

H.281

An act relating to the removal of bodily remains

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

Sec. 1. 18 V.S.A. § 5212 is amended to read:

§ 5212. PERMIT TO REMOVE DEAD BODIES

(a) A person desirous of disinterring or removing the body of a human being from one cemetery to another cemetery or to another part of the same cemetery or from a tomb or receiving vault elsewhere shall apply to the ~~town~~ clerk of the ~~town where such~~ municipality in which the dead body is interred or entombed for a removal permit.

(b) An applicant for a removal permit shall publish notice of his or her intent to remove the remains. This notice shall be published for two successive weeks in a newspaper of general circulation in the ~~town~~ municipality in which the body is interred or entombed. The notice shall include a statement that the spouse, child, parent ~~or~~ sibling, or descendant of the deceased or that the cemetery commissioner or other municipal authority responsible for cemeteries in the municipality may object to the proposed removal by filing a complaint in the probate court of the district in which the body is located as provided in section 5212a of this title.

(c) The ~~town~~ municipal clerk shall issue a removal permit 45 days after the date on which notice was last published pursuant to subsection (b) of this section or, if an objection is made pursuant to section 5212a, upon order of the court.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, a removal permit shall be issued upon application:

- (1) when removal is necessary because of temporary entombment; or
- (2) to a federal, state, county, or municipal official acting pursuant to official duties; or
- (3) if the applicant has written permission to remove the remains from all persons entitled to object under section 5212a of this title.

(e) This section does not apply to:

- (1) Unmarked burial sites which are subject to the provisions of subchapter 7 of this chapter.
- (2) The removal of "historic remains," which has the same meaning as in subdivision 5217(a)(1) of this title.

Sec. 2. 18 V.S.A. § 5212a is amended to read:

§ 5212a. REMOVAL; OBJECTIONS

(a) Unless removal is otherwise authorized by law, the cemetery commissioner or other municipal authority responsible for cemeteries in the municipality in which remains are interred or entombed or a spouse, child,

parent ~~or~~, sibling, or descendant of the deceased may, within 30 days after the date notice was last published under section 5212 of this title, object to the proposed removal by filing a complaint and a copy of the application in the probate court of the district in which the body is interred or entombed. A copy of the complaint shall be filed with the clerk of the ~~town where~~ municipality in which the body is interred or entombed and shall be mailed to the applicant for the removal permit.

(b) The probate court shall, after hearing, issue its order authorizing removal of the body unless the removal is one or more of the following:

(1) ~~removal would be contrary~~ Contrary to the expressed intent of the deceased; ~~or~~.

(2) ~~removal is objected~~ Objected to by the surviving spouse of the deceased; ~~or~~.

(3) ~~removal is objected~~ Objected to by an adult son or daughter of the deceased and there is no surviving spouse of the deceased;.

(4) ~~removal is objected~~ Objected to by a parent of the deceased and there is no surviving spouse or son or daughter of the deceased; ~~or~~.

(5) ~~removal is objected~~ Objected to by an adult sibling of the deceased and there is no surviving spouse, son or daughter, or parent of the deceased.

(6) Objected to by a descendant of the deceased and there is no surviving spouse, son or daughter, parent, or adult sibling of the deceased.

(7) Objected to by the cemetery association or other municipal cemetery authority responsible for cemeteries in the municipality in which the remains are interred or entombed, and there is no surviving spouse, son or daughter, parent, adult sibling, or known descendant of the deceased.

Sec. 3. 18 V.S.A. § 5217 is added to read:

§ 5217. REMOVAL OF HISTORIC REMAINS

(a) As used in this section:

(1) "Historic remains" means remains of a human being who has been deceased for 100 years or more and the remains are located in a publicly known or marked burial ground or cemetery.

(2) "Public good" means actions that provide for the greatest benefit of the people of the state of Vermont.

(3) "Remains" means cremated human remains that are in a container or the bodily remains of a human being.

(4) "Removal" means to transport human remains from one location to another location.

(b) A person may apply for a removal permit to disinter or remove historic remains by filing an application with the clerk for the municipality in which the historic remains are located. The application shall include all the following:

(1) Identification of the specific location and marking of the remains performed by a qualified professional archeologist using standard archeological procedures.

(2) Identification of the specific location in which the remains will be reburied.

(3) The purpose for the removal of the remains, including a statement of the public good that will result from the removal.

