

Senate Bill 305

Sponsored by Senator JOHNSON (at the request of Naomi Brandenfels) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates alternative to study, thesis or report requirement for person to be considered qualified archaeologist.

A BILL FOR AN ACT

1
2 Relating to qualified archaeologists; creating new provisions; and amending ORS 358.905 and
3 390.235.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 390.235 is amended to read:

6 390.235. (1)(a) A person may not excavate or alter an archaeological site on public lands, make
7 an exploratory excavation on public lands to determine the presence of an archaeological site or
8 remove from public lands any material of an archaeological, historical, prehistorical or
9 anthropological nature without first obtaining a permit issued by the State Parks and Recreation
10 Department.

11 (b) If a person who obtains a permit under this section intends to curate or arrange for alternate
12 curation of an archaeological object that is uncovered during an archaeological investigation, the
13 person must submit evidence to the State Historic Preservation Officer that the Oregon State Mu-
14 seum of Anthropology and the appropriate Indian tribe have approved the applicant's curatorial fa-
15 cilities.

16 (c) No permit shall be effective without the approval of the state agency or local governing body
17 charged with management of the public land on which the excavation is to be made, and without the
18 approval of the appropriate Indian tribe.

19 (d) The State Parks and Recreation Director, with the advice of the Oregon Indian tribes and
20 Executive Officer of the Commission on Indian Services, shall adopt rules governing the issuance
21 of permits.

22 (e) Disputes under paragraphs (b) and (c) of this subsection shall be resolved in accordance with
23 ORS 390.240.

24 (f) Before issuing a permit, the State Parks and Recreation Director shall consult with:

25 (A) The landowning or land managing agency; and

26 (B) If the archaeological site in question is associated with a prehistoric or historic native In-
27 dian culture:

28 (i) The Commission on Indian Services; and

29 (ii) The most appropriate Indian tribe.

30 (2) The State Parks and Recreation Department may issue a permit under subsection (1) of this
31 section under the following circumstances:

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) To a person conducting an excavation, examination or gathering of such material for the
2 benefit of a recognized scientific or educational institution with a view to promoting the knowledge
3 of archaeology or anthropology;

4 (b) To a qualified archaeologist to salvage such material from unavoidable destruction; or

5 (c) To a qualified archaeologist sponsored by a recognized institution of higher learning, private
6 firm or an Indian tribe as defined in ORS 97.740.

7 (3) Any archaeological materials, with the exception of Indian human remains, funerary objects,
8 sacred objects and objects of cultural patrimony, recovered by a person granted a permit under
9 subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated
10 by the Oregon State Museum of Anthropology unless:

11 (a) The Oregon State Museum of Anthropology with the approval from the appropriate Indian
12 tribe approves the alternate curatorial facilities selected by the permittee;

13 (b) The materials are made available for nondestructive research by scholars; and

14 (c)(A) The material is retained by a recognized scientific, educational or Indian tribal institution
15 for whose benefit a permit was issued under subsection (2)(a) of this section;

16 (B) The State Board of Higher Education with the concurrence of the appropriate Indian tribe
17 grants approval for material to be curated by an educational facility other than the institution that
18 collected the material pursuant to a permit issued under subsection (2)(a) of this section; or

19 (C) The sponsoring institution or firm under subsection (2)(c) of this section furnishes the
20 Oregon State Museum of Anthropology with a complete catalog of the material within six months
21 after the material is collected.

22 (4) The Oregon State Museum of Anthropology shall have the authority to transfer permanent
23 possessory rights in subject material to an appropriate Indian tribe.

24 (5) Except for sites containing human remains, funerary objects and objects of cultural
25 patrimony [*as defined in ORS 358.905*], or objects associated with a prehistoric Indian tribal culture,
26 the permit required by subsection (1) of this section or by ORS 358.920 shall not be required for
27 forestry operations on private lands for which notice has been filed with the State Forester under
28 ORS 527.670.

29 **(6)(a) To be a considered a qualified archaeologist for purposes of this section, a person
30 must:**

31 **(A) Have a post-graduate degree in archaeology, anthropology, history, classics or other
32 germane discipline with a specialization in archaeology, or a documented equivalency of such
33 a degree;**

34 **(B) Have 12 weeks of supervised experience in basic archaeological field research, in-
35 cluding both survey and excavation and four weeks of laboratory analysis or curating; and**

36 **(C) Have designed and executed an archaeological study, as evidenced by a Master of Arts
37 or Master of Science thesis, or report equivalent in scope and quality, dealing with
38 archaeological field research.**

39 **(b) In lieu of the requirements of paragraph (a)(C) of this subsection, a person may be
40 considered a qualified archaeologist if the person meets the requirements of paragraph (a)(A)
41 and (B) of this subsection and in addition has:**

42 **(A) At least eight years of cumulative archaeological experience that includes:**

43 **(i) At least three years of archaeological excavation experience with professionally re-
44 cognized archaeological methods on a state or federally permitted project;**

45 **(ii) At least one year of supervised archaeological field investigations executed within the**

1 **framework of a permitted research design or analysis; and**

2 **(iii) At least one year of archaeological research, administration or management at a**
3 **supervisory level;**

4 **(B) A demonstrated ability to carry research to completion; and**

5 **(C) A demonstrated knowledge of state and federal historic preservation law and guide-**
6 **lines.**

7 [(6)] (7) As used in this section[:],

8 [(a)] “private firm” means any legal entity that:

9 [(A)] (a) Has as a member of its staff a qualified archaeologist; or

10 [(B)] (b) Contracts with a qualified archaeologist who acts as a consultant to the entity and
11 provides the entity with archaeological expertise.

