this section.

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

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

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

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

2 Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of March, 1990.

Governor