S T A T E  O F  N E W  Y O R K

S. 1620 A. 4291

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

February 3, 2009

IN SENATE -- Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

IN ASSEMBLY -- Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law and the education law, in relation to the discovery and disposition of human remains and funerary objects; and to amend the parks, recreation and historic preservation law, in relation to requiring certain notice and consultation prior to the undertaking of certain projects

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "unmarked burial site protection act".

S 2. Legislative findings and declaration. The legislature finds and declares that the sanctity of human burial sites is an intrinsic and paramount value among all cultural and religious traditions which practice the custom of burying the dead. The legislature further finds that there are numerous unmarked burial sites throughout the state, many of which are of great cultural and historical significance to the people of the state, particularly to members of the cultural and religious groups affiliated with them. Such sites are vulnerable to unintentional disturbance in the course of construction and other activities as well as deliberate vandalism and looting. Such disturbance constitutes a severe offense against the descendants of the dead and the beliefs and traditions of the culturally-affiliated groups.

The legislature finds and declares that existing laws are inadequate to protect these unmarked burial sites from disturbance, and that New York is one of the very few states which heretofore has provided no express statutory protection for unmarked burial sites. It is therefore declared to be the purpose of this act to ensure that human remains and associated funerary artifacts remain undisturbed to the maximum extent

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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practicable, and are treated with the utmost respect consistent with the wishes of lineal descendants and culturally-affiliated groups.

S 3. Section 1503 of the not-for-profit corporation law is amended by adding a new paragraph (c) to read as follows:

(C) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (C) OF SECTION FIFTEEN HUNDRED SEVEN AND PARAGRAPH (M) OF SECTION FIFTEEN HUNDRED TEN OF THIS ARTICLE, THIS ARTICLE DOES NOT APPLY TO A BURIAL SITE AS DEFINED IN PARAGRAPH (A) OF SECTION FIFTEEN HUNDRED EIGHTEEN.

S 4. The not-for-profit corporation law is amended by adding a new section 1518 to read as follows:

S 1518. DISCOVERY AND DISPOSITION OF HUMAN REMAINS AND FUNERARY OBJECTS.

(A) DEFINITIONS. AS USED IN THIS SECTION:

(1) "BURIAL SITE" MEANS ANY LOCATION IN WHICH HUMAN REMAINS ARE INTERRED, WHICH IS NOT A CEMETERY SUBJECT TO PROVISIONS OF THIS CHAPTER, THE RELIGIOUS CORPORATION LAW, THE GENERAL MUNICIPAL LAW, THE COUNTY LAW, THE TOWN LAW OR THE VILLAGE LAW.

(2) "COMMITTEE" MEANS THE NATIVE AMERICAN BURIAL SITE REVIEW COMMITTEE CREATED BY PARAGRAPH (C) OF THIS SECTION.

(3) "CULTURALLY-AFFILIATED GROUP" MEANS ANY GROUP, INCLUDING AN INDIAN TRIBE, WHOSE PAST OR PRESENT GOVERNMENT, OR TRADITIONAL CULTURE OR RELIGION WAS OR IS AFFILIATED WITH HUMAN REMAINS OR FUNERARY OBJECTS WHICH ARE THE SUBJECT OF THIS SECTION. SUCH GROUP SHALL INCLUDE AN INDIAN TRIBE WHOSE ABORIGINAL TERRITORY, AS DEFINED BY THE COMMITTEE, INCLUDES THE LOCATION OF A BURIAL SITE CONTAINING NATIVE AMERICAN HUMAN REMAINS OR FUNERARY OBJECTS.

(4) "FORENSIC ANTHROPOLOGIST" MEANS A PERSON QUALIFIED IN THE MEDICOLEGAL INVESTIGATION/EXAMINATION OF HUMAN SKELETAL REMAINS.

