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HOUSE BILL 48

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Paul C. Bandy

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO EXECUTIVE ORGANIZATION; CHANGING THE POWERS AND  
DUTIES OF THE CULTURAL PROPERTIES REVIEW COMMITTEE AND THE  
HISTORIC PRESERVATION DIVISION OF THE CULTURAL AFFAIRS  
DEPARTMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 18-6-5 NMSA 1978 (being Laws 1969,  
Chapter 223, Section 5, as amended) is amended to read:

"18-6-5. COMMITTEE--POWERS AND DUTIES.--The primary  
function of the committee is to ~~[review proposals]~~ determine  
policy for the preservation of cultural properties. The  
committee is authorized to take such actions as are reasonable  
and consistent with law to identify cultural properties and to  
advise on the protection and preservation of those properties.  
Among such actions as may be necessary and proper to the

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1 fulfillment of these responsibilities, and without being  
2 limited hereby, the committee:

3 A. shall determine what constitutes historical,  
4 archaeological, scientific, architectural and other cultural  
5 significance for the purpose of identifying cultural properties  
6 as used in the Cultural Properties Act;

7 B. shall prepare and keep up to date the official  
8 register. This official register shall be composed of  
9 properties identified by the committee as having historical or  
10 other cultural significance and integrity, being suitable for  
11 preservation and having educational significance;

12 C. shall prepare and maintain proper documentation  
13 of the historic or other significance of cultural properties.  
14 The committee is granted access to all state and local public  
15 documents that may be necessary for the documentation, and such  
16 state and local agencies as have custody of such documents are  
17 authorized to allow the committee to examine and reproduce  
18 those documents useful for the documentation;

19 D. shall inspect all registered cultural properties  
20 periodically to [~~assure~~] ensure proper cultural or historical  
21 integrity and proper maintenance. The inspection may be made  
22 by an authorized representative of the committee or the  
23 historic preservation division of the [~~office of~~] cultural  
24 affairs department. Such inspection shall be made only with  
25 the written consent of the owner or [~~his~~] the owner's

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1 authorized representative;

2 E. shall, based upon the inspection of a registered  
3 cultural property, recommend such repairs, maintenance and  
4 other measures as should be taken to maintain registered  
5 status;

6 F. shall issue [~~regulations~~] rules pertaining to  
7 the identification, preservation and maintenance of registered  
8 cultural properties in order to maintain the integrity of those  
9 properties;

10 G. may delete from the official register any  
11 registered cultural property whose owner does not comply with  
12 the committee's [~~regulations~~] rules or follow its  
13 recommendations for repair and maintenance or [~~which~~] that,  
14 upon presentation of further evidence, does not merit continued  
15 official registry;

16 H. may recommend to the museum resources division  
17 of the [~~office of~~] cultural affairs department and other public  
18 administrators of registered cultural properties measures for  
19 the investigation, restoration and protection of such  
20 properties;

21 I. may encourage and render technical advice to  
22 private owners of registered cultural properties in order that  
23 such properties may be preserved;

24 J. may encourage and provide technical assistance  
25 to municipalities and counties in acquiring, preserving and

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1 developing cultural properties within their jurisdictions;

2 K. shall cooperate with federal, state, local and  
3 private agencies and persons engaged in the administration,  
4 development or other work relating to cultural properties  
5 within the state;

6 L. shall pursue all activities in a manner  
7 consistent with state and federal laws and regulations;

8 M. may encourage and promote public appreciation of  
9 New Mexico's historical and cultural heritage by:

10 (1) reviewing for accuracy the proposed  
11 publication of information on cultural properties; and

12 (2) reviewing the accuracy and adequacy of  
13 proposed marking of cultural properties;

14 N. may ~~utilize~~ use the assistance of individuals,  
15 local organizations, state agencies and others interested in  
16 the identification and preservation of cultural properties;

17 O. ~~[may issue, with the concurrence of]~~ shall  
18 establish, by rule, guidelines for the issuance of permits by  
19 the state archaeologist and the state historic preservation  
20 officer [permits] for the examination or excavation of sites  
21 and the collection or removal of objects of antiquity or  
22 general scientific interest, where such sites or objects are  
23 located on state lands, to institutions [which] that the  
24 committee may deem to be properly qualified to conduct such  
25 examination, excavation or collection, subject to such rules

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1 [and regulations] as the committee may prescribe; provided that  
2 the examinations, excavations and collections are undertaken by  
3 reputable museums, universities, colleges or other historical,  
4 scientific or educational institutions or societies approved by  
5 the committee, with a view toward disseminating knowledge about  
6 cultural properties; and provided that a summary report of such  
7 investigations, containing relevant maps, documents, drawings  
8 and photographs, be submitted to the committee, which shall in  
9 turn submit the report to the appropriate agency or make other  
10 appropriate disposition of the report; and provided further  
11 that all specimens so collected shall be the property of New  
12 Mexico and that prior arrangements be made for the disposition  
13 of specimens derived from such investigations in an appropriate  
14 institution of the state or for loan of such specimens to  
15 qualified institutions in or out of the state;

16 P. shall provide advice to the state historic  
17 preservation officer [~~in~~] of the historic preservation division  
18 and to the director of the museum resources division of the  
19 [~~office of~~] cultural affairs department on cultural properties;  
20 and

21 Q. shall make, in conjunction with the historic  
22 preservation division, an annual report on its activities to  
23 the governor and the legislature. The report may contain  
24 recommendations for the more effective preservation of New  
25 Mexico's historic and cultural heritage."

