

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 153

Short Title: Archaeologist Law Change.

(Public)

Sponsors: Representatives Rogers; Bowman, Chapin, Colton, J. Crawford, Hasty, Hege, H. Hunter, Lineberry, Mercer, Payne, Perdue, Tart, R. Thompson, and Warner.

Referred to: Judiciary.

February 6, 1989

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAW PROTECTING ARCHAEOLOGICAL RESOURCES AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. The Title of Chapter 70 of the General Statutes reads as rewritten:

"CHAPTER 70

~~"Indian Antiquities, Archaeological Resources, and Unmarked Human Skeletal Remains Protection~~ Archaeological Resources Protection."

Sec. 2. G.S.70-15(c) reads as rewritten:

"(c) Any person who knowingly and willfully violated or employs any other person to violate any prohibition contained in G.S.70-15(a) or G.S.70-15(b) ~~shall upon conviction, be fined not more than two thousand dollars (\$2,000) or imprisoned not more than six months, or both, in the discretion of the court~~ is guilty of a Class H felony."

Sec. 3. Article 2 of Chapter 70 of the General Statutes is amended by adding new sections to read:

"§ 70-21. Cooperation with other State agencies.

Heads of agencies controlling State land shall report violations of this Article to the Department of Cultural Resources and to the State Bureau of Investigation, pursuant to G.S.114-15.1.

"§ 70-22. Law-enforcement agencies empowered to assist Department.

All law-enforcement agencies and officers, State and local, are empowered to assist the Department of Cultural Resources in carrying out its duties under this Article."

Sec. 4. Article 3 of Chapter 70 of the General Statutes reads as rewritten:

"ARTICLE 3

"Unmarked Human Burial and Human Skeletal Remains Protection Act.

"§ 70-26. Short title.

This Article shall be known as 'The Unmarked Human Burial and Human Skeletal Remains Protection Act.'

"§ 70-27. Findings and purpose.

(a) The General Assembly finds that:

- (1) Unmarked human burials and human skeletal remains are subject to vandalism and inadvertent destruction at an ever-increasing rate;
- (2) Existing State laws do not provide adequate protection to prevent damage to and destruction of these remains;
- (3) There is a great deal of scientific information to be gained from the proper excavation, study and analysis of human skeletal remains recovered from such burials; and
- (4) There has been no procedure for descendants or other interested individuals to make known their concerns regarding disposition of these remains.

(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to G.S. 130-198 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information.

"§ 70-28. Definitions.

As used in this Article:

- (1) '~~Chief~~State Archaeologist' means the ~~Chief~~State Archaeologist, Archaeology Branch, Archaeology and Historic Preservation Section, Division of Archives and History, Department of Cultural Resources.
- (2) 'Executive Director' means the Executive Director of the North Carolina Commission of Indian Affairs.
- (3) 'Human skeletal remains' or 'remains' means any part of the body of a deceased human being in any stage of decomposition.
- (4) 'Professional archaeologist' means a person having (i) a postgraduate degree in archaeology, anthropology, history, or another related field with a specialization in archaeology, (ii) a minimum of one year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains, and (iii) designed and executed an archaeological study and presented the written results and interpretations of such study.
- (5) 'Skeletal analyst' means any person having (i) a postgraduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology or other relevant aspects of physical

1 anthropology or medicine, (ii) a minimum of one year's experience in
2 conducting laboratory reconstruction and analysis of skeletal remains,
3 including the differentiation of the physical characteristics denoting
4 cultural or biological affinity, and (iii) designed and executed a
5 skeletal analysis, and presented the written results and interpretations
6 of such analysis.

- 7 (6) 'Unmarked human burial' means any interment of human skeletal
8 remains for which there exists no grave marker or any other historical
9 documentation providing information as to the identity of the
10 deceased.

