

SECOND REGULAR SESSION

HOUSE BILL NO. 1056

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BISHOP (Sponsor), MARSH AND DEMPSEY (Co-sponsors).

Read 1st time January 13, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3332L.011

AN ACT

To repeal sections 194.400, 194.405, 194.406, 194.407, 194.408, 194.409, and 194.410, RSMo, relating to unmarked burial remains, and to enact in lieu thereof eight new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 194.400, 194.405, 194.406, 194.407, 194.408, 194.409, and
2 194.410, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as
3 sections 194.400, 194.403, 194.405, 194.406, 194.407, 194.408, 194.409, and 194.410, to read
4 as follows:

194.400. As used in sections 194.400 to 194.410 the following words and phrases mean:

- 2 (1) **"Burial site", any natural or prepared physical location, whether originally**
3 **below, on, or above the surface of the earth, into which individual human remains were**
4 **deposited; including but not limited to, caves, rock cairns or pyres, or other structures**
5 **which may not fall within the ordinary definition of a gravesite;**
6 (2) **"Cemetery", land used for the interment of human remains, including each**
7 **tract so marked, signed, or designated and used as a human burial site, either currently or**
8 **in the past. The term also includes tracts of land which are not visibly marked, signed, or**
9 **designated as a cemetery, but which are known to be such by written historic records, or**
10 **where the decedents interred there have known, living lineal descendants or relatives.**
11 **However, the term cemetery does not apply to burial sites which predate 1700 and which**
12 **do not fall within any definition of cemetery contained in chapter 214, RSMo;**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

13 (3) "Committee", the unmarked human burial consultation committee;

14 [(2)] (4) "Cultural items", [shall include] **includes:**

15 (a) ["Associated funerary objects", objects that are reasonably believed to have been
16 placed with individual human remains either at the time of death, or during the death rite or
17 ceremony, or later, and all other items exclusively made for burial purposes including items
18 made to contain human remains;

19 (b) "Unassociated funerary objects", objects that are reasonably believed to have been
20 placed with individual human remains either at the time of death or during the death rite or
21 ceremony, or later, which can be identified by a preponderance of the evidence as related to
22 known human remains or an unmarked human burial site or can be identified as having been
23 removed from a specific unmarked human burial site;] **"Funerary objects", items that, as part
24 of a death rite or ceremony, are reasonably believed to have been placed intentionally with
25 or near individual human remains at the time of death, during burial, or later. Funerary
26 objects also mean those items that were exclusively made for human burial purposes, or
27 made to contain human remains, and that were placed at a human burial site. With
28 respect to Native American burial sites, this term includes both "associated funerary
29 objects" and "unassociated funerary objects", as those terms are defined in 25 U.S.C.
30 section 3001. In the event of a disagreement, the determination of the Federal Native
31 American Graves Protection and Repatriation Act Review Committee established pursuant
32 to 25 U.S.C. section 3006 shall govern as to what is a funerary object;**

33 (b) **"Sacred objects", a term limited here in scope and application to objects of
34 Native American origin. With respect to Native American burial sites, this term has the
35 same meaning as it is given in 25 U.S.C. section 3001; and**

36 (c) **"Cultural Patrimony", a term limited here in scope and application to objects
37 of Native American origin. With respect to objects found in or with Native American
38 burial sites, this term has the same meaning as it is given in 25 U.S.C. section 3001.**

39

40 **"Associated cultural items" means all funerary objects found with or so near to specific
41 human remains as to be associated archaeologically with those remains; and any sacred
42 objects or objects of cultural patrimony found generally at a site, even though they may not
43 be associated with any specific human remains, and even if no human remains are found
44 at all;**

45 [(3)] (5) "General archaeological investigation", refers to:

46 (a) Excavations performed by professional archaeologists usually consisting of a
47 structured scientific undertaking comprised of three segments including field investigations,
48 laboratory analysis, and preparation and submission of a report of investigation; and

49 (b) Identification of the presence of human remains in excavated materials considered
50 to occur at the completion of the laboratory analysis segment of the studies as above;

51 (6) "Native American", a term that mean of or relating to a present, past, or
52 prehistoric tribe, people, or culture, that is or was once indigenous to the United States.
53 As to present day tribes, it generally refers to those tribes and nations, the existence and
54 sovereignty of which is recognized by the United States government;

55 [(4)] (7) "Professional archaeologist", a person who has a graduate degree in
56 archaeology, anthropology, or closely related field, at least one year of full-time professional
57 experience or equivalent specialized training in archaeological research, administration [of] or
58 management, or at least four months of supervised field and analytic experience in general North
59 American archaeology and demonstrated ability to carry archaeological research to completion,
60 as evidenced by a master of arts or master of science thesis, or report equivalent in scope and
61 quality;

