

NATIVE AMERICAN INDIAN RELATED AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies the Utah Division of Indian Affairs Act to address meetings of Indian Tribal Nation representatives and Native American Indian related committees.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to meetings with Indian Tribal Nation elected officials;
- ▶ modifies provisions related to the Native American Remains Review Committee;

and

- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-9-104.5, as last amended by Laws of Utah 2010, Chapter 286

9-9-405, as last amended by Laws of Utah 2010, Chapter 286

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **9-9-104.5** is amended to read:



28 **9-9-104.5. Meetings with Tribal Leaders and Native American Indian**
 29 **organizations.**

30 (1) The division shall meet regularly with:

31 (a) elected officials of Indian ~~[tribes]~~ Tribal Nations located in whole or in part in the
 32 state; or

33 (b) individuals designated by elected officials of the ~~[tribes]~~ Indian Tribal Nations
 34 described in Subsection (1)(a).

35 (2) (a) Subject to Section 9-9-104.6, at least ~~[five]~~ six times each year, the division
 36 shall coordinate and attend a joint meeting of the representatives of tribal governments listed in
 37 Subsection (2)(b) for the purpose of coordinating the efforts of state and tribal governments in
 38 meeting the needs of the Native ~~[Americans]~~ American Indians residing in ~~[the state]~~ Utah.

39 (b) (i) The representatives to be included in the meeting described in Subsection (2)(a)
 40 shall be elected officials, serve as representatives for their entire elected term, and be selected
 41 as follows:

42 ~~[(A) an elected official of the Navajo Nation that resides in San Juan County selected~~
 43 ~~by the Navajo Nation government;]~~

44 (A) as a nonvoting member, an elected official of the Navajo Nation, Window Rock,
 45 Arizona, selected by the Navajo Nation, if the Navajo Nation chooses to select an elected
 46 official;

47 (B) the Navajo Nation council delegate that represents the Utah Navajo Chapters, as
 48 defined in Section 35A-8-1702, if the council delegate resides in San Juan County, Utah, or if
 49 the council delegate does not reside in San Juan County, Utah, a president of a Utah Navajo
 50 Chapter selected by the presidents of the Utah Navajo Chapters;

51 ~~[(B)]~~ (C) an elected official of the Ute Indian Tribe of the Uintah and Ouray
 52 Reservation selected by the Uintah and Ouray Tribal Business Committee;

53 ~~[(C)]~~ (D) an elected official of the Paiute Indian Tribe of Utah selected by the Paiute
 54 Indian Tribe of Utah Tribal Council;

55 ~~[(D)]~~ (E) an elected official of the Northwestern Band of the ~~[Shoshoni]~~ Shoshone
 56 Nation that resides in ~~[Northern]~~ Utah or Idaho selected by the Northwestern Band of the
 57 ~~[Shoshoni]~~ Shoshone Nation Tribal Council;

58 ~~[(E)]~~ (F) an elected official of the ~~H→~~ [Confederate] Confederated ←H Tribes of the
 58a Goshute ~~[Reservation that~~

59 ~~resides in Hopah]~~ selected by the [~~Goshute Business Council~~] Confederated Tribes of the
60 Goshute Reservation Tribal Council;

61 ~~(F)~~ (G) an elected official of the Skull Valley Band of Goshute Indians selected by
62 the Skull Valley Band of Goshute Indian Tribal Executive Committee;

63 (H) as a nonvoting member, an elected official of the Ute Mountain Ute Tribe,
64 Colorado, selected by the Ute Mountain Ute Tribal Nation, if the Ute Mountain Ute Tribal
65 Nation chooses to select an elected official;

66 ~~(G)~~ (I) an elected official of the Ute Mountain Ute Tribe that resides in Utah selected
67 by the Ute Mountain Ute Tribal Council; and

68 ~~(H)~~ (J) an elected official of the San Juan Southern Paiute Tribe, residing in Utah or
69 Arizona, selected by the San Juan Southern Paiute Tribal Council.

70 (ii) Notwithstanding Subsection (2)(b)(i), if an elected official of an Indian [~~tribe~~]
71 Tribal Nation provides notice to the division, the Indian [~~tribe~~] Tribal Nation may designate an
72 individual other than the elected official selected under Subsection (2)(b)(i) to represent the
73 Indian [~~tribe at a~~] Tribal Nation at an individual meeting held under Subsection (2)(a).

74 (iii) A majority of voting members listed in Subsection (2)(b)(i) constitutes a quorum
75 for purposes of a meeting held under Subsection (2)(a). An action of a majority of voting
76 members present when a quorum is present constitutes action of the representatives for
77 purposes of a meeting described in Subsection (2)(a).

78 (c) (i) A meeting held in accordance with Subsection (2)(a) is subject to Title 52,
79 Chapter 4, Open and Public Meetings Act.

80 (ii) A meeting of representatives listed in Subsection (2)(b) is not subject to the
81 requirements of Title 52, Chapter 4, Open and Public Meetings Act, notwithstanding whether it
82 is held on the same day as a meeting held in accordance with Subsection (2)(a) if:

83 (A) the division does not coordinate the meeting described in this Subsection (2)(c)(ii);

84 (B) no state agency participates in the meeting described in this Subsection (2)(c)(ii);

85 (C) a representative receives no per diem or expenses under this section for attending
86 the meeting described in this Subsection (2)(c)(ii) that is in addition to any per diem or
87 expenses the representative receives under Subsection (2)(d) for attending a meeting described
88 in Subsection (2)(a); and

89 (D) the meeting described in this Subsection (2)(c)(ii) is not held:

90 (I) after a meeting described in Subsection (2)(a) begins; and

91 (II) before the meeting described in Subsection (2)(c)(ii)(D)(I) adjourns.

