

H.26

An act relating to plans for treatment of unmarked burial sites

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 5212b. UNMARKED BURIAL SITES SPECIAL FUND; REPORTING OF
UNMARKED BURIAL SITES

(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 comprised 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 in accordance with a process approved by the commissioner. The commissioner shall approve any process

developed through consensus or agreement of the interested parties, including the municipality, ~~the governor's advisory commission on Native American affairs~~ Native American tribes based in Vermont, and private property owners of property on which there are known or likely to be unmarked burial sites, and any other appropriate interested parties, provided the commissioner determines that the process is likely to be effective, and includes all the following:

(1) Methods for determining the presence of unmarked burial sites, including archaeological surveys and assessments and other nonintrusive techniques.

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

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

(4) Procedures for protecting, preserving or moving unmarked burial sites and human remains, subject, where applicable, to the permit requirement and penalties of this chapter.

(5) Procedures for resolving disputes.

(d) If unmarked burial sites and human remains are removed, consistent with the process set forth in this section and any permit required by this chapter, there shall be no criminal liability under 13 V.S.A. § 3761.

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

(1) To monitor excavations.

(2) To protect, preserve, move, or reinter unmarked burial sites and human remains.

(3) To perform archaeological assessments and archaeological 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 to be consistent with the purposes of this fund.

(f) When an unmarked burial site is first discovered, the discovery shall be reported immediately to a law enforcement agency or the state medical examiner. If, after completion of an investigation pursuant to section 5205 of

this title, a medical examiner determines that the burial site does not fall under the examiner's purview, the medical examiner shall immediately notify the state archeologist.

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

Sec. 2. UNMARKED BURIAL SITE TREATMENT PLAN COMMITTEE

(a) The unmarked burial site treatment plan committee is created to develop procedures for addressing issues relating to known or discovered unmarked burial sites of human remains including developing treatment plans to be used when an unmarked burial site is discovered on private property. The committee is comprised of nine members to include:

(1) The commissioner of housing and community affairs or the commissioner's 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 in 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 Forest
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, which for the purposes of this section 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, but does not include a cemetery, mausoleum, or
columbarium or any other site that is clearly marked as a site containing human
remains.

(2) Develop various treatment plans for addressing issues when an
unmarked burial site is discovered on private property. A treatment plan is an
outline of the process for providing appropriate and respectful treatment of the
burial site while considering the rights of the landowner. Each treatment plan
shall include one or all of 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 likely to be one.

(C) Options for owners of property on which human remains are discovered or known to be located.

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

(E) Time frames for implementation of the plan.

(F) Procedures for resolving disputes among stakeholders.

(3) The committee shall issue a written report outlining the procedures and treatment plans to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs on or before January 15, 2010.

Sec. 3. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

(a)(1) When a person dies in this state, or a resident of this state dies within the state or elsewhere, and the decedent was a recipient of assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged, blind

or disabled, or an honorably discharged veteran of any branch of the U.S. military forces to the extent funds are available and to the extent authorized by department regulations, the decedent's burial shall be arranged and paid for by the department if the decedent was without sufficient known assets to pay for burial. The department shall pay burial expenses when arrangements are made other than by the department to the maximum permitted by its regulations. In any case where other contributions are made these payments shall be deducted from the amount otherwise paid by the department but in no case is the department responsible for any payment when the person arranging the burial selects a funeral the price of which exceeds the department's maximum.

* * *

(c) ~~When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to \$250.00 for expenses incurred.~~

(d) ~~In all other cases the department shall arrange for and pay for the burial of persons who die in this state or residents of this state who die within the state or elsewhere when such persons are without sufficient known assets to pay for their burial.~~

(e) [Omitted.]

(f) In all cases where the department is responsible for funeral ~~and/or~~ or burial expenses or both under this chapter, the department shall provide, by rule, the specific services that are to be provided at public expense, and, on an itemized basis, the maximum price to be paid by the department for each such service.