11 **"§ 70-29. Discovery of remains and notification of authorities.**

12 (a) Any person knowing or having reasonable grounds to believe that unmarked
13 human burials or human skeletal remains are being disturbed, destroyed, defaced,
14 mutilated, removed, or exposed, shall notify immediately the medical examiner of the
15 county in which the remains are encountered.

16 (b) If the unmarked human burials or human skeletal remains are encountered as
17 a result of construction or agricultural activities, disturbance of the remains shall cease
18 immediately and shall not resume without authorization from either the county medical
19 examiner or the ~~Chief State~~ Archaeologist, under the provisions of G.S. 70-30(c) or 70-
20 30(d).

21 (c) (1) If the unmarked human burials or human skeletal remains
22 are encountered by a professional archaeologist, as a result of survey
23 or test excavations, the remains may be excavated and other
24 activities may resume after notification, by telephone or registered
25 letter, is provided to the ~~Chief State~~ Archaeologist. The treatment,
26 analysis and disposition of the remains shall come under the
27 provisions of G.S. 70-34 and 70-35.

- 28 (2) If a professional archaeologist directing long-term(research designed
29 to continue for one or more field seasons of four or more weeks'
30 duration) systematic archaeological research sponsored by any
31 accredited college or university in North Carolina, as a part of his
32 research, recovers Native American skeletal remains, he may be
33 exempted from the provisions of G.S. 70-30, 70-31, 70-32, 70-33, 70-
34 34 and 70-35(c) of this Article so long as he:

- 35 a. Notifies the Executive Director within five working days of the
36 initial discovery of Native American skeletal remains;
37 b. Reports to the Executive Director, at agreed upon intervals, the
38 status of the project;
39 c. Curates the skeletal remains prior to ultimate disposition; and
40 d. Conducts no destructive skeletal analysis without the express
41 permission of the Executive Director.

42 Upon completion of the project fieldwork, the professional archaeologist, in
43 consultation with the skeletal analyst and the Executive Director, shall determine the
44 schedule for the completion of the skeletal analysis. In the event of a disagreement, the

1 time for completion of the skeletal analysis shall not exceed four years. The Executive
2 Director shall have authority concerning the ultimate disposition of the Native
3 American skeletal remains after analysis is completed in accordance with G.S. 70-35(a)
4 and 70-36(b) and (c).

5 (d) The ~~Chief State~~ Archaeologist shall notify the Chief, Medical Examiner
6 Section, Division of Health Services, Department of Human Resources, of any reported
7 human skeletal remains discovered by a professional archaeologist.

8 **"§ 70-30. Jurisdiction over remains.**

9 (a) Subsequent to notification of the discovery of an unmarked human burial or
10 human skeletal remains, the medical examiner of the county in which the remains were
11 encountered shall determine as soon as possible whether the remains are subject to the
12 provisions of G.S. 130-198.

13 (b) If the county medical examiner determines that the remains are subject to the
14 provisions of G.S. 130-198, he will immediately proceed with his investigation.

15 (c) If the county medical examiner determines that the remains are not subject to
16 the provisions of G.S. 130-198, he shall so notify the Chief Medical Examiner. The
17 Chief Medical Examiner shall notify the ~~Chief State~~ Archaeologist of the discovery of
18 the human skeletal remains and the findings of the county medical examiner. The ~~Chief~~
19 ~~State~~ Archaeologist shall immediately take charge of the remains.

20 (d) Subsequent to taking charge of the human skeletal remains, the ~~Chief State~~
21 Archaeologist shall have 48 hours to make arrangements with the landowner for the
22 protection or removal of the unmarked human burial or human skeletal remains. The
23 ~~Chief State~~ Archaeologist shall have no authority over the remains at the end of the 48-
24 hour period and may not prohibit the resumption of the construction or agricultural
25 activities without the permission of the landowner.

