

HOUSE BILL NO. 131

INTRODUCED BY BROOKE, GAGE, REAM, BARNHART, CODY, O'KEEFE,
YELLOWTAIL, DARKO, WANZENRIED, J. RICE, GERVAIS, SVRCEK,
GRADY, DOHERTY, RUSSELL

IN THE HOUSE

JANUARY 9, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 10, 1991 FIRST READING.

FEBRUARY 5, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 7, 1991 PRINTING REPORT.

FEBRUARY 8, 1991 ON MOTION, CONSIDERATION PASSED.

FEBRUARY 9, 1991 SECOND READING, DO PASS.

 ON MOTION, TAKEN FROM ENGROSSING AND
REREFERRED TO COMMITTEE
ON APPROPRIATIONS.

MARCH 6, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

MARCH 7, 1991 PRINTING REPORT.

MARCH 9, 1991 SECOND READING, DO PASS.

MARCH 11, 1991 ENGROSSING REPORT.

MARCH 12, 1991 THIRD READING, PASSED.
AYES, 78; NOES, 20.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 13, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

MARCH 22, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 23, 1991 SECOND READING, CONCURRED IN.

MARCH 25, 1991

THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 25, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

MARCH 28, 1991

REPORTED CORRECTLY ENROLLED.

APRIL 1, 1991

SIGNED BY PRESIDENT.

SIGNED BY SPEAKER.

DELIVERED TO GOVERNOR.

APRIL 5, 1991

RETURNED FROM GOVERNOR WITH
RECOMMENDED AMENDMENTS.

APRIL 9, 1991

SECOND READING, CONSIDERATION
PASSED FOR THE DAY.

APRIL 10, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS NOT CONCURRED IN.

IN THE SENATE

APRIL 17, 1991

SECOND READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

APRIL 18, 1991

THIRD READING, GOVERNOR'S
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 19, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 23, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 23, 1991

CONFERENCE COMMITTEE REPORTED.

APRIL 24, 1991

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 24, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 30, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 131
 2 INTRODUCED BY Frank D. Ream 3rd District
 3 Chief Yellowtail Clark Wendell Steve Harvath
 4 Sherry Russell

4 A BILL FOR AN ACT ENTITLED: "THE HUMAN SKELETAL REMAINS AND
 5 BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION
 6 BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES
 7 REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD
 8 REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND
 9 REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND
 10 CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES,
 11 GRANTS, DONATIONS, AND PENALTIES; EXEMPTING MEETINGS FROM
 12 THE OPEN MEETING LAWS; PROVIDING FOR CONFIDENTIALITY OF
 13 RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY;
 14 APPROPRIATING MONEY FROM THE CULTURAL AND AESTHETIC PROJECTS
 15 ACCOUNT; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102,
 16 MCA; AND PROVIDING EFFECTIVE DATES."

17
 18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because
 20 [section 4] grants to the burial protection board rulemaking
 21 authority to implement the provisions of this bill. At a
 22 minimum, it is the intent of the legislature that the board
 23 adopt rules:

- 24 (1) governing the conduct of board business;
- 25 (2) establishing and maintaining a registry of burial

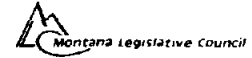
- 1 sites located in the state;
- 2 (3) establishing criteria for conducting field reviews
- 3 upon notification of a discovery of human skeletal remains,
- 4 burial sites, or burial materials; and
- 5 (4) establishing guidelines and forms for the issuance
- 6 of a permit for scientific analysis of human remains or
- 7 burial materials.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. **Section 1.** Short title. [Sections 1
 11 through 9] may be cited as the "Human Skeletal Remains and
 12 Burial Site Protection Act".

13 NEW SECTION. **Section 2.** Legislative findings and
 14 intent. (1) The legislature of the state of Montana finds
 15 that:

- 16 (a) the state and its citizens have an obligation to
- 17 protect from disturbance or destruction all human skeletal
- 18 remains, burial sites, and burial material, including those
- 19 in marked, unmarked, unrecorded, registered, or unregistered
- 20 graves or burial grounds located on state or private lands;
- 21 (b) marked, unmarked, unrecorded, registered, or
- 22 unregistered graves or burial grounds are increasingly
- 23 subject to pilferage, disturbance, and destruction for
- 24 commercial purposes, including land development,
- 25 agriculture, mining, and the sale of artifacts;



1 (c) private collection of artifacts may result in the
2 destruction of burial sites. Existing law reflects the value
3 society places on preserving human burial sites, but the law
4 does not clearly provide equal and adequate protection or
5 incentives to ensure preservation and protection of all
6 burial sites in the state regardless of ethnic origin,
7 burial context, or age.

8 (d) while some human skeletal remains and burial sites
9 may be of interest to science, the needs of the scientific
10 community to gather information and material from burial
11 sites must be balanced with the legal, moral, and religious
12 rights and obligations of tribal groups, next of kin, or
13 descendants;

14 (e) preservation in place is the preferred policy for
15 all human skeletal remains, burial sites, and burial
16 material; and

17 (f) notwithstanding any other provision of law,
18 [sections 1 through 9] are the exclusive laws governing the
19 treatment of human skeletal remains, burial sites, and
20 burial materials.

21 (2) It is the intent of the legislature to:

22 (a) ensure that all burials be accorded equal treatment
23 and respect for human dignity without reference to ethnic
24 origin, cultural background, or religious affiliation;

25 (b) provide adequate protection for all interests

1 related to any burial site encountered during archaeological
2 excavation or agricultural, mining, construction, or other
3 ground-disturbing activity on state and private lands
4 without causing avoidable or undue delay or hardship for any
5 person who has an interest in using the land on which the
6 burial site is located;

7 (c) recognize the interests, concerns, and obligations
8 of those having a kinship, tribal, cultural, or religious
9 affiliation with the burial site and balance those interests
10 against the interests of scientists, landowners, and
11 developers; and

12 (d) provide to the board an exemption from the open
13 meeting and public records laws when public disclosure of
14 the location of a burial site could result in pilferage,
15 disturbance, or destruction of the site.

16 NEW SECTION. Section 3. Definitions. As used in
17 [sections 1 through 9], the following definitions apply:

18 (1) "Board" means the burial preservation board
19 established in [section 4].

20 (2) "Burial material" means any item found at the
21 burial site or with the human skeletal remains and directly
22 associated with the burial or burial site.

23 (3) "Burial site" means any natural or prepared
24 physical location, whether originally below, on, or above
25 the surface of the earth, into which human remains were

1 intentionally deposited as a part of the death rites or
2 ceremonies of a culture.

3 (4) "Human skeletal remains" means any part of the
4 human body in any state of decomposition.

5 (5) "Marked, unmarked, unrecorded, registered, or
6 unregistered grave or burial ground" means any place,
7 including a cemetery, where human skeletal remains are or
8 have been interred.

9 (6) "Scientifically justifiable" means that the human
10 skeletal remains or burial material has a potential to
11 address specific research questions in the science of
12 anthropology, history, or biology.

13 (7) "Tribal group" means an Indian tribe recognized by
14 the United States secretary of the interior or recognized as
15 a tribe by other Indian nations.

16 NEW SECTION. Section 4. Board -- composition -- rights
17 -- responsibilities. (1) There is a burial preservation
18 board. The board is composed of:

19 (a) one person appointed by the tribal governmental
20 body of each of the seven Indian reservations in Montana;

21 (b) one person appointed by the Little Shell band of
22 Chippewa Indians;

23 (c) one person appointed by the Montana state historic
24 preservation officer;

25 (d) a representative of the Montana archaeological

1 association appointed by the coordinator of Indian affairs;

2 (e) one physical anthropologist appointed by the state
3 medical examiner; and

4 (f) a representative of the Montana coroner's
5 association appointed by the coordinator of Indian affairs.

6 (2) The board shall:

7 (a) provide for the establishment and maintenance of a
8 registry of burial sites located in the state;

9 (b) designate the appropriate member or members of the
10 board, or a representative or representatives of the board,
11 to conduct a field review upon notification of the discovery
12 of human skeletal remains, a burial site, or burial
13 materials;

14 (c) assist interested landowners in the development of
15 agreements with the board for the treatment and disposition,
16 with appropriate dignity, of human skeletal remains and
17 burial material;

18 (d) mediate, upon application of either party, disputes
19 that may arise between a landowner and known descendants
20 that relate to the treatment and disposition of human
21 skeletal remains and burial material;

22 (e) assume responsibility for final treatment and
23 disposition of human skeletal remains and burial material if
24 the field review recommendation is not accepted by the
25 board's representatives and the landowner;

1 (f) establish a nonrefundable application fee, not to
2 exceed \$50, for a permit for scientific analysis of human
3 skeletal remains or burial material from burial sites as
4 provided by [section 6];

5 (g) issue permits authorizing scientific analysis;

6 (h) accept grants or real or in-kind donations to carry
7 out the purposes of [sections 1 through 9];

8 (i) adopt rules necessary to administer and enforce the
9 provisions of [sections 1 through 9]; and

10 (j) perform any other duties necessary to implement the
11 provisions of [sections 1 through 9].

12 (3) The board is allocated to the department of
13 commerce for administrative purposes only as prescribed in
14 2-15-121.

15 (4) Members of the board shall serve without pay but
16 are entitled to reimbursement for travel, meals, and lodging
17 pursuant to 2-18-501 through 2-18-503.

18 **NEW SECTION. Section 5. Inadvertent disturbance --**
19 **reporting requirements -- field review.** (1) A person who by
20 archaeological excavation or by agricultural, mining,
21 construction, or other ground-disturbing activity
22 inadvertently disturbs or discovers human skeletal remains,
23 a burial site, or burial material shall immediately notify
24 the county coroner. Failure to notify the county coroner
25 subjects a person to the penalty provided in [section 8].

1 (2) Upon discovery of a burial site that is reasonably
2 suspected to overlie adjacent remains, excavation or further
3 disturbance must cease until the coroner has determined that
4 the remains are not subject to the provisions of Title 46,
5 chapter 4, part 1 or 2, or any other related provisions of
6 law concerning the investigation of the circumstances,
7 manner, and cause of death. The coroner shall make his
8 determination within 2 working days from the time the person
9 responsible for the excavation notifies him of the discovery
10 or recognition of the remains. If possible, the coroner
11 shall make his determination without removing or causing
12 further disturbance of the remains.

13 (3) If the coroner determines that the remains are not
14 subject to his authority, he shall telephone the state
15 historic preservation officer within 24 hours. Within 24
16 hours of notification, the state historic preservation
17 officer shall contact the landowner and the board or
18 landowner and the board member representing the nearest
19 reservation and notify them of the discovery of human
20 skeletal remains, a burial site, or burial material.

21 (4) If the state historic preservation officer cannot
22 be contacted, the coroner shall notify a member of the board
23 or the law enforcement agency of the nearest reservation
24 within 24 hours. The board or the agency shall immediately
25 notify the landowner and the board member representing that

1 reservation.

2 (5) Within 36 hours of notification of a discovery of
3 human skeletal remains, a burial site, or burial material,
4 the board shall designate representatives to conduct, with
5 the permission of the landowner, an initial field review. If
6 the field review cannot be completed within the next 36
7 hours, the board's representatives shall negotiate with the
8 landowner or his representative for a reasonable time
9 extension to complete the review. The field review must
10 include:

11 (a) a determination of whether the site can be
12 preserved;

13 (b) negotiation with the landowner concerning onsite
14 reburial or disinterment and reburial; and

15 (c) a recommendation, including a timeframe, concerning
16 final treatment or disposition of the human skeletal remains
17 or burial material.

18 (6) If the board's representatives fail to make a
19 recommendation or if the landowner and the board cannot
20 agree and mediation fails to provide a resolution acceptable
21 to the landowner and the board, the board shall oversee the
22 reinterment of the human skeletal remains and burial
23 material with appropriate dignity in an alternate location
24 not subject to further subsurface disturbance.

25 NEW SECTION. **Section 6.** Scientific analysis -- permit

1 required. (1) Although onsite reburial is preferred, the
2 board may, upon petition by a person seeking permission to
3 perform scientific analysis, grant a permit for the
4 scientific removal and analysis of human skeletal remains
5 and burial material upon proof and determination by the
6 board that the analysis is scientifically justifiable. A
7 petition for a permit must include:

8 (a) payment of the nonrefundable application fee
9 provided for in [section 4]; and

10 (b) a brief narrative describing the methodology to be
11 used, the timeframe needed to complete the scientific study,
12 and any other information specifically requested by the
13 board relating to the proposed study.

14 (2) The methodology proposed must be reviewed by the
15 state historic preservation officer or his designated
16 representative and the physical anthropologist on the board,
17 and a recommendation must be made to the full board. Once
18 approved by the board, any change in methodology or in the
19 timeframe must be approved by the board before the original
20 timeframe expires.

21 (3) A permit for scientific analysis issued by the
22 board is subject to terms, conditions, and procedures
23 prescribed by the board and must include the condition that
24 a permittee shall pay all costs of excavation, study, and
25 disposition.

1 (4) If the board denies a permit upon a finding that
 2 scientific analysis is not justifiable, the board must
 3 provide the applicant with a written statement outlining the
 4 grounds for its finding. The applicant may appeal the
 5 decision of the board under the provisions of Title 2,
 6 chapter 4, part 6, of the Montana Administrative Procedure
 7 Act.

8 (5) The board may suspend or revoke a permit pursuant
 9 to the Montana Administrative Procedure Act upon a finding
 10 that the permittee has violated any provision of [sections 1
 11 through 9] or any term, condition, or procedure of a permit
 12 issued by the board.

13 NEW SECTION. Section 7. Nondisclosure of records. The
 14 state historic preservation officer, in consultation with
 15 the board, shall maintain burial site records that are
 16 separate and distinct from those in the cultural resource
 17 registry and that are necessary to administer [sections 1
 18 through 9]. Burial site records are confidential and
 19 available only to federal and state personnel, or their
 20 appointed representatives, who are legally charged with
 21 administering laws protecting cultural resources. However,
 22 statistical information compiled from burial site records
 23 must be made available to the general public.

24 NEW SECTION. Section 8. Prohibited acts -- penalties.

25 (1) After July 1, 1991, a person may not:

1 (a) purposely or knowingly pilfer, disturb, destroy, or
 2 permit pilferage, disturbance, or destruction of a marked,
 3 unmarked, unrecorded, registered, or unregistered grave or
 4 burial ground or of burial material;

5 (b) for commercial use, knowingly possess, buy, sell,
 6 transport, barter, or display human skeletal remains or
 7 burial material acquired in violation of [sections 1 through
 8 9]; or

9 (c) without consent of the board, purposely or
 10 knowingly disclose information that is designated as
 11 confidential by the board and that may lead to pilferage,
 12 disturbance, or destruction of a burial site.

13 (2) A person convicted under the provisions of
 14 subsection (1)(a) or (1)(b) is guilty of a felony and may be
 15 fined an amount not to exceed \$10,000, be imprisoned for not
 16 more than 1 year, or both. A person convicted of a
 17 subsequent violation of subsection (1)(a) or (1)(b) is
 18 guilty of a felony and may be fined an amount not to exceed
 19 \$100,000, be imprisoned for not more than 5 years, or both.

20 (3) A person convicted under the provisions of
 21 subsection (1)(c) is guilty of a misdemeanor and may be
 22 fined an amount not to exceed \$5,000, be imprisoned for not
 23 more than 6 months, or both. A person convicted of a
 24 subsequent violation of subsection (1)(c) is guilty of a
 25 felony and may be fined an amount not to exceed \$10,000, be

1 imprisoned for not more than 1 year, or both.

2 (4) A person who fails to give notice as required by
3 [section 5(1)] is guilty of a misdemeanor and may be fined
4 an amount not less than \$100 or more than \$500.

