

HUMAN REMAINS RELATED AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Darin G. Peterson

House Sponsor: Michael E. Noel

LONG TITLE

General Description:

This bill modifies provisions related to discovery and disposition of human remains on nonfederal lands within the state.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ addresses the powers and duties of the Antiquities Section of the Division of History related to human remains discovered within the state;
- ▶ provides for a process when ancient human remains are discovered on nonfederal lands that are not state land;
- ▶ addresses the determination of ownership and the disposition of Native American remains discovered on nonfederal lands;
- ▶ addresses rulemaking; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-8-302, as last amended by Chapter 292, Laws of Utah 2006

9-8-304, as last amended by Chapter 292, Laws of Utah 2006

30 9-9-402, as last amended by Chapter 39, Laws of Utah 2005

31 9-9-403, as enacted by Chapter 286, Laws of Utah 1992

32 76-9-704, as last amended by Chapter 143, Laws of Utah 2005

33 ENACTS:

34 9-8-309, Utah Code Annotated 1953



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

37 Section 1. Section 9-8-302 is amended to read:

38 **9-8-302. Definitions.**

39 As used in this part and Part 4, Historic Sites:

40 (1) "Agency" means a department, division, office, bureau, board, commission, or
41 other administrative unit of the state.

42 (2) "Ancient human remains" means all or part of the following that are historic or
43 prehistoric:

44 (a) a physical individual; and

45 (b) any object on or attached to the physical individual that is placed on or attached to
46 the physical individual as part of the death rite or ceremony of a culture.

47 [~~(2)~~] (3) "Antiquities Section" means the Antiquities Section of the Division of State
48 History created in Section 9-8-304.

49 [~~(3)~~] (4) "Archaeological resources" means all material remains and their associations,
50 recoverable or discoverable through excavation or survey, that provide information pertaining
51 to the historic or prehistoric peoples of the state.

52 [~~(4)~~] (5) "Collection" means a specimen and the associated records documenting the
53 specimen and its recovery.

54 [~~(5)~~] (6) "Curation" means management and care of collections according to standard
55 professional museum practice, which may include inventorying, accessioning, labeling,
56 cataloging, identifying, evaluating, documenting, storing, maintaining, periodically inspecting,
57 cleaning, stabilizing, conserving, exhibiting, exchanging, or otherwise disposing of original

58 collections or reproductions, and providing access to and facilities for studying collections.

59 ~~[(6)]~~ (7) "Curation facility" is defined as provided in Section 53B-17-603.

60 ~~[(7)]~~ (8) "Division" means the Division of State History created in Section 9-8-201.

61 ~~[(8)]~~ (9) "Excavate" means the recovery of archaeological resources.

62 ~~[(9)]~~ (10) "Historic property" means any prehistoric or historic district, site, building,
63 structure, or specimen included in, or eligible for inclusion in, the National Register of Historic
64 Places or the State Register.

65 (11) "Indian tribe" means a tribe, band, nation, or other organized group or community
66 of Indians that is recognized as eligible for the special programs and services provided by the
67 United States to Indians because of their status as Indians.

68 ~~[(10)]~~ (12) "Museum" means the Utah Museum of Natural History.

69 (13) (a) "Nonfederal land" means land in the state that is not owned, controlled, or held
70 in trust by the federal government.

71 (b) "Nonfederal land" includes:

72 (i) land owned or controlled by:

73 (A) the state;

74 (B) a county, city, or town;

75 (C) an Indian tribe, if the land is not held in trust by the United States for the Indian
76 tribe or the Indian tribe's members; or

77 (D) a person other than the federal government; or

78 (ii) school and institutional trust lands.

79 ~~[(11)]~~ (14) "Principal investigator" means the individual with overall administrative
80 responsibility for the survey or excavation project authorized by the permit.

81 ~~[(12)]~~ (15) "Repository" is defined as provided in Section 53B-17-603.

82 ~~[(13)]~~ (16) "School and institutional trust lands" are those properties defined in Section
83 53C-1-103.

84 ~~[(14)]~~ (17) "Site" means any petroglyphs, pictographs, structural remains, or
85 geographic location that is the source of archaeological resources or specimens.

86 ~~[(15)]~~ (18) "Specimen" means all man-made artifacts and remains of an archaeological
87 or anthropological nature found on or below the surface of the earth, excluding structural
88 remains.

