

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Standards and Procedures for granting permits to excavate archaeological sites and unmarked graves

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural
 Division of Culture and History

Agency: Department of Education and the Arts

Address: Cultural Center, Capitol Complex

Charleston, West Virginia 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0			
CURRENT EXPENSE	0	0			
REPAIRS & ALTERNATIONS	0	0			
EQUIPMENT	0	0			
OTHER	0	0			

2. Explanation of above estimates:

New regulations will not increase the costs to this agency over normal costs of running the programs.

3. Objectives of these rules:

Set up procedures for implementing the requirements of HB 2671

Rule Title: Standards and Procedures for granting permits to excavate archaeological sites and unmarked graves

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None that we know of.

Date:

July 7, 1993

Signature of Agency Head or Authorized Representative

David R. Ica *as program coordinator*
Sec of Ed. & Arts Office

cc: William G. Farrar

Timetable to Submit Proposed Legislative Rules

- June 30 - Draft of amendments to members of Archives and History Commission
- July 6 - Receive approval from Commission
- July 7 - Receive approval and authorization from Secretary
- July 7 - Deadline to submit proposal and notice of public hearing for publication in State Register
- July 9 - Publication in State Register
- August 9 - Public comment period ends (30 days)
- August 9 - Public Hearing 5:30 p.m.
- August 10 - Complete revisions
- August 12 - Receive approval from Commission
- August 13 - Receive approval and authorization from Secretary
- August 15 - File with Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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TITLE 82
LEGISLATIVE RULES
DIVISION OF CULTURE AND HISTORY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
STANDARDS AND PROCEDURES FOR GRANTING PERMITS TO
EXCAVATE ARCHAEOLOGICAL SITES AND UNMARKED GRAVES

§82-3-1. General.

1.1. Scope. -- This legislative rule establishes the procedures by which permits are issued for the excavation of historic and prehistoric ruins and archaeological sites; burial grounds, human skeletal remains and unmarked graves; and the removal or alteration of grave markers. Additionally, it establishes the method by which property tax exemptions for unmarked graves are determined and the methods for disposing of skeletal remains and associated artifacts claimed by descendants and those remains and artifacts not claimed. Not included within the scope of this legislative rule are collections of artifacts from historic or prehistoric ruins, burial grounds, archaeological sites or unmarked graves acquired prior to the effective date of H.B. 4752, June 8, 1990 or of artifacts collected from the surface of the ground through surface survey, or activities undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder and projects being undertaken in compliance with §106 of the National Historic Preservation act of 1966, as amended, or subsection a, section five of chapter 29 of the West Virginia Code.

1.2. Authorization. -- W.Va. Code §§ 29-1-8(d) ~~29-1-5-(a)~~ and ~~(b)~~; ~~29-1-6-(b)~~; ~~29-1-7~~.

1.3. Filing Date. --

1.4. Effective Date. --

§82-3-2. Definitions.

2.1. "Archaeology" means the systematic, scientific study of past cultures through examination of material remains.

2.2. "Ruins" mean the remnants of structures constructed by humans during historic or prehistoric times.

2.3. "Sites" mean areas occupied for various durations by humans throughout history and prehistory including, but not limited to, campsites, villages, dwellings, rock shelters and industrial complexes.

2.4. "Cultural Affiliation" means the relationship of shared group identity which can be reasonably traced historically or

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prehistorically between a present day group and an identifiable earlier group.

2.5 "Lineal Descendants" means any individuals tracing his or her ancestry directly or by proven kinship.

2.6 "Proven Kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.

~~2.4. "Proven Kinship" means the relationship among people that exists because of genetic (which includes racial) descent, or marriage; in the case of Native American remains also includes persons who are designated by the director as acceptable and responsible representatives of an organization dedicated to and knowledgeable in Native American religious and cultural values.~~

2.7. 2.5. "Burial Grounds" mean a location where during history or prehistory human bodies or skeletal remains are entombed in visibly marked or unmarked graves and may include objects or artifacts with them.

2.8. 2.6. "Grave Goods" mean artifacts found in association with a human burial.

2.9. 2.7. "Professional Archaeologist" means an individual meeting the qualifications specified in the Secretary of the Interior's Standards for the Recovery of Archaeological Data (36 CFR 66).

2.10. 2.8. "Avocational Archaeologist" means an individual whose vocation is in a field different than archaeology and who does not have a degree in the subject.

2.11. 2.9. "Permit" means a written authorization issued by the Director of Historic Preservation Archives and History, or designee, to conduct excavations of historic and prehistoric ruins, archaeological sites, burial grounds, human skeletal remains, and unmarked graves, and to remove or alter grave markers. A permit shall be valid for one designated site.