5 (5) In addition to or in lieu of any penalty imposed by
6 this section, the board, upon a finding that a person has
7 violated any provision of this section or any term or
8 condition of a permit issued under [section 6], may impose a
9 fine not to exceed \$2,000 for each violation. A fine may be
10 imposed only upon notice and following a hearing conducted
11 pursuant to the Montana Administrative Procedure Act.

12 (6) This section does not apply to a person who,
13 pursuant to archaeological excavation or agricultural,
14 mining, construction, or other ground-disturbing activity,
15 inadvertently disturbs a burial site if, by the most
16 expeditious means available, the disturbance is reported to
17 the county coroner pursuant to [section 5] and if no further
18 disturbance occurs.

19 NEW SECTION. **Section 9.** Criminal enforcement and civil
20 actions -- costs. (1) The state and its political
21 subdivisions are responsible for enforcement of [sections 1
22 through 9]. A criminal action may be initiated by a county
23 attorney for violation of [sections 1 through 9] upon
24 request of the board. Civil actions for damages resulting
25 from violations of [sections 1 through 9] may be initiated

1 by the board.

2 (2) Costs of a civil action to enforce the provisions
3 of [sections 1 through 9] must be awarded to the successful
4 complainant.

5 **Section 10.** Section 2-3-203, MCA, is amended to read:

6 "2-3-203. Meetings of public agencies and certain
7 associations of public agencies to be open to public --
8 exceptions. (1) All meetings of public or governmental
9 bodies, boards, bureaus, commissions, agencies of the state,
10 or any political subdivision of the state or organizations
11 or agencies supported in whole or in part by public funds or
12 expending public funds must be open to the public.

13 (2) All meetings of associations that are composed of
14 public or governmental bodies referred to in subsection (1)
15 and that regulate the rights, duties, or privileges of any
16 individual must be open to the public.

17 (3) Provided, however, the presiding officer of any
18 meeting may close the meeting during the time the discussion
19 relates to a matter of individual privacy and then if and
20 only if the presiding officer determines that the demands of
21 individual privacy clearly exceed the merits of public
22 disclosure. The right of individual privacy may be waived by
23 the individual about whom the discussion pertains and, in
24 that event, the meeting shall be open.

25 (4) However, a meeting may be closed to discuss a

1 strategy to be followed with respect to collective
 2 bargaining or litigation when an open meeting would have a
 3 detrimental effect on the bargaining or litigating position
 4 of the public agency or when information acquired from an
 5 open meeting could result in pilferage, disturbance, or
 6 destruction of a burial site.

7 (5) Any committee or subcommittee appointed by a public
 8 body or an association described in subsection (2) for the
 9 purpose of conducting business which is within the
 10 jurisdiction of that agency shall be subject to the
 11 requirements of this section."

12 **Section 11.** Section 2-6-101, MCA, is amended to read:

13 "2-6-101. Definitions. (1) Writings are of two kinds:

14 (a) public; and

15 (b) private.

16 (2) Public writings are:

17 (a) the written acts or records of the acts of the
 18 sovereign authority, of official bodies and tribunals, and
 19 of public officers, legislative, judicial, and executive,
 20 whether of this state, of the United States, of a sister
 21 state, or of a foreign country;

22 (b) public records, kept in this state, of private
 23 writings, except as provided in 22-1-1103 and [section 7].

24 (3) Public writings are divided into four classes:

25 (a) laws;

1 (b) judicial records;

2 (c) other official documents;

3 (d) public records, kept in this state, of private
 4 writings.

5 (4) All other writings are private."

6 **Section 12.** Section 2-6-102, MCA, is amended to read:

7 "2-6-102. Citizens entitled to inspect and copy public
 8 writings. (1) Every citizen has a right to inspect and take
 9 a copy of any public writings of this state, except as
 10 provided in 22-1-1103, in [section 7], and as otherwise
 11 expressly provided by statute.

12 (2) Every public officer having the custody of a public
 13 writing which a citizen has a right to inspect is bound to
 14 give him on demand a certified copy of it, on payment of the
 15 legal fees therefor, and such copy is admissible as evidence
 16 in like cases and with like effect as the original writing."

17 **NEW SECTION. Section 13.** Disposition of fees, grants,
 18 donations, and penalties. The board shall deposit any fee,
 19 grant, or donation received under [section 4] or any penalty
 20 amount imposed under [section 8] into the cultural and
 21 aesthetic projects account provided for in 15-35-108, to be
 22 used to pay expenses for board meetings or expenses incurred
 23 in conducting field reviews.

24 **NEW SECTION. Section 14.** Appropriation. There is
 25 appropriated \$5,000 from the cultural and aesthetic projects

1 account provided for in 15-35-108 to the board for fiscal
2 year 1992 to be used to pay expenses for board meetings or
3 expenses incurred in conducting field reviews.

4 NEW SECTION. Section 15. Severability. If a part of
5 [this act] is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of [this
7 act] is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are
9 severable from the invalid applications.

10 NEW SECTION. Section 16. Effective dates. (1) [Section
11 4 and this section] are effective on passage and approval.
12 (2) [Sections 1 through 3 and 5 through 15] are
13 effective July 1, 1991.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 131

INTRODUCED BY BROOKE, GAGE, REAM, BARNHART, CODY, O'KEEFE,
YELLOWTAIL, DARKO, WANZENRIED, J. RICE, GERVAIS, SVRCEK,
GRADY, DOHERTY, RUSSELL

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE HUMAN
SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A
BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND
NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL
SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS;
PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING
FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR
DISPOSITION OF FEES, GRANTS, AND DONATIONS~~7--AND--PENALTIES~~;
EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER
CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF
RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING
FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY
FROM THE ~~CULTURAL-AND--AESTHETIC--PROJECTS--ACCOUNT~~ GENERAL
FUND; AMENDING SECTIONS ~~2-3-203~~, 2-6-101, AND 2-6-102, AND
17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A
TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 4] grants to the burial protection PRESERVATION

board rulemaking authority to implement the provisions of
this bill. At a minimum, it is the intent of the legislature
that the board adopt rules:
(1) governing the conduct of board business;
(2) establishing and maintaining a registry of burial
sites located in the state;
(3) establishing criteria for conducting field reviews
upon notification of a discovery of human skeletal remains,
burial sites, or burial materials; and
(4) establishing guidelines and forms for the issuance
of a permit for scientific analysis of human remains or
burial materials.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

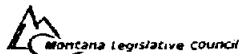
Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Short title. [Sections 1
through 10 and 13] may be cited as the "Human Skeletal
Remains and Burial Site Protection Act".

NEW SECTION. Section 2. Legislative findings and
intent. (1) The legislature of the state of Montana finds
that:

(a) the state and its citizens have an obligation to
protect from disturbance or destruction all human skeletal
remains, burial sites, and burial material, including those

SECOND READING



1 in marked, unmarked, unrecorded, registered, or unregistered
 2 graves or burial grounds located on state or private lands
 3 that are not protected as cemeteries or graveyards under
 4 existing state law;

5 (b) marked, unmarked, unrecorded, registered, or
 6 unregistered graves or burial grounds not protected as
 7 cemeteries or graveyards under existing state law are
 8 increasingly subject to pilferage, disturbance, and
 9 destruction for commercial purposes, including land
 10 development, agriculture, mining, and the sale of artifacts;

11 (c) private collection of artifacts may result in the
 12 destruction of burial sites. Existing law reflects the value
 13 society places on preserving human burial sites, but the law
 14 does not clearly provide equal and adequate protection or
 15 incentives to ensure preservation and protection of all
 16 burial sites in the state regardless of ethnic origin,
 17 burial context, or age.

18 (d) while some human skeletal remains and burial sites
 19 may be of interest to science, the needs of the scientific
 20 community to gather information and material from burial
 21 sites must be balanced with the legal, moral, and religious
 22 rights and obligations of tribal groups, next of kin, or
 23 descendants;

24 (e) preservation in place is the preferred policy for
 25 all human skeletal remains, burial sites, and burial

1 material; and

2 (f) notwithstanding any other provision of law,
 3 [sections 1 through 10 and 13] are the exclusive laws
 4 governing the treatment of human skeletal remains, burial
 5 sites, and burial materials.

6 (2) It is the intent of the legislature to:

7 (a) ensure that all burials be accorded equal treatment
 8 and respect for human dignity without reference to ethnic
 9 origin, cultural background, or religious affiliation;

10 (b) provide adequate protection for all interests
 11 related to any burial site encountered during archaeological
 12 excavation or agricultural, mining, construction, or other
 13 ground-disturbing activity on state and private lands
 14 without causing avoidable or undue delay or hardship for any
 15 person who has an interest in using the land on which the
 16 burial site is located;

17 (c) recognize the interests, concerns, and obligations
 18 of those having a kinship, tribal, cultural, or religious
 19 affiliation with the burial site and balance those interests
 20 against the interests of scientists, landowners, and
 21 developers;

22 (d) provide to the board an exemption from the open
 23 meeting and public records laws when public disclosure of
 24 the location of a burial site could result in pilferage,
 25 disturbance, or destruction of the site; and

1 (e) recognize the need for forensic examination of
 2 human skeletal remains, burial sites, and burial material if
 3 the county coroner, county attorney, or state medical
 4 examiner determines an examination is necessary under state
 5 law.

6 NEW SECTION. Section 3. Definitions. As used in
 7 [sections 1 through 10 and 13], the following definitions
 8 apply:

9 (1) "Board" means the burial preservation board
 10 established in [section 4].

11 (2) "Burial material" means any item found at the
 12 burial site or with the human skeletal remains and directly
 13 associated with the burial or burial site.

14 (3) "Burial site" means, except for cemeteries and
 15 graveyards protected under existing state law, any natural
 16 or prepared physical location, whether originally below, on,
 17 or above the surface of the earth, into which human remains
 18 were intentionally deposited as a part of the death rites or
 19 ceremonies of a culture.

20 (4) "Human skeletal remains" means any part of the
 21 human body in any state of decomposition taken from a burial
 22 site.

23 (5) "Marked, unmarked, unrecorded, registered, or
 24 unregistered grave or burial ground" means any place, except
 25 a cemetery or graveyard protected under existing state law,

1 where human skeletal remains are or have been interred.

2 (6) "Scientifically justifiable" means that the human
 3 skeletal remains or burial material has a potential to
 4 address specific research questions in the science of
 5 anthropology, history, or biology.

6 (7) "Tribal group" means an Indian tribe recognized by
 7 the United States secretary of the interior or recognized as
 8 a tribe by other Indian nations.

9 NEW SECTION. Section 4. Board -- composition -- rights
 10 -- responsibilities. (1) There is a burial preservation
 11 board. The board is composed of:

12 (a) one representative of each of the seven
 13 reservations, appointed by the governor from a list of up to
 14 three nominees provided by each of the respective tribal
 15 governments;

16 (b) one person appointed by the governor from a list of
 17 up to three nominees submitted by the Little Shell band of
 18 Chippewa Indians;

19 (c) one person appointed by the Montana state historic
 20 preservation officer;

21 (d) one representative of the Montana archaeological
 22 association appointed by the coordinator of Indian affairs
 23 from a list of up to three nominees submitted by the Montana
 24 archaeological association;

25 (e) one physical anthropologist appointed by the state

1 medical examiner;

2 (f) one representative of the Montana coroners'
3 association appointed by the coordinator of Indian affairs
4 from a list of up to three nominees submitted by the Montana
5 coroners' association; and

6 (g) one representative of the public, appointed by the
7 attorney general, who is not associated with tribal
8 governments; state government; the fields of historic
9 preservation, archaeology, or anthropology; or the Montana
10 coroners' association.

11 (2) Members of the board shall serve staggered 2-year
12 terms. A vacancy on the board must be filled in the same
13 manner as the original appointment and only for the
14 unexpired portion of the term.

15 (3) The board shall:

16 (a) provide for the establishment and maintenance of a
17 registry of burial sites located in the state;

18 (b) designate the appropriate member or members of the
19 board or a representative or representatives of the board to
20 conduct a field review upon notification of the discovery of
21 human skeletal remains, a burial site, or burial materials;

22 (c) assist interested landowners in the development of
23 agreements with the board for the treatment and disposition,
24 with appropriate dignity, of human skeletal remains and
25 burial material;

1 (d) mediate, upon application of either party, disputes
2 that may arise between a landowner and known descendants
3 that relate to the treatment and disposition of human
4 skeletal remains and burial material;

5 (e) assume responsibility for final treatment and
6 disposition of human skeletal remains and burial material if
7 the field review recommendation is not accepted by the
8 board's representatives and the landowner;

9 (f) establish a nonrefundable application fee, not to
10 exceed \$50, for a permit for scientific analysis of human
11 skeletal remains or burial material from burial sites as
12 provided by [section 6];

13 (g) issue permits authorizing scientific analysis;

14 (h) accept grants or real or in-kind donations to carry
15 out the purposes of [sections 1 through 10 and 13];

16 (i) adopt rules necessary to administer and enforce the
17 provisions of [sections 1 through 10 and 13]; and

18 (j) perform any other duties necessary to implement the
19 provisions of [sections 1 through 10 and 13].

20 (4) The board is allocated to the department of
21 commerce for administrative purposes only as prescribed in
22 2-15-121.

23 (5) Members of the board shall serve without pay but
24 are entitled to reimbursement for travel, meals, and lodging
25 pursuant to 2-18-501 through 2-18-503.

1 NEW SECTION. Section 5. Discovery -- reporting
 2 requirements -- field review. (1) A person who by
 3 archaeological excavation or by agricultural, mining,
 4 construction, or other ground-disturbing activity discovers
 5 human skeletal remains, a burial site, or burial material
 6 shall immediately notify the county coroner. Failure to
 7 notify the county coroner subjects a person to the penalty
 8 provided in [section 8].

9 (2) Upon discovery of human skeletal remains, a burial
 10 site, or burial material, excavation or further disturbance
 11 must cease until the coroner has determined whether the
 12 remains are subject to the provisions of Title 46, chapter
 13 4, or any other related provisions of law concerning the
 14 investigation of the circumstances, manner, and cause of
 15 death or whether a forensic examination of the human
 16 skeletal remains, burial site, or burial material is
 17 necessary. The coroner shall make his determination within 2
 18 working days from the time the person responsible for the
 19 excavation notifies him of the discovery or recognition of
 20 the remains. If the coroner cannot make the determination
 21 within 2 working days, he shall notify a member of the board
 22 of the reason for and the approximate length of the delay.
 23 The coroner shall take all reasonable steps to make his
 24 determination without removing or causing further
 25 disturbance of the remains.

1 (3) If a forensic examination, action under Title 46,
 2 chapter 4, or action under any other related provisions of
 3 law concerning the investigation of the circumstances,
 4 manner, and cause of death is necessary and yields evidence
 5 of criminal activity, the evidence may be seized by the
 6 coroner or law enforcement agency with jurisdiction for use
 7 in a criminal proceeding as provided by law.

8 (4) If the coroner determines that the remains are not
 9 subject to the provisions of Title 46, chapter 4, or any
 10 other provisions of law concerning the investigation of the
 11 circumstances, manner, and cause of death and that a
 12 forensic examination is not necessary, he shall telephone
 13 the state historic preservation officer within 24 hours.
 14 Within 24 hours of notification, the state historic
 15 preservation officer shall contact either the landowner and
 16 the board or the landowner and the board member representing
 17 the nearest reservation and notify them of the discovery of
 18 human skeletal remains, a burial site, or burial material.

19 (5) If the state historic preservation officer cannot
 20 be contacted, the coroner shall notify a member of the board
 21 or the law enforcement agency of the nearest reservation
 22 within 24 hours. The board or the agency shall immediately
 23 notify the landowner and the board member representing that
 24 reservation.

