

HUMAN REMAINS RELATED AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Darin G. Peterson

House Sponsor: _____

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:



- 28 **9-8-302**, as last amended by Chapter 292, Laws of Utah 2006
- 29 **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) (a) [~~"Archaeological"~~] Except as provided in Subsection (4)(b), "archaeological
50 resources" means all material remains and their associations, recoverable or discoverable
51 through excavation or survey, that provide information pertaining to the historic or prehistoric
52 peoples of the state.

53 (b) "Archaeological resources" does not include ancient human remains.

54 ~~[(4)]~~ (5) "Collection" means a specimen and the associated records documenting the
55 specimen and its recovery.

56 ~~[(5)]~~ (6) "Curation" means management and care of collections according to standard
57 professional museum practice, which may include inventorying, accessioning, labeling,
58 cataloging, identifying, evaluating, documenting, storing, maintaining, periodically inspecting,

59 cleaning, stabilizing, conserving, exhibiting, exchanging, or otherwise disposing of original
60 collections or reproductions, and providing access to and facilities for studying collections.

61 ~~[(6)]~~ (7) "Curation facility" is defined as provided in Section 53B-17-603.

62 ~~[(7)]~~ (8) "Division" means the Division of State History created in Section 9-8-201.

63 ~~[(8)]~~ (9) "Excavate" means the recovery of archaeological resources.

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

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

70 ~~[(10)]~~ (12) "Museum" means the Utah Museum of Natural History.

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

73 (b) "Nonfederal land" includes:

74 (i) land owned or controlled by:

75 (A) the state;

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

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

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

80 (ii) school and institutional trust lands.

81 ~~[(11)]~~ (14) "Principal investigator" means the individual with overall administrative
82 responsibility for the survey or excavation project authorized by the permit.

83 ~~[(12)]~~ (15) "Repository" is defined as provided in Section 53B-17-603.

84 ~~[(13)]~~ (16) "School and institutional trust lands" are those properties defined in Section
85 53C-1-103.

86 ~~[(14)]~~ (17) "Site" means any petroglyphs, pictographs, structural remains, or
87 geographic location that is the source of archaeological resources or specimens.

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

90 remains.

91 ~~[(16)]~~ (19) "State historic preservation officer" means that position mentioned in 16
92 U.S.C. Sec. 470a ~~[of the National Historic Preservation Act of 1966]~~, as amended.

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

94 (i) legislative and judicial branches;

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

96 and

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

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

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

100 (ii) land owned by a school district;

101 (iii) private land; or

102 (iv) school and institutional trust lands.

103 ~~[(17)]~~ (21) "Survey" means a surface investigation for archaeological resources that
104 may include:

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

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

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

110 **9-8-304. Antiquities Section created -- Duties.**

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

112 (2) The Antiquities Section shall:

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

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

115 (c) assist with the collection, preservation, and administration of specimens until ~~[they]~~
116 the specimens are placed in a repository or curation facility;

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

120 (e) assist with the excavation, retrieval, and proper care of ancient human remains [as

121 authorized by Subsection 76-9-704(3) and federal law;] discovered on nonfederal lands in
 122 accordance with:

123 (i) Section 9-8-308;

124 (ii) Section 9-9-403;

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

126 (iv) federal law;

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

128 (g) edit and publish antiquities records;

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

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

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

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

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

137 **9-8-309. Ancient human remains on nonfederal lands that are not state lands.**

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

140 (i) the person shall:

141 (A) cease activity in the area of the discovery until activity may be resumed in
 142 accordance with Subsection (1)(c);

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

144 (C) notify the person who owns or controls the nonfederal land, if that person is
 145 different than the person who discovers the ancient human remains; and

146 (ii) the person who owns or controls the nonfederal land shall:

147 (A) require that activity in the area of the discovery cease until activity may be resumed
 148 in accordance with Subsection (1)(c); and

149 (B) make a reasonable effort to protect the discovered ancient human remains before
 150 activity may be resumed in accordance with Subsection (1)(c).

151 (b) (i) If the local law enforcement agency believes after being notified under this

152 Subsection (1) that a person may have discovered ancient human remains, the local law
153 enforcement agency shall contact the Antiquities Section.

154 (ii) The Antiquities Section shall:

155 (A) within two business days of the day on which the Antiquities Section is notified by
156 local law enforcement, notify the landowner that the Antiquities Section may excavate and
157 retrieve the human remains with the landowner's permission; and

158 (B) if the landowner gives the landowner's permission, excavate the human remains by
159 no later than five business days from the day on which the Antiquities Section obtains the
160 permission of the landowner under this Subsection (1).