62 [(5)] (8) "Second or subsequent violation", any violation, other than the first violation,
63 of a criminal law related to the trafficking of human remains or cultural items located in the state
64 of Missouri, the United States, or any other state;

65 [(6)] (9) "Skeletal analyst", a person possessing a postgraduate degree representing
66 specialized training in skeletal biology, forensic osteology, or other relevant aspects of physical
67 anthropology. The skeletal analyst shall have a minimum experience of one year in conducting
68 laboratory reconstruction and analysis, and shall have demonstrated the ability to design and
69 execute a skeletal analysis, and to present the written results and interpretations of such analysis
70 in a thorough, scientific, and timely manner;

71 [(7)] (10) "Specific scientific investigations", refers to detailed studies of human remains
72 by professional archaeologists, anthropologists, osteologists, or professionals in related
73 disciplines;

74 [(8)] (11) "State historic preservation officer", the director of the department of natural
75 resources;

76 [(9)] (12) "Unmarked human burial", any instance where human skeletal remains are
77 discovered or believed to exist[, but] **outside of a cemetery and** for which there exists no
78 written historical documentation or grave markers.

**194.403. 1. All human remains in unmarked human burial sites found after August
2 28, 2004, which are not the subject of a criminal investigation, together with any associated
3 cultural items found after that date, shall immediately be placed under jurisdiction of the
4 state historic preservation officer, at the site or after they have been removed. The state
5 historic preservation officer shall have jurisdiction of the remains and associated cultural
6 items, even if they are in the physical custody of another entity having professional**

7 archaeological staff with the written consent of the state historic preservation officer. All
8 sacred objects or objects of cultural patrimony found after August 28, 2004, must be placed
9 into the jurisdiction of the state historic preservation officer, so that the department of
10 natural resources can attempt to repatriate those to the appropriate Native American tribe
11 or nation. However, nothing in sections 194.400 to 194.410 shall compel the state historic
12 preservation officer to turn custody and control of human remains or cultural items over
13 to any person, ethnic group or Native American tribe or nation that has not satisfactorily
14 demonstrated its kinship or cultural affiliation with such remains or items.

15 2. State, and local museums, including any "museum" as defined in 25 U.S.C.
16 section 3001, having legal custody and possession of human remains, funerary objects,
17 sacred objects, or objects of cultural patrimony prior to the August 28, 1987 are not
18 required to turn those over to the state historic preservation officer, as long as they are in
19 compliance with, or attempting to comply with, all other applicable state and federal laws.

20 3. The state historic preservation officer is authorized to promulgate appropriate
21 regulations for the administration of sections 194.400 to 194.410. Any rule or portion of
22 a rule, as that term is defined in section 536.010, RSMo, that is created under the authority
23 delegated in this section shall become effective only if it complies with and is subject to all
24 of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
25 section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the
26 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or
27 to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
28 rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be
29 invalid and void.

194.405. When an unmarked human burial or human skeletal remains are encountered
2 during archaeological excavation, construction, or other ground disturbing activities, whether
3 found on or in any private lands or waters or on or in any lands or waters owned by the state of
4 Missouri or its political subdivisions, agencies or instrumentalities, the provisions of sections
5 194.400 to 194.410 shall apply **to the human remains and to all associated cultural items.**

194.406. 1. Any person knowing or with reason to know that an unmarked human burial
2 or human skeletal remains **and any associated cultural items** are being disturbed, destroyed,
3 defaced, mutilated, removed, or excavated, or exposed shall immediately notify either the state
4 historic preservation officer or the local law enforcement officer with jurisdiction for the area
5 in which the burial or remains are encountered.

6 2. When an unmarked human burial or human skeletal remains are encountered as a
7 result of construction or agricultural earth disturbing activities or by a professional archaeologist
8 in the course of an investigation all such activities shall cease immediately within a radius of fifty

9 feet of the point of discovery. Such activity shall not resume without specific authorization from
10 either the state historic preservation officer or the local law enforcement officer, whichever party
11 has jurisdiction over and responsibility for such remains. Said parties shall act promptly and
12 make a decision within a reasonable time. Jurisdiction will be determined as follows:

13 (1) If upon investigation, the local law enforcement officer determines that the human
14 skeletal remains may be involved in a [legal] **criminal** investigation, that officer will
15 immediately assume all jurisdiction over and responsibility for such remains;

16 (2) If upon investigation, the local enforcement officer determines that the remains are
17 not involved in a [legal] **criminal** investigation, the state historic preservation officer or his duly
18 designated representative shall assume responsibility for such remains **and all associated**
19 **cultural items**.