2.12. 2.10. "Emergency Condition" means any unforeseen discovery of human remains.

2.13. 2.11. "Excavation" means the controlled removal of dirt to uncover and retrieve artifacts or human skeletal remains.

2.14. 2.12. "Surface Survey" means an activity that involves traversing the land for the purpose of locating archaeological sites as revealed by artifacts found on the surface of the ground.

2.15. 2.13. "Historical or Archaeological Significance" means sites, ruins, burial grounds, or unmarked graves having significance determined by applying the criteria of eligibility for the National Register of Historic Places found in 36 CFR 60.

2.16. ~~2.14.~~ "Director" means Director of Historic Preservation Archives and History or authorized representative.

§82-3-3. Permits to excavate historic and prehistoric ruins and archaeological sites.

3.1. Any person proposing to excavate a ruin or site shall request a permit application form from the Director at the Division of Culture and History, The Cultural Center, Capitol Complex, Charleston, W. Va. 25305. They may call the Cultural Center at 558-0240 for further information. Permits will be issued on a project by project basis. The form will provide for and require the following information:

3.1.1. Documentation of the property owner's or property manager's, in the case of publicly owned land, permission to excavate. Recovered artifacts remain the property owner's, except in the case of publicly owned land, unless they forfeit their rights to them in writing.

3.1.2. The applicant's qualifications. A professional archaeologist will submit a resume, if not already on file at the State Historic Preservation Office. Avocational archaeologists will submit a letter explaining their past accomplishments as an avocationalist.

3.1.3. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work.

3.1.4. The facility where recovered material and excavation records will be curated.

3.1.5. A plan to restore the site to its former condition prior to excavations when the site is not intended to altered or destroyed.

3.2. Upon review of the permit application by the Director, a written response to the applicant will be forwarded within thirty (30) days of receipt of the application. Permits may be issued for up to two (2) years and may be suspended or revoked at any time for failing to meet terms and conditions of the permit. The Director shall be allowed access to any excavation of a site or ruin to observe whether conditions and terms of the permit are being met.

Permits may be denied for reasons including, but not limited to, failure to provide a completed application form, inadequate justification for excavating a site or ruins, or inability to complete satisfactorily a previous excavation. The reasons for denial shall be written down and forwarded to the applicant within thirty days of receipt of the application. Applicants denied a permit may appeal the decision by requesting a hearing before a regularly scheduled meeting of the Archives and History Commission. Such hearing shall be held in accordance with W. Va. Code §§29A-5-1 et. seq.

3.3. If a permit is granted, an annual progress report shall be submitted on the anniversary date of the permit, if applicable, and a final report of the excavation will be submitted upon completion of fieldwork. The deadline for final reports will vary depending upon the nature of the project. Professionals will submit reports of the quality recommended in the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (36 CFR 68). Avocationalists are not expected to submit reports of professional quality, but they shall minimally include information on site location and conditions, relevant background information, all field observations (stratigraphy, features, etc.), and analyses and results. The Director may request that reports be written for publication to be read by the general public, or in other ways disseminate the information recovered through permitted excavations to the general public.

3.4. If a permit is granted, the Director shall specify the approximate methods by which descendants of the deceased and those of proven kinship shall be notified.

§82-3-4. Permits to excavate burial grounds, human skeletal remains and unmarked graves.

4.1. After the Director has been notified of the discovery of skeletal remains, grave artifacts or grave markers, the director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site. If the director determines that the site has potential historical or archaeological significance and after alternatives to excavation have been examined, a permit application form for the archaeological excavation or removal of the remains must be filed. In cases where discovery is unforeseen, an on-site inspection shall be made within ten (10) working days and the determination of potential historical or archaeological significance shall be made as soon as is reasonable, but shall not exceed sixty (60) days. ~~burial grounds, human skeletal remains, or unmarked graves and determined them to have archaeological significance, and after alternatives to excavation have been examined, and attempts to notify descendants of the deceased and those of proved kinship have been made; the director, may, upon receipt of a completed permit application form, issue a permit to excavate the burial grounds, human skeletal remains, or unmarked graves.~~ Permits to excavate burials will be made available for review by the public upon request. When the Director, or designee, determines that emergency conditions exist, a permit may be issued without having received an application form, provided that the terms and conditions for excavating are formally agreed to at a more convenient time. An application form will provide for and require the following information:

4.1.1. Documentation of the property owner's or property manager's in the case of publicly owned land, permission to excavate. Recovered artifacts remain the property owner's, except in the case of

4.2.2. The respectful manner in which the remains, artifacts or markers are to be removed and handled.

4.2.3. Scientific analysis of the remains, artifacts or markers and the duration of those studies.

4.2.4. The way in which the remains may be reburied in consultation with any lineal descendants, when available.

4.2.5. The methods for the respectful curation of recovered items.

4.2.6. Such other conditions as the director may deem necessary.

~~4.2. Upon review of the permit application by the Director, a written response to the applicant will be forwarded within thirty days of having received the application.~~

4.3. Permits shall be issued for up to two (2) years and may be suspended or revoked at any time due to failure of meeting terms and conditions of the permit. The Director shall be allowed access to any excavation of burial grounds, human skeletal remains, or unmarked graves to observe whether conditions and terms of the permit are being met.