92 (d) A representative of a tribal government that attends a meeting held in accordance
93 with Subsection (2)(a) may not receive compensation or benefits for the representative's
94 service, but may receive per diem and travel expenses in accordance with:

95 (i) Section 63A-3-106;

96 (ii) Section 63A-3-107; and

97 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
98 63A-3-107.

99 (e) For ~~[each]~~ a meeting described in Subsection (2)(a), only ~~[one individual from each~~
100 ~~tribe]~~ the individuals described in Subsection (2)(b) may receive per diem and expenses, as
101 provided in ~~[this]~~ Subsection (2)(d).

102 (3) The division may meet as necessary with Native American Indian groups other than
103 tribal governments representing the interests of Native ~~[Americans]~~ American Indians who are
104 citizens of the state residing on or off reservation land.

105 Section 2. Section **9-9-405** is amended to read:

106 **9-9-405. Review committee.**

107 (1) There is created a Native American Remains Review Committee.

108 (2) (a) The review committee shall be composed of seven members as follows:

109 (i) four Tribal members shall be appointed by the director from nominations submitted
110 by ~~[Indian tribes]~~ the elected officials of Indian Tribal Nations described in Subsection
111 9-9-104.5(2)(b); and

112 (ii) three shall be appointed by the director from nominations submitted by
113 representatives of Utah's repositories.

114 ~~[(b) Except as required by Subsection (2)(c), as terms of current committee members~~
115 ~~expire, the director shall appoint each new member or reappointed member to a four-year~~
116 ~~term.]~~

117 ~~[(c) Notwithstanding the requirements of Subsection (2)(b), the director shall, at the~~
118 ~~time of appointment or reappointment, adjust the length of terms to ensure that the terms of~~
119 ~~committee members are staggered so that approximately half of the review committee is~~
120 ~~appointed every two years.]~~

121 (b) A member appointed under Subsection (2)(a)(i) shall have familiarity and
 122 experience with this part.

123 (c) ~~H~~→ (i) ~~H~~ A member appointed under Subsection (2)(a) ~~H~~→ (i) ~~H~~ serves at the will
 123a of the director, and
 124 if the member represents an Indian Tribal Nation, at the will of that Indian Tribal Nation.
 125 Removal of a member who represents an Indian Tribal Nation requires the joint decision of the
 126 director and the Indian Tribal Nation.

126a **~~H~~→ (ii) A member appointed under Subsection (2)(a)(ii) serves at the will of the director,**
 126b **and if the member represents a repository, at the will of the Division of State History. Removal**
 126c **of a member who represents a repository requires the joint decision of the director and the**
 126d **Division of State History. ~~H~~**

127 (d) When a vacancy occurs in the membership for any reason, the director shall appoint
 128 a replacement [~~for the unexpired term~~] in the same manner as the original appointment under
 129 Subsection (2)(a).

130 (e) A member may not receive compensation or benefits for the member's service, but
 131 may receive per diem and travel expenses in accordance with:

132 (i) Section 63A-3-106;

133 (ii) Section 63A-3-107; and

134 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
 135 63A-3-107.

136 (f) The review committee shall designate one of its members as chair.

137 (3) The review committee shall:

138 (a) monitor the identification process conducted under Section 9-9-403 to ensure a fair
 139 and objective consideration and assessment of all available relevant information and evidence;

140 (b) review a finding relating to the following, subject to the rules made by the division
 141 under Subsection 9-9-403(6):

142 (i) the identity or cultural affiliation of Native American remains; or

143 (ii) the return of Native American remains;

144 (c) facilitate the resolution of a dispute among Indian [~~tribes~~] Tribal Nations or lineal
 145 descendants and state agencies relating to the return of Native American remains, including
 146 convening the parties to the dispute if considered desirable;

147 (d) consult with Indian [~~tribes~~] Tribal Nations on matters within the scope of the work
 148 of the review committee affecting these [~~tribes~~] Indian Tribal Nations;

149 (e) consult with the division in the development of rules to carry out this part;

150 (f) perform other related functions as the division may assign to the review committee;

151 and

152 (g) make recommendations, if appropriate, regarding care of Native American remains
153 that are to be repatriated.

154 (4) A record or finding made by the review committee relating to the identity of or
155 cultural affiliation of Native American remains and the return of Native American remains may
156 be admissible in any action brought under this part.

157 (5) The appropriate state agency having primary authority over the lands as provided in
158 Chapter 8, Part 3, Antiquities, shall ensure that the review committee has reasonable access to:

- 159 (a) Native American remains under review; and
- 160 (b) associated scientific and historical documents.

161 (6) The division shall provide reasonable administrative and staff support necessary for
162 the deliberations of the review committee.

163 (7) The review committee shall submit an annual report to the Native American
164 Legislative Liaison Committee, created in Section 36-22-1, on the progress made, and any
165 barriers encountered, in implementing this section during the previous year.

Legislative Review Note
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Office of Legislative Research and General Counsel