(c) An applicant for a removal permit to disinter or remove historic remains shall publish notice of the applicant's intent to remove the remains for two successive weeks in a newspaper of general circulation in the municipality in which the historic remains are located. The applicant shall also send notice by first-class mail to all the following:

(1) The cemetery commissioner or other municipal authority responsible for cemeteries in the municipality in which the historic remains are located.

(2) All historical societies located within the municipality in which the historic remains are located.

(3) The district environmental commission for the district in which the historic remains are located.

(4) The state archeologist.

(5) The Vermont Old Cemetery Association.

(6) The Vermont Cemetery Association.

(d) An objection to the proposed removal of historic remains shall be filed with the probate court for the district in which the historic remains are located and the clerk for the municipality in which the historic remains are located within 60 days after the date the notice was last published as required by subsection (c) of this section. An objection may be filed only by the following:

(1) A descendant of the deceased.

(2) The cemetery commissioner or other municipal authority responsible for cemeteries in the municipality in which the historic remains are located.

(3) An historical society located within the municipality in which the historic remains are located.

(4) The Vermont Historical Society.

(5) The Vermont Old Cemetery Association.

(6) The Vermont Cemetery Association.

(7) The state archeologist.

(8) Any veterans' organizations operating within the county in which the historic remains are located.

(e) If no objection is received within 60 days after the date the notice was last published as required by subsection (c) of this section, the municipal clerk shall issue a removal permit.

(f) If the probate court receives an objection within the 60-day period, the court shall notify the clerk for the municipality in which the historic remains

are located and schedule a hearing on whether to allow removal as described in the application.

(g) The probate court, after hearing, shall order the municipal clerk to grant or deny a permit for removal of the historic remains. The court shall consider the impact of the removal on the public good.

(h) The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed, and the permit may require that the removal be conducted or supervised by a qualified professional archeologist in compliance with standard archeological process. All costs associated with the removal shall be paid by the applicant.

Sec. 4. 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 or outline of a process for providing appropriate and respectful treatment of a burial site while considering the rights of the landowner and appropriate stakeholders, including affected Native American tribes or bands and veterans’ organizations. Each treatment plan shall include, as appropriate, the following:

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

(B) Methods for handling development and excavation on property on which there is a known burial site or there is likely to be one.

(C) Options for owners of property on which human remains 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 or 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 or any other site that is clearly marked as containing human remains.

§ 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 economic, housing and community development. This subsection does not apply to a medical examiner or state's attorney acting under section 5205 of this title.

(b) If, after 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 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 economic, housing and community development 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 economic, housing and community development.

(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 economic, housing and community development 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 economic, housing and community development 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.

§ 5604. UNMARKED BURIAL SITE TREATMENT PLAN COMMITTEE

(a) The unmarked burial site treatment plan committee is created to develop procedures for addressing issues related to known or discovered unmarked burial sites including treatment plans to be used when an unmarked burial site is discovered on private property. The committee is composed of the following nine members:

(1) The commissioner of housing and community affairs, or designee.

(2) The state archeologist, or designee.

(3) A representative from the Vermont League of Cities and Towns, Inc.

(4) A representative from a Native American tribe based in Vermont who has experience handling unmarked burial sites, appointed by the commissioner of housing and community affairs.

(5) A federal archeologist from the Natural Resources Conservation Service of the U.S.D.A.

(6) The U.S. Forest Service, Green Mountain National Forests archeologist.

(7) The director of the University of Vermont consulting archeology program.

(8) A representative from the Vermont Bankers Association, Inc.

(9) A representative from the home Builders and Remodelers Association of Vermont.

(b) The committee shall:

(1) Develop procedures for responding to reports of a discovery of an unmarked burial site as defined in 18 V.S.A. § 5601(2).

(2) When notified of the discovery of an unmarked burial site on private property and after consultation with appropriate stakeholders, including affected Native American tribes or bands and veterans organizations, develop a treatment plan for the burial site.

(3) The committee shall issue an annual report describing the number and issues surrounding unmarked burial sites for which treatment plans were developed, including an outline of the procedures and treatment plans that have been implemented and the outcomes or resolutions of the implemented treatment plans. The report shall be posted on the website of the department of housing and community affairs.

Sec. 4. REPEAL

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

Sec. 5. EFFECTIVE DATE

This act shall take effect on September 1, 2010.