

Senator Jani Iwamoto proposes the following substitute bill:

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";
- ▶ 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



26 **9-9-407**, as enacted by Laws of Utah 2017, Chapter 88

27 **63N-2-215**, as renumbered and amended by Laws of Utah 2015, Chapter 283

28

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).