

BILL ANALYSIS

Senate Research Center

S.B. 810
By: Barrientos
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As Filed

DIGEST

Currently, Texas has many archaeological resources that are being looted from private and public lands. Many of these resources are found in the unmarked burials of Native Americans and African-Americans, where looters enter in order to recover artifacts for sale to collectors. This legislation sets forth regulations for the protection of certain unmarked burials containing human remains or funerary objects, excluding arrowheads and other Indian artifacts that are not part of a human grave, and existing collections of artifacts in private ownership. S.B. 810 also establishes a procedure for reporting the discovery of human skeletal remains and provides criminal penalties for grave robbers who intentionally disturb burials to obtain human skeletal remains and associated funerary objects for personal use or profit.

PURPOSE

As proposed, S.B. 810 provides for the protection of certain unmarked burials and associated human remains or funerary objects, and for the creation of certain offenses and penalties concerning unmarked burials.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Historical Commission in SECTION 2 (Section 192.010, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 42, Penal Code, by adding Section 42.13, as follows:

Sec. 42.13. DISTURBING AN UNMARKED BURIAL. Defines "funerary object," "human remains," "unmarked burial," and "disturbance." Provides that a person commits a state jail felony if the person intentionally or knowingly disturbs human remains or funerary objects from an unmarked burial; or buys, sells, or barter human remains or funerary objects. Provides that a person commits a Class B misdemeanor if the person knows that a burial is being disturbed and the person intentionally or knowingly fails to notify certain authorities. Provides exceptions to the application of this section, and evidence constituting a defense to prosecution for an alleged violation. Sets forth the terms by which the state assumes jurisdiction over any human remains or funerary objects associated with an offense if ownership cannot be established to the presiding judge's satisfaction.

SECTION 2. Amends Title 9, Natural Resources Code, by adding Chapter 192, as follows:

CHAPTER 192. DISCOVERY OF UNMARKED BURIALS

Sec. 192.001. DEFINITIONS. Defines "commission," "funerary object," "human remains," "medical examiner," "Native American remains," "professional archeologist," "state archaeologist," and "unmarked burial."

Sec. 192.002. DISCOVERY OF UNMARKED BURIALS. Requires a person who discovers an unmarked burial to stop any activity that may disturb the burial and report the presence and location of the burial to certain authorities. Sets forth the terms by which the

person who discovers an unmarked burial is required to take all reasonable steps to secure and maintain its preservation. Sets forth the procedure for moving an object before completion of disposition to permit the continuation of work on a construction project or similar project. Requires an officer to whom an unmarked burial is reported to keep the location confidential, and prohibits the location of the site from being disclosed in any public document.

Sec. 192.003. FAILURE TO REPORT; CRIMINAL PENALTY. Sets forth the terms by which a person commits a Class C misdemeanor if the person knowingly fails to report the presence or discovery of an unmarked burial within a certain period, unless certain conditions are met.

Sec. 192.004. DISTURBANCE OF BURIAL; CRIMINAL PENALTY. Sets forth the terms by which a person commits a third degree felony if the person disturbs an unmarked burial with the intent to unlawfully appropriate human remains or funerary objects.

Sec. 192.005. DISPOSITION OF REMAINS. Requires a law enforcement officer or state archeologist to promptly notify the landowner and the appropriate medical examiner if there is reason to believe a site may contain human remains. Sets forth the method for disposing of human remains if they are suspected of association with any crime, if they are not suspected of association with any crime, or if they demonstrate a historical relationship to a Native American tribal or ethnic group. Establishes the placement of all Native American burial remains and associated funerary objects not claimed for reburial, burial remains and associated funerary objects not directly related to a tribal or ethnic group, and remains not claimed for repatriation by the consulted entity. Sets forth the terms by which unmarked burials and funerary objects, their cultural and biological characteristics, and recommended temporary disposition are required to be reported to the state archeologist within a certain period.

Sec. 192.006. EXCAVATION NOT REQUIRED. Provides that this chapter does not require excavation of an unmarked human burial unless excavation is necessary to prevent destruction of the remains or associated funerary objects.

Sec. 192.007. DISPLAY OF HUMAN REMAINS; CRIMINAL PENALTY. Provides that a person commits a Class A misdemeanor, with each day of display constituting a separate offense, if the person knowingly displays human remains for profit or aids and abets a commercial enterprise displaying human remains.

Sec. 192.008. INVOLVEMENT OF PRIVATE LANDOWNERS. Sets forth the terms by which a landowner is required to be notified and consulted if human remains or funerary objects are disturbed on private land. Prohibits the location of human remains or funerary objects from allowing public access on the landowner's private property.

Sec. 192.009. DEFENSES TO PROSECUTION. Sets forth the conditions under which it is a defense to prosecution for an alleged violation under Section 192.004.

Sec. 192.010. RULEMAKING AUTHORITY. Requires the Texas Historical Commission, by rule, to establish procedures to implement this chapter.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 1997.

SECTION 5. Emergency clause.