89 ~~[(16)]~~ (19) "State historic preservation officer" means that position mentioned in 16
90 U.S.C. Sec. 470a ~~[of the National Historic Preservation Act of 1966]~~, as amended.

91 (20) (a) "State land" means land owned by the state including the state's:

92 (i) legislative and judicial branches;

93 (ii) departments, divisions, agencies, boards, commissions, councils, and committees;

94 and

95 (iii) institutions of higher education as defined under Section 53B-3-102.

96 (b) "State land" does not include:

97 (i) land owned by a political subdivision of the state;

98 (ii) land owned by a school district;

99 (iii) private land; or

100 (iv) school and institutional trust lands.

101 ~~[(17)]~~ (21) "Survey" means a surface investigation for archaeological resources that
102 may include:

103 (a) insubstantial surface collection of archaeological resources; and

104 (b) limited subsurface testing that disturbs no more of a site than is necessary to
105 determine the nature and extent of the archaeological resources or whether the site is a historic
106 property.

107 Section 2. Section **9-8-304** is amended to read:

108 **9-8-304. Antiquities Section created -- Duties.**

109 (1) There is created within the division the Antiquities Section.

110 (2) The Antiquities Section shall:

111 (a) promote research, study, and activities in the field of antiquities;

112 (b) assist with the marking, protection, and preservation of sites;

113 (c) assist with the collection, preservation, and administration of specimens until ~~[they]~~

114 the specimens are placed in a repository or curation facility;

115 (d) provide advice on the protection and orderly development of archaeological
116 resources, and in doing so confer with the Public Lands Policy Coordinating Office if
117 requested;

118 (e) assist with the excavation, retrieval, and proper care of ancient human remains [as
119 authorized by Subsection 76-9-704(3) and federal law;] discovered on nonfederal lands in
120 accordance with:

121 (i) Section 9-8-309;

122 (ii) Section 9-9-403;

123 (iii) Subsection 76-9-704(3); and

124 (iv) federal law;

125 (f) collect and administer site survey and excavation records;

126 (g) edit and publish antiquities records;

127 (h) inform the state historic preservation officer in writing about any request for advice
128 or consultation from an agency or an agency's agent; and

129 (i) employ an archaeologist meeting the requirements of 36 C.F.R. 61.4.

130 (3) The Antiquities Section shall cooperate with local, state, and federal agencies and
131 all interested persons to achieve the purposes of this part and Part 4, Historic Sites.

132 (4) Before performing the duties specified in Subsections (2)(a) through (e), the
133 Antiquities Section shall obtain permission from the landowner.

134 Section 3. Section **9-8-309** is enacted to read:

135 **9-8-309. Ancient human remains on nonfederal lands that are not state lands.**

136 (1) (a) After April 30, 2007, if a person knows or has reason to know that the person
137 discovered ancient human remains on nonfederal land that is not state land:

138 (i) the person shall:

139 (A) cease activity in the area of the discovery until activity may be resumed in
140 accordance with Subsection (1)(d);

141 (B) notify a local law enforcement agency in accordance with Section 76-9-704; and

142 (C) notify the person who owns or controls the nonfederal land, if that person is
143 different than the person who discovers the ancient human remains; and
144 (ii) the person who owns or controls the nonfederal land shall:
145 (A) require that activity in the area of the discovery cease until activity may be resumed
146 in accordance with Subsection (1)(d); and
147 (B) make a reasonable effort to protect the discovered ancient human remains before
148 activity may be resumed in accordance with Subsection (1)(d).
149 (b) (i) If the local law enforcement agency believes after being notified under this
150 Subsection (1) that a person may have discovered ancient human remains, the local law
151 enforcement agency shall contact the Antiquities Section.
152 (ii) The Antiquities Section shall:
153 (A) within two business days of the day on which the Antiquities Section is notified by
154 local law enforcement, notify the landowner that the Antiquities Section may excavate and
155 retrieve the human remains with the landowner's permission; and
156 (B) if the landowner gives the landowner's permission, excavate the human remains by
157 no later than:
158 (I) five business days from the day on which the Antiquities Section obtains the
159 permission of the landowner under this Subsection (1); or
160 (II) if extraordinary circumstances exist as provided in Subsection (1)(c), within the
161 time period designated by the director not to exceed 30 days from the day on which the
162 Antiquities Section obtains the permission of the landowner under this Subsection (1).
163 (c) (i) The director may grant the Antiquities Section an extension of time for
164 excavation and retrieval of ancient human remains not to exceed 30 days from the day on
165 which the Antiquities Section obtains the permission of the landowner under this Subsection
166 (1), if the director determines that extraordinary circumstances exist on the basis of objective
167 criteria such as:
168 (A) the unusual scope of the ancient human remains;
169 (B) the complexity or difficulty of excavation or retrieval of the ancient human