194.407. 1. In cases where an unmarked human burial or human skeletal remains are
2 discovered as a result of construction or agricultural earth disturbing activities and where the
3 state historic preservation officer has been determined to have jurisdiction, the state historic
4 preservation officer shall determine whether removal of the human skeletal remains is necessary
5 and appropriate for the purpose of scientific analysis. A general archaeological investigation of
6 the site shall be conducted by a professional archaeologist and the professional archaeologist
7 shall advise the state historic preservation officer of the physical location and the cultural and
8 biological characteristics of the unmarked human burial or human skeletal remains **and all**
9 **associated cultural items** within thirty days after the state historic preservation officer assumed
10 jurisdiction over [the burial or remains] **them**.

11 2. In cases where an unmarked human burial or skeletal remains are discovered by a
12 professional archaeologist in the course of an investigation, and where the state historic
13 preservation officer has been determined to have jurisdiction, the professional archaeologist shall
14 advise the state historic preservation officer of the physical location and the cultural and
15 biological characteristics of the unmarked human burial or human skeletal remains **and all**
16 **associated cultural items** within thirty days after the state historic officer assumed jurisdiction
17 **over them**.

18 3. **The state historic preservation officer may, during the course of these**
19 **investigations, call upon Native Americans, leaders of ethnic groups, or other appropriate**
20 **persons to examine the burial site and associated cultural items, to the extent that may be**
21 **appropriate**. Notwithstanding anything to the contrary herein contained no construction shall
22 be suspended or delayed more than thirty days **unless the scope of work for the respectful and**
23 **appropriate removal of the remains and all associated cultural items requires a longer**
24 **period of time**. **If the state historic preservation officer determines that a longer period of**
25 **time is necessary, the department shall notify in writing the lawful private or public**

26 **property owner or easement holder and give a complete explanation of reasons for the**
27 **delay. Such delay shall not exceed an additional thirty days, except with the consent of all**
28 **affected persons, or as a court of competent jurisdiction may require.**

194.408. Whenever an unmarked human burial or human skeletal remains are reported
2 to the state historic preservation officer, **with or without associated cultural items**, the state
3 historic preservation officer shall proceed as follows:

4 (1) Insofar as possible, the state historic preservation officer shall make reasonable
5 efforts to identify and locate persons who can establish direct kinship with or descent from the
6 individual whose remains constitute the burial. The state historic preservation officer, in
7 consultation with the most closely related family member, shall determine the proper disposition
8 of the remains **and all associated cultural items**;

9 (2) When no direct kin or descendants can be identified or located, but the burial or
10 remains can be shown to have ethnic affinity with living peoples, the state historic preservation
11 officer in consultation with the [leaders] **leader** of the ethnic groups having a relation to the
12 burial or remains shall determine the proper disposition of the remains. But, if the state historic
13 preservation officer determines the burial or remains are scientifically significant, no reinterment
14 shall occur until the burial or remains have been examined by a skeletal analyst designated by
15 the state historic preservation officer. In no event shall reinterment be delayed more than one
16 year **unless that delay and its rationale have been reviewed and approved by the committee**;

17 (3) When the burial or remains cannot be related to any living peoples, the state historic
18 preservation officer, in consultation with the unmarked human burial consultation committee,
19 shall determine the proper disposition of the burial or remains. But, if the state historic
20 preservation officer determines the burial or remains are scientifically significant, no reinterment
21 shall occur until the burial or remains have been examined by a skeletal analyst designated by
22 the state historic preservation officer. In no event shall reinterment be delayed more than one
23 year unless [otherwise and to the extent determined] **that delay and its rationale have been**
24 **reviewed and approved** by the committee;

25 (4) **When the burial site appears to be that of a Native American individual, the**
26 **state historic preservation officer, in consultation with the appropriate state agency or**
27 **museum and the unmarked human burial consultation committee, shall observe and**
28 **comply fully with the pertinent provisions of the federal Native American Graves**
29 **Protection and Repatriation Act, 25 U.S.C. sections 3001, et seq.;**

30 (5) Notwithstanding subdivisions (2)[and], (3), **and (4)** of this section the state historical
31 preservation officer [may] **shall** seek approval from the unmarked human burial consultation
32 committee to delay reinterment of the remains **for more than one year**, for an additional
33 scientific study **that has not already commenced, to be conducted** in a facility chosen by the

34 state historic preservation officer. **The state historic preservation officer, on this or any other**
35 **pending question or issue, may call a special meeting of the committee; or the state historic**
36 **preservation officer may request a special public vote of the committee to decide the**
37 **question.** If the **delay in reinterment for the new, additional scientific** study is approved by
38 the committee, **then** reinterment shall be delayed for a period as specified by the committee;

