

Article 3.

Unmarked Human Burial and Human Skeletal Remains Protection Act.

**§ 70-26. Short title.**

This Article shall be known as "The Unmarked Human Burial and Human Skeletal Remains Protection Act." (1981, c. 853, s. 2.)

**§ 70-27. Findings and purpose.**

(a) The General Assembly finds that:

- (1) Unmarked human burials and human skeletal remains are subject to vandalism and inadvertent destruction at an ever-increasing rate;
- (2) Existing State laws do not provide adequate protection to prevent damage to and destruction of these remains;
- (3) There is a great deal of scientific information to be gained from the proper excavation, study and analysis of human skeletal remains recovered from such burials; and
- (4) There has been no procedure for descendants or other interested individuals to make known their concerns regarding disposition of these remains.

(b) The purpose of this Article is (i) to provide adequate protection from vandalism for unmarked human burials and human skeletal remains, (ii) to provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the medical examiner pursuant to G.S. 130A-383 that are encountered during archaeological excavation, construction, or other ground disturbing activities, found anywhere within the State except on federal land, and (iii) to provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials if the analysis would result in valuable scientific information. (1981, c. 853, s. 2; 2007-484, s. 11(a).)

**§ 70-28. Definitions.**

As used in this Article:

- (1) "State Archaeologist" means the head of the Office of State Archaeology section of the Office of Archives and History, Department of Natural and Cultural Resources.
- (2) "Executive Director" means the Executive Director of the North Carolina Commission of Indian Affairs.
- (3) "Human skeletal remains" or "remains" means any part of the body of a deceased human being in any stage of decomposition.
- (4) "Professional archaeologist" means a person having (i) a postgraduate degree in archaeology, anthropology, history, or another related field with a specialization in archaeology, (ii) a minimum of one year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains, and (iii) designed and executed an archaeological study and presented the written results and interpretations of such study.
- (5) "Skeletal analyst" means any person having (i) a postgraduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology or other relevant aspects of physical anthropology or medicine, (ii) a minimum of one year's experience in conducting laboratory reconstruction

and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity, and (iii) designed and executed a skeletal analysis, and presented the written results and interpretations of such analysis.

- (6) "Unmarked human burial" means any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased. (1981, c. 853, s. 2; 2002-159, s. 35(a); 2007-484, s. 10(a); 2015-241, s. 14.30(s).)

**§ 70-29. Discovery of remains and notification of authorities.**

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being disturbed, destroyed, defaced, mutilated, removed, or exposed, shall notify immediately the medical examiner of the county in which the remains are encountered.

(b) If the unmarked human burials or human skeletal remains are encountered as a result of construction or agricultural activities, disturbance of the remains shall cease immediately and shall not resume without authorization from either the county medical examiner or the State Archaeologist, under the provisions of G.S. 70-30(c) or 70-30(d).

(c) (1) If the unmarked human burials or human skeletal remains are encountered by a professional archaeologist, as a result of survey or test excavations, the remains may be excavated and other activities may resume after notification, by telephone or registered letter, is provided to the State Archaeologist. The treatment, analysis and disposition of the remains shall come under the provisions of G.S. 70-34 and 70-35.

(2) If a professional archaeologist directing long-term (research designed to continue for one or more field seasons of four or more weeks' duration) systematic archaeological research sponsored by any accredited college or university in North Carolina, as a part of his research, recovers Native American skeletal remains, he may be exempted from the provisions of G.S. 70-30, 70-31, 70-32, 70-33, 70-34 and 70-35(c) of this Article so long as he:

- a. Notifies the Executive Director within five working days of the initial discovery of Native American skeletal remains;
- b. Reports to the Executive Director, at agreed upon intervals, the status of the project;
- c. Curates the skeletal remains prior to ultimate disposition; and
- d. Conducts no destructive skeletal analysis without the express permission of the Executive Director.

Upon completion of the project fieldwork, the professional archaeologist, in consultation with the skeletal analyst and the Executive Director, shall determine the schedule for the completion of the skeletal analysis. In the event of a disagreement, the time for completion of the skeletal analysis shall not exceed four years. The Executive Director shall have authority concerning the ultimate disposition of the Native American skeletal remains after analysis is completed in accordance with G.S. 70-35(a) and 70-36(b) and (c).

(d) The State Archaeologist shall notify the Chief, Medical Examiner Section, Division of Health Services, Department of Health and Human Services, of any reported human skeletal

remains discovered by a professional archaeologist. (1981, c. 853, s. 2; 1997-443, s. 11A.118(a); 2007-484, s. 10(b).)

