

**NATIVE AMERICAN REMAINS AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jani Iwamoto**

House Sponsor: Douglas V. Sagers

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**LONG TITLE**

**General Description:**

This bill amends provisions related to Native American remains.

**Highlighted Provisions:**

This bill:

- ▶ creates definitions for "partner agency" and "tribal consultation";
- ▶ requires an annual report regarding expenditures made from the Native American

Repatriation Restricted Account;

- ▶ provides for certain expenditures to be reimbursed from the Native American

Repatriation Restricted Account; and

- ▶ makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**9-9-402**, as last amended by Laws of Utah 2008, Chapter 114

**9-9-405**, as last amended by Laws of Utah 2014, Chapter 371

**9-9-407**, as enacted by Laws of Utah 2017, Chapter 88

**63N-2-215**, as renumbered and amended by Laws of Utah 2015, Chapter 283

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

30 Section 1. Section **9-9-402** is amended to read:

31 **9-9-402. Definitions.**

32 As used in this part:

33 (1) "Antiquities Section" means the Antiquities Section of the Division of State  
34 History.

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

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

41 (4) "Director" means the director of the Division of Indian Affairs.

42 (5) "Division" means the Division of Indian Affairs.

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

46 (7) "Lineal descendant" means the genealogical descendant established by oral or  
47 written record.

48 (8) "Native American" means of or relating to a tribe, people, or culture that is  
49 indigenous to the United States.

50 (9) "Native American remains" means remains that are Native American.

51 (10) (a) "Nonfederal land" means land in the state that is not owned, controlled, or held  
52 in trust by the federal government.

53 (b) "Nonfederal land" includes:

54 (i) land owned or controlled by:

55 (A) the state;

- 56 (B) a county, city, or town;
- 57 (C) an Indian tribe, if the land is not held in trust by the United States for the Indian
- 58 tribe or the Indian tribe's members; or
- 59 (D) a person other than the federal government; or
- 60 (ii) school and institutional trust lands as defined in Section 53C-1-103.
- 61 (11) "Partner agency" means an agency of the state or a tribal agency that participates
- 62 in the remains repatriation process.
- 63 [~~(11)~~] (12) "Remains" means all or part of a physical individual and objects on or
- 64 attached to the physical individual that are placed there as part of the death rite or ceremony of
- 65 a culture.
- 66 [~~(12)~~] (13) "Review committee" means the Native American Remains Review
- 67 Committee created by Section 9-9-405.
- 68 [~~(13)~~] (14) (a) "State land" means land owned by the state including the state's:
- 69 (i) legislative and judicial branches;
- 70 (ii) departments, divisions, agencies, boards, commissions, councils, and committees;
- 71 and
- 72 (iii) institutions of higher education as defined under Section 53B-3-102.
- 73 (b) "State land" does not include:
- 74 (i) land owned by a political subdivision of the state;
- 75 (ii) land owned by a school district;
- 76 (iii) private land; or
- 77 (iv) school and institutional trust lands as defined in Section 53C-1-103.
- 78 (15) "Tribal consultation" means the state and the tribes exchanging views and
- 79 information, in writing or in person, regarding implementing proposed state action under this
- 80 part that has or may have substantial implications for tribes including impacts on:
- 81 (a) tribal cultural practices;
- 82 (b) tribal lands;

- 83           (c) tribal resources;
- 84           (d) access to traditional areas of tribal cultural or religious importance; or
- 85           (e) the consideration of the state's responsibilities to Indian tribes.

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

87           **9-9-405. Review committee.**

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

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

90           (i) four Tribal members shall be appointed by the director from nominations submitted  
91 by the elected officials of Indian Tribal Nations described in Subsection [9-9-104.5\(2\)\(b\)](#); and

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

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

96           (c) (i) A member appointed under Subsection (2)(a)(i) serves at the will of the director,  
97 and if the member represents an Indian Tribal Nation, at the will of that Indian Tribal Nation.  
98 Removal of a member who represents an Indian Tribal Nation requires the joint decision of the  
99 director and the Indian Tribal Nation.

100           (ii) A member appointed under Subsection (2)(a)(ii) serves at the will of the director,  
101 and if the member represents a repository, at the will of the Division of State History. Removal  
102 of a member who represents a repository requires the joint decision of the director and the  
103 Division of State History.

104           (d) When a vacancy occurs in the membership for any reason, the director shall appoint  
105 a replacement in the same manner as the original appointment under Subsection (2)(a).

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

108           (i) Section [63A-3-106](#);

109           (ii) Section [63A-3-107](#); and

110 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
111 63A-3-107.