25 (6) Within 36 hours after the board receives

1 notification of a discovery of human skeletal remains, a
 2 burial site, or burial material, the board shall designate
 3 representatives to conduct, with the permission of the
 4 landowner, an initial field review. If the field review
 5 cannot be completed within the next 36 hours, the board's
 6 representatives shall negotiate with the landowner or his
 7 representative for a reasonable time extension to complete
 8 the review. The field review must include:

9 (a) a determination of whether the site can be
 10 preserved;

11 (b) negotiation with the landowner concerning onsite
 12 reburial or disinterment and reburial; and

13 (c) a recommendation, including a timeframe, concerning
 14 final treatment or disposition of the human skeletal remains
 15 or burial material.

16 (7) If the board's representatives fail to make a
 17 recommendation or if the landowner and the board cannot
 18 agree and mediation fails to provide a resolution acceptable
 19 to the landowner and the board, control of human skeletal
 20 remains or burial materials is vested in the board and the
 21 board shall give control of the remains or materials in the
 22 following priority to:

23 (a) the descendants, if identifiable;

24 (b) the tribe or other cultural group that has the
 25 closest cultural affiliation with the human skeletal remains

1 or burial materials;

2 (c) the tribe or other cultural group recognized as
 3 having aboriginally or historically occupied the area where
 4 the remains or materials were discovered if, upon
 5 notification by the board, the tribe or cultural group
 6 states a claim for the remains or materials; or

7 (d) if unclaimed by any tribe or cultural group, the
 8 board, which shall determine the appropriate disposition and
 9 oversee the reinterment of the remains and materials.

10 (8) For purposes of this section, "cultural group"
 11 means a present-day group or organization that has a
 12 relationship of shared group identity which can be
 13 reasonably traced historically or prehistorically to an
 14 identifiable earlier group or organization.

15 NEW SECTION. **Section 6. Scientific analysis -- permit**
 16 **required.** (1) Although onsite reburial is preferred, the
 17 board may, upon petition by a person seeking permission to
 18 perform scientific analysis, grant a permit for the
 19 scientific removal and analysis of human skeletal remains
 20 and burial material upon proof and determination by the
 21 board that the analysis is scientifically justifiable. A
 22 petition for a permit must include:

23 (a) payment of the nonrefundable application fee
 24 provided for in [section 4]; and

25 (b) a brief narrative describing the methodology to be

1 used, the timeframe needed to complete the scientific study,
2 and any other information specifically requested by the
3 board relating to the proposed study.

4 (2) The methodology proposed must be reviewed by the
5 state historic preservation officer or his designated
6 representative and the physical anthropologist on the board,
7 and a recommendation must be made to the full board. Once
8 approved by the board, any change in methodology or in the
9 timeframe must be approved by the board before the original
10 timeframe expires. The timeframe for scientific study may
11 not exceed 12 months from the date of issuance of the
12 permit.

13 (3) A permit for scientific analysis issued by the
14 board is subject to terms, conditions, and procedures
15 prescribed by the board and must include the condition that
16 a permittee shall pay all costs of excavation, study, and
17 disposition.

18 (4) The board shall either issue or deny a permit
19 within 30 working days from the date of the permit petition.
20 If the board denies a permit upon a finding that scientific
21 analysis is not justifiable, the board shall provide the
22 applicant with a written statement outlining the grounds for
23 its finding. The applicant may appeal the decision of the
24 board under the provisions of Title 2, chapter 4, part 6, of
25 the Montana Administrative Procedure Act.

1 (5) The board may suspend or revoke a permit pursuant
2 to the Montana Administrative Procedure Act upon a finding
3 that the permittee has violated any provision of [sections 1
4 through 10 and 13] or any term, condition, or procedure of a
5 permit issued by the board.

6 (6) The provisions of this section do not apply to a
7 forensic examination by the county coroner, action under
8 Title 46, chapter 4, or action under any other related
9 provisions of law concerning the investigation of the
10 circumstances, manner, and cause of death.

11 **NEW SECTION. Section 7. Nondisclosure of records.** (1)
12 The state historic preservation officer, in consultation
13 with the board, shall maintain burial site records that are
14 separate and distinct from those in the cultural resource
15 registry and that are necessary to administer [sections 1
16 through 10 and 13].

17 (2) Burial site records are confidential and available
18 only to criminal justice agencies or to federal, state, and
19 tribal personnel or their appointed representatives legally
20 charged with administering laws protecting cultural
21 resources.

22 (3) Statistical information compiled from burial site
23 records must be made available to the general public. Any
24 information concerning burial site records that is released
25 to a criminal justice agency is confidential criminal

1 justice information, as defined in 44-5-103, and is subject
2 to dissemination pursuant to 44-5-303.

3 NEW SECTION. **Section 8. Prohibited acts -- penalties.**

4 (1) After July 1, 1991, unless authorized under [sections 1
5 through 10 and 13] or by the descendants, tribe, cultural
6 group, or other person, group, or entity to which the board
7 gives control of the human skeletal remains or burial
8 materials under [section 5], a person may not:

9 (a) purposely or knowingly pilfer, disturb, destroy, or
10 permit pilferage, disturbance, or destruction of a marked,
11 unmarked, unrecorded, registered, or unregistered grave or
12 burial ground or of burial material;

13 (b) for commercial use, knowingly possess, buy, sell,
14 transport, barter, or display human skeletal remains or
15 burial material acquired in violation of [sections 1 through
16 10 and 13]; or

17 (c) purposely or knowingly disclose information knowing
18 that it is highly probable that the disclosure will lead to
19 pilferage, disturbance, or destruction of a burial site.

20 (2) A person convicted under the provisions of
21 subsection (1)(a) may be fined an amount not to exceed
22 \$1,000, be imprisoned in the county jail for not more than 6
23 months, or both. A person convicted of a subsequent
24 violation of subsection (1)(a) may be fined an amount not to
25 exceed \$20,000, be imprisoned for not more than 5 years, or

1 both.

2 (3) A person convicted under the provisions of
3 subsection (1)(b) may be fined an amount not to exceed
4 \$50,000, be imprisoned for not more than 20 years, or both.

5 (4) A person convicted under the provisions of
6 subsection (1)(c) may be fined an amount not to exceed \$500,
7 be imprisoned for not more than 6 months, or both. A person
8 convicted of a subsequent violation of subsection (1)(c) may
9 be fined an amount not to exceed \$10,000, be imprisoned for
10 not more than 5 years, or both.

11 (5) A person who knowingly fails to give notice as
12 required by [section 5(1)] may be fined an amount not less
13 than \$100 or more than \$500.

14 (6) A person who violates a provision of this section
15 or any term or condition of a permit issued under [section
16 6] is subject to a civil penalty not to exceed \$2,000 for
17 the first violation and not to exceed \$10,000 for a
18 subsequent violation.

19 NEW SECTION. **Section 9. Civil penalty and damages**
20 **actions.** (1) [Sections 1 through 10 and 13] do not preclude
21 civil actions for damages.

22 (2) The board may bring an action under [section 8] for
23 a civil penalty.

24 NEW SECTION. **Section 10. Closure of board meetings.**
25 The board may close part of a meeting of the board to the

1 public if the board finds that information that may be
 2 acquired at that part of the meeting may allow a person to
 3 identify a burial site, human skeletal remains, or burial
 4 material and pilfer, disturb, or destroy the human skeletal
 5 remains, burial site, or burial material.

6 **Section 11.** Section 2-6-101, MCA, is amended to read:

7 **"2-6-101. Definitions.** (1) Writings are of two kinds:

- 8 (a) public; and
- 9 (b) private.

10 (2) Public writings are:

11 (a) the written acts or records of the acts of the
 12 sovereign authority, of official bodies and tribunals, and
 13 of public officers, legislative, judicial, and executive,
 14 whether of this state, of the United States, of a sister
 15 state, or of a foreign country;

16 (b) public records, kept in this state, of private
 17 writings, except as provided in 22-1-1103 and [section 7].

18 (3) Public writings are divided into four classes:

- 19 (a) laws;
- 20 (b) judicial records;
- 21 (c) other official documents;
- 22 (d) public records, kept in this state, of private

23 writings.

24 (4) All other writings are private."

25 **Section 12.** Section 2-6-102, MCA, is amended to read:

1 **"2-6-102. Citizens entitled to inspect and copy public**
 2 **writings.** (1) Every citizen has a right to inspect and take
 3 a copy of any public writings of this state, except as
 4 provided in 22-1-1103 or [section 7] and as otherwise
 5 expressly provided by statute.

6 (2) Every public officer having the custody of a public
 7 writing which a citizen has a right to inspect is bound to
 8 give him on demand a certified copy of it, on payment of the
 9 legal fees therefor, and such copy is admissible as evidence
 10 in like cases and with like effect as the original writing."

11 **NEW SECTION. Section 13. Disposition of fees, grants,**
 12 **and donations.** (1) There is an account in the state special
 13 revenue fund. The board shall deposit any fee, grant, or
 14 donation received under [section 4] into the account to be
 15 used to pay expenses for board meetings or expenses incurred
 16 in conducting field reviews.

17 (2) The money in the account is statutorily
 18 appropriated to the board as provided in 17-7-502.

19 **Section 14.** Section 17-7-502, MCA, is amended to read:

20 **"17-7-502. Statutory appropriations -- definition --**
 21 **requisites for validity.** (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
11 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
12 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
13 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
15 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
16 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
17 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
18 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
19 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
20 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;
21 [section 13]; and section 13, House Bill No. 861, Laws of
22 1985.

23 (4) There is a statutory appropriation to pay the
24 principal, interest, premiums, and costs of issuing, paying,
25 and securing all bonds, notes, or other obligations, as due,

1 that have been authorized and issued pursuant to the laws of
2 Montana. Agencies that have entered into agreements
3 authorized by the laws of Montana to pay the state
4 treasurer, for deposit in accordance with 17-2-101 through
5 17-2-107, as determined by the state treasurer, an amount
6 sufficient to pay the principal and interest as due on the
7 bonds or notes have statutory appropriation authority for
8 such payments. (In subsection (3), pursuant to sec. 10, Ch.
9 664, L. 1987, the inclusion of 39-71-2504 terminates June
10 30, 1991.)"

11 NEW SECTION. Section 15. Appropriation. There is
12 appropriated \$10,000 from the general fund to the board for
13 the 2 fiscal years beginning July 1, 1991, to be used to pay
14 expenses for board meetings or expenses incurred in
15 conducting field reviews.

16 NEW SECTION. Section 16. Severability. If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 NEW SECTION. Section 17. Effective dates. (1)
23 [Sections 4, 13, 14, 16, and this section] are effective on
24 passage and approval.

25 (2) [Sections 1 through 3, 5 through 12, 15, and 18]

1 are effective July 1, 1991.

2 NEW SECTION. **Section 18. Termination.** [Sections 13(2)

3 and 14] terminate on June 30, 1993.

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON APPROPRIATIONS

HB 0131/02

HB 0131/02

1 HOUSE BILL NO. 131

2 INTRODUCED BY BROOKE, GAGE, REAM, BARNHART, CODY, O'KEEFE,
3 YELLOWTAIL, DARKO, WANZENRIED, J. RICE, GERVAIS, SVRCEK,
4 GRADY, DOHERTY, RUSSELL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE HUMAN
7 SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A
8 BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND
9 NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL
10 SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS;
11 PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING
12 FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR
13 DISPOSITION OF FEES, GRANTS, AND DONATIONS;--AND--PENALTIES;
14 EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER
15 CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF
16 RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING
17 FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY
18 FROM THE CULTURAL-AND--AESTHETIC--PROJECTS--ACCOUNT GENERAL
19 FUND; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102, AND
20 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A
21 TERMINATION DATE."

22 STATEMENT OF INTENT

23
24 A statement of intent is required for this bill because
25 [section 4] grants to the burial protection PRESERVATION

1 board rulemaking authority to implement the provisions of
2 this bill. At a minimum, it is the intent of the legislature
3 that the board adopt rules:

- 4 (1) governing the conduct of board business;
5 (2) establishing and maintaining a registry of burial
6 sites located in the state;
7 (3) establishing criteria for conducting field reviews
8 upon notification of a discovery of human skeletal remains,
9 burial sites, or burial materials; and
10 (4) establishing guidelines and forms for the issuance
11 of a permit for scientific analysis of human remains or
12 burial materials.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 (Refer to Introduced Bill)

16 Strike everything after the enacting clause and insert:

17 NEW SECTION. Section 1. Short title. [Sections 1
18 through 10 and 13] may be cited as the "Human Skeletal
19 Remains and Burial Site Protection Act".

20 NEW SECTION. Section 2. Legislative findings and
21 intent. (1) The legislature of the state of Montana finds
22 that:

- 23 (a) the state and its citizens have an obligation to
24 protect from disturbance or destruction all human skeletal
25 remains, burial sites, and burial material, including those

SECOND READING

HB 131

-2-

SECOND PRINTING



1 in marked, unmarked, unrecorded, registered, or unregistered
2 graves or burial grounds located on state or private lands
3 that are not protected as cemeteries or graveyards under
4 existing state law;

5 (b) marked, unmarked, unrecorded, registered, or
6 unregistered graves or burial grounds not protected as
7 cemeteries or graveyards under existing state law are
8 increasingly subject to pilferage, disturbance, and
9 destruction for commercial purposes, including land
10 development, agriculture, mining, and the sale of artifacts;

11 (c) private collection of artifacts may result in the
12 destruction of burial sites. Existing law reflects the value
13 society places on preserving human burial sites, but the law
14 does not clearly provide equal and adequate protection or
15 incentives to ensure preservation and protection of all
16 burial sites in the state regardless of ethnic origin,
17 burial context, or age.

18 (d) while some human skeletal remains and burial sites
19 may be of interest to science, the needs of the scientific
20 community to gather information and material from burial
21 sites must be balanced with the legal, moral, and religious
22 rights and obligations of tribal groups, next of kin, or
23 descendants;

24 (e) preservation in place is the preferred policy for
25 all human skeletal remains, burial sites, and burial

1 material; and

2 (f) notwithstanding any other provision of law,
3 [sections 1 through 10 and 13] are the exclusive laws
4 governing the treatment of human skeletal remains, burial
5 sites, and burial materials.

6 (2) It is the intent of the legislature to:

7 (a) ensure that all burials be accorded equal treatment
8 and respect for human dignity without reference to ethnic
9 origin, cultural background, or religious affiliation;

10 (b) provide adequate protection for all interests
11 related to any burial site encountered during archaeological
12 excavation or agricultural, mining, construction, or other
13 ground-disturbing activity on state and private lands
14 without causing avoidable or undue delay or hardship for any
15 person who has an interest in using the land on which the
16 burial site is located;

17 (c) recognize the interests, concerns, and obligations
18 of those having a kinship, tribal, cultural, or religious
19 affiliation with the burial site and balance those interests
20 against the interests of scientists, landowners, and
21 developers;

22 (d) provide to the board an exemption from the open
23 meeting and public records laws when public disclosure of
24 the location of a burial site could result in pilferage,
25 disturbance, or destruction of the site; and

1 (e) recognize the need for forensic examination of
 2 human skeletal remains, burial sites, and burial material if
 3 the county coroner, county attorney, or state medical
 4 examiner determines an examination is necessary under state
 5 law.

6 NEW SECTION. Section 3. Definitions. As used in
 7 [sections 1 through 10 and 13], the following definitions
 8 apply:

9 (1) "Board" means the burial preservation board
 10 established in [section 4].

11 (2) "Burial material" means any item found at the
 12 burial site or with the human skeletal remains and directly
 13 associated with the burial or burial site.