26 **"§ 70-31. Archaeological investigation of human skeletal remains.**

27 (a) If an agreement is reached with the landowner for the excavation of the
28 human skeletal remains, the ~~Chief State~~ Archaeologist shall either designate a member
29 of his staff or authorize another professional archaeologist to excavate or supervise the
30 excavation.

31 (b) The professional archaeologist excavating human skeletal remains shall
32 report to the ~~Chief State~~ Archaeologist, either in writing or by telephone, his opinion on
33 the cultural and biological characteristics of the remains. This report shall be transmitted
34 as soon as possible after the commencement of excavation, but no later than two full
35 business days after the removal of a burial.

36 (c) The ~~Chief State~~ Archaeologist, in consultation with the professional
37 archaeologist excavating the remains, shall determine where the remains shall be held
38 subsequent to excavation, pending other arrangements according to G.S. 70-32 or 70-
39 33.

40 (d) The Department of Cultural Resources may obtain administrative inspection
41 warrants pursuant to the provisions of Chapter 15, Article 4A of the General Statutes to
42 enforce the provisions of this Article, provided that prior to the requesting of the
43 administrative warrant, the Department shall contact the affected landowners and
44 request their consent for access to their land for the purpose of gathering such

1 information. If consent is not granted, the Department shall give reasonable notice of
2 the time, place and before whom the administrative warrant will be requested so that the
3 owner or owners may have an opportunity to be heard.

4 **"§ 70-32. Consultation with the Native American Community.**

5 (a) If the professional archaeologist determines that the human skeletal remains
6 are Native American, the ~~Chief-State~~ Archaeologist shall immediately notify the
7 Executive Director of the North Carolina Commission of Indian Affairs. The Executive
8 Director shall notify and consult with the Eastern Band of Cherokee or other appropriate
9 tribal group or community.

10 (b) Within four weeks of the notification, the Executive Director shall
11 communicate in writing to the ~~Chief-State~~ Archaeologist, the concerns of the
12 Commission of Indian Affairs and an appropriate tribal group or community with regard
13 to the treatment and ultimate disposition of the Native American skeletal remains.

14 (c) Within 90 days of receipt of the concerns of the Commission of Indian
15 Affairs, the ~~Chief-State~~ Archaeologist and the Executive Director, with the approval of
16 the principal tribal official of an appropriate tribe, shall prepare a written agreement
17 concerning the treatment and ultimate disposition of the Native American skeletal
18 remains. The written agreement shall include the following:

- 19 (1) Designation of a qualified skeletal analyst to work on the skeletal
20 remains;
- 21 (2) The type of analysis and the specific period of time to be provided for
22 analysis of the skeletal remains;
- 23 (3) The timetable for written progress reports and the final report
24 concerning the skeletal analysis to be provided to the ~~Chief-State~~
25 Archaeologist and the Executive Director by the skeletal analyst; and
- 26 (4) A plan for the ultimate disposition of the Native American remains
27 subsequent to the completion of adequate skeletal analysis.

28 If no agreement is reached within 90 days, the Archaeological Advisory Committee
29 shall determine the terms of the agreement.

30 **"§ 70-33. Consultation with other individuals.**

31 (a) If the professional archaeologist determines that the human skeletal remains
32 are other than Native American, the ~~Chief-State~~ Archaeologist shall publish notice that
33 excavation of the remains has occurred, at least once per week for four successive
34 weeks in a newspaper of general circulation in the county where the burials or skeletal
35 remains were situated, in an effort to determine the identity or next of kin or both of the
36 deceased.

37 (b) If the next of kin are located, within 90 days the ~~Chief-State~~ Archaeologist in
38 consultation with the next of kin shall prepare a written agreement concerning the
39 treatment and ultimate disposition of the skeletal remains. The written agreement shall
40 include:

- 41 (1) Designation of a qualified skeletal analyst to work on the skeletal
42 remains;
- 43 (2) The type of analysis and the specific period of time to be provided for
44 analysis of the skeletal remains;

- 1 (3) The timetable for written progress reports and the final report
2 concerning the skeletal analysis to be provided to the ~~Chief-State~~
3 Archaeologist and the next of kin by the skeletal analyst; and
4 (4) A plan for the ultimate disposition of the skeletal remains subsequent
5 to the completion of adequate skeletal analysis.

