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**HOUSE BILL NO. 2772**

Offered January 19, 2001

*A BILL to amend and reenact §§ 10.1-2300 through 10.1-2305 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-2300.1, relating to the appointment of a state archaeologist.*

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Patron—Katzen

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Referred to Committee on Conservation and Natural Resources

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-2300 through 10.1-2305 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 10.1-2300.1 as follows:**

§ 10.1-2300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Field investigation" means the study of the traces of human culture at any site by means of surveying, sampling, excavating, or removing surface or subsurface material, or going on a site with that intent.

"Object of antiquity" means any relic, artifact, remain, including human skeletal remains, specimen, or other archaeological article that may be found on, in or below the surface of the earth which has historic, scientific, archaeologic or educational value.

"Person" means any natural individual, partnership, association, corporation or other legal entity.

"Site" means a geographical area on dry land that contains any evidence of human activity ~~which~~ *that* is or may be the source of important historic, scientific, archaeologic or educational data or objects.

"State archaeological site" means an area designated by the Department in which it is reasonable to expect to find objects of antiquity.

"State archaeological zone" means an interrelated grouping of state archaeological sites.

"State archaeologist" means the individual appointed pursuant to § 10.1-2300.1.

"State-controlled land" means any land owned by the Commonwealth or under the primary administrative jurisdiction of any state agency. State agency shall not mean any county, city or town, or any board or authority organized under state law to perform local or regional functions. Such land includes but is not limited to state parks, state wildlife areas, state recreation areas, highway rights-of-way and state-owned easements.

§ 10.1-2300.1. Appointment of State Archaeologist.

*The Director shall appoint a state archaeologist to carry out the provisions of this chapter and to perform such other duties as required by the Director.*

*The State Archaeologist shall be a technically trained archaeologist and shall have both a practical and theoretical knowledge of archaeology.*

§ 10.1-2301. Duties of State Archaeologist.

~~The Director~~ *The State Archaeologist* shall, *with the approval of the Director:*

1. Coordinate all archaeological research on state-controlled land and in state archaeological sites and zones;

2. Coordinate a survey of significant archaeological sites located on state-controlled land, and upon request, survey and officially recognize significant archaeological sites on privately owned property;

3. Identify, evaluate, preserve and protect sites and objects of antiquity which have historic, scientific, archaeologic or educational value and are located on state-controlled land or on state archaeological sites or zones;

4. Protect archaeological sites and objects located on state-controlled land or on state archaeological sites or zones from neglect, desecration, damage and destruction;

5. Ensure that archaeological sites and objects located on state-controlled land or on state archaeological sites or zones are identified, evaluated and properly explored so that adequate records may be made;

6. Encourage private owners of designated state archaeological sites to cooperate with the Commonwealth to preserve the site; and

7. Encourage a statewide archaeological education program to inform the general public of the importance of its irreplaceable archaeological heritage.

§ 10.1-2302. Permit required to conduct field investigations; ownership of objects of antiquity; penalty.

A. It shall be unlawful for any person to conduct any type of field investigation, exploration or

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59 recovery operation involving the removal, destruction or disturbance of any object of antiquity on  
60 state-controlled land, or on a state archaeological site or zone without first receiving a permit from the  
61 ~~Director~~ *State Archaeologist*.

62 B. The ~~Director~~ *State Archaeologist* may issue a permit to conduct field investigations if the ~~Director~~  
63 *State Archaeologist* finds that it is in the best interest of the Commonwealth, and the applicant is a  
64 historic, scientific, or educational institution, professional archaeologist or amateur, who is qualified and  
65 recognized in the area of field investigations or archaeology.

66 C. The permit shall require that all objects of antiquity that are recovered from state-controlled land  
67 shall be the exclusive property of the Commonwealth. Title to some or all objects of antiquity which are  
68 discovered or removed from a state archaeological site not located on state-controlled land may be  
69 retained by the owner of such land. All objects of antiquity that are discovered or recovered on or from  
70 state-controlled land shall be retained by the Commonwealth, unless they are released to the applicant by  
71 the ~~Director~~ *State Archaeologist*.

72 D. All field investigations, explorations, or recovery operations undertaken pursuant to a permit  
73 issued under this section shall be carried out under the general supervision of the ~~Director~~ *State*  
74 *Archaeologist* and in a manner to ensure that the maximum amount of historic, scientific, archaeologic  
75 and educational information may be recovered and preserved in addition to the physical recovery of  
76 objects.

77 E. If the field investigation described in the application is likely to interfere with the activity of any  
78 state agency, no permit shall be issued unless the applicant has secured the written approval of such  
79 agency.

80 F. Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.  
81 § 10.1-2303. Control of archaeological sites; authority of State Archaeologist to contract.

82 A. The Commonwealth of Virginia reserves to itself, through the ~~Director~~ *State Archaeologist*, the  
83 exclusive right and privilege of field investigation on sites that are on state-controlled land. The ~~Director~~  
84 *State Archaeologist* shall first obtain all permits of other state agencies required by law. The ~~Director~~  
85 *State Archaeologist* is authorized to permit others to conduct such investigations.

86 B. All objects of antiquity derived from or found on state-controlled land shall remain the property  
87 of the Commonwealth.

88 § 10.1-2304. Designating archaeological sites and zones.

89 The ~~Director~~ *State Archaeologist* may designate state archaeological sites and state archaeological  
90 zones on private property or on property owned by any county, city or town, or board or authority  
91 organized to perform local or regional functions in the Commonwealth provided that the ~~Director~~ *State*  
92 *Archaeologist* secures the express prior written consent of the owner of the property involved. No state  
93 archaeological site or zone located on private property may be established within the boundaries of any  
94 county, city or town which has established a local archaeological commission or similar entity  
95 designated to preserve, protect and identify local sites and objects of antiquity without the consent of the  
96 local governing body. Field investigations may not be conducted on a designated site without a permit  
97 issued by the ~~Director~~ *State Archaeologist* pursuant to § 10.1-2302.

98 § 10.1-2305. Permit required for the archaeological excavation of human remains.

99 A. It shall be unlawful for any person to conduct any type of archaeological field investigation  
100 involving the removal of human skeletal remains or associated artifacts from any unmarked human  
101 burial regardless of age of an archaeological site and regardless of ownership without first receiving a  
102 permit from the ~~Director~~ *State Archaeologist*.

103 B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation of  
104 such burials pursuant to a permit from the ~~Director~~ *State Archaeologist* shall be exempt from the  
105 requirements of §§ 57-38.1 and 57-39. However, such exemption shall not apply in the case of human  
106 burials within formally chartered cemeteries that have been abandoned.

107 C. The Department shall be considered an interested party in court proceedings considering the  
108 abandonment of legally constituted cemeteries or family graveyards with historic significance. A permit  
109 from the ~~Director~~ *State Archaeologist* is required if archaeological investigations are undertaken as a part  
110 of a court-approved removal of a cemetery.

111 D. The Board shall promulgate regulations implementing this section that provide for appropriate  
112 public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the  
113 scientific quality of the research conducted on the remains, and the appropriate disposition of the  
114 remains upon completion of the research. The Department may carry out such excavations and research  
115 without a permit, provided that it has complied with the substantive requirements of the regulations  
116 promulgated pursuant to this section.

117 E. Any interested party may appeal the ~~Director's~~ *State Archaeologist's* decision to issue a permit or  
118 to act directly to excavate human remains to the local circuit court. Such appeal must be filed within  
119 fourteen days of the ~~Director's~~ *State Archaeologist's* decision.