14 (3) "Burial site" means, except for cemeteries and
 15 graveyards protected under existing state law, any natural
 16 or prepared physical location, whether originally below, on,
 17 or above the surface of the earth, into which human remains
 18 were intentionally deposited as a part of the death rites or
 19 ceremonies of a culture.

20 (4) "Human skeletal remains" means any part of the
 21 human body in any state of decomposition taken from a burial
 22 site.

23 (5) "Marked, unmarked, unrecorded, registered, or
 24 unregistered grave or burial ground" means any place, except
 25 a cemetery or graveyard protected under existing state law,

1 where human skeletal remains are or have been interred.

2 (6) "Scientifically justifiable" means that the human
 3 skeletal remains or burial material has a potential to
 4 address specific research questions in the science of
 5 anthropology, history, or biology.

6 (7) "Tribal group" means an Indian tribe recognized by
 7 the United States secretary of the interior or recognized as
 8 a tribe by other Indian nations.

9 NEW SECTION. Section 4. Board -- composition -- rights
 10 -- responsibilities. (1) There is a burial preservation
 11 board. The board is composed of:

12 (a) one representative of each of the seven
 13 reservations, appointed by the governor from a list of up to
 14 three nominees provided by each of the respective tribal
 15 governments;

16 (b) one person appointed by the governor from a list of
 17 up to three nominees submitted by the Little Shell band of
 18 Chippewa Indians;

19 (c) one person appointed by the Montana state historic
 20 preservation officer;

21 (d) one representative of the Montana archaeological
 22 association appointed by the coordinator of Indian affairs
 23 from a list of up to three nominees submitted by the Montana
 24 archaeological association;

25 (e) one physical anthropologist appointed by the state

1 medical examiner;

2 (f) one representative of the Montana coroners'
3 association appointed by the coordinator of Indian affairs
4 from a list of up to three nominees submitted by the Montana
5 coroners' association; and

6 (g) one representative of the public, appointed by the
7 attorney general, who is not associated with tribal
8 governments; state government; the fields of historic
9 preservation, archaeology, or anthropology; or the Montana
10 coroners' association.

11 (2) Members of the board shall serve staggered 2-year
12 terms. A vacancy on the board must be filled in the same
13 manner as the original appointment and only for the
14 unexpired portion of the term.

15 (3) The board shall:

16 (a) provide for the establishment and maintenance of a
17 registry of burial sites located in the state;

18 (b) designate the appropriate member or members of the
19 board or a representative or representatives of the board to
20 conduct a field review upon notification of the discovery of
21 human skeletal remains, a burial site, or burial materials;

22 (c) assist interested landowners in the development of
23 agreements with the board for the treatment and disposition,
24 with appropriate dignity, of human skeletal remains and
25 burial material;

1 (d) mediate, upon application of either party, disputes
2 that may arise between a landowner and known descendants
3 that relate to the treatment and disposition of human
4 skeletal remains and burial material;

5 (e) assume responsibility for final treatment and
6 disposition of human skeletal remains and burial material if
7 the field review recommendation is not accepted by the
8 board's representatives and the landowner;

9 (f) establish a nonrefundable application fee, not to
10 exceed \$50, for a permit for scientific analysis of human
11 skeletal remains or burial material from burial sites as
12 provided by [section 6];

13 (g) issue permits authorizing scientific analysis;

14 (h) accept grants or real or in-kind donations to carry
15 out the purposes of [sections 1 through 10 and 13];

16 (i) adopt rules necessary to administer and enforce the
17 provisions of [sections 1 through 10 and 13]; and

18 (j) perform any other duties necessary to implement the
19 provisions of [sections 1 through 10 and 13].

20 (4) The board is allocated to the department of
21 commerce for administrative purposes only as prescribed in
22 2-15-121.

23 (5) Members of the board shall serve without pay but
24 are entitled to reimbursement for travel, meals, and lodging
25 pursuant to 2-18-501 through 2-18-503.

1 NEW SECTION. **Section 5. Discovery** -- reporting
2 requirements -- field review. (1) A person who by
3 archaeological excavation or by agricultural, mining,
4 construction, or other ground-disturbing activity discovers
5 human skeletal remains, a burial site, or burial material
6 shall immediately notify the county coroner. Failure to
7 notify the county coroner subjects a person to the penalty
8 provided in [section 8].

9 (2) Upon discovery of human skeletal remains, a burial
10 site, or burial material, excavation or further disturbance
11 must cease until the coroner has determined whether the
12 remains are subject to the provisions of Title 46, chapter
13 4, or any other related provisions of law concerning the
14 investigation of the circumstances, manner, and cause of
15 death or whether a forensic examination of the human
16 skeletal remains, burial site, or burial material is
17 necessary. The coroner shall make his determination within 2
18 working days from the time the person responsible for the
19 excavation notifies him of the discovery or recognition of
20 the remains. If the coroner cannot make the determination
21 within 2 working days, he shall notify a member of the board
22 of the reason for and the approximate length of the delay.
23 The coroner shall take all reasonable steps to make his
24 determination without removing or causing further
25 disturbance of the remains.

1 (3) If a forensic examination, action under Title 46,
2 chapter 4, or action under any other related provisions of
3 law concerning the investigation of the circumstances,
4 manner, and cause of death is necessary and yields evidence
5 of criminal activity, the evidence may be seized by the
6 coroner or law enforcement agency with jurisdiction for use
7 in a criminal proceeding as provided by law.

8 (4) If the coroner determines that the remains are not
9 subject to the provisions of Title 46, chapter 4, or any
10 other provisions of law concerning the investigation of the
11 circumstances, manner, and cause of death and that a
12 forensic examination is not necessary, he shall telephone
13 the state historic preservation officer within 24 hours.
14 Within 24 hours of notification, the state historic
15 preservation officer shall contact either the landowner and
16 the board or the landowner and the board member representing
17 the nearest reservation and notify them of the discovery of
18 human skeletal remains, a burial site, or burial material.

19 (5) If the state historic preservation officer cannot
20 be contacted, the coroner shall notify a member of the board
21 or the law enforcement agency of the nearest reservation
22 within 24 hours. The board or the agency shall immediately
23 notify the landowner and the board member representing that
24 reservation.

25 (6) Within 36 hours after the board receives

1 notification of a discovery of human skeletal remains, a
 2 burial site, or burial material, the board shall designate
 3 representatives to conduct, with the permission of the
 4 landowner, an initial field review. If the field review
 5 cannot be completed within the next 36 hours, the board's
 6 representatives shall negotiate with the landowner or his
 7 representative for a reasonable time extension to complete
 8 the review. The field review must include:

9 (a) a determination of whether the site can be
 10 preserved;

11 (b) negotiation with the landowner concerning onsite
 12 reburial or disinterment and reburial; and

13 (c) a recommendation, including a timeframe, concerning
 14 final treatment or disposition of the human skeletal remains
 15 or burial material.

16 (7) If the board's representatives fail to make a
 17 recommendation or if the landowner and the board cannot
 18 agree and mediation fails to provide a resolution acceptable
 19 to the landowner and the board, control of human skeletal
 20 remains or burial materials is vested in the board and the
 21 board shall give control of the remains or materials in the
 22 following priority to:

23 (a) the descendants, if identifiable;

24 (b) the tribe or other cultural group that has the
 25 closest cultural affiliation with the human skeletal remains

1 or burial materials;

2 (c) the tribe or other cultural group recognized as
 3 having aboriginally or historically occupied the area where
 4 the remains or materials were discovered if, upon
 5 notification by the board, the tribe or cultural group
 6 states a claim for the remains or materials; or

7 (d) if unclaimed by any tribe or cultural group, the
 8 board, which shall determine the appropriate disposition and
 9 oversee the reinterment of the remains and materials.

10 (8) For purposes of this section, "cultural group"
 11 means a present-day group or organization that has a
 12 relationship of shared group identity which can be
 13 reasonably traced historically or prehistorically to an
 14 identifiable earlier group or organization.

15 NEW SECTION. **Section 6. Scientific analysis -- permit**
 16 **required.** (1) Although onsite reburial is preferred, the
 17 board may, upon petition by a person seeking permission to
 18 perform scientific analysis, grant a permit for the
 19 scientific removal and analysis of human skeletal remains
 20 and burial material upon proof and determination by the
 21 board that the analysis is scientifically justifiable. A
 22 petition for a permit must include:

23 (a) payment of the nonrefundable application fee
 24 provided for in [section 4]; and

25 (b) a brief narrative describing the methodology to be

1 used, the timeframe needed to complete the scientific study,
2 and any other information specifically requested by the
3 board relating to the proposed study.

4 (2) The methodology proposed must be reviewed by the
5 state historic preservation officer or his designated
6 representative and the physical anthropologist on the board,
7 and a recommendation must be made to the full board. Once
8 approved by the board, any change in methodology or in the
9 timeframe must be approved by the board before the original
10 timeframe expires. The timeframe for scientific study may
11 not exceed 12 months from the date of issuance of the
12 permit.

13 (3) A permit for scientific analysis issued by the
14 board is subject to terms, conditions, and procedures
15 prescribed by the board and must include the condition that
16 a permittee shall pay all costs of excavation, study, and
17 disposition.

18 (4) The board shall either issue or deny a permit
19 within 30 working days from the date of the permit petition.
20 If the board denies a permit upon a finding that scientific
21 analysis is not justifiable, the board shall provide the
22 applicant with a written statement outlining the grounds for
23 its finding. The applicant may appeal the decision of the
24 board under the provisions of Title 2, chapter 4, part 6, of
25 the Montana Administrative Procedure Act.

1 (5) The board may suspend or revoke a permit pursuant
2 to the Montana Administrative Procedure Act upon a finding
3 that the permittee has violated any provision of [sections 1
4 through 10 and 13] or any term, condition, or procedure of a
5 permit issued by the board.

6 (6) The provisions of this section do not apply to a
7 forensic examination by the county coroner, action under
8 Title 46, chapter 4, or action under any other related
9 provisions of law concerning the investigation of the
10 circumstances, manner, and cause of death.

11 NEW SECTION. **Section 7. Nondisclosure of records.** (1)
12 The state historic preservation officer, in consultation
13 with the board, shall maintain burial site records that are
14 separate and distinct from those in the cultural resource
15 registry and that are necessary to administer [sections 1
16 through 10 and 13].

17 (2) Burial site records are confidential and available
18 only to criminal justice agencies or to federal, state, and
19 tribal personnel or their appointed representatives legally
20 charged with administering laws protecting cultural
21 resources.

22 (3) Statistical information compiled from burial site
23 records must be made available to the general public. Any
24 information concerning burial site records that is released
25 to a criminal justice agency is confidential criminal

1 justice information, as defined in 44-5-103, and is subject
2 to dissemination pursuant to 44-5-303.

3 NEW SECTION. Section 8. Prohibited acts -- penalties.

4 (1) After July 1, 1991, unless authorized under [sections 1
5 through 10 and 13] or by the descendants, tribe, cultural
6 group, or other person, group, or entity to which the board
7 gives control of the human skeletal remains or burial
8 materials under [section 5], a person may not:

9 (a) purposely or knowingly pilfer, disturb, destroy, or
10 permit pilferage, disturbance, or destruction of a marked,
11 unmarked, unrecorded, registered, or unregistered grave or
12 burial ground or of burial material;

13 (b) for commercial use, knowingly possess, buy, sell,
14 transport, barter, or display human skeletal remains or
15 burial material acquired in violation of [sections 1 through
16 10 and 13]; or

17 (c) purposely or knowingly disclose information knowing
18 that it is highly probable that the disclosure will lead to
19 pilferage, disturbance, or destruction of a burial site.

20 (2) A person convicted under the provisions of
21 subsection (1)(a) may be fined an amount not to exceed
22 \$1,000, be imprisoned in the county jail for not more than 6
23 months, or both. A person convicted of a subsequent
24 violation of subsection (1)(a) may be fined an amount not to
25 exceed \$20,000, be imprisoned for not more than 5 years, or

1 both.

2 (3) A person convicted under the provisions of
3 subsection (1)(b) may be fined an amount not to exceed
4 \$50,000, be imprisoned for not more than 20 years, or both.

5 (4) A person convicted under the provisions of
6 subsection (1)(c) may be fined an amount not to exceed \$500,
7 be imprisoned for not more than 6 months, or both. A person
8 convicted of a subsequent violation of subsection (1)(c) may
9 be fined an amount not to exceed \$10,000, be imprisoned for
10 not more than 5 years, or both.

11 (5) A person who knowingly fails to give notice as
12 required by [section 5(1)] may be fined an amount not less
13 than \$100 or more than \$500.

14 (6) A person who violates a provision of this section
15 or any term or condition of a permit issued under [section
16 6] is subject to a civil penalty not to exceed \$2,000 for
17 the first violation and not to exceed \$10,000 for a
18 subsequent violation.

19 NEW SECTION. Section 9. Civil penalty and damages
20 actions. (1) [Sections 1 through 10 and 13] do not preclude
21 civil actions for damages.

22 (2) The board may bring an action under [section 8] for
23 a civil penalty.

24 NEW SECTION. Section 10. Closure of board meetings.
25 The board may close part of a meeting of the board to the

1 public if the board finds that information that may be
 2 acquired at that part of the meeting may allow a person to
 3 identify a burial site, human skeletal remains, or burial
 4 material and pilfer, disturb, or destroy the human skeletal
 5 remains, burial site, or burial material.

6 **Section 11.** Section 2-6-101, MCA, is amended to read:

7 **"2-6-101. Definitions.** (1) Writings are of two kinds:

8 (a) public; and

9 (b) private.

10 (2) Public writings are:

11 (a) the written acts or records of the acts of the
 12 sovereign authority, of official bodies and tribunals, and
 13 of public officers, legislative, judicial, and executive,
 14 whether of this state, of the United States, of a sister
 15 state, or of a foreign country;

16 (b) public records, kept in this state, of private
 17 writings, except as provided in 22-1-1103 and [section 7].

18 (3) Public writings are divided into four classes:

19 (a) laws;

20 (b) judicial records;

21 (c) other official documents;

22 (d) public records, kept in this state, of private
 23 writings.

24 (4) All other writings are private."

25 **Section 12.** Section 2-6-102, MCA, is amended to read:

1 **"2-6-102. Citizens entitled to inspect and copy public**
 2 **writings.** (1) Every citizen has a right to inspect and take
 3 a copy of any public writings of this state, except as
 4 provided in 22-1-1103 or [section 7] and as otherwise
 5 expressly provided by statute.

6 (2) Every public officer having the custody of a public
 7 writing which a citizen has a right to inspect is bound to
 8 give him on demand a certified copy of it, on payment of the
 9 legal fees therefor, and such copy is admissible as evidence
 10 in like cases and with like effect as the original writing."

11 **NEW SECTION. Section 13. Disposition of fees, grants,**
 12 **and donations.** (1) There is an account in the state special
 13 revenue fund. The board shall deposit any fee, grant, or
 14 donation received under [section 4] into the account to be
 15 used to pay expenses for board meetings or expenses incurred
 16 in conducting field reviews.

17 (2) The money in the account is statutorily
 18 appropriated to the board as provided in 17-7-502.

19 **Section 14.** Section 17-7-502, MCA, is amended to read:

20 **"17-7-502. Statutory appropriations -- definition --**
 21 **requisites for validity.** (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
11 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
12 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
13 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
15 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
16 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
17 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
18 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
19 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
20 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;
21 [section 13]; and section 13, House Bill No. 861, Laws of
22 1985.

23 (4) There is a statutory appropriation to pay the
24 principal, interest, premiums, and costs of issuing, paying,
25 and securing all bonds, notes, or other obligations, as due,

1 that have been authorized and issued pursuant to the laws of
2 Montana. Agencies that have entered into agreements
3 authorized by the laws of Montana to pay the state
4 treasurer, for deposit in accordance with 17-2-101 through
5 17-2-107, as determined by the state treasurer, an amount
6 sufficient to pay the principal and interest as due on the
7 bonds or notes have statutory appropriation authority for
8 such payments. (In subsection (3), pursuant to sec. 10, Ch.
9 664, L. 1987, the inclusion of 39-71-2504 terminates June
10 30, 1991.)"

