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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1993

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 2671

(By Delegate *Mr. Speaker, Mr. Chambers, & Del. Burk*)
[By Request of the Executive]

— ● —

Passed *April 10,* 1993

In Effect *July 1, 1993* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2671

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed April 10, 1993; in effect July 1, 1993.]

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.

1 (a) The division of culture and history and the office

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

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

- 16 (1) The arts and humanities section;
- 17 (2) The archives and history section;
- 18 (3) The museums section;
- 19 (4) The historic preservation section; and
- 20 (5) The administrative section.

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

- 23 (1) A commission on the arts; and
- 24 (2) A commission on archives and history.

25 (d) The commissioner shall exercise control and
26 supervision of the division and shall be responsible for
27 the projects, programs and actions of each of its sections.
28 The purpose and duty of the division is to advance, foster
29 and promote the creative and performing arts and
30 crafts, including both indoor and outdoor exhibits and
31 performances; to advance, foster, promote, identify,
32 register, acquire, mark and care for historical, prehis-
33 torical, archaeological and significant architectural
34 sites, structures and objects in the state; to encourage
35 the promotion, preservation and development of signif-
36 icant sites, structures and objects through the use of
37 economic development activities such as loans, subsidies,
38 grants and other incentives; to coordinate all cultural,

39 historical and artistic activities in state government and
40 at state-owned facilities; to acquire, preserve and
41 classify books, documents, records and memorabilia of
42 historical interest or importance; and, in general, to do
43 all things necessary or convenient to preserve and
44 advance the culture of the state.

45 (d) The division shall have jurisdiction and control and
46 may set and collect fees for the use of all space in the
47 building presently known as the West Virginia science
48 and culture center, including the deck and courtyards
49 forming an integral part thereof; the building presently
50 known as West Virginia Independence Hall in Wheel-
51 ing, including all the grounds and appurtenances
52 thereof; "Camp Washington Carver" in Fayette County,
53 as provided for in section fourteen of this article; and
54 any other sites as may be transferred to or acquired by
55 the division. Notwithstanding any provision of this code
56 to the contrary, including the provisions of article one
57 of chapter five-b of this code, beginning on and after the
58 first day of July, one thousand nine hundred ninety-
59 three, the division shall have responsibility for, and
60 control of, all visitor touring and visitor tour guide
61 activities within the state capitol building at Charleston.

62 (e) For the purposes of this article "commissioner"
63 means the commissioner of culture and history, and
64 "division" means the division of culture and history.

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

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

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

10 No more than seven of the appointed members may
11 be of the same political party. Members of the commis-
12 sion should be appointed so as to fairly represent both

13 sexes, the ethnic and cultural diversity of the state and
14 the geographic regions of the state. The archives and
15 history commission shall contain the required profes-
16 sional representation necessary to carry out the provi-
17 sions of the National Historic Preservation Act of 1966,
18 as amended, and shall serve as the "state review board"
19 and shall follow all rules and regulations as specified
20 therein. This representation shall include the following
21 professions: Historian, architectural historian, historical
22 architect, archaeologist specializing in historic and
23 prehistoric archaeology, archivist, librarian and mu-
24 seum specialist.

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

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

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

47 Each member or ex officio member of the commission
48 shall serve without compensation, but shall be reim-
49 bursed for all reasonable and necessary expenses
50 actually incurred in the performance of the duties of the
51 commission; except that in the event the expenses are
52 paid, or are to be paid, by a third party, the member

53 or ex officio member, as the case may be, shall not be
54 reimbursed by the state.

55 The commission shall have the following powers:

56 (a) To advise the commissioner and the directors of the
57 archives and history section, the historic preservation
58 section and the museums section concerning the accomp-
59 lishment of the purposes of those sections and to
60 establish a state plan with respect thereto;

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

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

72 (d) To otherwise encourage and promote the purposes
73 of the archives and history section, the historic preser-
74 vation section and the museums section;

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

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

82 (g) To review and approve nominations to the state
83 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.**

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;

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

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

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

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

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

63 (c) *Acts prohibited; penalties.*

64 (1) No person may excavate, remove, destroy, or
65 otherwise disturb any historic or prehistoric ruins,
66 burial grounds, archaeological site, or human skeletal
67 remains, unmarked grave, grave artifact or grave
68 marker of historical significance unless such person has
69 a valid permit issued to him or her by the director of
70 the historic preservation section: *Provided*, That the
71 supervising archaeologist of an archaeological investiga-
72 tion being undertaken in compliance with the federal
73 Archaeological Resources Protection Act (Public Law
74 96-95 at 16 USC 470(aa)) and regulations promulgated
75 thereunder shall not be required to obtain such permit,
76 but shall notify the director of the historic preservation
77 section that such investigation is being undertaken and
78 file reports as are required of persons issued a permit
79 under this section: *Provided, however*, That projects
80 being undertaken in compliance with section 106 of the

81 National Historic Preservation Act of 1966, as amended,
82 or subsection (a), section five of this article shall not be
83 required to obtain such permit for excavation, removal,
84 destruction or disturbance of historic or prehistoric
85 ruins or archaeological sites.