#### **§ 70-30. Jurisdiction over remains.**

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the medical examiner of the county in which the remains were encountered shall determine as soon as possible whether the remains are subject to the provisions of G.S. 130A-383.

(b) If the county medical examiner determines that the remains are subject to the provisions of G.S. 130A-383, the county medical examiner will immediately proceed with the investigation.

(c) If the county medical examiner determines that the remains are not subject to the provisions of G.S. 130A-383, the county medical examiner shall so notify the Chief Medical Examiner. The Chief Medical Examiner shall notify the State Archaeologist of the discovery of the human skeletal remains and the findings of the county medical examiner. The State Archaeologist shall immediately take charge of the remains.

(d) Subsequent to taking charge of the human skeletal remains, the State Archaeologist shall have 48 hours to make arrangements with the landowner for the protection or removal of the unmarked human burial or human skeletal remains. The State Archaeologist shall have no authority over the remains at the end of the 48-hour period and may not prohibit the resumption of the construction or agricultural activities without the permission of the landowner. (1981, c. 853, s. 2; 2007-484, ss. 10(c), 11(b).)

#### **§ 70-31. Archaeological investigation of human skeletal remains.**

(a) If an agreement is reached with the landowner for the excavation of the human skeletal remains, the State Archaeologist shall either designate a member of his staff or authorize another professional archaeologist to excavate or supervise the excavation.

(b) The professional archaeologist excavating human skeletal remains shall report to the State Archaeologist, either in writing or by telephone, his opinion on the cultural and biological characteristics of the remains. This report shall be transmitted as soon as possible after the commencement of excavation, but no later than two full business days after the removal of a burial.

(c) The State Archaeologist, in consultation with the professional archaeologist excavating the remains, shall determine where the remains shall be held subsequent to excavation, pending other arrangements according to G.S. 70-32 or 70-33.

(d) The Department of Natural and Cultural Resources may obtain administrative inspection warrants pursuant to the provisions of Chapter 15, Article 4A of the General Statutes to enforce the provisions of this Article, provided that prior to the requesting of the administrative warrant, the Department shall contact the affected landowners and request their consent for access to their land for the purpose of gathering such information. If consent is not granted, the Department shall give reasonable notice of the time, place and before whom the administrative warrant will be requested so that the owner or owners may have an opportunity to be heard. (1981, c. 853, s. 2; 2007-484, s. 10(d); 2015-241, s. 14.30(s).)

#### **§ 70-32. Consultation with the Native American Community.**

(a) If the professional archaeologist determines that the human skeletal remains are Native American, the State Archaeologist shall immediately notify the Executive Director of the North Carolina Commission of Indian Affairs. The Executive Director shall notify and consult with the Eastern Band of Cherokee or other appropriate tribal group or community.

(b) Within four weeks of the notification, the Executive Director shall communicate in writing to the State Archaeologist, the concerns of the Commission of Indian Affairs and an appropriate tribal group or community with regard to the treatment and ultimate disposition of the Native American skeletal remains.

(c) Within 90 days of receipt of the concerns of the Commission of Indian Affairs, the State Archaeologist and the Executive Director, with the approval of the principal tribal official of an appropriate tribe, shall prepare a written agreement concerning the treatment and ultimate disposition of the Native American skeletal remains. The written agreement shall include the following:

- (1) Designation of a qualified skeletal analyst to work on the skeletal remains;
- (2) The type of analysis and the specific period of time to be provided for analysis of the skeletal remains;
- (3) The timetable for written progress reports and the final report concerning the skeletal analysis to be provided to the State Archaeologist and the Executive Director by the skeletal analyst; and
- (4) A plan for the ultimate disposition of the Native American remains subsequent to the completion of adequate skeletal analysis.

If no agreement is reached within 90 days, the Archaeological Advisory Committee shall determine the terms of the agreement. (1981, c. 853, s. 2; 2007-484, s. 10(e).)

### **§ 70-33. Consultation with other individuals.**

(a) If the professional archaeologist determines that the human skeletal remains are other than Native American, the State Archaeologist shall publish notice that excavation of the remains has occurred, at least once per week for four successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or next of kin or both of the deceased.

(b) If the next of kin are located, within 90 days the State Archaeologist in consultation with the next of kin shall prepare a written agreement concerning the treatment and ultimate disposition of the skeletal remains. The written agreement shall include:

- (1) Designation of a qualified skeletal analyst to work on the skeletal remains;
- (2) The type of analysis and the specific period of time to be provided for analysis of the skeletal remains;
- (3) The timetable for written progress reports and the final report concerning the skeletal analysis to be provided to the State Archaeologist and the next of kin by the skeletal analyst; and
- (4) A plan for the ultimate disposition of the skeletal remains subsequent to the completion of adequate skeletal analysis.