170 remains; or
171 (C) the landowner's concerns related to the excavation or retrieval of the ancient human
172 remains.
173 (ii) If the landowner objects to the time period designated by the director, the
174 landowner may appeal the decision to the executive director of the department in writing.
175 (iii) If the executive director receives an appeal from the landowner under this
176 Subsection (1)(c), the executive director shall:
177 (A) decide on the appeal within two business days; and
178 (B) (I) uphold the decision of the director; or
179 (II) designate a shorter time period than the director designated for the excavation and
180 retrieval of the ancient human remains.
181 (iv) An appeal under this Subsection (1)(c) may not be the cause for the delay of the
182 excavation and retrieval of the ancient human remains.
183 (v) A decision and appeal under this Subsection (1)(c) is exempt from Title 63,
184 Chapter 46b, Administrative Procedures Act.
185 (d) A person that owns or controls nonfederal land that is not state land may engage in
186 or permit others to engage in activities in the area of the discovery without violating this part or
187 Section 76-9-704 if once notified of the discovery of ancient human remains on the nonfederal
188 land, the person:
189 (i) consents to the Antiquities Section excavating and retrieving the ancient human
190 remains; and
191 (ii) engages in or permits others to engage in activities in the area of the discovery only
192 after:
193 (A) the day on which the Antiquities Section removes the ancient human remains from
194 the nonfederal land; or
195 (B) the time period described in Subsection (1)(b)(ii)(B).
196 (2) A person that owns or controls nonfederal land that is not state land may not be
197 required to pay any costs incurred by the state associated with the ancient human remains.

198 including costs associated with the costs of the:

199 (a) discovery of ancient human remains;

200 (b) excavation or retrieval of ancient human remains; or

201 (c) determination of ownership or disposition of ancient human remains.

202 (3) For nonfederal land that is not state land, nothing in this section limits or prohibits
203 the Antiquities Section and a person who owns or controls the nonfederal land from entering
204 into an agreement addressing the ancient human remains that allows for different terms than
205 those provided in this section.

206 (4) The ownership and control of ancient human remains that are the ancient human
207 remains of a Native American shall be determined in accordance with Chapter 9, Part 4, Native
208 American Grave Protection and Repatriation Act:

209 (a) if the ancient human remains are in possession of the state;

210 (b) if the ancient human remains are not known to have been discovered on lands
211 owned, controlled, or held in trust by the federal government; and

212 (c) regardless of when the ancient human remains are discovered.

213 (5) This section:

214 (a) does not apply to ancient human remains that are subject to the provisions and
215 procedures of:

216 (i) federal law; or

217 (ii) Part 4, Historic Sites; and

218 (b) does not modify any property rights of a person that owns or controls nonfederal
219 land except as to the ownership of the ancient human remains.

220 (6) The division, Antiquities Section, or Division of Indian Affairs may not make rules
221 that impose any requirement on a person who discovers ancient human remains or who owns or
222 controls nonfederal land that is not state land on which ancient human remains are discovered
223 that is not expressly provided for in this section.

224 Section 4. Section **9-9-402** is amended to read:

225 **9-9-402. Definitions.**

226 As used in this part:

227 (1) "Antiquities Section" means the Antiquities Section of the Division of History.

228 [~~(1)~~] (2) "Burial site" means any natural or prepared physical location, whether
229 originally below, on, or above the surface of the earth, into which as a part of the death rite or
230 ceremony of a culture individual human remains are deposited.

231 [~~(2)~~] (3) "Cultural affiliation" means that there is a relationship of shared group identity
232 that can be reasonably traced historically or prehistorically between a present day Indian tribe
233 and an identifiable earlier group.

