WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1993

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ENROLLED

Com. Sub. for
HOUSE BILL No. 2671

(By Delegate Mr. Speaker, Mr. Chambers, & Del. Burk)

[By Request of the Executive]

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Passed ............................................ April 10, 1993

In Effect ....................................... July 1, 1993  Passage
AN ACT to amend and reenact sections one, five and eight-a, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to setting salary of the commissioner of culture and history; transferring responsibility for capitol visitor touring to the division of culture and history; adding definitions; providing of ad hoc committee to develop permit conditions and providing for director of historic preservation to chair committee; adding permit conditions to be addressed; requiring provision of information deemed necessary.

Be it enacted by the Legislature of West Virginia:

That sections one, five and eight-a, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

(a) The division of culture and history and the office
of commissioner of culture and history heretofore created are hereby continued. The governor shall nominate, and by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer of the division and shall be paid an annual salary of forty-five thousand dollars per year, notwithstanding the provisions of section two-a, article seven, chapter six of this code. The commissioner so appointed shall have: (1) A bachelor's degree in one of the fine arts, social sciences, library science or a related field; or (2) four years' experience in the administration of museum management, public administration, arts, history or a related field.

(b) The division shall consist of five sections as follows:

(1) The arts and humanities section;

(2) The archives and history section;

(3) The museums section;

(4) The historic preservation section; and

(5) The administrative section.

(c) The division shall also consist of two citizens commissions as follows:

(1) A commission on the arts; and

(2) A commission on archives and history.

(d) The commissioner shall exercise control and supervision of the division and shall be responsible for the projects, programs and actions of each of its sections. The purpose and duty of the division is to advance, foster and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark and care for historical, prehistorical, archaeological and significant architectural sites, structures and objects in the state; to encourage the promotion, preservation and development of significant sites, structures and objects through the use of economic development activities such as loans, subsidies, grants and other incentives; to coordinate all cultural,
The division shall have jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia science and culture center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; "Camp Washington Carver" in Fayette County, as provided for in section fourteen of this article; and any other sites as may be transferred to or acquired by the division. Notwithstanding any provision of this code to the contrary, including the provisions of article one of chapter five-b of this code, beginning on and after the first day of July, one thousand nine hundred ninety-three, the division shall have responsibility for, and control of, all visitor touring and visitor tour guide activities within the state capitol building at Charleston.

For the purposes of this article "commissioner" means the commissioner of culture and history, and "division" means the division of culture and history.

§29-1-5. Archives and history commission.

The archives and history commission which is hereby created shall be composed of thirteen appointed members, two ex officio voting members and six ex officio nonvoting members as provided in this section.

The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term.

No more than seven of the appointed members may be of the same political party. Members of the commission should be appointed so as to fairly represent both
sexes, the ethnic and cultural diversity of the state and
the geographic regions of the state. The archives and
history commission shall contain the required profes-
sional representation necessary to carry out the provi-
sions of the National Historic Preservation Act of 1966,
as amended, and shall serve as the “state review board”
and shall follow all rules and regulations as specified
therein. This representation shall include the following
professions: Historian, architectural historian, historical
architect, archaeologist specializing in historic and
prehistoric archaeology, archivist, librarian and mu-
seum specialist.

The commission shall elect one of its members chair.
It shall meet at such time as shall be specified by the
chair. Notice of each meeting shall be given to each
member by the chair in compliance with the open
meetings law. A majority of the voting members shall
constitute a quorum for the transaction of business.

In addition to the thirteen appointed members, the
president of the state historical society and the president
of the state historical association shall serve as ex officio
voting members of the archives and history commission.
The director of the state geological and economic survey,
the president of the West Virginia preservation alliance,
inc., and the state historic preservation officer shall
serve as ex officio nonvoting members of the archives
and history commission.

The directors of the archives and history section, the
historic preservation section and the museums section
shall be ex officio nonvoting members of the commis-
sion. The director of the archives and history section
shall serve as secretary of the commission. The secre-
tary, or a majority of the members, may also call a
meeting upon such notice as provided in this section.