If no agreement is reached, the remains shall be handled according to the wishes of the next of kin. (1981, c. 853, s. 2; 2007-484, s. 10(f).)

### **§ 70-34. Skeletal analysis.**

(a) Skeletal analysis conducted under the provisions of this Article shall only be accomplished by persons having those qualifications expressed in G.S. 70-28(5).

(b) Prior to the execution of the written agreements outlined in G.S. 70-32(c) and 70-33(b), the State Archaeologist shall consult with both the professional archaeologist and the skeletal analyst investigating the remains.

(c) The professional archaeologist and the skeletal analyst shall submit a proposal to the State Archaeologist within the 90-day period set forth in G.S. 70-32(c) and 70-33(b), including:

- (1) Methodology and techniques to be utilized;
- (2) Research objectives;
- (3) Proposed time schedule for completion of the analysis; and
- (4) Proposed time intervals for written progress reports and the final report to be submitted.

(d) If the terms of the written agreement are not substantially met, the Executive Director or the next of kin, after consultation with the State Archaeologist, may take possession of the skeletal remains. In such case, the State Archaeologist may ensure that appropriate skeletal analysis is conducted by another qualified skeletal analyst prior to ultimate disposition of the skeletal remains. (1981, c. 853, s. 2; 2007-484, s. 10(g).)

#### **§ 70-35. Disposition of human skeletal remains.**

(a) If the skeletal remains are Native American, the Executive Director, after consultation with an appropriate tribal group or community, shall determine the ultimate disposition of the remains after the analysis.

(b) If the skeletal remains are other than Native American and the next of kin have been identified, the next of kin shall have authority concerning the ultimate disposition of the remains after the analysis.

(c) If the State Archaeologist has received no information or communication concerning the identity or next of kin of the deceased, the skeletal remains shall be transferred to the State Archaeologist and permanently curated according to standard museum procedures after adequate skeletal analysis. (1981, c. 853, s. 2; 2007-484, s. 10(h).)

#### **§ 70-36. Financial responsibility.**

(a) The provisions of this Article shall not require that the owner of the land on which the unmarked human burials or human skeletal remains are found, bear the cost of excavation, removal, analysis or disposition.

(b) If a determination is made by the Executive Director, in consultation with an appropriate tribal group or community, that Native American skeletal remains shall be reinterred following the completion of skeletal analysis, an appropriate tribal group or community may provide a suitable burial location. If it elects not to do so, it shall be the responsibility of the North Carolina Commission of Indian Affairs to provide a suitable burial location.

(c) The expense of transportation of Native American remains to the reburial location shall be borne by the party conducting the excavation and removal of the skeletal remains. The reburial ceremony may be provided by an appropriate tribal group or community. If it elects not to do so, the reburial ceremony shall be the responsibility of the Commission of Indian Affairs. (1981, c. 853, s. 2.)

#### **§ 70-37. Prohibited acts.**

(a) No person, unless acting under the provisions of G.S. 130-198 through G.S. 130-201, shall:

- (1) Knowingly acquire any human skeletal remains removed from unmarked burials in North Carolina after October 1, 1981, except in accordance with the provisions of this Article;
- (2) Knowingly exhibit or sell any human skeletal remains acquired from unmarked burials in North Carolina; or
- (3) Knowingly retain human skeletal remains acquired from unmarked burials in North Carolina after October 1, 1981, for scientific analysis beyond a period of time provided for such analysis pursuant to the provisions of G.S. 70-32, 70-33 and 70-34, with the exception of those skeletal remains curated under the provisions of G.S. 70-35.

(b) Other provisions of criminal law concerning vandalism of unmarked human burials or human skeletal remains may be found in G.S. 14-149. (1981, c. 853, s. 2.)

**§ 70-38. Rule-making authority.**

The North Carolina Historical Commission may promulgate rules and regulations to implement the provisions of this Article. (1981, c. 853, s. 2.)

**§ 70-39. Exceptions.**

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to the provisions of G.S. 70-37(a).

(b) Human skeletal remains determined to be within the jurisdiction of the medical examiner according to the provisions of G.S. 130A-383 are not subject to the prohibitions contained in this Article. (1981, c. 853, s. 2; 2007-484, s. 11(c).)

**§ 70-40. Penalties.**

(a) Violation of the provisions of G.S. 70-29 is a Class 1 misdemeanor.

(b) Violation of the provisions of G.S. 70-37(a) is a Class H felony. (1981, c. 853, s. 2; 1993, c. 539, s. 543; 1994, Ex. Sess., c. 24, s. 14(c).)

**§§ 70-41 through 70-45. Reserved for future codification purposes.**