6 If no agreement is reached, the remains shall be handled according to the wishes of
7 the next of kin.

8 **"§ 70-34. Skeletal analysis.**

9 (a) Skeletal analysis conducted under the provisions of this Article shall only be
10 accomplished by persons having those qualifications expressed in G.S. 70-28(5).

11 (b) Prior to the execution of the written agreements outlined in G.S. 70-32(c) and
12 70-33(b), the ~~Chief-State~~ Archaeologist shall consult with both the professional
13 archaeologist and the skeletal analyst investigating the remains.

14 (c) The professional archaeologist and the skeletal analyst shall submit a
15 proposal to the ~~Chief-State~~ Archaeologist within the 90-day period set forth in G.S. 70-
16 32(c) and 70-33(b), including:

- 17 (1) Methodology and techniques to be utilized;
18 (2) Research objectives;
19 (3) Proposed time schedule for completion of the analysis; and
20 (4) Proposed time intervals for written progress reports and the final
21 report to be submitted.

22 (d) If the terms of the written agreement are not substantially met, the Executive
23 Director or the next of kin, after consultation with the ~~Chief-State~~ Archaeologist, may
24 take possession of the skeletal remains. In such case, the ~~Chief-State~~ Archaeologist may
25 ensure that appropriate skeletal analysis is conducted by another qualified skeletal
26 analyst prior to ultimate disposition of the skeletal remains.

27 **"§ 70-35. Disposition of human skeletal remains.**

28 (a) If the skeletal remains are Native American, the Executive Director, after
29 consultation with an appropriate tribal group or community, shall determine the ultimate
30 disposition of the remains after the analysis.

31 (b) If the skeletal remains are other than Native American and the next of kin
32 have been identified, the next of kin shall have authority concerning the ultimate
33 disposition of the remains after the analysis.

34 (c) If the ~~Chief-State~~ Archaeologist has received no information or
35 communication concerning the identity or next of kin of the deceased, the skeletal
36 remains shall be transferred to the ~~Chief-State~~ Archaeologist and permanently curated
37 according to standard museum procedures after adequate skeletal analysis.

38 **"§ 70-36. Financial responsibility.**

39 (a) The provisions of this Article shall not require that the owner of the land on
40 which the unmarked human burials or human skeletal remains are found, bear the cost
41 of excavation, removal, analysis or disposition.

42 (b) If a determination is made by the Executive Director, in consultation with an
43 appropriate tribal group or community, that Native American skeletal remains shall be
44 reinterred following the completion of skeletal analysis, an appropriate tribal group or

1 community may provide a suitable burial location. If it elects not to do so, it shall be the
2 responsibility of the North Carolina Commission of Indian Affairs to provide a suitable
3 burial location.

4 (c) The expense of transportation of Native American remains to the reburial
5 location shall be borne by the party conducting the excavation and removal of the
6 skeletal remains. The reburial ceremony may be provided by an appropriate tribal group
7 or community. If it elects not to do so, the reburial ceremony shall be the responsibility
8 of the Commission of Indian Affairs.

9 **"§ 70-37. Prohibited acts.**

10 (a) No person, unless acting under the provisions of G.S. 130-198 through G.S.
11 130-201, shall:

- 12 (1) Knowingly acquire any human skeletal remains removed from
13 unmarked burials in North Carolina after October 1, 1981, except in
14 accordance with the provisions of this Article;
- 15 (2) Knowingly exhibit or sell any human skeletal remains acquired from
16 unmarked burials in North Carolina; or
- 17 (3) Knowingly retain human skeletal remains acquired from unmarked
18 burials in North Carolina after October 1, 1981, for scientific analysis
19 beyond a period of time provided for such analysis pursuant to the
20 provisions of G.S. 70-32, 70-33 and 70-34, with the exception of those
21 skeletal remains curated under the provisions of G.S. 70-35.