234 [~~(3)~~] (4) "Division" means the Division of Indian Affairs.

235 [~~(4)~~] (5) "Indian tribe" means any tribe, band, nation, or other organized group or
236 community of Indians that is recognized as eligible for the special programs and services
237 provided by the United States to Indians because of their status as Indians.

238 [~~(5)~~] (6) "Lineal descendant" means the genealogical descendant established by oral or
239 written record.

240 [~~(6)~~] (7) "Native American" means of or relating to a tribe, people, or culture that is
241 indigenous to the United States.

242 (8) "Native American remains" means remains that are Native American.

243 (9) (a) "Nonfederal land" means land in the state that is not owned, controlled, or held
244 in trust by the federal government.

245 (b) "Nonfederal land" includes:

246 (i) land owned or controlled by:

247 (A) the state;

248 (B) a county, city, or town;

249 (C) an Indian tribe, if the land is not held in trust by the United States for the Indian
250 tribe or the Indian tribe's members; or

251 (D) a person other than the federal government; or

252 (ii) school and institutional trust lands as defined in Section 53C-1-103.

253 [~~(7)~~] (10) "Remains" means all or part of a physical individual and objects on or

254 attached to the physical individual that are placed there as part of the death rite or ceremony of
255 a culture.

256 ~~[(8)] (11) (a)~~ "State ~~[lands]~~ land" means any ~~[lands]~~ land owned by the state ~~[or its~~
257 ~~subdivisions, except school and institutional trust lands as]~~ including the state's:

258 (i) legislative and judicial branches;

259 (ii) departments, divisions, agencies, boards, commissions, councils, and committees;

260 and

261 (iii) institutions of higher education as defined under Section 53B-3-102.

262 (b) "State land" does not include:

263 (i) land owned by a political subdivision of the state;

264 (ii) land owned by a school district;

265 (iii) private land; or

266 (iv) school and institutional trust lands as defined in Section 53C-1-103.

267 Section 5. Section **9-9-403** is amended to read:

268 **9-9-403. Ownership and disposition of Native American remains.**

269 (1) ~~[The]~~ If Native American remains are discovered on nonfederal lands on or after
270 April 30, 2007, the ownership or control of the Native American remains ~~[that are excavated or~~
271 ~~discovered on state lands after the effective date of this part]~~ shall be determined in the
272 following priority:

273 (a) first, in the lineal descendants of the Native American;

274 (b) second, if the lineal descendants cannot be ascertained, in the Indian tribe that has
275 the closest cultural affiliation with the Native American remains and that states a claim for the
276 Native American remains; or

277 (c) third, if cultural affiliation of the Native American remains cannot be reasonably
278 ascertained and the land is recognized either by a final judgment of the Indian Claims
279 Commission or through other evidence as the exclusive or joint aboriginal land of some Indian
280 tribe, in the Indian tribe that is recognized as aboriginally occupying the area in which the
281 Native American remains ~~[were]~~ are discovered, if that tribe states a claim for the Native

282 American remains, or in a different tribe if it can be shown by a preponderance of the evidence
283 that that different tribe has a stronger genetic or cultural relationship with the Native American
284 remains and that different tribe states a claim for the Native American remains.

285 (2) Subject to Subsection (7), Native American remains discovered on nonfederal lands
286 that are not claimed under Subsection (1) shall be disposed of in accordance with rules
287 [~~promulgated~~] made by the division consistent with Chapter 8, Part 3, Antiquities, and in
288 consultation with Native American groups, representatives of repositories, and the review
289 committee established under Section 9-9-405.

290 (3) The intentional removal or excavation of Native American remains from state lands
291 may be permitted only if:

292 (a) the Native American remains are excavated or removed pursuant to a permit issued
293 under Section 9-8-305;

294 (b) the Native American remains are excavated or removed after consultation with and
295 written consent of the [~~land~~] owner of the state land; and

296 (c) the ownership or right of control of the disposition of the Native American remains
297 is determined as provided in Subsections (1) and (2).

298 (4) (a) Any person who knows or has reason to know that [~~he or she~~] the person has
299 discovered Native American remains on state lands after [~~the effective date of this part~~] March
300 17, 1992 shall notify, in writing, the appropriate state agency having primary management
301 authority over the lands as provided in Chapter 8, Part 3, Antiquities.

