HOUSE
RESEARCH
ORGANIZATION bill analysis 5/19/89

HB 2434
Wallace
(CSHB 2434 by Jackson)

SUBJECT: Human burials and disposition of remains

COMMITTEE: Cultural and Historical Resources: committee substitute recommended

VOTE: 6 ayes--Wallace, Danburg, Brimer, Haggerty, D. Smith, Jackson

0 nays

3 absent--Willis, F. Hill, Thomas

WITNESSES: For--Victor Peter, Harris County Czech Heritage Society; Robert Mallouf, Texas Historical Commission, Melvin Post, Czech Heritage Society of Texas; Raymond Apodaca, Texas Indian Commission; E. Mott Davis; Henry Curbello; Walter Prugh; Clyde Lee Prestwood; Lillia Mae Peter; Thomas Hester

Against--James Ron Green

On--Wayne Glander

DIGEST: HB 2434 would provide equal treatment and protection under the law for all human burials, whether marked or unmarked, regardless of ethnic origin, gender, or religious affiliation.

The bill would amend sec. 42, Penal Code, to provide penalties for violating a human burial. A burial would be defined as a marked or unmarked place, excavation or construction, including a pit, tomb, or mound used for interment of human remains and associated burial objects. Specific definitions of burial object and human remains would be provided.

A person who knowingly disturbs, damages, or destroys a burial or burial marker, or who removes human remains or burial objects from a burial, would commit a third degree felony (maximum penalty of a $5,000 fine and a 10 year prison term). A person who buys, sells, or barters human remains would commit a Class A misdemeanor (a maximum penalty of a $2,000 fine and a one year jail term). A person who knowingly or intentionally fails to report that a burial is being disturbed, damaged, or destroyed would commit a Class B misdemeanor (a maximum penalty of $1,000 and a six month jail term).

Officially sanctioned and appropriate scientific analysis and removal would be excepted from the prohibitions on disturbance of a burial. Sale or barter of human remains for appropriate use by institutions of higher learning would likewise be excepted.

The bill would establish an advisory committee to assist the state archeologist in determining the proper disposition of burials and associated human remains and burial objects. The 14-member committee would consist of the executive director of the Texas Indian Commission and of the Texas Historical Commission (THC), four American Indians, professionals representing archeological, historical, museum, and higher educational interests.

The state archeologist would be required to develop, in consultation with the advisory committee, guidelines for the appropriate disposition and display of human remains or burial objects under the jurisdiction of the THC.

A person who discovers a burial would be required to stop any activity that would disturb it and to notify the medical examiner or, if there is no medical examiner for the area, the justice of the peace for the county where the burial is located. A person who discovers a burial during an archeological investigation would be required to immediately notify the archeologist in charge. Resumption of activity that could disturb the burial would require approval of the medical examiner, justice of the peace, or archeologist, as appropriate.

An archeologist notified of a burial in which the remains were of a person dead less than 75 years would be required to notify the the medical examiner or justice of the peace. The state archeologist would be notified of the burial of a person dead 75 years or more.

A burial found on state land would be declared the property of the state. A burial found on private property would be placed under the temporary jurisdiction of the THC, after oral or written notice was given to the property owner.

The state archeologist would decide on the disposition of burials under his or her jurisdiction and would have to make a reasonable effort, in cooperation with the Texas Indian Commission, to establish direct kinship, tribal, or community relations with a person whose remains constitute the burial.

SUPPORTERS SAY:

Human dignity is at the core of the issue addressed in this bill. Human remains are being bought and sold as commodities, a desecration of individual dignity and of valuable historical resources. At no previous time in history have human remains been systematically wrenched from the ground as they are now, merely to satisfy the cravings of private collectors and curiosity seekers. This bill would help provide protection for all human remains equally, without regard to historical or ethnic roots.

Commercial and amateur collectors destroy as many as 8,000 human burial sites a year in Texas. If the skeletal remains are not of interest to the looter, they are discarded as trash in the search for the finger rings, buttons, or belt buckles of Civil War soldiers or early settlers, or the painted pottery and arrowheads of American Indians. The burial artifacts constitute a valuable part of our Texas heritage. Every burial that is dug up by a souvenir hunter represents a page torn out of the history books of our state. Once dug out of the ground without the benefit of scientific method, the information a burial represents can never be reconstructed.

The commercial collectors are only interested in profits and are not the keepers of our historical heritage. Seldom are they trained in scientific archeology, and they would be incapable of excavating a site according to acceptable professional standards even if that was their desire.

Most of the looting is done by trespassers. HB 2434 would help protect the property rights of landowners. Once the THC or the state archeologist became involved in a case, the property owner's interest would be guaranteed.

Twenty-one states have now enacted protective legislation protecting burial grounds. Texas should join in this effort.

OPPONENTS SAY:

Artifact collectors should not face legal restrictions when operating with good intentions. This bill would be the first step toward making it a crime to pick up an arrowhead in your own back yard. The private collectors have conscientiously assembled significant collections that are accessible to the public. School children and individuals alike have traditionally benefitted from the educational experience afforded by these collections.

Placing legal restrictions on collecting activities would create a black market in antiquities, not unlike the black market in Inca or Mayan antiquities. Local law enforcement agencies are not equipped to deal with such matters and already have more serious problems to deal with.

Much of the bill is vague. It is not stated who would pay for the services required when professionals must be called in. No definition of reasonable effort is provided in the requirement that the state archeologist locate persons related to a person whose remains have been found. Furthermore, the state archeologist should be authorized to delegate some of the considerable authority that would be given by this bill.

OTHER OPPONENTS SAY:

This bill would not go far enough in protecting archeological resources. A hostile landowner could thwart the legitimate interests of the scientific community in preserving our historic heritage. Nothing in the bill would prevent such a person or a corporate owner from intentionally destroying archeological remains in order to facilitate commercial development.

NOTES:

The committee substitute provides for a 14-member advisory committee, rather than an 11-member committee as in the original. It adds the requirement that an individual conducting an archeological investigation cease activity and notify the archeologist in charge. The substitute adds the provision that the landowner approve a workplan for the disposition of human remains found on his property, and prohibits public access to sites on private land. Finally, the substitute adds the requirement that the state archeologist report to the landowner.

The companion bill, SB 1327 by Santiesteban, is pending in the Senate Natural Resources Committee.