

BILL ANALYSIS

Senate Research Center
77R4252 YDB-F

S.B. 472
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State Affairs
2/19/2001
As Filed

DIGEST AND PURPOSE

Currently, several states have extended the federal protections Native American graves on federal and tribal land were afforded under the Native American Graves Protection Act of 1990. Texas does not have a law extending these protections to Native American graves not on federal or tribal land. As proposed, S.B. 472 creates an offense if a person intentionally disturbs human remains or funerary objects, buys, sells or trades such objects, or knows of an unmarked burial and fails to notify the county sheriff or state archeologist.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Historical Commission in SECTION 2 (Section 192.009, 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 “disturb,” “funerary object,” “human remains,” and “unmarked burial.” Sets forth certain conditions that define an offense under this section. Provides that an offense under Subsection (b) of this section is a state jail felony, unless the defendant has been previously convicted under this subsection, in which case the offense is a third degree felony. Provides that an offense under Subsection (c) of this section is a Class B misdemeanor, unless the defendant has been previously convicted under this subsection, in which case the offense is a Class A misdemeanor. Sets forth specific conditions for an affirmative defense against prosecution for an offense under this section. Provides that the state retains jurisdiction, as provided by Chapter 192, Natural Resources Code, over any human remains or funerary objects in a certain situation.

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,” “disturb,” “funerary object,” “human remains,” “medical examiner,” “Native American culture,” “Native American remains,” “professional archeologist,” “state archeologist,” “unmarked burial.”

Sec. 192.002. DISCOVERY OF UNMARKED BURIALS. Requires a person who discovers an unmarked burial in, partially in, or on the ground to immediately stop any activity that may disturb the burial. Requires the person to report the presence and location of the burial to the sheriff of the county in which the burial is located, or to the state archeologist. Authorizes the continuation of activity that will not disturb the burial site. Requires the person who discovers an unmarked burial to take all reasonable steps immediately to secure and maintain its preservation. Requires the state archeologist or sheriff to supervise a specific move of an object and sets forth requirements of the move. Sets forth the items to which this section

applies if human remains are discovered and the state archeologist or a professional archeologist determine that further human remains are unlikely to be present. Requires the sheriff or state archeologist to whom an unmarked burial is reported under this section, to keep the location of the unmarked burial confidential, except as provided by this chapter. Provides that the location of the site is confidential and is not considered public information for the purposes of Chapter 552, Government Code.

Sec. 192.003. FAILURE TO REPORT; CRIMINAL PENALTY. Sets forth the conditions under which a person commits an offense under this section. Provides that an offense under this section is a Class A misdemeanor, unless the defendant has been previously convicted of an offense under this section, in which case the offense is a state jail felony.

Sec. 192.004. DISTURBANCE OF BURIAL; CRIMINAL PENALTY. Sets forth the conditions under which a person commits an offense under this section. Provides that an offense under this section is a state jail felony, unless the defendant has been previously convicted of an offense under this section, in which case the offense is a third degree felony.

Sec. 192.005. DISPOSITION OF REMAINS. a) Requires the law enforcement officer or state archeologist to notify the landowner and the appropriate medical examiner if there is reason to believe a site may contain human remains. Requires the medical examiner to inform the landowner and the person whose activities resulted in the discovery of the site, within five business days, of the nature and duration of any additional measures needed to protect the site if the remains reported under this section are associated with or suspected of association with any crime.

b) Requires the medical examiner to notify the state archeologist, within five business days, if remains reported under this section are not associated with or suspected of association with any crime. Requires the state archeologist to inform the landowner and the person whose activities resulted in the discovery of the site as to the nature and duration of any additional measures needed to protect the site, as soon as reasonably practicable, but not later than the fifth business day after the date the state archeologist receives notice under this section.

c) Requires the state archeologist to perform certain acts if human remains or any funerary object demonstrates a direct historical relationship to a Native American culture.

d) Requires all Native American burial remains and associated funerary objects not claimed for reburial by the applicable Native American culture to be placed with certain institutions or agencies for curation purposes. Requires the state archeologist to determine the racial or ethnic group of any remains not associated with a Native American culture and contact any descendants associated with the remains. Requires the state archeologist to consult with certain leaders concerning disposition of the remains if the descendants cannot be located. Requires the state archeologist to designate an appropriate repository for curation or reinterment of the remains if the remains are not claimed for repatriation by the consulted entity.

e) Requires professional archeologists to report to the state archeologist, within three business days, any unmarked burials and funerary objects discovered during the performance of their official duties. Requires the professional archeologist to report to the state archeologist, within 15 business days after initial notification, concerning certain characteristics of the burial and recommend temporary disposition of the remains for analysis in accordance with this chapter.

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. INVOLVEMENT OF PRIVATE LANDOWNERS. Requires the state archeologist to notify the landowner within three business days after being notified that human

remains or funerary objects have been disturbed on private land. Requires the state archeologist, at the request of the landowner, to consult with the landowner about proposed treatment and disposition of the remains. Provides that the landowner receives no additional rights to the remains solely because the landowner consults with the state archeologist. Provides that the location of remains on private property controlled by the landowner does not allow public access to the property.

Sec. 192.008. AFFIRMATIVE DEFENSES TO PROSECUTION. Sets forth certain conditions that define an affirmative defense to prosecution for an alleged violation of Section 192.004.

Sec. 192.009. RULEMAKING AUTHORITY. Grants rulemaking authority to the Texas Historical Commission to establish procedures to implement this chapter.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2001.