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1           SECTION 2. Section 18-6-11 NMSA 1978 (being Laws 1977,  
2 Chapter 75, Section 1, as amended) is amended to read:

3           "18-6-11. PERMIT REQUIRED FOR EXCAVATION OF  
4 ARCHAEOLOGICAL SITES--PENALTY.--

5           A. It is unlawful for any person or [~~his~~] the  
6 person's agent or employee to excavate with the use of  
7 mechanical earthmoving equipment an archaeological site for the  
8 purpose of collecting or removing objects of antiquity [~~when~~]  
9 if the archaeological site is located on private land in this  
10 state, unless the person has first obtained a permit issued  
11 pursuant to the provisions of this section for the excavation.  
12 As used in this section, an "archaeological site" means a  
13 location where there exists material evidence of the past life  
14 and culture of human beings in this state but excludes the  
15 sites of burial of human beings.

16           B. Permits for excavation pursuant to Subsection A  
17 of this section may be issued by [~~the committee upon approval~~  
18 ~~by~~] the state archaeologist and the state historic preservation  
19 officer [~~when~~] if the applicant:

20                   (1) submits written authorization for the  
21 excavation from the owner of the land;

22                   (2) furnishes satisfactory evidence of being  
23 qualified to perform the archaeological excavation by  
24 experience, training and knowledge;

25                   (3) submits a satisfactory plan of excavation

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1 for the archaeological site and states in the plan the method  
2 by which excavation will be undertaken; and

3 (4) agrees in writing, upon the completion of  
4 the excavation, to submit a summary report to the committee of  
5 the excavation, which report shall contain relevant maps,  
6 documents, drawings and photographs, together with a  
7 description of the archaeological specimens removed as a result  
8 of the excavation. Failure to file the summary report shall be  
9 grounds for refusing issuance of a future permit to the person.

10 C. All archaeological specimens collected or  
11 removed from the archaeological site as a result of excavation  
12 pursuant to Subsections A and B of this section shall be the  
13 property of the person owning the land on which the site is  
14 located.

15 D. Nothing in this section shall be deemed to limit  
16 or prohibit the use of the land on which the archaeological  
17 site is located by the owner of the land or to require the  
18 owner to obtain a permit for personal excavation on [~~his~~] the  
19 owner's own land, provided that no transfer of ownership is  
20 made with the intent of excavating archaeological sites as  
21 prohibited in this section, and provided further that this  
22 exemption does not apply to marked or unmarked burial grounds.

23 E. Any person convicted of violating the provisions  
24 of this section is guilty of a misdemeanor and shall be  
25 punished by a fine not to exceed one thousand dollars (\$1,000)

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1 and, in addition thereto, shall forfeit to the state all  
2 equipment used in committing the violation for which the person  
3 is convicted."

4 SECTION 3. Section 18-6-11.2 NMSA 1978 (being Laws 1989,  
5 Chapter 267, Section 1) is amended to read:

6 "18-6-11.2. PERMIT REQUIRED FOR EXCAVATION OF UNMARKED  
7 BURIALS--PENALTY.--

8 A. Each human burial in the state interred in any  
9 unmarked burial ground is accorded the protection of law and  
10 shall receive appropriate and respectful treatment and  
11 disposition.

12 B. A person who knowingly, willfully and  
13 intentionally excavates, removes, disturbs or destroys any  
14 human burial buried, entombed or sepulchered in any unmarked  
15 burial ground in the state, or any person who knowingly,  
16 willfully and intentionally procures or employs any other  
17 person to excavate, remove, disturb or destroy any human burial  
18 buried, entombed or sepulchered in any unmarked burial ground  
19 in the state, except by authority of a permit issued by the  
20 state medical investigator or by the [~~committee with the~~  
21 ~~concurrence of the~~] state archaeologist and state historic  
22 preservation officer, is guilty of a fourth degree felony and  
23 shall be punished by a fine not to exceed five thousand dollars  
24 (\$5,000) or by imprisonment for a definite term of eighteen  
25 months or both. The offender shall upon conviction forfeit to

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1 the state all objects, artifacts and human burials excavated or  
2 removed from an unmarked burial ground in violation of this  
3 section, and any proceeds from the sale by the offender of any  
4 of the foregoing shall also be forfeited. As used in this  
5 section:

6 (1) "unmarked burial ground" means a location  
7 where there exists a burial [~~or burials~~] of any human being  
8 [~~which~~] that is not visibly marked on the surface of the ground  
9 in any manner traditionally or customarily used for marking  
10 burials and includes any funerary object, material object or  
11 artifact associated with the burial [~~or burials~~]; and

12 (2) "human burial" means a human body or human  
13 skeletal remains and includes any funerary object, material  
14 object or artifact buried, entombed or sepulchered with that  
15 human body or skeletal remains.