12 [(b)] “*Qualified archaeologist*” means a person who has the following qualifications:]

13 [(A)] A *post-graduate degree in archaeology, anthropology, history, classics or other germane dis-*
14 *cipline with a specialization in archaeology, or a documented equivalency of such a degree;*]

15 [(B)] *Twelve weeks of supervised experience in basic archaeological field research, including both*
16 *survey and excavation and four weeks of laboratory analysis or curating; and]*

17 [(C)] *Has designed and executed an archaeological study, as evidenced by a Master of Arts or*
18 *Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field*
19 *research.]*

20 [(7)] (8) Violation of the provisions of subsection (1)(a) of this section is a Class B misdemeanor.

21 **SECTION 2.** ORS 358.905 is amended to read:

22 358.905. (1) As used in ORS 192.005, 192.501 to 192.505[,] **and** 358.905 to 358.961 [*and 390.235*]:

23 (a) “Archaeological object” means an object that:

24 (A) Is at least 75 years old;

25 (B) Is part of the physical record of an indigenous or other culture found in the state or waters
26 of the state; and

27 (C) Is material remains of past human life or activity that are of archaeological significance
28 including, but not limited to, monuments, symbols, tools, facilities, technological by-products and
29 dietary by-products.

30 [(b)] “*Site of archaeological significance*” means:]

31 [(A)] *Any archaeological site on, or eligible for inclusion on, the National Register of Historic*
32 *Places as determined in writing by the State Historic Preservation Officer; or]*

33 [(B)] *Any archaeological site that has been determined significant in writing by an Indian tribe.]*

34 [(c)(A)] (b)(A) “Archaeological site” means a geographic locality in Oregon, including but not
35 limited to submerged and submersible lands and the bed of the sea within the state’s jurisdiction,
36 that contains archaeological objects and the contextual associations of the archaeological objects
37 with:

38 (i) Each other; or

39 (ii) Biotic or geological remains or deposits.

40 (B) Examples of archaeological sites described in subparagraph (A) of this paragraph include but
41 are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters,
42 homesteads and townsites.

43 [(d)] “*Indian tribe*” has the meaning given that term in ORS 97.740.]

44 [(e)] (c) “Burial” means any natural or prepared physical location whether originally below, on
45 or above the surface of the earth, into which, as a part of a death rite or death ceremony of a cul-

1 ture, human remains were deposited.

2 [(f)] (d) “Funerary objects” means any artifacts or objects that, as part of a death rite or cere-
 3 mony of a culture, are reasonably believed to have been placed with individual human remains ei-
 4 ther at the time of death or later.

5 [(g)] (e) “Human remains” means the physical remains of a human body, including, but not lim-
 6 ited to, bones, teeth, hair, ashes or mummified or otherwise preserved soft tissues of an individual.

7 (f) “Indian tribe” has the meaning given that term in ORS 97.740.

8 [(h)] (g) “Object of cultural patrimony”:

9 (A) Means an object having ongoing historical, traditional or cultural importance central to the
 10 native Indian group or culture itself, rather than property owned by an individual native Indian, and
 11 which, therefore, cannot be alienated, appropriated or conveyed by an individual regardless of
 12 whether or not the individual is a member of the Indian tribe. The object shall have been considered
 13 inalienable by the native Indian group at the time the object was separated from such group.

14 (B) Does not mean unassociated arrowheads, baskets or stone tools or portions of arrowheads,
 15 baskets or stone tools.

16 [(i)] (h) “Police officer” has the meaning given that term in ORS 181.610.

17 [(j)] (i) “Public lands” means any lands owned by the State of Oregon, a city, county, district
 18 or municipal or public corporation in Oregon.

19 [(k)] (j) “Sacred object” means an archaeological object or other object that:

20 (A) Is demonstrably revered by any ethnic group, religious group or Indian tribe as holy;

21 (B) Is used in connection with the religious or spiritual service or worship of a deity or spirit
 22 power; or

23 (C) Was or is needed by traditional native Indian religious leaders for the practice of traditional
 24 native Indian religion.

25 (k) “Site of archaeological significance” means:

26 (A) Any archaeological site on, or eligible for inclusion on, the National Register of His-
 27 toric Places as determined in writing by the State Historic Preservation Officer; or

28 (B) Any archaeological site that has been determined significant in writing by an Indian
 29 tribe.

30 (L) “State police” has the meaning given that term in ORS 181.010.

31 (2) The terms set forth in subsection (1)(e), (f), (g), (h) and (k) of this section shall be interpreted
 32 in the same manner as similar terms interpreted pursuant to 25 U.S.C. 3001 et seq.

33 **SECTION 3. ORS 390.235, 390.237 and 390.240 are added to and made a part of ORS 358.920**
 34 **to 358.955.**