

**Senator Darin G. Peterson** proposes the following substitute bill:

**HUMAN REMAINS RELATED AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Darin G. Peterson**

House Sponsor: Michael E. Noel

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**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



26 **Utah Code Sections Affected:**

27 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) "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 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 that 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.

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**S.B. 204 1st Sub. (Green) - Human Remains Related Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**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
<b>Total</b>	<b>\$0</b>	<b>\$99,400</b>	<b>\$99,400</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**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.

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