~~4.3.1. 4.2.3.~~ Permits may be renewed for a period of six months if a letter requesting such a renewal and the reasons for the renewal request are submitted to the Director.

~~4.4. 4.2.1.~~ Permits may be denied from being issued for reasons including, but not limited to, failure to provide a completed application form, inadequate justification for excavating burial grounds, human skeletal remains, or unmarked graves, or inability to complete satisfactorily a previous excavation. The reasons for denying a permit shall be written down and forwarded to the applicant, ~~within thirty (30) days of having received the application.~~ Applicants denied a permit may appeal the decision by requesting a hearing before a regularly scheduled meeting of the Archives and History Commission. Such hearing shall be held in accordance with W. Va. Code §§29A-5-1 et. seq.

~~4.2.2. The Director, in considering permits to excavate remains or grave goods shall consult with an organization recognized by the Director as representing the religious and cultural concerns and interests of Native Americans.~~

~~4.5. 4.3.~~ If a permit is granted, an annual progress report shall be submitted on the anniversary date of the permit, if applicable, and a final report of the excavations will be submitted upon completion of fieldwork. The deadline for final reports will vary depending upon the nature of the project. Professionals will submit reports of the quality recommended in the Secretary of Interior's Standards and

publicly owned land, unless they forfeit their rights to them in writing.

4.1.2. The applicant's qualifications. A professional archaeologist will submit a resume, if not already on file at the State Historic Preservation Office. Avocational archaeologists will submit a letter explaining their past accomplishments as an avocationalist.

4.1.3. An excavation plan detailing the methodologies and techniques by which the excavations will be conducted and the reason and object for excavation the burial grounds, human skeletal remains, or unmarked graves and the benefits expected to be obtained from the contemplated work; except when discovered through construction activities.

4.1.4. The facility where recovered material and excavation records will be curated.

4.1.5. A plan to restore the site to its former condition prior to excavations when the site is not intended to be altered or destroyed.

4.2. Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and 6 or 8 members representing known or presumed lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. At least one (1) person shall represent each of these groups with the remaining vacancies to be chosen at the discretion of the Director from these groups according to the presumed cultural affiliation of the site. In the case of Native American sites, the ad hoc committee shall be comprised of the chair and 6 or 8 members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known or presumed lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia. At least one (1) person shall represent each of these groups with the remaining vacancies to be chosen at the discretion of the director from these groups according to the presumed cultural affiliation of the site. The ad hoc committee must be formed within thirty days of application, must meet within sixty days of application, and must render a decision within ninety days of application.

All such permits shall at a minimum address the following conditions:

4.2.1. The methods by which lineal descendants of the deceased are notified prior to the disturbance.

Guidelines for Archaeology and Historic Preservation (36 CFR 68). Avocationalists are not expected to submit reports of professional quality, but they shall minimally include information on site location and conditions, relevant background information, all field observations (stratigraphy, features, etc.), and analyses and results. The Director may request that reports be written for publication to be read by the general public, or in other ways disseminate the information recovered through permitted excavations to the general public.

~~4.4. If a permit is granted, the Director shall specify the approximate methods by which descendants of the deceased and those of proven kinship shall be notified.~~

§82-3-5. Permits for the removal or alteration of grave markers.

5.1. Any person proposing to remove or alter the appearance of a grave marker shall request a permit application form from the Director. The form will provide for and require the following information:

5.1.1. When applicable, written authorization from the cemetery authority or caretaker for removal or alteration of a grave marker.

5.1.2. Evidence of attempts to notify descendants prior to removing or altering the grave marker.

5.1.3. The purpose for removing or altering the grave marker.

5.1.4. The methods for recording the grave marker prior to its removal or alteration. They may include, but not be limited to, photographs, rubbings, and maps showing the location of the marker in relationship to surrounding markers or objects.

§82-3-6. Disposition of skeletal remains and associated artifacts when claimed by lineal descendants.