11 **NEW SECTION. Section 15. Appropriation.** There is
12 appropriated \$10,000 from the general fund to the board for
13 the 2 fiscal years beginning July 1, 1991, to be used to pay
14 expenses for board meetings or expenses incurred in
15 conducting field reviews.

16 **NEW SECTION. Section 16. Severability.** If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 **NEW SECTION. Section 17. Effective dates.** (1)
23 [Sections 4, 13, 14, 16, and this section] are effective on
24 passage and approval.

25 (2) [Sections 1 through 3, 5 through 12, 15, and 18]

HB 0131/02

1 are effective July 1, 1991.

2 NEW SECTION. **Section 18. Termination.** [Sections 13(2)

3 and 14] terminate on June 30, 1993.

-End-

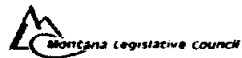
1 HOUSE BILL NO. 131
 2 INTRODUCED BY BROOKE, GAGE, REAM, BARNHART, CODY, O'KEEFE,
 3 YELLOWTAIL, DARKO, WANZENRIED, J. RICE, GERVAIS, SVRCEK,
 4 GRADY, DOHERTY, RUSSELL
 5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE HUMAN
 7 SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A
 8 BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND
 9 NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL
 10 SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS;
 11 PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING
 12 FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR
 13 DISPOSITION OF FEES, GRANTS, AND DONATIONS,--AND--PENALTIES;
 14 EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER
 15 CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF
 16 RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING
 17 FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY
 18 FROM THE CULTURAL-AND--AESTHETIC--PROJECTS--ACCOUNT GENERAL
 19 FUND; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102, AND
 20 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A
 21 TERMINATION DATE."

22
 23 STATEMENT OF INTENT
 24 A statement of intent is required for this bill because
 25 [section 4] grants to the burial protection PRESERVATION

1 board rulemaking authority to implement the provisions of
 2 this bill. At a minimum, it is the intent of the legislature
 3 that the board adopt rules:
 4 (1) governing the conduct of board business;
 5 (2) establishing and maintaining a registry of burial
 6 sites located in the state;
 7 (3) establishing criteria for conducting field reviews
 8 upon notification of a discovery of human skeletal remains,
 9 burial sites, or burial materials; and
 10 (4) establishing guidelines and forms for the issuance
 11 of a permit for scientific analysis of human remains or
 12 burial materials.

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 15 (Refer to Introduced Bill)
 16 Strike everything after the enacting clause and insert:
 17 NEW SECTION. Section 1. Short title. [Sections 1
 18 through 10 and 13] may be cited as the "Human Skeletal
 19 Remains and Burial Site Protection Act".

20 NEW SECTION. Section 2. Legislative findings and
 21 intent. (1) The legislature of the state of Montana finds
 22 that:
 23 (a) the state and its citizens have an obligation to
 24 protect from disturbance or destruction all human skeletal
 25 remains, burial sites, and burial material, including those



1 in marked, unmarked, unrecorded, registered, or unregistered
2 graves or burial grounds located on state or private lands
3 that are not protected as cemeteries or graveyards under
4 existing state law;

5 (b) marked, unmarked, unrecorded, registered, or
6 unregistered graves or burial grounds not protected as
7 cemeteries or graveyards under existing state law are
8 increasingly subject to pilferage, disturbance, and
9 destruction for commercial purposes, including land
10 development, agriculture, mining, and the sale of artifacts;

11 (c) private collection of artifacts may result in the
12 destruction of burial sites. Existing law reflects the value
13 society places on preserving human burial sites, but the law
14 does not clearly provide equal and adequate protection or
15 incentives to ensure preservation and protection of all
16 burial sites in the state regardless of ethnic origin,
17 burial context, or age.

18 (d) while some human skeletal remains and burial sites
19 may be of interest to science, the needs of the scientific
20 community to gather information and material from burial
21 sites must be balanced with the legal, moral, and religious
22 rights and obligations of tribal groups, next of kin, or
23 descendants;

24 (e) preservation in place is the preferred policy for
25 all human skeletal remains, burial sites, and burial

1 material; and

2 (f) notwithstanding any other provision of law,
3 [sections 1 through 10 and 13] are the exclusive laws
4 governing the treatment of human skeletal remains, burial
5 sites, and burial materials.

6 (2) It is the intent of the legislature to:

7 (a) ensure that all burials be accorded equal treatment
8 and respect for human dignity without reference to ethnic
9 origin, cultural background, or religious affiliation;

10 (b) provide adequate protection for all interests
11 related to any burial site encountered during archaeological
12 excavation or agricultural, mining, construction, or other
13 ground-disturbing activity on state and private lands
14 without causing avoidable or undue delay or hardship for any
15 person who has an interest in using the land on which the
16 burial site is located;

17 (c) recognize the interests, concerns, and obligations
18 of those having a kinship, tribal, cultural, or religious
19 affiliation with the burial site and balance those interests
20 against the interests of scientists, landowners, and
21 developers;

22 (d) provide to the board an exemption from the open
23 meeting and public records laws when public disclosure of
24 the location of a burial site could result in pilferage,
25 disturbance, or destruction of the site; and

1 (e) recognize the need for forensic examination of
 2 human skeletal remains, burial sites, and burial material if
 3 the county coroner, county attorney, or state medical
 4 examiner determines an examination is necessary under state
 5 law.

6 NEW SECTION. Section 3. Definitions. As used in
 7 [sections 1 through 10 and 13], the following definitions
 8 apply:

9 (1) "Board" means the burial preservation board
 10 established in [section 4].

11 (2) "Burial material" means any item found at the
 12 burial site or with the human skeletal remains and directly
 13 associated with the burial or burial site.

14 (3) "Burial site" means, except for cemeteries and
 15 graveyards protected under existing state law, any natural
 16 or prepared physical location, whether originally below, on,
 17 or above the surface of the earth, into which human remains
 18 were intentionally deposited as a part of the death rites or
 19 ceremonies of a culture.

20 (4) "Human skeletal remains" means any part of the
 21 human body in any state of decomposition taken from a burial
 22 site.

23 (5) "Marked, unmarked, unrecorded, registered, or
 24 unregistered grave or burial ground" means any place, except
 25 a cemetery or graveyard protected under existing state law,

1 where human skeletal remains are or have been interred.

2 (6) "Scientifically justifiable" means that the human
 3 skeletal remains or burial material has a potential to
 4 address specific research questions in the science of
 5 anthropology, history, or biology.

6 (7) "Tribal group" means an Indian tribe recognized by
 7 the United States secretary of the interior or recognized as
 8 a tribe by other Indian nations.

9 NEW SECTION. Section 4. Board -- composition -- rights
 10 -- responsibilities. (1) There is a burial preservation
 11 board. The board is composed of:

12 (a) one representative of each of the seven
 13 reservations, appointed by the governor from a list of up to
 14 three nominees provided by each of the respective tribal
 15 governments;

16 (b) one person appointed by the governor from a list of
 17 up to three nominees submitted by the Little Shell band of
 18 Chippewa Indians;

19 (c) one person appointed by the Montana state historic
 20 preservation officer;

21 (d) one representative of the Montana archaeological
 22 association appointed by the coordinator of Indian affairs
 23 from a list of up to three nominees submitted by the Montana
 24 archaeological association;

25 (e) one physical anthropologist appointed by the state

1 medical examiner;

2 (f) one representative of the Montana coroners'
3 association appointed by the coordinator of Indian affairs
4 from a list of up to three nominees submitted by the Montana
5 coroners' association; and

6 (g) one representative of the public, appointed by the
7 attorney general, who is not associated with tribal
8 governments; state government; the fields of historic
9 preservation, archaeology, or anthropology; or the Montana
10 coroners' association.

11 (2) Members of the board shall serve staggered 2-year
12 terms. A vacancy on the board must be filled in the same
13 manner as the original appointment and only for the
14 unexpired portion of the term.

15 (3) The board shall:

16 (a) provide for the establishment and maintenance of a
17 registry of burial sites located in the state;

18 (b) designate the appropriate member or members of the
19 board or a representative or representatives of the board to
20 conduct a field review upon notification of the discovery of
21 human skeletal remains, a burial site, or burial materials;

22 (c) assist interested landowners in the development of
23 agreements with the board for the treatment and disposition,
24 with appropriate dignity, of human skeletal remains and
25 burial material;

1 (d) mediate, upon application of either party, disputes
2 that may arise between a landowner and known descendants
3 that relate to the treatment and disposition of human
4 skeletal remains and burial material;

5 (e) assume responsibility for final treatment and
6 disposition of human skeletal remains and burial material if
7 the field review recommendation is not accepted by the
8 board's representatives and the landowner;

9 (f) establish a nonrefundable application fee, not to
10 exceed \$50, for a permit for scientific analysis of human
11 skeletal remains or burial material from burial sites as
12 provided by [section 6];

13 (g) issue permits authorizing scientific analysis;

14 (h) accept grants or real or in-kind donations to carry
15 out the purposes of [sections 1 through 10 and 13];

16 (i) adopt rules necessary to administer and enforce the
17 provisions of [sections 1 through 10 and 13]; and

18 (j) perform any other duties necessary to implement the
19 provisions of [sections 1 through 10 and 13].

20 (4) The board is allocated to the department of
21 commerce for administrative purposes only as prescribed in
22 2-15-121.

23 (5) Members of the board shall serve without pay but
24 are entitled to reimbursement for travel, meals, and lodging
25 pursuant to 2-18-501 through 2-18-503.

1 NEW SECTION. **Section 5. Discovery -- reporting**
 2 **requirements -- field review.** (1) A person who by
 3 archaeological excavation or by agricultural, mining,
 4 construction, or other ground-disturbing activity discovers
 5 human skeletal remains, a burial site, or burial material
 6 shall immediately notify the county coroner. Failure to
 7 notify the county coroner subjects a person to the penalty
 8 provided in [section 8].

9 (2) Upon discovery of human skeletal remains, a burial
 10 site, or burial material, excavation or further disturbance
 11 must cease until the coroner has determined whether the
 12 remains are subject to the provisions of Title 46, chapter
 13 4, or any other related provisions of law concerning the
 14 investigation of the circumstances, manner, and cause of
 15 death or whether a forensic examination of the human
 16 skeletal remains, burial site, or burial material is
 17 necessary. The coroner shall make his determination within 2
 18 working days from the time the person responsible for the
 19 excavation notifies him of the discovery or recognition of
 20 the remains. If the coroner cannot make the determination
 21 within 2 working days, he shall notify a member of the board
 22 of the reason for and the approximate length of the delay.
 23 The coroner shall take all reasonable steps to make his
 24 determination without removing or causing further
 25 disturbance of the remains.

1 (3) If a forensic examination, action under Title 46,
 2 chapter 4, or action under any other related provisions of
 3 law concerning the investigation of the circumstances,
 4 manner, and cause of death is necessary and yields evidence
 5 of criminal activity, the evidence may be seized by the
 6 coroner or law enforcement agency with jurisdiction for use
 7 in a criminal proceeding as provided by law.

8 (4) If the coroner determines that the remains are not
 9 subject to the provisions of Title 46, chapter 4, or any
 10 other provisions of law concerning the investigation of the
 11 circumstances, manner, and cause of death and that a
 12 forensic examination is not necessary, he shall telephone
 13 the state historic preservation officer within 24 hours.
 14 Within 24 hours of notification, the state historic
 15 preservation officer shall contact either the landowner and
 16 the board or the landowner and the board member representing
 17 the nearest reservation and notify them of the discovery of
 18 human skeletal remains, a burial site, or burial material.

19 (5) If the state historic preservation officer cannot
 20 be contacted, the coroner shall notify a member of the board
 21 or the law enforcement agency of the nearest reservation
 22 within 24 hours. The board or the agency shall immediately
 23 notify the landowner and the board member representing that
 24 reservation.

25 (6) Within 36 hours after the board receives

1 notification of a discovery of human skeletal remains, a
 2 burial site, or burial material, the board shall designate
 3 representatives to conduct, with the permission of the
 4 landowner, an initial field review. If the field review
 5 cannot be completed within the next 36 hours, the board's
 6 representatives shall negotiate with the landowner or his
 7 representative for a reasonable time extension to complete
 8 the review. The field review must include:

9 (a) a determination of whether the site can be
 10 preserved;

11 (b) negotiation with the landowner concerning onsite
 12 reburial or disinterment and reburial; and

13 (c) a recommendation, including a timeframe, concerning
 14 final treatment or disposition of the human skeletal remains
 15 or burial material.

16 (7) If the board's representatives fail to make a
 17 recommendation or if the landowner and the board cannot
 18 agree and mediation fails to provide a resolution acceptable
 19 to the landowner and the board, control of human skeletal
 20 remains or burial materials is vested in the board and the
 21 board shall give control of the remains or materials in the
 22 following priority to:

23 (a) the descendants, if identifiable;

24 (b) the tribe or other cultural group that has the
 25 closest cultural affiliation with the human skeletal remains

1 or burial materials;

2 (c) the tribe or other cultural group recognized as
 3 having aboriginally or historically occupied the area where
 4 the remains or materials were discovered if, upon
 5 notification by the board, the tribe or cultural group
 6 states a claim for the remains or materials; or

7 (d) if unclaimed by any tribe or cultural group, the
 8 board, which shall determine the appropriate disposition and
 9 oversee the reinterment of the remains and materials.

10 (8) For purposes of this section, "cultural group"
 11 means a present-day group or organization that has a
 12 relationship of shared group identity which can be
 13 reasonably traced historically or prehistorically to an
 14 identifiable earlier group or organization.

15 **NEW SECTION. Section 6. Scientific analysis -- permit**
 16 **required.** (1) Although onsite reburial is preferred, the
 17 board may, upon petition by a person seeking permission to
 18 perform scientific analysis, grant a permit for the
 19 scientific removal and analysis of human skeletal remains
 20 and burial material upon proof and determination by the
 21 board that the analysis is scientifically justifiable. A
 22 petition for a permit must include:

23 (a) payment of the nonrefundable application fee
 24 provided for in [section 4]; and

25 (b) a brief narrative describing the methodology to be

1 used, the timeframe needed to complete the scientific study,
2 and any other information specifically requested by the
3 board relating to the proposed study.

4 (2) The methodology proposed must be reviewed by the
5 state historic preservation officer or his designated
6 representative and the physical anthropologist on the board,
7 and a recommendation must be made to the full board. Once
8 approved by the board, any change in methodology or in the
9 timeframe must be approved by the board before the original
10 timeframe expires. The timeframe for scientific study may
11 not exceed 12 months from the date of issuance of the
12 permit.

13 (3) A permit for scientific analysis issued by the
14 board is subject to terms, conditions, and procedures
15 prescribed by the board and must include the condition that
16 a permittee shall pay all costs of excavation, study, and
17 disposition.

18 (4) The board shall either issue or deny a permit
19 within 30 working days from the date of the permit petition.
20 If the board denies a permit upon a finding that scientific
21 analysis is not justifiable, the board shall provide the
22 applicant with a written statement outlining the grounds for
23 its finding. The applicant may appeal the decision of the
24 board under the provisions of Title 2, chapter 4, part 6, of
25 the Montana Administrative Procedure Act.

1 (5) The board may suspend or revoke a permit pursuant
2 to the Montana Administrative Procedure Act upon a finding
3 that the permittee has violated any provision of [sections 1
4 through 10 and 13] or any term, condition, or procedure of a
5 permit issued by the board.