161 (c) A person that owns or controls nonfederal land that is not state land may engage in
162 or permit others to engage in activities in the area of the discovery without violating this part or
163 Section 76-9-704 if once notified of the discovery of ancient human remains on the nonfederal
164 land, the person:

165 (i) consents to the Antiquities Section excavating and retrieving the ancient human
166 remains; and

167 (ii) engages in or permits others to engage in activities in the area of the discovery only
168 after:

169 (A) the day on which the Antiquities Section removes the ancient human remains from
170 the nonfederal land; or

171 (B) five business days from the day on which the person gives permission to the
172 Antiquities Section excavating and retrieving the ancient human remains.

173 (2) A person that owns or controls nonfederal land that is not state land may not be
174 required to pay any costs incurred by the state associated with the ancient human remains,
175 including costs associated with the costs of the:

176 (a) discovery of ancient human remains;

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

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

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

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

186 (a) if the ancient human remains are in possession of the division, the Antiquities
187 Section, or the Division of Indian Affairs;

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

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

191 (5) This section:

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

194 (i) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470a; or

195 (ii) Part 4, Historic Sites; and

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

198 (6) The division, Antiquities Section, or Division of Indian Affairs may not make rules
199 that impose any requirement on a person who discovers ancient remains or who owns or
200 controls nonfederal land that is not state land on which ancient human remains are discovered
201 that is not expressly provided for in:

202 (a) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470a; or

203 (b) Part 4, Historic Sites.

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

205 **9-9-402. Definitions.**

206 As used in this part:

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

208 ~~(1)~~ (2) "Burial site" means any natural or prepared physical location, whether
209 originally below, on, or above the surface of the earth, into which as a part of the death rite or
210 ceremony of a culture individual human remains are deposited.

211 ~~(2)~~ (3) "Cultural affiliation" means that there is a relationship of shared group identity
212 that can be reasonably traced historically or prehistorically between a present day Indian tribe
213 and an identifiable earlier group.

214 [(3)] (4) "Division" means the Division of Indian Affairs.

215 [(4)] (5) "Indian tribe" means any tribe, band, nation, or other organized group or
216 community of Indians that is recognized as eligible for the special programs and services
217 provided by the United States to Indians because of their status as Indians.

218 [(5)] (6) "Lineal descendant" means the genealogical descendant established by oral or
219 written record.

220 [(6)] (7) "Native American" means of or relating to a tribe, people, or culture that is
221 indigenous to the United States.

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

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

225 (b) "Nonfederal land" includes:

226 (i) land owned or controlled by:

227 (A) the state;

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

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

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

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

233 [(7)] (10) "Remains" means all or part of a physical individual and objects on or
234 attached to the physical individual that are placed there as part of the death rite or ceremony of
235 a culture.

236 [(8)] (11) (a) "State [~~lands~~] land" means any [~~lands~~] land owned by the state [~~or its~~
237 ~~subdivisions, except school and institutional trust lands as~~] including the state's:

238 (i) legislative and judicial branches;

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

240 and

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

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

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

244 (ii) land owned by a school district;

245 (iii) private land; or

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

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

248 **9-9-403. Ownership and disposition of Native American remains.**

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

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

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

257 (c) third, if cultural affiliation of the Native American remains cannot be reasonably
258 ascertained and the land is recognized either by a final judgment of the Indian Claims
259 Commission or through other evidence as the exclusive or joint aboriginal land of some Indian
260 tribe, in the Indian tribe that is recognized as aboriginally occupying the area in which the
261 Native American remains ~~[were]~~ are discovered, if that tribe states a claim for the Native
262 American remains, or in a different tribe if it can be shown by a preponderance of the evidence
263 that that different tribe has a stronger genetic or cultural relationship with the Native American
264 remains and that different tribe states a claim for the Native American remains.

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

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

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

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

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

278 (4) (a) Any person who knows or has reason to know that ~~[he or she]~~ the person has
279 discovered Native American remains on state lands after ~~[the effective date of this part]~~ March
280 17, 1992 shall notify, in writing, the appropriate state agency having primary management
281 authority over the lands as provided in Chapter 8, Part 3, Antiquities.

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

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

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

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

303 (7) The division may not make rules that impose any requirement on a person who
304 discovers Native American remains or owns or controls nonfederal land that is not state land
305 on which Native American remains are discovered that is not expressly provided for in:

306 (a) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470a; or

307 (b) Chapter 8, Part 4, Historic Sites.

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

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

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

314 **76-9-704. Abuse or desecration of a dead human body -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legislative Review Note
as of 1-30-07 9:46 AM

Office of Legislative Research and General Counsel

S.B. 204 - Human Remains Related Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill would require an on-going appropriation of \$99,400 from the General Fund beginning in FY 2008 to the Division of State History for staff and cost of analyses to implement the provisions of the bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$99,400	\$99,400	\$0	\$0	\$0
Total	\$0	\$99,400	\$99,400	\$0	\$0	\$0

Individual, Business and/or Local Impact

There could be some savings realized by certain individuals, business and local governments as the Antiquities Section will take on responsibilities concerning discoveries of ancient human remains.