

H.R. 2893--105th Congress, 1st Session

To amend the Native American Graves Protection and Repatriation Act to provide for appropriate study and repatriation of remains for which a cultural affiliation is not readily ascertainable.

In the House of Representatives on November 7, 1997, Mr. Hastings of Washington introduced H.R. 2893; which was referred to the Committee on Resources. Relevant NAGPRA text is modified below to reflect the amendment. Red indicates new text; ~~strikeout~~ indicates deleted text.

SEC. 3. OWNERSHIP. 25 USC 3002

(a) Native American Human Remains and Objects.-The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after the date of enactment of this Act, shall be (with priority given in the order listed) -

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony -

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered; or

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects ;~~or~~

~~(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe-~~

~~(1) in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or~~

~~(2) if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.~~

(b) Unclaimed Native American Human Remains and Objects.-Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8 of this title, Native American groups, representatives of museums and the scientific community.

(c) Intentional Excavation And Removal Of Native American Human Remains And Objects.-The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if -

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979(93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

(d) Inadvertent Discovery of Native American Remains and Objects.-

(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after the date of enactment of this Act, shall notify, in writing, the Secretary of the

Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to those Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971, the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section. Any person or entity that disposes of or controls a cultural item referred to in the preceding sentence shall comply with the applicable requirements of subsection (c).

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) Relinquishment.—Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

(f) Recording and Status of Items Excavated or Discovered after November 16, 1990.—Cultural items excavated or discovered after November 16, 1990, except those items whose ownership or control is established under paragraph (1) or paragraph (2)(A) of subsection (a)—

(1) shall be reasonably recorded according to generally accepted scientific standards;

(2) shall remain under the control of the agency having primary management authority for the land on which the cultural item was excavated or discovered until 90 days after the publication in the Federal Register of a notice setting out a general description of the item, its estimated age, and the general area of discovery; and

(3) are subject to the study provisions of subsection 7(b).

SEC. 5. INVENTORY FOR HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS. 25 USC 3003

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(b) Requirements.—

(1) The inventories and identifications required under subsection (a) of this section shall be —

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after the date of enactment of this Act, and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8.

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and, except as expressly set forth in sections 3(f) and 7(b), this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

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(d) Notification.-

(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information -

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

SEC. 7. REPATRIATION. 25 USC 3005

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(b) STUDY AND RECORDING.--

(1) In cases of human remains and associated funerary objects for which no lineal descendants have been identified and in cases of other cultural items:

(A) If the cultural affiliation of a cultural item has not been established, studies may be conducted in an attempt to establish such an affiliation or to obtain scientific, historical, or cultural information. If the cultural affiliation of a cultural item is determined pursuant to this subparagraph, the Federal agency or museum having custody of the cultural item shall, not later than 90 days after such determination, notify any culturally affiliated Indian tribe or Native Hawaiian organization of their affiliation. Such notice shall be given in the manner specified in paragraphs (2) and (3) of section 5(d).

(B) If the cultural affiliation of a cultural item has been established with an Indian tribe or Native Hawaiian organization, studies of such item may be conducted if needed for the completion of a specific scientific study, the outcome of which is reasonably expected to provide significant new information concerning the history or prehistory of the United States. If the culturally affiliated tribe or organization requests the return of the cultural item, the Federal agency or museum shall return such item to the Indian tribe or Native Hawaiian organization not later than 90 days after the date on which the scientific study is completed. Study of a cultural item under this subparagraph shall not be permitted to delay return of the item for more than 180 days after the item is made available for study, unless a longer period of study is agreed upon by the culturally affiliated tribe or organization that has requested return of the cultural item.

(2) Not later than 180 days after a study conducted under this subsection is completed, the Federal agency or museum with custody of the cultural item shall provide a report of the results of the study to any Indian tribe or Native Hawaiian organization that has an established cultural affiliation with the cultural item studied.

(3) If study of a cultural item pursuant to subparagraph (A) or (B) of paragraph (1) is requested, the Federal agency or museum with custody of such item must make such item reasonably available for such study unless the Secretary determines that the Federal agency or museum has presented clear and convincing evidence that the potential scientific benefit of the requested study is substantially outweighed under the circumstances by curatorial, cultural, or other reasonable considerations.

(4) Nothing in this subsection shall be construed to require any museum to undertake or permit any study of a cultural item that is contrary to policies of the museum or to its prior agreements.

~~Scientific Study. If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of~~

culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.