6 (6) The provisions of this section do not apply to a
7 forensic examination by the county coroner, action under
8 Title 46, chapter 4, or action under any other related
9 provisions of law concerning the investigation of the
10 circumstances, manner, and cause of death.

11 NEW SECTION. Section 7. Nondisclosure of records. (1)
12 The state historic preservation officer, in consultation
13 with the board, shall maintain burial site records that are
14 separate and distinct from those in the cultural resource
15 registry and that are necessary to administer [sections 1
16 through 10 and 13].

17 (2) Burial site records are confidential and available
18 only to criminal justice agencies or to federal, state, and
19 tribal personnel or their appointed representatives legally
20 charged with administering laws protecting cultural
21 resources.

22 (3) Statistical information compiled from burial site
23 records must be made available to the general public. Any
24 information concerning burial site records that is released
25 to a criminal justice agency is confidential criminal

1 justice information, as defined in 44-5-103, and is subject
2 to dissemination pursuant to 44-5-303.

3 NEW SECTION. **Section 8. Prohibited acts -- penalties.**

4 (1) After July 1, 1991, unless authorized under [sections 1
5 through 10 and 13] or by the descendants, tribe, cultural
6 group, or other person, group, or entity to which the board
7 gives control of the human skeletal remains or burial
8 materials under [section 5], a person may not:

9 (a) purposely or knowingly pilfer, disturb, destroy, or
10 permit pilferage, disturbance, or destruction of a marked,
11 unmarked, unrecorded, registered, or unregistered grave or
12 burial ground or of burial material;

13 (b) for commercial use, knowingly possess, buy, sell,
14 transport, barter, or display human skeletal remains or
15 burial material acquired in violation of [sections 1 through
16 10 and 13]; or

17 (c) purposely or knowingly disclose information knowing
18 that it is highly probable that the disclosure will lead to
19 pilferage, disturbance, or destruction of a burial site.

20 (2) A person convicted under the provisions of
21 subsection (1)(a) may be fined an amount not to exceed
22 \$1,000, be imprisoned in the county jail for not more than 6
23 months, or both. A person convicted of a subsequent
24 violation of subsection (1)(a) may be fined an amount not to
25 exceed \$20,000, be imprisoned for not more than 5 years, or

1 both.

2 (3) A person convicted under the provisions of
3 subsection (1)(b) may be fined an amount not to exceed
4 \$50,000, be imprisoned for not more than 20 years, or both.

5 (4) A person convicted under the provisions of
6 subsection (1)(c) may be fined an amount not to exceed \$500,
7 be imprisoned for not more than 6 months, or both. A person
8 convicted of a subsequent violation of subsection (1)(c) may
9 be fined an amount not to exceed \$10,000, be imprisoned for
10 not more than 5 years, or both.

11 (5) A person who knowingly fails to give notice as
12 required by [section 5(1)] may be fined an amount not less
13 than \$100 or more than \$500.

14 (6) A person who violates a provision of this section
15 or any term or condition of a permit issued under [section
16 6] is subject to a civil penalty not to exceed \$2,000 for
17 the first violation and not to exceed \$10,000 for a
18 subsequent violation.

19 NEW SECTION. **Section 9. Civil penalty and damages**
20 **actions.** (1) [Sections 1 through 10 and 13] do not preclude
21 civil actions for damages.

22 (2) The board may bring an action under [section 8] for
23 a civil penalty.

24 NEW SECTION. **Section 10. Closure of board meetings.**
25 The board may close part of a meeting of the board to the

1 public if the board finds that information that may be
 2 acquired at that part of the meeting may allow a person to
 3 identify a burial site, human skeletal remains, or burial
 4 material and pilfer, disturb, or destroy the human skeletal
 5 remains, burial site, or burial material.

6 **Section 11.** Section 2-6-101, MCA, is amended to read:

7 "2-6-101. Definitions. (1) Writings are of two kinds:

8 (a) public; and

9 (b) private.

10 (2) Public writings are:

11 (a) the written acts or records of the acts of the
 12 sovereign authority, of official bodies and tribunals, and
 13 of public officers, legislative, judicial, and executive,
 14 whether of this state, of the United States, of a sister
 15 state, or of a foreign country;

16 (b) public records, kept in this state, of private
 17 writings, except as provided in 22-1-1103 and [section 7].

18 (3) Public writings are divided into four classes:

19 (a) laws;

20 (b) judicial records;

21 (c) other official documents;

22 (d) public records, kept in this state, of private
 23 writings.

24 (4) All other writings are private."

25 **Section 12.** Section 2-6-102, MCA, is amended to read:

1 "2-6-102. Citizens entitled to inspect and copy public
 2 writings. (1) Every citizen has a right to inspect and take
 3 a copy of any public writings of this state, except as
 4 provided in 22-1-1103 or [section 7] and as otherwise
 5 expressly provided by statute.

6 (2) Every public officer having the custody of a public
 7 writing which a citizen has a right to inspect is bound to
 8 give him on demand a certified copy of it, on payment of the
 9 legal fees therefor, and such copy is admissible as evidence
 10 in like cases and with like effect as the original writing."

11 **NEW SECTION. Section 13. Disposition of fees, grants,
 12 and donations.** (1) There is an account in the state special
 13 revenue fund. The board shall deposit any fee, grant, or
 14 donation received under [section 4] into the account to be
 15 used to pay expenses for board meetings or expenses incurred
 16 in conducting field reviews.

17 (2) The money in the account is statutorily
 18 appropriated to the board as provided in 17-7-502.

19 **Section 14.** Section 17-7-502, MCA, is amended to read:

20 "17-7-502. Statutory appropriations -- definition --
 21 requisites for validity. (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
2 of the following provisions:

3 (a) The law containing the statutory authority must be
4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
6 appropriation must specifically state that a statutory
7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
9 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
11 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
12 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
13 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;
14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
15 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
16 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
17 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
18 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
19 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
20 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;
21 [section 13]; and section 13, House Bill No. 861, Laws of
22 1985.

23 (4) There is a statutory appropriation to pay the
24 principal, interest, premiums, and costs of issuing, paying,
25 and securing all bonds, notes, or other obligations, as due,

1 that have been authorized and issued pursuant to the laws of
2 Montana. Agencies that have entered into agreements
3 authorized by the laws of Montana to pay the state
4 treasurer, for deposit in accordance with 17-2-101 through
5 17-2-107, as determined by the state treasurer, an amount
6 sufficient to pay the principal and interest as due on the
7 bonds or notes have statutory appropriation authority for
8 such payments. (In subsection (3), pursuant to sec. 10, Ch.
9 664, L. 1987, the inclusion of 39-71-2504 terminates June
10 30, 1991.)"

11 NEW SECTION. Section 15. Appropriation. There is
12 appropriated \$10,000 from the general fund to the board for
13 the 2 fiscal years beginning July 1, 1991, to be used to pay
14 expenses for board meetings or expenses incurred in
15 conducting field reviews.

16 NEW SECTION. Section 16. Severability. If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 NEW SECTION. Section 17. Effective dates. (1)
23 [Sections 4, 13, 14, 16, and this section] are effective on
24 passage and approval.

25 (2) [Sections 1 through 3, 5 through 12, 15, and 18]

1 are effective July 1, 1991.

2 NEW SECTION. **Section 18.** Termination. (Sections 13(2)

3 and 14) terminate on June 30, 1993.

-End-

1 HOUSE BILL NO. 131

2 INTRODUCED BY BROOKE, GAGE, REAM, BARNHART, CODY, O'KEEFE,
3 YELLOWTAIL, DARKO, WANZENRIED, J. RICE, GERVAIS, SVRCEK,
4 GRADY, DOHERTY, RUSSELL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE HUMAN
7 SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A
8 BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND
9 NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL
10 SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS;
11 PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING
12 FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR
13 DISPOSITION OF FEES, GRANTS, AND DONATIONS;--AND--PENALTIES;
14 EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER
15 CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF
16 RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING
17 FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY
18 FROM THE CULTURAL-AND--AESTHETIC--PROJECTS--ACCOUNT GENERAL
19 FUND; AMENDING SECTIONS 2-3-203, 2-6-101, AND 2-6-102, AND
20 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A
21 TERMINATION DATE."

22 STATEMENT OF INTENT

23
24 A statement of intent is required for this bill because
25 [section 4] grants to the burial protection PRESERVATION

1 board rulemaking authority to implement the provisions of
2 this bill. At a minimum, it is the intent of the legislature
3 that the board adopt rules:

- 4 (1) governing the conduct of board business;
5 (2) establishing and maintaining a registry of burial
6 sites located in the state;
7 (3) establishing criteria for conducting field reviews
8 upon notification of a discovery of human skeletal remains,
9 burial sites, or burial materials; and
10 (4) establishing guidelines and forms for the issuance
11 of a permit for scientific analysis of human remains or
12 burial materials.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 (Refer to Introduced Bill)

16 Strike everything after the enacting clause and insert:

17 NEW SECTION. Section 1. Short title. [Sections 1
18 through 10 and 13] may be cited as the "Human Skeletal
19 Remains and Burial Site Protection Act".

20 NEW SECTION. Section 2. Legislative findings and
21 intent. (1) The legislature of the state of Montana finds
22 that:

- 23 (a) the state and its citizens have an obligation to
24 protect from disturbance or destruction all human skeletal
25 remains, burial sites, and burial material, including those

1 in marked, unmarked, unrecorded, registered, or unregistered
 2 graves or burial grounds located on state or private lands
 3 that are not protected as cemeteries or graveyards under
 4 existing state law;

5 (b) marked, unmarked, unrecorded, registered, or
 6 unregistered graves or burial grounds not protected as
 7 cemeteries or graveyards under existing state law are
 8 increasingly subject to pilferage, disturbance, and
 9 destruction for commercial purposes, including land
 10 development, agriculture, mining, and the sale of artifacts;

11 (c) private collection of artifacts may result in the
 12 destruction of burial sites. Existing law reflects the value
 13 society places on preserving human burial sites, but the law
 14 does not clearly provide equal and adequate protection or
 15 incentives to ensure preservation and protection of all
 16 burial sites in the state regardless of ethnic origin,
 17 burial context, or age.

18 (d) while some human skeletal remains and burial sites
 19 may be of interest to science, the needs of the scientific
 20 community to gather information and material from burial
 21 sites must be balanced with the legal, moral, and religious
 22 rights and obligations of tribal groups, next of kin, or
 23 descendants;

24 (e) preservation in place is the preferred policy for
 25 all human skeletal remains, burial sites, and burial

1 material; and

2 (f) notwithstanding any other provision of law,
 3 [sections 1 through 10 and 13] are the exclusive laws
 4 governing the treatment of human skeletal remains, burial
 5 sites, and burial materials.

6 (2) It is the intent of the legislature to:

7 (a) ensure that all burials be accorded equal treatment
 8 and respect for human dignity without reference to ethnic
 9 origin, cultural background, or religious affiliation;

10 (b) provide adequate protection for all interests
 11 related to any burial site encountered during archaeological
 12 excavation or agricultural, mining, construction, or other
 13 ground-disturbing activity on state and private lands
 14 without causing avoidable or undue delay or hardship for any
 15 person who has an interest in using the land on which the
 16 burial site is located;

17 (c) recognize the interests, concerns, and obligations
 18 of those having a kinship, tribal, cultural, or religious
 19 affiliation with the burial site and balance those interests
 20 against the interests of scientists, landowners, and
 21 developers;

22 (d) provide to the board an exemption from the open
 23 meeting and public records laws when public disclosure of
 24 the location of a burial site could result in pilferage,
 25 disturbance, or destruction of the site; and

1 (e) recognize the need for forensic examination of
 2 human skeletal remains, burial sites, and burial material if
 3 the county coroner, county attorney, or state medical
 4 examiner determines an examination is necessary under state
 5 law.

6 NEW SECTION. **Section 3.** Definitions. As used in
 7 [sections 1 through 10 and 13], the following definitions
 8 apply:

9 (1) "Board" means the burial preservation board
 10 established in [section 4].

11 (2) "Burial material" means any item found at the
 12 burial site or with the human skeletal remains and directly
 13 associated with the burial or burial site.

14 (3) "Burial site" means, except for cemeteries and
 15 graveyards protected under existing state law, any natural
 16 or prepared physical location, whether originally below, on,
 17 or above the surface of the earth, into which human remains
 18 were intentionally deposited as a part of the death rites or
 19 ceremonies of a culture.

20 (4) "Human skeletal remains" means any part of the
 21 human body in any state of decomposition taken from a burial
 22 site.

23 (5) "Marked, unmarked, unrecorded, registered, or
 24 unregistered grave or burial ground" means any place, except
 25 a cemetery or graveyard protected under existing state law,

1 where human skeletal remains are or have been interred.

2 (6) "Scientifically justifiable" means that the human
 3 skeletal remains or burial material has a potential to
 4 address specific research questions in the science of
 5 anthropology, history, or biology.

6 (7) "Tribal group" means an Indian tribe recognized by
 7 the United States secretary of the interior or recognized as
 8 a tribe by other Indian nations.

9 NEW SECTION. **Section 4.** Board -- composition -- rights
 10 -- responsibilities. (1) There is a burial preservation
 11 board. The board is composed of:

12 (a) one representative of each of the seven
 13 reservations, appointed by the governor from a list of up to
 14 three nominees provided by each of the respective tribal
 15 governments;

16 (b) one person appointed by the governor from a list of
 17 up to three nominees submitted by the Little Shell band of
 18 Chippewa Indians;

19 (c) one person appointed by the Montana state historic
 20 preservation officer;

21 (d) one representative of the Montana archaeological
 22 association appointed by the coordinator of Indian affairs
 23 from a list of up to three nominees submitted by the Montana
 24 archaeological association;

25 (e) one physical anthropologist appointed by the state

1 medical examiner;

2 (f) one representative of the Montana coroners'
3 association appointed by the coordinator of Indian affairs
4 from a list of up to three nominees submitted by the Montana
5 coroners' association; and

6 (g) one representative of the public, appointed by the
7 attorney general, who is not associated with tribal
8 governments; state government; the fields of historic
9 preservation, archaeology, or anthropology; or the Montana
10 coroners' association.

11 (2) Members of the board shall serve staggered 2-year
12 terms. A vacancy on the board must be filled in the same
13 manner as the original appointment and only for the
14 unexpired portion of the term.

15 (3) The board shall:

16 (a) provide for the establishment and maintenance of a
17 registry of burial sites located in the state;

18 (b) designate the appropriate member or members of the
19 board or a representative or representatives of the board to
20 conduct a field review upon notification of the discovery of
21 human skeletal remains, a burial site, or burial materials;

22 (c) assist interested landowners in the development of
23 agreements with the board for the treatment and disposition,
24 with appropriate dignity, of human skeletal remains and
25 burial material;

1 (d) mediate, upon application of either party, disputes
2 that may arise between a landowner and known descendants
3 that relate to the treatment and disposition of human
4 skeletal remains and burial material;

5 (e) assume responsibility for final treatment and
6 disposition of human skeletal remains and burial material if
7 the field review recommendation is not accepted by the
8 board's representatives and the landowner;

9 (f) establish a nonrefundable application fee, not to
10 exceed \$50, for a permit for scientific analysis of human
11 skeletal remains or burial material from burial sites as
12 provided by [section 6];

13 (g) issue permits authorizing scientific analysis;

14 (h) accept grants or real or in-kind donations to carry
15 out the purposes of [sections 1 through 10 and 13];

16 (i) adopt rules necessary to administer and enforce the
17 provisions of [sections 1 through 10 and 13]; and

18 (j) perform any other duties necessary to implement the
19 provisions of [sections 1 through 10 and 13].

20 (4) The board is allocated to the department of
21 commerce for administrative purposes only as prescribed in
22 2-15-121.

