

H.26

An act relating to plans for treatment of unmarked burial sites

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 121, subchapter 7 is added to read:

Subchapter 7. Unmarked Burial Sites

§ 5601. DEFINITIONS

In this subchapter:

(1) "Treatment plan" means a plan to provide appropriate and respectful treatment of a burial site and includes any or all of the following:

(A) Methods for determining the presence of an unmarked burial site which may include archeological surveys and assessments and other nonintrusive techniques.

(B) Methods for handling development and excavation on property on which it is known that there is or is likely to be one or more burial sites.

(C) Options for owners of property on which human remains in burial sites are discovered or determined to be located.

(D) Procedures for protecting, preserving, and moving the burial site and human remains.

(E) Time frames for implementation of the plan.

(F) Procedures for resolving disputes among stakeholders.

(2) “Unmarked burial site” means the location of any interment of human remains, evidence of human remains, including the presence of red ochre, associated funerary objects, or a documented concentration of burial sites. “Unmarked burial site” does not include a cemetery, mausoleum, or columbarium managed or maintained by a municipality, church, other organization, or a private individual.

§ 5602. DISTURBANCE OF AN UNMARKED BURIAL SITE

(a) When an unmarked burial site is first discovered, excavation or disruption of that site shall stop immediately. The discovery shall be reported immediately to a designated law enforcement officer or the state medical examiner. A person who, after discovering an unmarked burial site, proceeds to excavate, disinter, disturb, destroy, or remove any human remains or associated funerary objects from the unmarked burial site or aids in those activities may be subject to the penalties of 13 V.S.A. § 3761 unless the person is operating under a treatment plan approved by the commissioner of housing and community affairs. This subsection does not apply to a medical examiner or state’s attorney acting under section 5205 of this title.

(b) If, after the completion of an investigation pursuant to section 5205 of this title, a medical examiner determines that the burial site does not fall under the purview of the medical examiner’s office, the medical examiner shall immediately notify the state archeologist who, as soon as possible, shall

consult with stakeholders, including the municipality, the land owner, state or federally recognized Native American tribes, and any other appropriate interested organizations, to formulate a treatment plan. The state archeologist shall also make a reasonable effort to discover and consult with the closest likely descendents to formulate a treatment plan.

§ 5603. UNMARKED BURIAL SITES SPECIAL FUND

(a) The unmarked burial sites special fund is established in the state treasury for the purpose of protecting, preserving, moving, or reintering human remains discovered in unmarked burial sites.

(b) The fund shall be composed of any monies appropriated to the fund by the general assembly or received from any other source, private or public. Interest earned on the fund and any balance remaining in the fund at the end of a fiscal year shall be retained in the fund. This fund shall be maintained by the state treasurer and shall be managed in accordance with subchapter 5 of chapter 7 of Title 32.

(c) The commissioner of housing and community affairs may authorize disbursements from the fund for use in any municipality in which human remains are discovered in unmarked burial sites, provided that the commissioner has approved a treatment plan for the site that has been developed pursuant to subsection 5602(b) of this title.

(d) The funds shall be used for the following purposes relating to unmarked burial sites:

(1) To implement a treatment plan approved by the commissioner of housing and community affairs.

(2) To monitor excavations.

(3) To perform archeological assessments and archeological site or field investigations, including radar scanning and any other nonintrusive technology or technique designed to determine the presence of human remains.

(4) To provide mediation and other appropriate dispute resolution services.

(5) To acquire property or development rights, provided the commissioner of housing and community affairs determines that disbursements for this purpose will not unduly burden the fund, and further provided the commissioner shall expend funds for this purpose only with the concurrence of the secretary of commerce and community development and after consultation with the legislative bodies of any affected municipality or municipalities.

(6) Any other appropriate purpose determined by the commissioner of housing and community affairs to be consistent with the purposes of this fund.

(e) The commissioner may adopt rules to carry out the intent and purpose of this section.

Sec. 2. REPEAL

18 V.S.A. § 5212b, relating to a burial sites special fund, is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on September 1, 2009.