16 C. Any person who discovers a human burial in any  
17 unmarked burial ground shall cease any activity that may  
18 disturb that burial or any object or artifact associated with  
19 that burial and shall notify the local law enforcement agency  
20 having jurisdiction in the area. The local law enforcement  
21 agency shall notify the state medical investigator and the  
22 state historic preservation officer.

23 D. The state medical investigator may, consistent  
24 with the statutes governing medical investigations, have  
25 authority over or take possession of any human burial

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1 discovered in the state, in which case, the provisions of  
2 Subsections E and F of this section shall not apply.

3 E. Permits for excavation of a human burial  
4 discovered in an unmarked burial ground shall be issued by the  
5 ~~[committee]~~ state archaeologist and state historic preservation  
6 officer within sixty days of receipt of application ~~[when]~~ if  
7 the applicant:

8 (1) submits written authorization for that  
9 excavation from the owner of the land on which the human burial  
10 is located or the applicant is the owner of the land;

11 (2) demonstrates appropriate efforts to  
12 determine the age of the human burial and to identify and  
13 consult with any living person who may be related to the human  
14 burial interred in the unmarked burial ground;

15 (3) complies with permit procedures and  
16 requirements established by ~~[regulations]~~ rules authorized in  
17 this section to ensure the complete removal of the human burial  
18 and the collection of all pertinent scientific information in  
19 accordance with proper archaeological methods; and

20 (4) provides for the lawful disposition or  
21 reinterment of the human burial either in the original or  
22 another appropriate location and of any objects or artifacts  
23 associated with that human burial, consistent with  
24 ~~[regulations]~~ rules issued by the state historic preservation  
25 officer, except that the ~~[committee]~~ officer shall not require,

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1 as a condition of issuance of a permit, reinterment or  
2 disposition, any action that unduly interferes with the owner's  
3 use of the land.

4 F. Permits for the excavation of any human burial  
5 discovered in the course of construction or other land  
6 modification may be issued by the [~~committee with the~~  
7 ~~concurrence of the~~] state archaeologist and the state historic  
8 preservation officer on an annual basis to professional  
9 archaeological consultants or organizations.

10 G. Except when the [~~committee requires~~] state  
11 archaeologist and state historic preservation officer require  
12 as a condition of the permit that any object or artifact  
13 associated with a human burial be reinterred or disposed of  
14 with that burial, that object or artifact shall be the property  
15 of the person owning the land on which that burial is located.

16 H. Any object or artifact and any human burial  
17 excavated or removed from an unmarked burial ground in  
18 violation of this section shall be forfeited to the state and  
19 shall be lawfully disposed of or reinterred in accordance with  
20 [~~regulations~~] rules issued by the state historic preservation  
21 officer; provided that no object or artifact so forfeited shall  
22 ever be sold by the state; and provided further that any object  
23 or artifact removed from the land without the owner's consent  
24 and in violation of this section shall be returned to the  
25 lawful owner consistent with Subsection G of this section.

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1 I. The state historic preservation officer shall  
2 issue [~~regulations~~] rules with the concurrence of the state  
3 medical investigator for the implementation of this section."

4 SECTION 4. Section 18-6-12 NMSA 1978 (being Laws 1969,  
5 Chapter 223, Section 10) is amended to read:

6 "18-6-12. EMERGENCY CLASSIFICATION PENDING  
7 INVESTIGATION.--A cultural property [~~which~~] that the  
8 [~~committee~~] state historic preservation officer thinks may be  
9 worthy of preservation may be included on the official register  
10 on a temporary basis for not more than one year, during which  
11 time the [~~committee~~] officer shall investigate the property and  
12 make a determination as to whether it may be permanently placed  
13 on the official register. If the cultural property is on  
14 private land, the temporary classification shall not be  
15 considered a taking of private property, but the owner may  
16 receive a fair rental value for the part of the land affected  
17 if the temporary classification unduly interferes with the  
18 owner's normal use of the land. The owner shall be immediately  
19 notified of the [~~committee's~~] officer's determination. If at  
20 the expiration of one year from the time the temporary  
21 classification was imposed the owner has not been notified of  
22 any [~~committee~~] action by the officer, the temporary  
23 classification shall lapse, and it shall not be renewed for  
24 five years."

25 SECTION 5. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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