23 (5) Members of the board shall serve without pay but
24 are entitled to reimbursement for travel, meals, and lodging
25 pursuant to 2-18-501 through 2-18-503.

1 NEW SECTION. Section 5. Discovery -- reporting
 2 requirements -- field review. (1) A person who by
 3 archaeological excavation or by agricultural, mining,
 4 construction, or other ground-disturbing activity discovers
 5 human skeletal remains, a burial site, or burial material
 6 shall immediately notify the county coroner. Failure to
 7 notify the county coroner subjects a person to the penalty
 8 provided in [section 8].

9 (2) Upon discovery of human skeletal remains, a burial
 10 site, or burial material, excavation or further disturbance
 11 must cease until the coroner has determined whether the
 12 remains are subject to the provisions of Title 46, chapter
 13 4, or any other related provisions of law concerning the
 14 investigation of the circumstances, manner, and cause of
 15 death or whether a forensic examination of the human
 16 skeletal remains, burial site, or burial material is
 17 necessary. The coroner shall make his determination within 2
 18 working days from the time the person responsible for the
 19 excavation notifies him of the discovery or recognition of
 20 the remains. If the coroner cannot make the determination
 21 within 2 working days, he shall notify a member of the board
 22 of the reason for and the approximate length of the delay.
 23 The coroner shall take all reasonable steps to make his
 24 determination without removing or causing further
 25 disturbance of the remains.

1 (3) If a forensic examination, action under Title 46,
 2 chapter 4, or action under any other related provisions of
 3 law concerning the investigation of the circumstances,
 4 manner, and cause of death is necessary and yields evidence
 5 of criminal activity, the evidence may be seized by the
 6 coroner or law enforcement agency with jurisdiction for use
 7 in a criminal proceeding as provided by law.

8 (4) If the coroner determines that the remains are not
 9 subject to the provisions of Title 46, chapter 4, or any
 10 other provisions of law concerning the investigation of the
 11 circumstances, manner, and cause of death and that a
 12 forensic examination is not necessary, he shall telephone
 13 the state historic preservation officer within 24 hours.
 14 Within 24 hours of notification, the state historic
 15 preservation officer shall contact either the landowner and
 16 the board or the landowner and the board member representing
 17 the nearest reservation and notify them of the discovery of
 18 human skeletal remains, a burial site, or burial material.

19 (5) If the state historic preservation officer cannot
 20 be contacted, the coroner shall notify a member of the board
 21 or the law enforcement agency of the nearest reservation
 22 within 24 hours. The board or the agency shall immediately
 23 notify the landowner and the board member representing that
 24 reservation.

25 (6) Within 36 hours after the board receives

1 notification of a discovery of human skeletal remains, a
 2 burial site, or burial material, the board shall designate
 3 representatives to conduct, with the permission of the
 4 landowner, an initial field review. If the field review
 5 cannot be completed within the next 36 hours, the board's
 6 representatives shall negotiate with the landowner or his
 7 representative for a reasonable time extension to complete
 8 the review. The field review must include:

9 (a) a determination of whether the site can be
 10 preserved;

11 (b) negotiation with the landowner concerning onsite
 12 reburial or disinterment and reburial; and

13 (c) a recommendation, including a timeframe, concerning
 14 final treatment or disposition of the human skeletal remains
 15 or burial material.

16 (7) If the board's representatives fail to make a
 17 recommendation or if the landowner and the board cannot
 18 agree and mediation fails to provide a resolution acceptable
 19 to the landowner and the board, control of human skeletal
 20 remains or burial materials is vested in the board and the
 21 board shall give control of the remains or materials in the
 22 following priority to:

- 23 (a) the descendants, if identifiable;
- 24 (b) the tribe or other cultural group that has the
- 25 closest cultural affiliation with the human skeletal remains

1 or burial materials;

2 (c) the tribe or other cultural group recognized as
 3 having aboriginally or historically occupied the area where
 4 the remains or materials were discovered if, upon
 5 notification by the board, the tribe or cultural group
 6 states a claim for the remains or materials; or

7 (d) if unclaimed by any tribe or cultural group, the
 8 board, which shall determine the appropriate disposition and
 9 oversee the reinterment of the remains and materials.

10 (8) For purposes of this section, "cultural group"
 11 means a present-day group or organization that has a
 12 relationship of shared group identity which can be
 13 reasonably traced historically or prehistorically to an
 14 identifiable earlier group or organization.

15 **NEW SECTION. Section 6. Scientific analysis -- permit**
 16 **required.** (1) Although onsite reburial is preferred, the
 17 board may, upon petition by a person seeking permission to
 18 perform scientific analysis, grant a permit for the
 19 scientific removal and analysis of human skeletal remains
 20 and burial material upon proof and determination by the
 21 board that the analysis is scientifically justifiable. A
 22 petition for a permit must include:

23 (a) payment of the nonrefundable application fee
 24 provided for in [section 4]; and

25 (b) a brief narrative describing the methodology to be

1 used, the timeframe needed to complete the scientific study,
2 and any other information specifically requested by the
3 board relating to the proposed study.

4 (2) The methodology proposed must be reviewed by the
5 state historic preservation officer or his designated
6 representative and the physical anthropologist on the board,
7 and a recommendation must be made to the full board. Once
8 approved by the board, any change in methodology or in the
9 timeframe must be approved by the board before the original
10 timeframe expires. The timeframe for scientific study may
11 not exceed 12 months from the date of issuance of the
12 permit.

13 (3) A permit for scientific analysis issued by the
14 board is subject to terms, conditions, and procedures
15 prescribed by the board and must include the condition that
16 a permittee shall pay all costs of excavation, study, and
17 disposition.

18 (4) The board shall either issue or deny a permit
19 within 30 working days from the date of the permit petition.
20 If the board denies a permit upon a finding that scientific
21 analysis is not justifiable, the board shall provide the
22 applicant with a written statement outlining the grounds for
23 its finding. The applicant may appeal the decision of the
24 board under the provisions of Title 2, chapter 4, part 6, of
25 the Montana Administrative Procedure Act.

1 (5) The board may suspend or revoke a permit pursuant
2 to the Montana Administrative Procedure Act upon a finding
3 that the permittee has violated any provision of [sections 1
4 through 10 and 13] or any term, condition, or procedure of a
5 permit issued by the board.

6 (6) The provisions of this section do not apply to a
7 forensic examination by the county coroner, action under
8 Title 46, chapter 4, or action under any other related
9 provisions of law concerning the investigation of the
10 circumstances, manner, and cause of death.

11 **NEW SECTION. Section 7. Nondisclosure of records.** (1)
12 The state historic preservation officer, in consultation
13 with the board, shall maintain burial site records that are
14 separate and distinct from those in the cultural resource
15 registry and that are necessary to administer [sections 1
16 through 10 and 13].

17 (2) Burial site records are confidential and available
18 only to criminal justice agencies or to federal, state, and
19 tribal personnel or their appointed representatives legally
20 charged with administering laws protecting cultural
21 resources.

22 (3) Statistical information compiled from burial site
23 records must be made available to the general public. Any
24 information concerning burial site records that is released
25 to a criminal justice agency is confidential criminal

1 justice information, as defined in 44-5-103, and is subject
2 to dissemination pursuant to 44-5-303.

3 **NEW SECTION. Section 8. Prohibited acts -- penalties.**

4 (1) After July 1, 1991, unless authorized under [sections 1
5 through 10 and 13] or by the descendants, tribe, cultural
6 group, or other person, group, or entity to which the board
7 gives control of the human skeletal remains or burial
8 materials under [section 5], a person may not:

9 (a) purposely or knowingly pilfer, disturb, destroy, or
10 permit pilferage, disturbance, or destruction of a marked,
11 unmarked, unrecorded, registered, or unregistered grave or
12 burial ground or of burial material;

13 (b) for commercial use, knowingly possess, buy, sell,
14 transport, barter, or display human skeletal remains or
15 burial material acquired in violation of [sections 1 through
16 10 and 13]; or

17 (c) purposely or knowingly disclose information knowing
18 that it is highly probable that the disclosure will lead to
19 pilferage, disturbance, or destruction of a burial site.

20 (2) A person convicted under the provisions of
21 subsection (1)(a) may be fined an amount not to exceed
22 \$1,000, be imprisoned in the county jail for not more than 6
23 months, or both. A person convicted of a subsequent
24 violation of subsection (1)(a) may be fined an amount not to
25 exceed \$20,000, be imprisoned for not more than 5 years, or

1 both.

2 (3) A person convicted under the provisions of
3 subsection (1)(b) may be fined an amount not to exceed
4 \$50,000, be imprisoned for not more than 20 years, or both.

5 (4) A person convicted under the provisions of
6 subsection (1)(c) may be fined an amount not to exceed \$500,
7 be imprisoned for not more than 6 months, or both. A person
8 convicted of a subsequent violation of subsection (1)(c) may
9 be fined an amount not to exceed \$10,000, be imprisoned for
10 not more than 5 years, or both.

11 (5) A person who knowingly fails to give notice as
12 required by [section 5(1)] may be fined an amount not less
13 than \$100 or more than \$500.

14 (6) A person who violates a provision of this section
15 or any term or condition of a permit issued under [section
16 6] is subject to a civil penalty not to exceed \$2,000 for
17 the first violation and not to exceed \$10,000 for a
18 subsequent violation.

19 **NEW SECTION. Section 9. Civil penalty and damages**
20 **actions.** (1) [Sections 1 through 10 and 13] do not preclude
21 civil actions for damages.

22 (2) The board may bring an action under [section 8] for
23 a civil penalty.

24 **NEW SECTION. Section 10. Closure of board meetings.**
25 The board may close part of a meeting of the board to the

1 public if the board finds that information that may be
 2 acquired at that part of the meeting may allow a person to
 3 identify a burial site, human skeletal remains, or burial
 4 material and pilfer, disturb, or destroy the human skeletal
 5 remains, burial site, or burial material.

6 **Section 11.** Section 2-6-101, MCA, is amended to read:

7 "2-6-101. Definitions. (1) Writings are of two kinds:

8 (a) public; and

9 (b) private.

10 (2) Public writings are:

11 (a) the written acts or records of the acts of the
 12 sovereign authority, of official bodies and tribunals, and
 13 of public officers, legislative, judicial, and executive,
 14 whether of this state, of the United States, of a sister
 15 state, or of a foreign country;

16 (b) public records, kept in this state, of private
 17 writings, except as provided in 22-1-1103 and [section 7].

18 (3) Public writings are divided into four classes:

19 (a) laws;

20 (b) judicial records;

21 (c) other official documents;

22 (d) public records, kept in this state, of private
 23 writings.

24 (4) All other writings are private."

25 **Section 12.** Section 2-6-102, MCA, is amended to read:

1 "2-6-102. Citizens entitled to inspect and copy public
 2 writings. (1) Every citizen has a right to inspect and take
 3 a copy of any public writings of this state, except as
 4 provided in 22-1-1103 or [section 7] and as otherwise
 5 expressly provided by statute.

6 (2) Every public officer having the custody of a public
 7 writing which a citizen has a right to inspect is bound to
 8 give him on demand a certified copy of it, on payment of the
 9 legal fees therefor, and such copy is admissible as evidence
 10 in like cases and with like effect as the original writing."

11 **NEW SECTION. Section 13. Disposition of fees, grants,
 12 and donations.** (1) There is an account in the state special
 13 revenue fund. The board shall deposit any fee, grant, or
 14 donation received under [section 4] into the account to be
 15 used to pay expenses for board meetings or expenses incurred
 16 in conducting field reviews.

17 (2) The money in the account is statutorily
 18 appropriated to the board as provided in 17-7-502.

19 **Section 14.** Section 17-7-502, MCA, is amended to read:

20 "17-7-502. Statutory appropriations -- definition --
 21 requisites for validity. (1) A statutory appropriation is an
 22 appropriation made by permanent law that authorizes spending
 23 by a state agency without the need for a biennial
 24 legislative appropriation or budget amendment.

25 (2) Except as provided in subsection (4), to be

1 effective, a statutory appropriation must comply with both
 2 of the following provisions:

3 (a) The law containing the statutory authority must be
 4 listed in subsection (3).

5 (b) The law or portion of the law making a statutory
 6 appropriation must specifically state that a statutory
 7 appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing
 9 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 10 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 11 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;
 12 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;
 13 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;
 14 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;
 15 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;
 16 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;
 17 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;
 18 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;
 19 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;
 20 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;
 21 [section 13]; and section 13, House Bill No. 861, Laws of
 22 1985.

23 (4) There is a statutory appropriation to pay the
 24 principal, interest, premiums, and costs of issuing, paying,
 25 and securing all bonds, notes, or other obligations, as due,

1 that have been authorized and issued pursuant to the laws of
 2 Montana. Agencies that have entered into agreements
 3 authorized by the laws of Montana to pay the state
 4 treasurer, for deposit in accordance with 17-2-101 through
 5 17-2-107, as determined by the state treasurer, an amount
 6 sufficient to pay the principal and interest as due on the
 7 bonds or notes have statutory appropriation authority for
 8 such payments. (In subsection (3), pursuant to sec. 10, Ch.
 9 664, L. 1987, the inclusion of 39-71-2504 terminates June
 10 30, 1991.)"

11 NEW SECTION. Section 15. Appropriation. There is
 12 appropriated \$10,000 from the general fund to the board for
 13 the 2 fiscal years beginning July 1, 1991, to be used to pay
 14 expenses for board meetings or expenses incurred in
 15 conducting field reviews.

16 NEW SECTION. Section 16. Severability. If a part of
 17 [this act] is invalid, all valid parts that are severable
 18 from the invalid part remain in effect. If a part of [this
 19 act] is invalid in one or more of its applications, the part
 20 remains in effect in all valid applications that are
 21 severable from the invalid applications.

22 NEW SECTION. Section 17. Effective dates. (1)
 23 [Sections 4, 13, 14, 16, and this section] are effective on
 24 passage and approval.

25 (2) [Sections 1 through 3, 5 through 12, 15, and 18]

HB 0131/02

1 are effective July 1, 1991.

2 NEW SECTION. **Section 18. Termination.** [Sections 13(2)

3 and 14] terminate on June 30, 1993.

-End-

GOVERNOR'S AMENDMENTS TO
House BILL 131
(REFERENCE COPY, AS AMENDED)
APRIL 5, 1991

1. Page 6, line 19.
Following: "appointed"
Insert: "by the governor from a list of up to three nominees submitted"
2. Page 6, line 22.
Following: "by the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
3. Page 6, line 25 and page 7, line 1.
Following: "by the"
Strike: "state medical examiner"
Insert: "governor"
4. Page 7, line 3.
Following: "by the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
5. Page 7, line 7.
Following: line 6
Strike: "attorney general"
Insert: "governor"
6. Page 12.
Following: line 14
Insert: "(9) The disinterment and disposition of the human skeletal remains or burial materials must be completed by the board, tribe or cultural group within 40 days after discovery of the remains or burial materials and notification regarding those remains has been made to the coroner."

Conference Committee
on House Bill 131
Report No. 1, April 23, 1991

4/23/91
2:30 PM
DLS

April 23, 1991
Page 2 of 2

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 131 met and considered the Governor's amendments to House Bill 131, dated April 5, 1991, and recommend that House Bill 131 (reference copy -- salmon) be amended as follows:

1. Page 6, line 19.
Following: "appointed"
Insert: "by the governor from a list of up to three nominees submitted"
2. Page 6, line 22.
Following: "the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
3. Page 6, line 25 through page 7, line 1.
Following: "the"
Strike: remainder of line 25 through "examiner" on page 7, line 1
Insert: "governor"
4. Page 7, line 3.
Following: "the"
Strike: "coordinator of Indian affairs"
Insert: "governor"
5. Page 7, line 7.
Following: line 6
Strike: "attorney general"
Insert: "governor"
6. Page 11, lines 18 through 20.
Following: "provide" on line 18
Insert: ", within 40 days after notification to the board,
Following: "board," on line 19
Insert: "the human skeletal remains and burial materials must be removed and"
Following: "control" on line 19
Strike: remainder of line 19 through "materials" on line 20
Following: "board" on line 20
Strike: "and the"
Insert: ". The"

And this Conference Committee report be adopted.

