

## SB0081S01 compared with SB0081

~~deleted text~~ shows text that was in SB0081 but was deleted in SB0081S01.

Inserted text shows text that was not in SB0081 but was inserted into SB0081S01.

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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

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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

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

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

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

As used in this part:

- (1) "Antiquities Section" means the Antiquities Section of the Division of State History.
- (2) "Burial site" means a natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture individual human remains are deposited.
- (3) "Cultural affiliation" means that there is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian tribe and an identifiable earlier group.
- (4) "Director" means the director of the Division of Indian Affairs.
- (5) "Division" means the Division of Indian Affairs.
- (6) "Indian tribe" means a tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (7) "Lineal descendant" means the genealogical descendant established by oral or written record.
- (8) "Native American" means of or relating to a tribe, people, or culture that is indigenous to the United States.
- (9) "Native American remains" means remains that are Native American.

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

(b) "Nonfederal land" includes:

(i) land owned or controlled by:

(A) the state;

(B) a county, city, or town;

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

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

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

(11) "Partner agency" means an agency of the state or a tribal agency that participates in the remains repatriation process.

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

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

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

(i) legislative and judicial branches;

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

and

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

(b) "State land" does not include:

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

(ii) land owned by a school district;

(iii) private land; or

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

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

(a) tribal cultural practices;

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(b) tribal lands;

(c) tribal resources;

(d) access to traditional areas of tribal cultural or religious importance; or

(e) the consideration of the state's responsibilities to Indian tribes.

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

### **9-9-405. Review committee.**

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

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

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

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

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

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

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

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

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

(i) Section 63A-3-106;

(ii) Section 63A-3-107; and

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

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

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(3) The review committee shall:

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

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

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

(ii) the return of Native American remains;

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

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

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

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

and

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

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

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

(a) Native American remains under review; and

(b) associated scientific and historical documents.

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

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

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

(b) a review of the expenditures made from the Native American Repatriation

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### Restricted Account.

Section ~~{2}~~3. Section 9-9-407 is amended to read:

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

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

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

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

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

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

- (i) use of equipment;
- (ii) labor for use of the equipment;
- (iii) reseeding and vegetation efforts;
- (iv) compliance with Section 9-8-404; ~~{f}~~ and ~~{f}~~
- (v) caskets; ~~[and]~~

~~{fvi}~~b for tribal consultation, including:

(i) consultation time ~~{, per diem, lodging}~~, drafting reports, taking detailed notes, communicating to the stakeholders, facilitating discussions, and traveling to individual tribal locations;

~~{fvii}~~ii travel costs, including per diem and lodging costs, for:

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

(B) regional partner tribes; ~~{and}~~

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

~~{~~ ~~{fviii}~~iii meeting facilities for the division to host tribal consultations when the division determines that a state facility does not meet tribal consultation needs; and

~~{fix}~~iv costs for holding meetings under Subsection (3)~~{a}~~b~~{fviii}~~iii; and

~~{fb} no more than 5% of the annual expenditures from the Native American Repatriation Restricted Account may be used for training for tribal elders and councils on the~~

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~~processes under this part, including costs for:]~~

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

(i) lodging and transportation of employees of the department or a partner agency; or  
(ii) travel grants issued in accordance with Subsection (6) for tribal representatives.  
(4) If the balance in the Native American Repatriation Restricted Account exceeds \$100,000 at the close of any fiscal year, the excess shall be transferred into the General Fund.

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

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

(a) require that ~~{}~~an Indian Tribe ~~{}~~a recipient request the grant in writing and specify how the grant money will be expended; and

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

Section ~~{}~~4. Section **63N-2-215** is amended to read:

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

(1) For purposes of this section:

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

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

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

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

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