86 A person who, either by himself or through an agent,
87 intentionally excavates, removes, destroys or otherwise
88 disturbs any historic or prehistoric ruins, burial
89 grounds or archaeological site, or unmarked grave,
90 grave artifact or grave marker of historical significance
91 without first having been issued a valid permit by the
92 director of the historic preservation section, or who fails
93 to comply with the terms and conditions of such permit,
94 is guilty of a misdemeanor, and, upon conviction, shall
95 be fined not less than one hundred dollars nor more than
96 five hundred dollars, and may be imprisoned in the
97 county jail for not less than ten days nor more than six
98 months or both fined and imprisoned.

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

112 A person who intentionally withholds information
113 about the excavation, removal, destruction, or other
114 disturbance of any historic or prehistoric ruins, burial
115 grounds, archaeological site, or human skeletal remains,
116 unmarked grave, grave artifact or grave marker of
117 historical significance is guilty of a misdemeanor and,
118 upon conviction, shall be fined not more than one
119 hundred dollars, and may be imprisoned in the county
120 jail not more than ten days.

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

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

132 (3) Each instance of excavation, removal, destruction,
133 disturbance or offering for sale or exchange under (1)
134 and (2) of this subsection shall constitute a separate
135 offense.

136 (d) *Notification of discovery of human skeletal remains*
137 *in unmarked locations.*

138 Within forty-eight hours of the discovery of human
139 skeletal remains, grave artifact or grave marker in an
140 unmarked grave on any publicly or privately owned
141 property the person making such discovery shall notify
142 the county sheriff of the discovery and its location. If the
143 human remains, grave artifact or grave marker appear
144 to be from an unmarked grave, the sheriff shall
145 promptly, and prior to any further disturbance or
146 removal of the remains, notify the director of the
147 historic preservation section. The director shall cause an
148 on-site inspection of the disturbance to be made to
149 determine the potential for archaeological significance
150 of the site: *Provided*, That when the discovery is made
151 by an archaeological investigation permitted under state
152 or federal law, the supervising archaeologist shall notify
153 the director of the historic preservation section directly.

154 If the director of the historic preservation section
155 determines that the site has no archaeological signifi-
156 cance, the removal, transfer and disposition of the
157 remains shall be subject to the provisions of article
158 thirteen, chapter thirty-seven of this code, and the
159 director shall notify the circuit court of the county
160 wherein the site is located.

161 If the director of historic preservation determines that
162 the site has a potential for archaeological significance,
163 the director shall take such action as is reasonable,
164 necessary and prudent, including consultation with
165 appropriate private or public organizations, to preserve
166 and advance the culture of the state in accordance with
167 the powers and duties granted to the director, including
168 the issuance of a permit for the archaeological excava-
169 tion or removal of the remains. If the director deter-
170 mines that the issuance of a permit for the archaeolog-
171 ical excavation or removal of the remains is not
172 reasonable, necessary or prudent, the director shall
173 provide written reasons to the applicant for not issuing
174 the permit.

175 (e) *Issuance of permits.*

176 Prior to the issuance of a permit for the disturbance
177 of human skeletal remains, grave artifacts, or grave
178 markers, the director of historic preservation shall
179 convene and chair an ad hoc committee to develop
180 permit conditions. The committee shall be comprised of
181 the chair and 6 or 8 members representing known or
182 presumed lineal descendants, private and public organ-
183 izations which have cultural affiliation to the presumed
184 contents of the site, the Council for West Virginia
185 Archaeology and the West Virginia Archaeological
186 Society. In the case of Native American sites, the
187 membership of the committee shall be comprised of the
188 chair and 6 or 8 members representing the Council for
189 West Virginia Archaeology, the West Virginia Archaeo-
190 logical Society, and known or presumed lineal descend-
191 ants, preferably with cultural affiliation to tribes that
192 existed in the geographic area that is now West
193 Virginia.

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

200 All such permits shall at a minimum address the

201 following conditions: (1) The methods by which lineal
202 descendents of the deceased are notified prior to the
203 disturbance; (2) the respectful manner in which the
204 remains, artifacts or markers are to be removed and
205 handled; (3) scientific analysis of the remains, artifacts
206 or markers and the duration of those studies; (4) the way
207 in which the remains may be reburied in consultation
208 with any lineal descendents, when available; (5) methods
209 for the respectful curation of recovered items; and (6)
210 such other conditions as the director may deem neces-
211 sary. Expenses accrued in meeting the permit condi-
212 tions shall be borne by the permit applicant, except in
213 cases where the deceased descendents or sponsors are
214 willing to share or assume the costs. A permit to disturb
215 human skeletal remains, grave artifacts or grave
216 markers will be issued only after alternatives to
217 disturbance and other mitigative measures have been
218 considered.