(g) For the purpose of this chapter, "burial" means the act of interring or cremating the human dead and the ceremonies directly related to that cremation or interment at the gravesite; and "funeral" means the ceremonies prior to burial of the body by interment, cremation or other method.

(h) Notwithstanding any provision of law to the contrary, the commissioner is authorized, in his or her discretion, to pay for not more than five burials per year as described in subsection (c) of this section when the facts so warrant.

Sec. 4. 20 V.S.A. §§ 1581, 1582, and 1583 are amended to read:

§ 1581. VERMONT VETERANS' MEMORIAL CEMETERY ~~ADVISORY~~
BOARD

(a) The Vermont veterans' memorial cemetery ~~advisory~~ board is created to ~~advise the adjutant general on~~ determine all matters relating to the establishment and operation of a Vermont veterans' memorial cemetery to be known as the Vermont Veterans' Memorial Cemetery. The board shall consist of:

(1) ~~The commissioner of the department of buildings and general services,~~ adjutant general or designee, who shall serve as chair of the board.

(2) The commissioner of the department of buildings and general services or designee.

(3) ~~One member of the senate who shall be appointed by the senate~~
committee on committees.

~~(3)~~(4) ~~One member of the house who shall be appointed by the house~~
speaker.

~~(4)~~(5) Four individuals who represent veterans or are members of a
veterans' organization, ~~to be~~ appointed by the governor for staggered terms of
six years.

~~(5)~~(6) One individual who represents the Vermont granite, Vermont
slate, or Vermont marble industry selected by the governor for a six-year term.

(b) The office of the adjutant general shall provide administrative support
to the board.

(c) For each meeting, legislative members ~~shall be~~ are entitled to receive
compensation and reimbursement for expenses as provided under subsection
406(a) of Title 2. ~~The , and~~ and members representing veterans or from veterans'
organizations ~~shall be~~ are entitled to per diem as provided in section 1010 of
Title 32 and their necessary and actual expenses.

§ 1582. RULES; DAILY OPERATIONS

(a) Vermont veterans' memorial cemetery ~~advisory board may~~ shall adopt rules ~~under the provisions of chapter 25 of Title 3~~ relating to acquisition of land, design of the cemetery, its buildings and grave markers, eligibility for burial, and any other matters necessary to establish and maintain the Vermont veterans' memorial cemetery.

(b) Daily operations shall be overseen by the adjutant general.

§ 1583. ADJUTANT GENERAL; POWERS AND DUTIES

(a) The adjutant general, subject to available funds and with the advice and consent of the Vermont veterans' memorial cemetery ~~advisory committee board~~, shall administer the creation, establishment, operation, and maintenance of the Vermont veterans' memorial cemetery.

* * *

Sec. 5. AMENDMENT OF ACT 250 PERMIT

The adjutant general, the Vermont veterans' memorial cemetery board, and the agency of natural resources shall determine whether there is an environmentally safe alternative to Condition 6 of Land Use Permit # 3RO676 issued on August 20, 1991, which requires that all corpses be embalmed. No later than September 1, 2009, the adjutant general on behalf of the board may apply to the district 3 environmental commission for an amendment to that permit.

Sec. 6. 18 V.S.A. § 5201 is amended to read:

§ 5201. PERMITS; REMOVAL OF BODIES; CREMATION; WAITING
PERIOD; INVESTIGATION INTO CIRCUMSTANCES OF
DEATH

* * *

~~(c) The person in charge of the body shall not release for cremation the body of a person who died in Vermont until the person in charge has received a certificate from the chief, regional or assistant medical examiner that the medical examiner has made personal inquiry into the cause and manner of death and is satisfied that no further examination or judicial inquiry concerning it is necessary. The certificate shall be retained by the crematory for a period of three years. For the certificate, the medical examiner is entitled to a fee of \$25.00 payable by the person requesting cremation.~~

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

and that the bill title be amended to read: “An act relating to cremation, the treatment of unmarked burial sites, the operation of the Vermont Veterans’ Memorial Cemetery, and payment for burial of indigent persons”