22 (b) Other provisions of criminal law concerning vandalism of unmarked human
23 burials or human skeletal remains may be found in G.S. 14-149.

24 **"§ 70-38. Rule-making authority.**

25 The North Carolina Historical Commission may promulgate rules and regulations to
26 implement the provisions of this Article.

27 **"§ 70-39. Exceptions.**

28 (a) Human skeletal remains acquired from commercial biological supply houses
29 or through medical means are not subject to the provisions of G.S. 70-37(a).

30 (b) Human skeletal remains determined to be within the jurisdiction of the
31 medical examiner according to the provisions of G.S. 130-198 are not subject to the
32 prohibitions contained in this Article.

33 **"§ 70-40. Penalties.**

34 (a) Violation of the provisions of G.S. 70-29 is a misdemeanor.

35 (b) Violation of the provisions of G.S. 70-37(a) is a Class H felony.

36 **"§ 70-41. Forfeiture.**

37 All archaeological resources with respect to which a violation of the provisions of
38 this Article occurred, and all vehicles and equipment that were used in connection with
39 this violation are subject to forfeiture to the State in the same manner as are vehicles and
40 equipment pursuant to G.S. 90-112.

41 **"§ 70-42. Law-enforcement agencies empowered to assist Department.**

42 All law-enforcement agencies and officers, State and local, are empowered to assist
43 the Department of Cultural Resources in carrying out its duties under this Article."

44 Sec. 5. G.S. 121-28 reads as rewritten:

1 **"§ 121-28. Violation of Article a misdemeanor Penalties.**

2 (a) Any person violating the provisions of this Article or any rules or regulations
3 established thereunder shall be guilty of a misdemeanor and upon conviction shall be
4 punished as in cases of misdemeanors is guilty of a Class H felony.

5 (b) Each day on which a violation occurs constitutes occasion of a separate and
6 distinct offense."

7 Sec. 6. Chapter 121 of the General Statutes is amended by adding a new
8 section to read:

9 **"§ 121-29. Forfeiture.**

10 All archaeological resources with respect to which a violation of the provisions of
11 this Article occurred, and all vehicles and equipment that were used in connection with
12 this violation are subject to forfeiture to the State in the same manner as vehicles and
13 equipment subject to forfeiture under G.S. 90-112."

14 Sec. 7. G.S. 143B-62 reads as rewritten:

15 **"§ 143B-62. North Carolina Historical Commission – creation, powers and duties.**

16 There is hereby created the North Carolina Historical Commission of the
17 Department of Cultural Resources to give advice and assistance to the Secretary of
18 Cultural Resources and to promulgate rules and regulations to be followed in the
19 acquisition, disposition, preservation, and use of records, artifacts, real and personal
20 property, and other materials and properties of historical, archaeological, architectural,
21 or other cultural value, and in the extension of State aid to other agencies, counties,
22 municipalities, organizations, and individuals in the interest of historic preservation.

23 (1) The Historical Commission shall have the following powers and
24 duties:

- 25 a. To advise the Secretary of Cultural Resources on the scholarly
26 editing, writing, and publication of historical materials to be
27 issued under the name of the Department;
- 28 b. To evaluate and approve proposed nominations of historic,
29 archaeological, architectural, or cultural properties for entry on
30 the National Register of Historic Places;
- 31 c. To evaluate and approve the State plan for historic preservation
32 as provided for in Chapter 121;
- 33 d. To evaluate and approve historic, archaeological, architectural,
34 or cultural properties proposed to be acquired and administered
35 by the State;
- 36 e. To evaluate and prepare a report on its findings and
37 recommendations concerning any property not owned by the
38 State for which State aid or appropriations are requested from
39 the Department of Cultural Resources, and to submit its
40 findings and recommendations in accordance with Chapter 121;
- 41 f. To serve as an advisory and coordinative mechanism in and by
42 which State undertakings of every kind that are potentially
43 harmful to the cause of historic preservation within the State
44 may be discussed, and where possible, resolved, particularly by