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

113 (3) The review committee shall:

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

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

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

119 (ii) the return of Native American remains;

120 (c) facilitate the resolution of a dispute among Indian Tribal Nations or lineal  
121 descendants and state agencies relating to the return of Native American remains, including  
122 convening the parties to the dispute if considered desirable;

123 (d) consult with Indian Tribal Nations on matters within the scope of the work of the  
124 review committee affecting these Indian Tribal Nations;

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

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

127 and

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

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

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

135 (a) Native American remains under review; and

136 (b) associated scientific and historical documents.

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

139 (7) The department shall include in the annual written report described in Section  
140 9-1-208[7]:

141 (a) a description of the progress made, and any barriers encountered, by the review  
142 committee in implementing this section during the previous year[7]; and

143 (b) a review of the expenditures made from the Native American Repatriation  
144 Restricted Account.

145 Section 3. Section 9-9-407 is amended to read:

146 **9-9-407. Native American Repatriation Restricted Account.**

147 (1) There is created a restricted account within the General Fund known as the "Native  
148 American Repatriation Restricted Account."

149 (2) (a) The Native American Repatriation Restricted Account shall consist of  
150 appropriations from the Legislature.

151 (b) All interest earned on Native American Repatriation Restricted Account money  
152 shall be deposited into the Native American Repatriation Restricted Account.

153 (3) Subject to appropriation from the Legislature, the division may use the money in  
154 the Native American Repatriation Restricted Account as follows:

155 (a) for a grant issued in accordance with Subsection (6) to an Indian Tribe to pay the  
156 following costs of reburial of Native American remains:

- 157 (i) use of equipment;
- 158 (ii) labor for use of the equipment;
- 159 (iii) reseeding and vegetation efforts;
- 160 (iv) compliance with Section 9-8-404; and
- 161 (v) caskets; [and]

162 (b) for tribal consultation, including:

163 (i) consultation time, drafting reports, taking detailed notes, communicating to the

164 stakeholders, facilitating discussions, and traveling to individual tribal locations;  
 165 (ii) travel costs, including per diem and lodging costs, for:  
 166 (A) Utah tribal leaders and tribal cultural resource managers; and  
 167 (B) regional partner tribes;  
 168 (iii) meeting facilities for the division to host tribal consultations when the division  
 169 determines that a state facility does not meet tribal consultation needs; and  
 170 (iv) costs for holding meetings under Subsection (3)(b)(iii); and  
 171 ~~[(b) no more than 5% of the annual expenditures from the Native American~~  
 172 ~~Repatriation Restricted Account may be used for training for tribal elders and councils on the~~  
 173 ~~processes under this part, including costs for:]~~  
 174 (c) for training tribal representatives, councils, and staff of a partner agency with  
 175 repatriation responsibilities in the processes under Section 9-8-404 and rules made by the  
 176 Division of State History in accordance with Title 63G, Chapter 3, Utah Administrative  
 177 Rulemaking Act, including costs for:  
 178 (i) lodging and transportation of employees of the department or a partner agency; or  
 179 (ii) travel grants issued in accordance with Subsection (6) for tribal representatives.  
 180 (4) If the balance in the Native American Repatriation Restricted Account exceeds  
 181 \$100,000 at the close of any fiscal year, the excess shall be transferred into the General Fund.  
 182 (5) In accordance with Section 63J-1-602.1, appropriations from the account are  
 183 nonlapsing.  
 184 (6) To issue a grant under this section, the division shall:  
 185 (a) require that an Indian Tribe request the grant in writing and specify how the grant  
 186 money will be expended; and  
 187 (b) enter into an agreement with the Indian Tribe to ensure that the grant money is  
 188 expended in accordance with Subsection (3).  
 189 Section 4. Section 63N-2-215 is amended to read:  
 190 **63N-2-215. Indian tribes -- Application.**

- 191 (1) For purposes of this section:
- 192 (a) "Indian reservation" has the same meaning as defined in Section 9-9-210.
- 193 (b) "Indian tribe" has the same meaning as defined in [~~Subsection~~] Section
- 194 9-9-402[~~(6)~~].
- 195 (c) "Tribal applicant" means the governing authority of a tribe that meets the
- 196 requirements for designation as an enterprise zone under Subsection (2).
- 197 (2) Indian tribes may apply for designation of an area within an Indian reservation as an
- 198 enterprise zone.
- 199 (3) The tribal applicant shall follow the application procedure for a municipal applicant
- 200 in this part except for the population requirement in Subsections 63N-2-204(2)(a) and (b).