

NATIVE AMERICAN REMAINS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: Douglas V. Sagers

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";
- ▶ 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

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

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

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

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



28 **9-9-402. Definitions.**

29 As used in this part:

30 (1) "Antiquities Section" means the Antiquities Section of the Division of State
31 History.

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

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

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

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

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

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

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

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

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

50 (b) "Nonfederal land" includes:

51 (i) land owned or controlled by:

52 (A) the state;

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

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

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

57 (ii) school and institutional trust lands as defined in Section [53C-1-103](#).

58 (11) "Partner agency" means an agency of the state or a tribal agency that participates

59 in the remains repatriation process.

60 [~~(11)~~] (12) "Remains" means all or part of a physical individual and objects on or
61 attached to the physical individual that are placed there as part of the death rite or ceremony of
62 a culture.

63 [~~(12)~~] (13) "Review committee" means the Native American Remains Review
64 Committee created by Section 9-9-405.

65 [~~(13)~~] (14) (a) "State land" means land owned by the state including the state's:

- 66 (i) legislative and judicial branches;
- 67 (ii) departments, divisions, agencies, boards, commissions, councils, and committees;

68 and

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

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

- 71 (i) land owned by a political subdivision of the state;
- 72 (ii) land owned by a school district;
- 73 (iii) private land; or
- 74 (iv) school and institutional trust lands as defined in Section 53C-1-103.

75 (15) "Tribal consultation" means the state and the tribes exchanging views and
76 information, in writing or in person, regarding implementing proposed state action under this
77 part that has or may have substantial implications for tribes including impacts on:

- 78 (a) tribal cultural practices;
- 79 (b) tribal lands;
- 80 (c) tribal resources;
- 81 (d) access to traditional areas of tribal cultural or religious importance; or
- 82 (e) the consideration of the state's responsibilities to Indian tribes.

83 Section 2. Section 9-9-407 is amended to read:

84 **9-9-407. Native American Repatriation Restricted Account.**

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

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

89 (b) All interest earned on Native American Repatriation Restricted Account money

90 shall be deposited into the Native American Repatriation Restricted Account.

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

93 (a) for a grant issued in accordance with Subsection (6) [~~to an Indian Tribe~~] to pay the
94 following costs of reburial of Native American remains:

95 (i) use of equipment;

96 (ii) labor for use of the equipment;

97 (iii) reseeding and vegetation efforts;

98 (iv) compliance with Section 9-8-404; [~~and~~]

99 (v) caskets; [~~and~~]

100 (vi) tribal consultation, including consultation time, per diem, lodging, drafting reports,
101 taking detailed notes, communicating to the stakeholders, facilitating discussions, and traveling
102 to individual tribal locations;

103 (vii) travel costs, including per diem and lodging costs, for:

104 (A) Utah tribal leaders and tribal cultural resource managers;

105 (B) regional partner tribes; and

106 (C) staff of a partner agency that serves as a subject matter expert;

107 (viii) meeting facilities for the division to host tribal consultations when the division
108 determines that a state facility does not meet tribal consultation needs; and

109 (ix) costs for holding meetings under Subsection (3)(a)(viii); and

110 [~~(b) no more than 5% of the annual expenditures from the Native American~~
111 ~~Repatriation Restricted Account may be used for training for tribal elders and councils on the~~
112 ~~processes under this part, including costs for:]~~

113 (b) for training tribal representatives, councils, and staff of a partner agency with
114 repatriation responsibilities in the processes under Section 9-8-404 and rules made by the
115 Division of State History in accordance with Title 63G, Chapter 3, Utah Administrative
116 Rulemaking Act, including costs for:

117 (i) lodging and transportation of employees of the department or a partner agency; or

118 (ii) travel grants issued in accordance with Subsection (6) for tribal representatives.

119 (4) If the balance in the Native American Repatriation Restricted Account exceeds
120 \$100,000 at the close of any fiscal year, the excess shall be transferred into the General Fund.

121 (5) In accordance with Section 63J-1-602.1, appropriations from the account are
122 nonlapsing.

123 (6) To issue a grant under this section, the division shall:

124 (a) require that [~~an Indian Tribe~~] a recipient request the grant in writing and specify
125 how the grant money will be expended; and

126 (b) enter into an agreement with the [~~Indian Tribe~~] recipient to ensure that the grant
127 money is expended in accordance with Subsection (3).

128 Section 3. Section 63N-2-215 is amended to read:

129 **63N-2-215. Indian tribes -- Application.**

130 (1) For purposes of this section:

131 (a) "Indian reservation" has the same meaning as defined in Section 9-9-210.

132 (b) "Indian tribe" has the same meaning as defined in [~~Subsection~~] Section
133 9-9-402[~~(6)~~].

134 (c) "Tribal applicant" means the governing authority of a tribe that meets the
135 requirements for designation as an enterprise zone under Subsection (2).

136 (2) Indian tribes may apply for designation of an area within an Indian reservation as an
137 enterprise zone.

138 (3) The tribal applicant shall follow the application procedure for a municipal applicant
139 in this part except for the population requirement in Subsections 63N-2-204(2)(a) and (b).