302 (b) If the discovery [~~occurred~~] occurs in connection with construction, mining, logging,
303 agriculture, or a related activity the person shall cease the activity in the area of the discovery,
304 make a reasonable effort to protect the Native American remains discovered before resuming
305 the activity, and provide notice of discovery to the appropriate state agency under Subsection
306 (4)(a).

307 (c) Following notification under Subsections (4)(a) and (b) and upon certification by
308 the head of the appropriate state agency that notification has been received the activity may
309 resume after compliance with Section 76-9-704.

310 (5) Scientific study of Native American remains may be carried out only with approval
311 of the owner of the Native American remains as established in Subsections (1) and (2). If
312 ownership is unknown, prior study shall be restricted to those sufficient to identify ownership.
313 This study shall be approved only in accordance with rules made by the division in consultation
314 with the review committee established under Section 9-9-405. The Native American remains
315 ~~[shall]~~ may not be retained ~~[no]~~ longer than 90 days after the date of establishing ownership.

316 (6) If there are multiple ~~[requests for repatriation]~~ claims of ownership under
317 Subsection (1) of any Native American remains and the division cannot clearly determine
318 which ~~[requesting]~~ party making a claim is the most appropriate claimant, the appropriate state
319 agency having primary authority over the lands as provided in Chapter 8, Part 3, Antiquities,
320 may retain the remains until the ~~[requesting parties agree upon its]~~ parties that make a claim for
321 the Native American remains enter into an agreement concerning the disposition of the Native
322 American remains or the dispute is otherwise resolved by a court of competent jurisdiction.

323 (7) The division may not make rules that impose any requirement on a person who
324 discovers Native American remains or owns or controls nonfederal land that is not state land
325 on which Native American remains are discovered that is not expressly provided for in Section
326 9-8-309.

327 (8) For purposes of this part, if Native American remains are discovered on nonfederal
328 land that is not state land, the Antiquities Section shall be considered the state agency having
329 primary authority over the nonfederal land.

330 (9) This part does not modify any property rights of a person that owns or controls
331 nonfederal land except as to the ownership of Native American remains.

332 Section 6. Section **76-9-704** is amended to read:

333 **76-9-704. Abuse or desecration of a dead human body -- Penalties.**

334 (1) For purposes of this section, "dead human body" includes any part of a human body
335 in any stage of decomposition, including ancient human remains as defined in Section 9-8-302.

336 (2) A person is guilty of abuse or desecration of a dead human body if the person
337 intentionally and unlawfully:

338 (a) fails to report the finding of a dead human body to a local law enforcement agency;

339 (b) disturbs, moves, removes, conceals, or destroys a dead human body or any part of
340 it;

341 (c) disinters a buried or otherwise interred dead human body, without authority of a
342 court order;

343 (d) dismembers a dead human body to any extent, or damages or detaches any part or
344 portion of a dead human body; or

345 (e) (i) commits or attempts to commit upon any dead human body any act of sexual
346 penetration, regardless of the sex of the actor and of the dead human body; and

347 (ii) as used in Subsection (2)(e)(i), "sexual penetration" means penetration, however
348 slight, of the genital or anal opening by any object, substance, instrument, or device, including
349 a part of the human body, or penetration involving the genitals of the actor and the mouth of
350 the dead human body.

351 (3) A person does not violate this section if when that person directs or carries out
352 procedures regarding a dead human body, that person complies with:

353 (a) Title 9, Chapter 8, Part 3, Antiquities;

354 (b) Title 26, Chapter 4, Utah Medical Examiner Act;

355 (c) Title 26, Chapter 28, Uniform Anatomical Gift Act;

356 (d) Title 53B, Chapter 17, Part 3, Use of Dead Bodies for Medical Purposes;

357 (e) Title 58, Chapter 9, Funeral Services Licensing Act; or

358 (f) Title 58, Chapter 67, Utah Medical Practice Act, which concerns licensing to
359 practice medicine.

360 (4) (a) Failure to report the finding of a dead human body as required under Subsection
361 (2)(a) is a class B misdemeanor.

362 (b) Abuse or desecration of a dead human body as described in Subsections (2)(b)
363 through (e) is a third degree felony.