~~6.1. In the case of human skeletal remains and associated artifacts from apparent Native American origin, reburial shall be done in consultation and cooperation with an organization recognized by the Director as representing the religious and cultural concerns and interests of Native Americans.~~

~~6.2. In the case of human skeletal remains and associated artifacts from an origin other than Native American, 6.1. The lineal descendants of a deceased individual shall file a claim of legitimacy and provide the Director with documentation and/or evidence of descent.~~

~~6.1.1. 6.2.1.~~ Based upon evidence submitted by the descendants of a deceased individual pursuant to section 6.2.1, the Director shall make a written determination of the legitimacy of a claim of descent and state the reasons therefore.

~~6.1.2.~~ ~~6.2.2.~~ A descendent may appeal an adverse determination of legitimacy by the Director to the Archives and History Commission by filing notice of appeal with the Commission twenty (20) days prior to the next regularly scheduled meeting.

~~6.1.2.a.~~ ~~6.2.3.~~ The filing of a notice of appeal with the Commission shall stay any action to dispose of or rebury the claimed remains and associated artifacts and grave goods.

~~6.1.2.b.~~ ~~6.2.4.~~ Upon receipt of a notice of appeal, the Commission shall provide the descendent with a hearing at the next regularly scheduled meeting of the Commission. Such hearing shall be held in accordance with W. Va. Code §29A-5-1 et. seq.

~~6.2.~~ ~~6.3.~~ Upon determination of a legitimate claim to the remains and grave goods, a written agreement between the Director, the permittee and the descendent of the deceased shall be executed detailing the method by which the remains and any associated artifacts and grave goods shall be disposed of or reburied.

§82-3-7. Disposition of skeletal remains and associated artifacts when not claimed by descendants.

7.1. When human skeletal remains are not claimed by descendants, the Director has the option to rebury the remains after archaeological investigations have been completed, or to accession them into the state museum where they will be cared for with dignity and respect as determined by the Director and interested parties. Reburial will be the preferred option unless a strong case against such action is presented.

§82-3-8. Procedures for establishing property tax exemptions for burial grounds and unmarked graves.

8.1. When a private property owner has evidence for the presence of a burial ground or unmarked grave on his or her property, they may apply for a tax exemption in the manner outlined below.

8.1.1. The property owner shall submit a letter to the Director seeking a determination of the suspected burial ground or unmarked graves authenticity and eligibility for tax exemption.

8.1.2. A response to the letter shall be made within thirty (30) days about the availability of an archaeologist from the Division of Culture and History to make the determination.

8.1.3. Upon completion of archaeological fieldwork to determine the location and extent of the burial ground, a response shall be prepared, after which, if verifying the presence of the burial ground, a certificate of authenticity will be issued to the property owner. The certificate may then be presented to the county assessor for processing.

8.1.4. The property owner has the option to establish a protective easement of the burial ground or unmarked grave by making arrangements with officials from the Division of Culture and History.

DEPARTMENT OF EDUCATION AND THE ARTS

Office of the Secretary

State Capitol, Bldg. 1, R-151
Charleston, West Virginia 25305
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Gaston Caperton
Governor

July 8, 1993

Barbara Harmon-Schamberger
Cabinet Secretary

The Honorable Ken Hechler
Secretary of State
State of West Virginia
Building 1, Suite 75K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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Dear Secretary Hechler,

Pursuant to WV Code §5F-2, I hereby authorize filing of the following proposed amended legislative rule by the Division of Culture and History for public comment:

Title 82, Series 3, Standards and Procedures for Granting
Permits to Excavate Archaeological Sites and Unmarked
Graves.

I am, at this time, withholding authorization for the Division to file an agency approved rule on this matter pending disposition of issues which may be raised during such comment period.

Sincerely,



Barbara Harmon-Schamberger
Secretary

BHS:mc

cc: Bill Drennen



WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MEMORANDUM

TO: Barbara Harmon-Schamberger, Secretary
Department of Education and the Arts

FROM: W. M. Drennen, Jr., Commissioner *Bill*

SUBJECT: Amendments to Rules - Approval Request

DATE: July 6, 1993

The passage of HB 2671 necessitates amendments to our Legislative Rules regarding the protection of unmarked graves. There are numerous deadlines to which we must adhere prior to filing with Legislative Rule Making and Review no later than August 15. In order to meet these deadlines, we must ask your approval and that your office forward the proposal and notice to the Secretary of State so that his office receives this material tomorrow, July 7.

We sincerely regret the short turnaround time we are requesting, but once you review the calendar of our submission, we trust you will understand our difficulty.

Thank you for your assistance. If you have questions about the amendments or the process as we understand it, please feel free to contact me or staff members involved. They include Becky Payne in Wheeling at 557-1300, Fred Armstrong or Bill Farrar at 558-0220.