

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7120

BILL NUMBER: HB 1258

NOTE PREPARED: Jan 31, 2006

BILL AMENDED: Jan 30, 2006

SUBJECT: Disturbance of Land.

FIRST AUTHOR: Rep. Yount

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill defines "artifact" as a significant object made by a human before December 31, 1870. It requires a person who disturbs buried human remains or artifacts to cease disturbing the area within 50 feet of the remains or artifacts. It establishes a Class A infraction for violating certain duties concerning the unintentional discovery of artifacts. It also allows confidentiality of location information of historical or archeological sites.

The bill allows certain persons to accompany a conservation officer to investigate a violation of a historic preservation and archeology law. It establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with a plan. It also allows the court to order restitution for certain costs related to the violation of the Historic Preservation and Archeology Law.

The bill establishes a Class D felony for possession of looted property and provides that the offense is a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000. It provides that a disinterment under a plan approved by the Department of Natural Resources (DNR) is exempt from other disinterment procedures. The bill makes conforming changes. It repeals a definition of "conservation officer", and reenacts the definition to make it apply throughout the natural resources title.

The bill makes littering a Class A misdemeanor instead of a Class B infraction if refuse is placed or left in, on, or within 100 feet of a body of water that is under the jurisdiction of the: (1) Department of Natural Resources; or (2) United States Army Corps of Engineers.

Effective Date: July 1, 2006.

Explanation of State Expenditures:(Revised) *Definition of Artifact.* This bill defines "artifact" as an object made or shaped by human workmanship before December 31, 1870, that the DNR determines is significant. Under existing law, an artifact is an object made before December 11, 1816. The bill would expand the number of objects that would fall under the DNR jurisdiction. However, the DNR should be able to cover any additional costs associated with this provision given its existing level of budget and resources.

Notifying DNR. Under existing law, a person who disturbs buried human remains must notify the DNR within two business days of the time of the disturbance and treat or re-bury the remains according to rules adopted by the Natural Resources Commission or a court order and permit issued by the State Department of Health. Under the proposal, the person must immediately cease disturbing the human remains and the area within 100 feet of the human remains; notify the DNR within 2 business days; refrain from covering over the human remains; submit a development plan to the DNR; and treat or re-bury the human remains according to rules adopted by the Commission. Adding additional requirements could result in additional violations. A person who recklessly, knowingly, or intentionally violates these provisions commits a Class A misdemeanor.

Under existing law, a person who discovers an artifact or burial object while disturbing the ground for a purpose other than the discovery of artifacts or burial objects must immediately cease disturbing the ground and notify the DNR within two business days. After notification, the DNR may authorize the person to continue the ground disturbing activity or require that continued ground disturbance be conducted only in accordance with an approved plan. The DNR has 30 days to make a determination. Under the proposal, the person who discovers an artifact or burial object must immediately cease disturbing the ground and the area within 100 feet of the artifact or burial object. The person must also refrain from covering over the artifact or burial object. The person must also notify the DNR within two business days. Persons who violate these additional requirements commit a Class A infraction.

Confidentiality of Historic Sites. The proposal provides that the DNR Division of Historic Preservation and Archeology may keep reports and information concerning the location of historic and archeological sites confidential if the division director determines that disclosure would likely risk harm to the historic or archeological site; cause a significant invasion of privacy; or impede the use of a traditional religious site by practitioners. The division may not disclose reports and information required to be confidential under federal law. If the division director determines that reports and information should be confidential, the DNR director, in consultation with the division director, must determine who may have access to the confidential reports and information. These provisions could increase administrative expenses for the DNR. However, the DNR should be able to cover any additional expense given its existing level of budget and resources.

Determination of a Violation. The proposal provides that an employee of the Division of Historic Preservation and Archeology or a person authorized by the DNR may accompany a conservation officer on public or private property to determine if there is a violation. This provision could increase expenses to the DNR; however, it is presumed that the DNR will be able to cover any additional expense given its existing level of budget and resources or through the reallocation of current resources.

Program to Assist Homeowners. Under the proposal, the division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with a historical society, the Historic

Landmarks Foundation, a professional archeologist or historian, or any other entity that the division selects. These provisions may increase expenses for the division. However, the bill provides that in conducting a program, the division may receive gifts and grants under terms, obligations, and liabilities that the division director considers appropriate. The director must use a gift or grant for the program.

Archeology Preservation Trust Fund. The Auditor of State must establish the Archeology Preservation Trust Fund for purposes of holding money received for the program. The division director must administer the fund. Expenses of administering the fund must be paid from money in the fund. The Treasurer of State must invest the money in the Archeology Preservation Trust Fund that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The Treasurer must deposit in the fund the interest that accrues from the investment of the trust fund. Money in the trust fund at the end of a state fiscal year does not revert to the state General Fund. There is annually appropriated to the division the money in the trust fund. The division may adopt rules to govern the administration of the fund program and provisions.

Restitution. The bill provides that in addition to a sentence imposed for a felony or misdemeanor; or judgment imposed for an infraction; and an order for restitution to a victim, the court may order an individual to make restitution to the trust fund for the division's cost necessitated because of the offense committed by the individual. The court must forward a copy of an order for restitution to the division.

Penalty Provisions. Violators commit a Class A misdemeanor if the ground is disturbed before a plan is approved by the DNR or if the person recklessly, knowingly, or intentionally does not cease the disturbance upon the discovery of a site that contains human remains or artifacts. Violators that litter within 100 feet of a body of water under the jurisdiction of the U.S. Army Corps of Engineers or the DNR commit a Class A misdemeanor. The offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least \$100,000.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from two to eight years depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$62,292. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Penalty Provisions.* The maximum fine for Class C or a Class D felony is \$10,000. The maximum fine for a Class A misdemeanor is \$5,000. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: The proposal could reduce local expenditures to the extent that local units would have access to documentation from the state indicating that a burial ground was or was not within 50 feet of a land disturbance. Local units would not need to make their own determinations.

Penalty Provisions. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44. More alleged felony defendants could be detained in county jails prior to their court hearings.

Explanation of Local Revenues: *Penalty Provisions.* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction; DNR.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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