39 **(6) When the state historic preservation officer assumes jurisdiction and control**
40 **over an unmarked human burial site and its associated cultural items, the lawful private**
41 **or public property owner or easement holder shall have the right to continue the**
42 **construction or other activities, after compliance with sections 194.406 and 194.407.**
43 **However, if those activities will result in or necessitate the further alteration, disturbance,**
44 **or removal of the human remains and any associated cultural items, without being able to**
45 **respectfully rebury them in place on that site, then the state historic preservation officer**
46 **shall make the necessary arrangements to remove those remains and cultural objects from**
47 **that site and to take jurisdiction of them, and the lawful private or public property owner**
48 **or easement holder shall be responsible for the resulting costs of their archaeological**
49 **removal, cleaning, cataloging, preservation, documentation, and return to the state historic**
50 **preservation officer for reburial or repatriation.**

194.409. 1. There is hereby created in the department of natural resources, an
2 "Unmarked Human Burial Consultation Committee", which shall be composed of seven
3 members to be appointed by the governor with the advice and consent of the senate. The
4 members of the committee shall be appointed as follows: the state historic preservation officer,
5 two members who are archaeologists or skeletal analysts, two native Americans who are
6 members of an Indian tribe recognized by the United States of America, one member who is a
7 non-Indian minority, and one non-Indian, non-minority member who is neither a professional
8 archaeologist nor a skeletal analyst. Members of the committee shall be residents of the state of
9 Missouri.

10 2. The state historic preservation officer shall be chairman of the committee and shall
11 serve a term which is contemporaneous with his employment as director of the department of
12 natural resources. The terms of all other members of the committee shall be three years.

13 3. The committee shall meet at least [once] **twice** each calendar year, but may meet more
14 often at the request of the state historic preservation officer.

15 4. The members of the committee shall serve voluntarily and shall not receive
16 compensation for membership on the committee, except that they shall be eligible to receive
17 reimbursement for transportation expenses as provided for through the budget approved for the
18 office of the state historic preservation officer.

19 5. All actions and decisions of the state historic preservation officer and the unmarked

20 human burial consultation committee shall be in conformity with the provisions of the federal
21 National Historic Preservation Act of 1966, as amended; **with the federal Native American**
22 **Graves Protection and Repatriation Act (NAGPRA), as amended, 25 U.S.C. 3001, et seq.,**
23 **if NAGPRA is applicable; and with any written agreement or memorandum of**
24 **understanding entered into by a federal agency with the state historic preservation officer,**
25 **or with a Native American tribe or nation, or both, according to federal law.**

194.410. 1. Any person, corporation, partnership, proprietorship, or organization who
2 knowingly disturbs, destroys, vandalizes, or damages a marked or unmarked human burial site
3 commits a class D felony.

4 2. Any person who knowingly appropriates for profit, uses for profit, sells, purchases or
5 transports for sale or profit any human remains without the right of possession to those remains
6 as provided in sections 194.400 to 194.410 commits a class A misdemeanor and, in the case of
7 a second or subsequent violation, commits a class D felony.

8 3. Any person who knowingly appropriates for profit, uses for profit, sells, purchases or
9 transports for sale or profit any cultural items obtained in violation of sections 194.400 to
10 194.410 commits a class A misdemeanor and, in the case of a second or subsequent violation,
11 commits a class D felony.

12 4. **Any natural person who violates any provision of sections 194.400 to 194.410**
13 **shall be subject to a civil penalty of one thousand dollars per violation, plus the court costs,**
14 **attorneys fees, and other costs incurred by the state historic preservation officer or the**
15 **department of natural resources in recovering the human remains or cultural items, and**
16 **in properly cleaning, cataloging, preserving, and documenting them for reburial or**
17 **repatriation. Where more than one natural person acts in combination, each shall be**
18 **subject to the civil penalty and other specific costs. Any corporation, general or limited**
19 **partnership, trust, limited liability company, or other legal entity that knowingly violates**
20 **any provision of sections 194.400 to 194.410 shall be subject to a civil penalty of ten**
21 **thousand dollars per violation, plus the court costs, attorney fees, and other costs incurred**
22 **by the state historic preservation officer or the department of natural resources in**
23 **recovering the human remains or cultural items, and in properly cleaning, cataloging,**
24 **preserving, and documenting them for reburial or repatriation. A civil penalty imposed**
25 **pursuant to this section shall be cumulative and in addition to other court costs, attorney**
26 **fees, and other costs that may be imposed in the same action, in addition to any fines or**
27 **imprisonment that may be imposed in a criminal action in any court of competent**
28 **jurisdiction.**

29 5. The department may request either the attorney general or a prosecuting
30 attorney to bring any action authorized in this section in the name of the people of the state

31 **of Missouri. Suit may be brought in any county where the cause of action accrued or the**
32 **county containing the seat of state government.**