219 In addition, a person applying for a permit to excavate
220 or remove human skeletal remains, grave artifacts,
221 grave markers, or any historic or prehistoric features of
222 archaeological significance may provide to the ad hoc
223 committee information he or she deems appropriate and
224 shall:

225 (1) Provide a detailed statement to the director of the
226 historic preservation section giving the reasons and
227 objectives for excavation or removal and the benefits
228 expected to be obtained from the contemplated work;

229 (2) Provide data and results of any excavation, study
230 or collection in annual reports to the director of the
231 historic preservation section and submit a final report
232 to the director upon completion of the excavation;

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

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

239 Such permits shall be issued for a period of two years

240 and may be renewed at expiration. The permits are not
241 transferable but other persons who have not been issued
242 a permit may work under the direct supervision of the
243 person holding the permit. The person or persons to
244 whom a permit was issued must carry the permit while
245 exercising the privileges granted and must be present
246 at the site whenever work is being done.

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

252 As permits are issued, the director of the historic
253 preservation section shall maintain a catalogue of
254 unmarked grave locations throughout the state.

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

256 To serve as an incentive for the protection of un-
257 marked graves, the owner, having evidence of the
258 presence of unmarked graves on his or her property,
259 may apply to the director of the historic preservation
260 section for a determination as to whether such is the
261 case. Upon making such a determination in the affirma-
262 tive, the director of the historic preservation section
263 shall provide written certification to the land owner that
264 the site containing the graves is a cemetery and as such
265 is exempt from property taxation upon presentation of
266 the certification to the county assessor. The area of the
267 site to receive property tax exempt status shall be
268 determined by the director of the historic preservation
269 section. Additionally, a property owner may establish
270 protective easements for the location of unmarked
271 graves.

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

274 (1) The prosecuting attorney of the county in which
275 a violation of any provision of this section is alleged to
276 have occurred may be requested by the director of the
277 historic preservation section to initiate criminal prose-
278 cutions or to seek civil damages, injunctive relief and

279 any other appropriate relief. The director of the historic
280 preservation section shall cooperate with the prosecut-
281 ing attorney in resolving such allegations.

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

292 Civil damages may include:

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

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

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

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

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

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

311 When civil damages are recovered, the proceeds, less
312 the costs of the prosecuting attorney associated with the
313 determination and collection of such damages, shall be
314 deposited into the endangered historic properties fund
315 and may be expended by the commissioner of culture
316 and history for archaeological programs at the state

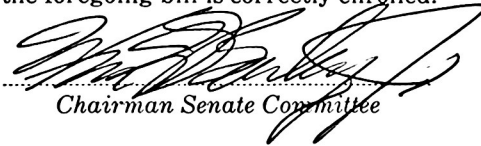
317 level, including the payment of rewards for information
318 leading to the arrest and conviction of persons violating
319 the provisions of subdivisions (1) and (2), subsection (c)
320 of this section.

321 (3) The commissioner of culture and history is
322 authorized to offer and pay rewards of up to one
323 thousand dollars from funds on deposit in the endan-
324 gered historic properties fund for information leading
325 to the arrest and conviction of persons who violate the
326 provisions of subdivisions (1) and (2), subsection (c) of
327 this section.

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

330 All human skeletal remains and grave artifacts found
331 in unmarked graves on public or private land, and not
332 subject to reburial, under the provisions of subsection (e)
333 of this section, are held in trust for the people of West
334 Virginia by the state and are under the jurisdiction of
335 the director of historic preservation. All materials
336 collected and not reburied through this section shall be
337 maintained with dignity and respect for the people of
338 the state under the care of the West Virginia state
339 museum.

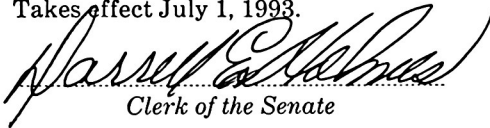
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

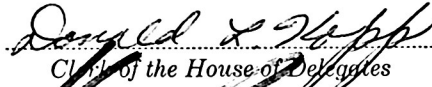

Chairman Senate Committee


Ernest C. Moore
Chairman House Committee

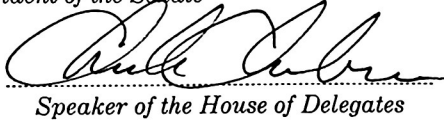
Originating in the House.


Takes effect July 1, 1993.

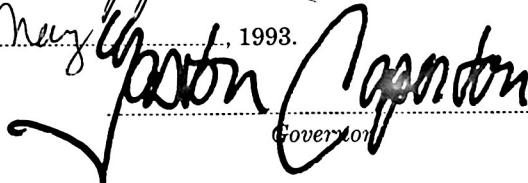

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within  approved this the 12th
day of May, 1993.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/93

Time 3:33 PM