

House Research Act Summary

CHAPTER: 115

SESSION: 2007 Regular Session

TOPIC: Private cemeteries

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Overview

Makes a number of changes in Minnesota Statutes, section 307.08, governing human burial grounds and human remains.

1 Burials.

Subd. 1. Intent. Includes "human burial grounds" in the intent statement of section 307.08.

Subd. 2. Felony; gross misdemeanor. Clarifies the current criminal provisions relating to disturbing burials by creating exceptions for people who act with the consent of "appropriate authorities" (defined in subdivision 13) and landowners. Changes the statute to use other terms ("burial," "burial ground," "authenticated" that are defined in subdivision 13).

Subd. 3. Protective posting. Requires agreement of the appropriate authority (see subdivision 13) and landowner for protective posting of authenticated or recorded human burial grounds. Provides that posting of a burial ground is not required. Requires the appropriate authority and landowner to approve signs used for protective posting.

Subd. 3a and 4. Authentication/state archaeologist. Authorizes the state archaeologist to retain a professional archaeologist, physical anthropologist, or other expert to authenticate or identify burial grounds. Requires the Indian Affairs Council (IAC) to approve this person if probable Indian burial grounds are to be disturbed or probable Indian remains analyzed. Provides that authentication is at the discretion of

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the state archaeologist. Strikes provisions governing rights of entry, because this topic is dealt with in a new subdivision 12.

Subd. 5. Cost; use of data. Provides that specified costs relating to marking burial grounds and identification and reburial of human remains on public lands or waters is the responsibility of the state or political subdivision controlling the lands or waters. States that on private lands or waters these costs shall be borne by the state, but may be borne by the landowner upon mutual agreement with the state.

Subd. 6. Approval of signs. Strikes language requiring the Minnesota Historical Society to approve signs.

Subd. 7. Remains outside of recorded cemeteries. Strikes references to platted or identified cemeteries, and inserts new references to unplatted graves or burials within recorded cemeteries. Specifies that if probable tribal identity can be determined and human remains have been removed from their original context, the remains must be turned over to contemporary tribal leaders. If probable tribal identity cannot be determined for Indian remains, they must be dealt with as provided by the IAC and the state archaeologist if they are from public land, and as determined by the Council if removed from private land. If deemed desirable by the state archaeologist or the IAC, requires remains to be studied by an archaeologist or anthropologist before being delivered to tribal leaders or being reburied. Provides that landowners seeking permission to develop or disturb nonburial areas within authenticated or recorded burial grounds to apply to the state archaeologist and other appropriate authority (for non-Indian burials) and to the IAC and other appropriate authority (for Indian burials). Provides that landowners with authenticated or suspected human burial grounds on their property are obligated to inform prospective buyers of the burial ground.

Subd. 8. Burial ground relocation. Provides that a non-Indian burial ground may not be relocated without consent of the appropriate authority. Under current law, an "authenticated and identified" Indian burial ground may not be relocated without approval of the IAC. This section strikes the phrase "authenticated and identified" from this requirement. Current law deals with costs and removal of Indian burials. This subdivision strikes "Indian," thus making these provisions applicable to all burials. This subdivision also requires burial requirements to be licensed under the field archaeology law.

Subd. 9. Interagency cooperation. No changes.

Subd. 10. Construction and development plan review. Makes this subdivision, dealing with development of lands or waters where burials are known to exist, apply to all human burials, not just Indian burials. Under current law, the state or political subdivision controlling the lands or waters must submit plans to the state archaeologist and the IAC for review. This subdivision provides that the landowner or developer must do this for private land. The subdivision provides that the IAC will be involved only if burials are known or thought to be Indian. Requires the state archaeologist and IAC to review the plans within 30 days.

Subd. 11. Burial sites data. No changes

Subd. 12. Right of entry. (In current law, this topic is dealt with in subdivision 3a.)

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Authorizes the state archaeologist to enter on property to authenticate burial sites. Provides that only with permission of the landowner or lessees, descendants of persons buried in burial grounds may enter grounds to conduct ceremonies. Provides that the right of entry must not unreasonably burden property owners or unnecessarily restrict their use of property.

Subd. 13. Definitions. Defines many terms for purposes of section 307.08.