- 1 evaluating and making recommendations concerning any State
2 undertaking which may affect a property that has been entered
3 on the National Register of Historic Places as provided for in
4 Chapter 121 of the General Statutes of North Carolina;
- 5 g. To exercise any other powers granted to the Commission by
6 provisions of Chapter 121 of the General Statutes of North
7 Carolina;
- 8 h. To give its professional advice and assistance to the Secretary
9 of Cultural Resources on any matter which the Secretary may
10 refer to it in the performance of the Department's duties and
11 responsibilities provided for in Chapter 121 of the General
12 Statutes of North Carolina;
- 13 i. To serve as a search committee to seek out, interview, and
14 recommend to the Secretary of Cultural Resources one or more
15 experienced and professionally trained historian(s) for the
16 position of Director of the Division of Archives and History
17 when a vacancy occurs, and to assist and cooperate with the
18 Secretary in periodic reviews of the performance of the Director
19 and the Division; ~~and~~
- 20 j. To assist and advise the Secretary of Cultural Resources and the
21 Director of the Division of Archives and History in the
22 development and implementation of plans and priorities for the
23 State's historical programs ; and
- 24 k. To review existing statutes relating to archaeological resources,
25 to make recommendations to the General Assembly concerning
26 programs and statutes, to advise the Department on the
27 development of its archaeological program and to determine the
28 terms of agreements under G.S. 70-32 in cases in which the
29 executive director of the Commission of Indian Affairs and the
30 State Archaeologist cannot reach an agreement within 90 days,
31 in cases involving disposition of human skeletal remains.
- 32 (2) The Historical Commission shall have the power and duty to establish
33 standards and provide rules and regulations as follows:
- 34 a. For the acquisition and use of historical materials suitable for
35 acceptance in the North Carolina State Archives or the North
36 Carolina Museum of History;
- 37 b. For the disposition of public records under provisions of
38 Chapter 121 of the General Statutes of North Carolina; and
- 39 c. For the certification of records in the North Carolina State
40 Archives as provided in Chapter 121 of the General Statutes of
41 North Carolina;
- 42 d. For the use by the public of historic, architectural,
43 archaeological, or cultural properties as provided in Chapter
44 121 of the General Statutes of North Carolina;

- 1 e. For the acquisition of historic, archaeological, architectural, or
2 cultural properties by the State;
- 3 f. For the extension of State aid or appropriations through the
4 Department of Cultural Resources to counties, municipalities,
5 organizations, or individuals for the purpose of historic
6 preservation or restoration; and
- 7 fl. For the extension of State aid or appropriations through the
8 Department of Cultural Resources to non-State-owned
9 nonprofit history museums;
- 10 g. For qualification for grants-in-aid or other assistance from the
11 federal government for historic preservation or restoration as
12 provided in Chapter 121 of the General Statutes of North
13 Carolina. This section shall be construed liberally in order that
14 the State and its citizens may benefit from such grants-in-aid.
- 15 (3) The Commission shall adopt rules and regulations consistent with the
16 provisions of this section. All current rules and regulations heretofore
17 adopted by the Executive Board of the State Department of Archives
18 and History, the Historic Sites Advisory Committee, the North
19 Carolina Advisory Council on Historical Preservation, the Executive
20 Mansion Fine Arts Commission, and the Memorials Commission shall
21 remain in full force and effect unless and until repealed or superseded
22 by action of the Historical Commission. All rules and regulations
23 adopted by the Commission shall be enforced by the Department of
24 Cultural Resources."
- 25 Sec. 8. This act is effective upon ratification.