Each member or ex officio member of the commission
shall serve without compensation, but shall be reim-
bursed for all reasonable and necessary expenses
actually incurred in the performance of the duties of the
commission; except that in the event the expenses are
paid, or are to be paid, by a third party, the member
The commission shall have the following powers:

(a) To advise the commissioner and the directors of the archives and history section, the historic preservation section and the museums section concerning the accomplishment of the purposes of those sections and to establish a state plan with respect thereto;

(b) To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the archives and history section, the historic preservation section and the museums section;

(c) To request, accept or expend federal funds to accomplish the purposes of the archives and history section, the historic preservation section and the museums section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the archives and history commission;

(d) To otherwise encourage and promote the purposes of the archives and history section, the historic preservation section and the museums section;

(e) To approve rules and regulations concerning the professional policies and functions of the archives and history section, the historic preservation section and the museums section as promulgated by the directors of those sections;

(f) To advise and consent to the appointment of the section directors by the commissioner; and

(g) To review and approve nominations to the state and national registers of historic places.

§29-1-8a. 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 educa-
tional 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;

(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;

(7) "Native American tribe" means any Indian tribe, band, nation, or organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(8) "Cultural affiliation" means the relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day group and an identifiable earlier group;

(9) "Lineal descendants" means any individuals tracing his or her ancestry directly or by proven kinship; and

(10) "Proven kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.

(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 the historic preservation section: 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 the historic preservation section 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 the historic preservation section, 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 jail for not less than ten days nor more than six months or both fined and imprisoned.

A person who, either by himself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs human skeletal remains of historical significance without first having been issued a valid permit by the director of the historic preservation section, or who fails to comply with the terms and conditions relating to disinterment or displacement of human skeletal remains of such permit, is guilty of the felony of disinterment or displacement of a dead human body or parts thereof under section fourteen, article eight, chapter sixty-one of this code and, upon conviction, shall be confined in the state penitentiary not less than two nor more than five years.

A person who intentionally withholds information about the excavation, removal, destruction, or other disturbance of any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance is guilty of a misdemeanor and, upon conviction, shall be fined not more than one hundred dollars, and may be imprisoned in the county jail not more than ten days.
(2) No person may offer for sale or exchange any human skeletal remains, grave artifact or grave marker obtained in violation of this section.

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

(3) Each instance of excavation, removal, destruction, disturbance or offering for sale or exchange under (1) and (2) of this subsection shall constitute a separate 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 the historic preservation section. 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 the historic preservation section directly.

If the director of the historic preservation section 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 historic preservation 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 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.

Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director of historic preservation shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and 6 or 8 members representing known or presumed lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. In the case of Native American sites, the membership of the committee shall be comprised of the chair and 6 or 8 members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known or presumed lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia.

In the case of a site of less then five acres, which is owned by an individual or partnership, the ad hoc committee must be formed within thirty days of application for same by the property owner, must meet within sixty days of such application, and must render a decision within ninety days of such application.

All such permits shall at a minimum address the
following conditions: (1) The methods by which lineal descendants of 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) 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 lineal descendants, when available; (5) methods for the respectful curation of recovered items; and (6) 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 deceased descendants 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 may provide to the ad hoc committee information he or she deems appropriate and shall:

(1) Provide a detailed statement to the director of the historic preservation section 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 the historic preservation section and submit a final report to the director upon completion of the excavation;

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

(4) Provide any additional information the ad hoc committee deems necessary in developing the permit conditions.

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 the historic preservation section 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 the historic preservation section for a determination as to whether such is the case. Upon making such a determination in the affirmative, the director of the historic preservation section 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 the historic preservation section. 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 the historic preservation section to initiate criminal prosecutions or to seek civil damages, injunctive relief and
any other appropriate relief. The director of the historic preservation section shall cooperate with the prosecuting attorney in resolving such allegations.

(2) Persons convicted of any prohibited act involving the excavation, removal, destruction, disturbance or offering for sale or exchange of historic or prehistoric ruins, burial grounds, archaeological site, human skeletal remains, unmarked grave, grave artifact or grave marker under the provisions of subdivisions (1) and (2), subsection (c) of this section shall also be liable for civil damages to be assessed by the prosecuting attorney in consultation with the director of the historic preservation section.

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 of such damages, shall be deposited into the endangered historic properties fund and may be expended by the commissioner of culture 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 commissioner of culture 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 historic preservation. 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.
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 July 1, 1993.

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 ____________________ day of May, 1993.

Governor