For the House:

B. Brooke
Rep. Brooke, Chair

B. Barnhart
Rep. Barnhart

E. Grady
Rep. Grady

For the Senate:

W. Yellowtail
Sen. Yellowtail, Chair

S. Svrcek
Sen. Svrcek

A. Gage
Sen. Gage

ADOPT

REJECT

860933CC.HSF

CCR #1
HB 131
860933CC.HSF



"AN ACT CREATING THE HUMAN SKELETAL REMAINS AND BURIAL SITE PROTECTION ACT; CREATING A BURIAL PRESERVATION BOARD; ESTABLISHING REPORTING AND NOTIFICATION PROCEDURES REGARDING DISTURBANCE OF A BURIAL SITE; PROVIDING FOR FIELD REVIEW AND SCIENTIFIC ANALYSIS; PROVIDING DISINTERMENT AND REINTERMENT PROCEDURES; PROVIDING FOR FEES AND CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR DISPOSITION OF FEES, GRANTS, AND DONATIONS; EXEMPTING PARTS OF MEETINGS FROM THE OPEN MEETING LAWS UNDER CERTAIN CONDITIONS; PROVIDING FOR CONFIDENTIALITY OF RECORDS; GRANTING THE BOARD RULEMAKING AUTHORITY; PROVIDING FOR A 2-YEAR STATUTORY APPROPRIATION; APPROPRIATING MONEY FROM THE GENERAL FUND; AMENDING SECTIONS 2-6-101, 2-6-102, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants to the burial preservation board rulemaking authority to implement the provisions of this bill. At a minimum, it is the intent of the legislature that the board adopt rules:

- (1) governing the conduct of board business;
- (2) establishing and maintaining a registry of burial sites located in the state;
- (3) establishing criteria for conducting field reviews upon notification of a discovery of human skeletal remains, burial sites, or burial materials; and

(4) establishing guidelines and forms for the issuance of a permit for scientific analysis of human remains or burial materials.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 10 and 13] may be cited as the "Human Skeletal Remains and Burial Site Protection Act".

Section 2. Legislative findings and intent. (1) The legislature of the state of Montana finds that:

(a) the state and its citizens have an obligation to protect from disturbance or destruction all human skeletal remains, burial sites, and burial material, including those in marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds located on state or private lands that are not protected as cemeteries or graveyards under existing state law;

(b) marked, unmarked, unrecorded, registered, or unregistered graves or burial grounds not protected as cemeteries or graveyards under existing state law are increasingly subject to pilferage, disturbance, and destruction for commercial purposes, including land development, agriculture, mining, and the sale of artifacts;

(c) private collection of artifacts may result in the destruction of burial sites. Existing law reflects the value society places on preserving human burial sites, but the law does not clearly provide equal and adequate protection or incentives to

ensure preservation and protection of all burial sites in the state regardless of ethnic origin, burial context, or age.

(d) while some human skeletal remains and burial sites may be of interest to science, the needs of the scientific community to gather information and material from burial sites must be balanced with the legal, moral, and religious rights and obligations of tribal groups, next of kin, or descendants;

(e) preservation in place is the preferred policy for all human skeletal remains, burial sites, and burial material; and

(f) notwithstanding any other provision of law, [sections 1 through 10 and 13] are the exclusive laws governing the treatment of human skeletal remains, burial sites, and burial materials.

(2) It is the intent of the legislature to:

(a) ensure that all burials be accorded equal treatment and respect for human dignity without reference to ethnic origin, cultural background, or religious affiliation;

(b) provide adequate protection for all interests related to any burial site encountered during archaeological excavation or agricultural, mining, construction, or other ground-disturbing activity on state and private lands without causing avoidable or undue delay or hardship for any person who has an interest in using the land on which the burial site is located;

(c) recognize the interests, concerns, and obligations of those having a kinship, tribal, cultural, or religious affiliation with the burial site and balance those interests against the

interests of scientists, landowners, and developers;

(d) provide to the board an exemption from the open meeting and public records laws when public disclosure of the location of a burial site could result in pilferage, disturbance, or destruction of the site; and

(e) recognize the need for forensic examination of human skeletal remains, burial sites, and burial material if the county coroner, county attorney, or state medical examiner determines an examination is necessary under state law.

Section 3. Definitions. As used in [sections 1 through 10 and 13], the following definitions apply:

(1) "Board" means the burial preservation board established in [section 4].

(2) "Burial material" means any item found at the burial site or with the human skeletal remains and directly associated with the burial or burial site.

(3) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(4) "Human skeletal remains" means any part of the human body in any state of decomposition taken from a burial site.

(5) "Marked, unmarked, unrecorded, registered, or unregistered grave or burial ground" means any place, except a

cemetery or graveyard protected under existing state law, where human skeletal remains are or have been interred.

(6) "Scientifically justifiable" means that the human skeletal remains or burial material has a potential to address specific research questions in the science of anthropology, history, or biology.

(7) "Tribal group" means an Indian tribe recognized by the United States secretary of the interior or recognized as a tribe by other Indian nations.

Section 4. Board -- composition -- rights -- responsibilities. (1) There is a burial preservation board. The board is composed of:

(a) one representative of each of the seven reservations, appointed by the governor from a list of up to three nominees provided by each of the respective tribal governments;

(b) one person appointed by the governor from a list of up to three nominees submitted by the Little Shell band of Chippewa Indians;

(c) one person appointed by the governor from a list of up to three nominees submitted by the Montana state historic preservation officer;

(d) one representative of the Montana archaeological association appointed by the governor from a list of up to three nominees submitted by the Montana archaeological association;

(e) one physical anthropologist appointed by the governor;

(f) one representative of the Montana coroners' association appointed by the governor from a list of up to three nominees submitted by the Montana coroners' association; and

(g) one representative of the public, appointed by the governor, who is not associated with tribal governments; state government; the fields of historic preservation, archaeology, or anthropology; or the Montana coroners' association.

(2) Members of the board shall serve staggered 2-year terms. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The board shall:

(a) provide for the establishment and maintenance of a registry of burial sites located in the state;

(b) designate the appropriate member or members of the board or a representative or representatives of the board to conduct a field review upon notification of the discovery of human skeletal remains, a burial site, or burial materials;

(c) assist interested landowners in the development of agreements with the board for the treatment and disposition, with appropriate dignity, of human skeletal remains and burial material;

(d) mediate, upon application of either party, disputes that may arise between a landowner and known descendants that relate to the treatment and disposition of human skeletal remains and burial

material;

(e) assume responsibility for final treatment and disposition of human skeletal remains and burial material if the field review recommendation is not accepted by the board's representatives and the landowner;

(f) establish a nonrefundable application fee, not to exceed \$50, for a permit for scientific analysis of human skeletal remains or burial material from burial sites as provided by [section 6];

(g) issue permits authorizing scientific analysis;

(h) accept grants or real or in-kind donations to carry out the purposes of [sections 1 through 10 and 13];

(i) adopt rules necessary to administer and enforce the provisions of [sections 1 through 10 and 13]; and

(j) perform any other duties necessary to implement the provisions of [sections 1 through 10 and 13].

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(5) Members of the board shall serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

Section 5. Discovery -- reporting requirements -- field review. (1) A person who by archaeological excavation or by agricultural, mining, construction, or other ground-disturbing activity discovers human skeletal remains, a burial site, or

burial material shall immediately notify the county coroner. Failure to notify the county coroner subjects a person to the penalty provided in [section 8].

(2) Upon discovery of human skeletal remains, a burial site, or burial material, excavation or further disturbance must cease until the coroner has determined whether the remains are subject to the provisions of Title 46, chapter 4, or any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death or whether a forensic examination of the human skeletal remains, burial site, or burial material is necessary. The coroner shall make his determination within 2 working days from the time the person responsible for the excavation notifies him of the discovery or recognition of the remains. If the coroner cannot make the determination within 2 working days, he shall notify a member of the board of the reason for and the approximate length of the delay. The coroner shall take all reasonable steps to make his determination without removing or causing further disturbance of the remains.

(3) If a forensic examination, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death is necessary and yields evidence of criminal activity, the evidence may be seized by the coroner or law enforcement agency with jurisdiction for use in a criminal proceeding as provided by law.

(4) If the coroner determines that the remains are not subject to the provisions of Title 46, chapter 4, or any other provisions of law concerning the investigation of the circumstances, manner, and cause of death and that a forensic examination is not necessary, he shall telephone the state historic preservation officer within 24 hours. Within 24 hours of notification, the state historic preservation officer shall contact either the landowner and the board or the landowner and the board member representing the nearest reservation and notify them of the discovery of human skeletal remains, a burial site, or burial material.

(5) If the state historic preservation officer cannot be contacted, the coroner shall notify a member of the board or the law enforcement agency of the nearest reservation within 24 hours. The board or the agency shall immediately notify the landowner and the board member representing that reservation.

(6) Within 36 hours after the board receives notification of a discovery of human skeletal remains, a burial site, or burial material, the board shall designate representatives to conduct, with the permission of the landowner, an initial field review. If the field review cannot be completed within the next 36 hours, the board's representatives shall negotiate with the landowner or his representative for a reasonable time extension to complete the review. The field review must include:

(a) a determination of whether the site can be preserved;

(b) negotiation with the landowner concerning onsite reburial or disinterment and reburial; and

(c) a recommendation, including a timeframe, concerning final treatment or disposition of the human skeletal remains or burial material.

(7) If the board's representatives fail to make a recommendation or if the landowner and the board cannot agree and mediation fails to provide, within 40 days after notification to the board, a resolution acceptable to the landowner and the board, the human skeletal remains and burial materials must be removed and control is vested in the board. The board shall give control of the remains or materials in the following priority to:

(a) the descendants, if identifiable;

(b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;

(c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group states a claim for the remains or materials; or

(d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(8) For purposes of this section, "cultural group" means a

present-day group or organization that has a relationship of shared group identity which can be reasonably traced historically or prehistorically to an identifiable earlier group or organization.

Section 6. Scientific analysis -- permit required. (1) Although onsite reburial is preferred, the board may, upon petition by a person seeking permission to perform scientific analysis, grant a permit for the scientific removal and analysis of human skeletal remains and burial material upon proof and determination by the board that the analysis is scientifically justifiable. A petition for a permit must include:

(a) payment of the nonrefundable application fee provided for in [section 4]; and

(b) a brief narrative describing the methodology to be used, the timeframe needed to complete the scientific study, and any other information specifically requested by the board relating to the proposed study.

(2) The methodology proposed must be reviewed by the state historic preservation officer or his designated representative and the physical anthropologist on the board, and a recommendation must be made to the full board. Once approved by the board, any change in methodology or in the timeframe must be approved by the board before the original timeframe expires. The timeframe for scientific study may not exceed 12 months from the date of issuance of the permit.

(3) A permit for scientific analysis issued by the board is subject to terms, conditions, and procedures prescribed by the board and must include the condition that a permittee shall pay all costs of excavation, study, and disposition.

(4) The board shall either issue or deny a permit within 30 working days from the date of the permit petition. If the board denies a permit upon a finding that scientific analysis is not justifiable, the board shall provide the applicant with a written statement outlining the grounds for its finding. The applicant may appeal the decision of the board under the provisions of Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(5) The board may suspend or revoke a permit pursuant to the Montana Administrative Procedure Act upon a finding that the permittee has violated any provision of [sections 1 through 10 and 13] or any term, condition, or procedure of a permit issued by the board.

(6) The provisions of this section do not apply to a forensic examination by the county coroner, action under Title 46, chapter 4, or action under any other related provisions of law concerning the investigation of the circumstances, manner, and cause of death.

Section 7. Nondisclosure of records. (1) The state historic preservation officer, in consultation with the board, shall maintain burial site records that are separate and distinct from those in the cultural resource registry and that are necessary to

administer [sections 1 through 10 and 13].

(2) Burial site records are confidential and available only to criminal justice agencies or to federal, state, and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources.

(3) Statistical information compiled from burial site records must be made available to the general public. Any information concerning burial site records that is released to a criminal justice agency is confidential criminal justice information, as defined in 44-5-103, and is subject to dissemination pursuant to 44-5-303.

Section 8. Prohibited acts -- penalties. (1) After July 1, 1991, unless authorized under [sections 1 through 10 and 13] or by the descendants, tribe, cultural group, or other person, group, or entity to which the board gives control of the human skeletal remains or burial materials under [section 5], a person may not:

(a) purposely or knowingly pilfer, disturb, destroy, or permit pilferage, disturbance, or destruction of a marked, unmarked, unrecorded, registered, or unregistered grave or burial ground or of burial material;

(b) for commercial use, knowingly possess, buy, sell, transport, barter, or display human skeletal remains or burial material acquired in violation of [sections 1 through 10 and 13]; or

(c) purposely or knowingly disclose information knowing that

it is highly probable that the disclosure will lead to pilferage, disturbance, or destruction of a burial site.

(2) A person convicted under the provisions of subsection (1)(a) may be fined an amount not to exceed \$1,000, be imprisoned in the county jail for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(a) may be fined an amount not to exceed \$20,000, be imprisoned for not more than 5 years, or both.

(3) A person convicted under the provisions of subsection (1)(b) may be fined an amount not to exceed \$50,000, be imprisoned for not more than 20 years, or both.

(4) A person convicted under the provisions of subsection (1)(c) may be fined an amount not to exceed \$500, be imprisoned for not more than 6 months, or both. A person convicted of a subsequent violation of subsection (1)(c) may be fined an amount not to exceed \$10,000, be imprisoned for not more than 5 years, or both.

(5) A person who knowingly fails to give notice as required by [section 5(1)] may be fined an amount not less than \$100 or more than \$500.

(6) A person who violates a provision of this section or any term or condition of a permit issued under [section 6] is subject to a civil penalty not to exceed \$2,000 for the first violation and not to exceed \$10,000 for a subsequent violation.

Section 9. Civil penalty and damages actions. (1) [Sections 1

through 10 and 13] do not preclude civil actions for damages.

(2) The board may bring an action under [section 8] for a civil penalty.

Section 10. Closure of board meetings. The board may close part of a meeting of the board to the public if the board finds that information that may be acquired at that part of the meeting may allow a person to identify a burial site, human skeletal remains, or burial material and pilfer, disturb, or destroy the human skeletal remains, burial site, or burial material.

Section 11. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

- (a) public; and
- (b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and [section 7].

(3) Public writings are divided into four classes:

- (a) laws;
- (b) judicial records;
- (c) other official documents;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 12. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103 or [section 7] and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him on demand a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing."

Section 13. Disposition of fees, grants, and donations. (1) There is an account in the state special revenue fund. The board shall deposit any fee, grant, or donation received under [section 4] into the account to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

(2) The money in the account is statutorily appropriated to the board as provided in 17-7-502.

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative

appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; section 13; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been

authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

Section 15. **Appropriation.** There is appropriated \$10,000 from the general fund to the board for the 2 fiscal years beginning July 1, 1991, to be used to pay expenses for board meetings or expenses incurred in conducting field reviews.

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Effective dates.** (1) [Sections 4, 13, 14, 16, and this section] are effective on passage and approval.

(2) [Sections 1 through 3, 5 through 12, 15, and 18] are effective July 1, 1991.

Section 18. **Termination.** [Sections 13(2) and 14] terminate on June 30, 1993.