(5) "FUNERARY OBJECTS" MEANS ANY ITEM OR ITEMS REASONABLY BELIEVED TO HAVE BEEN PLACED WITH HUMAN REMAINS AT THE TIME OF BURIAL, INCLUDING BUT NOT LIMITED TO BURIAL MARKERS, ITEMS OF PERSONAL ADORNMENT, VESSELS, BEADS, TOOLS, IMPLEMENTS, CEREMONIAL OBJECTS AND OTHER ARTIFACTS.

(6) "HUMAN REMAINS" MEANS THE REMAINS OF ANY PART OF THE BODY OF A DECEASED PERSON.

(7) "INDIAN TRIBE" MEANS ANY NATIVE AMERICAN TRIBE, NATION OR GROUP RECOGNIZED BY THE UNITED STATES OF AMERICA OR THE STATE OF NEW YORK.

(8) "LINEAL DESCENDANT" MEANS A GENEALOGICAL DESCENDANT ESTABLISHED BY ORAL TRADITION OR WRITTEN RECORD.

(9) "STATE ARCHAEOLOGIST" MEANS THE PERSON APPOINTED TO SUCH OFFICE PURSUANT TO SECTION TWO HUNDRED THIRTY-FIVE OF THE EDUCATION LAW.

(B) APPLICABILITY. THIS SECTION SHALL APPLY TO ALL LANDS WITHIN THE STATE, EXCEPT FOR LANDS LOCATED UPON ANY INDIAN RESERVATION LOCATED WHOLLY OR PARTLY WITHIN THE STATE.

(C) NATIVE AMERICAN BURIAL SITE REVIEW COMMITTEE. THERE IS HEREBY ESTABLISHED A NATIVE AMERICAN BURIAL SITE REVIEW COMMITTEE CONSISTING OF THE FOLLOWING: ONE MEMBER TO BE APPOINTED BY EACH OF THE INDIAN TRIBES IN THE STATE AS THE OFFICIAL REPRESENTATIVES FOR THE PURPOSES OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT; THE STATE ARCHAEOLOGIST; A FORENSIC ANTHROPOLOGIST; THE CHAIR OF THE HUMAN REMAINS COMMITTEE OR OTHER DESIGNEE OF THE NEW YORK ARCHAEOLOGICAL COUNCIL; AND ONE MEMBER WITH EXPERTISE IN THE FIELD OF HISTORIC PRESERVATION APPOINTED BY THE COMMISSIONER OF THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION. THE COMMITTEE SHALL ELECT A CHAIRPERSON FROM AMONG ITS MEMBERS. THE MEMBERS WHO ARE NOT PUBLIC EMPLOYEES SHALL BE REIMBURSED BY THE STATE FOR THEIR REASONABLE AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF COMMITTEE FUNCTIONS. IT SHALL BE THE FUNCTION OF THE COMMITTEE TO DETERMINE THE LINEAL DESCENDANTS AND/OR

CULTURALLY-AFFILIATED GROUPS FOR NATIVE AMERICAN HUMAN REMAINS AND FUNERARY OBJECTS SUBJECT TO THIS SECTION, AND TO PROVIDE NOTICE TO SUCH DESCENDANTS AND/OR GROUPS AS PROVIDED IN THIS SECTION. THE STATE ARCHAEOLOGIST SHALL PREPARE, AND THE COMMITTEE SHALL ADOPT, STANDARD PROCEDURES FOR DETERMINING THE LINEAL DESCENDANTS AND CULTURALLY-AFFILIATED GROUPS FOR HUMAN REMAINS AS REQUIRED BY THIS SECTION, INCLUDING ACCEPTABLE TYPES OF PROOF OF SUCH DESCENT AND AFFILIATION.

(D) DISCOVERY OF BURIAL SITE; REPORTING REQUIREMENTS. (1) ANY PERSON WHO IN THE COURSE OF ANY GROUND-DISTURBING ACTIVITY DISCOVERS A BURIAL SITE, HUMAN REMAINS OR FUNERARY OBJECTS SHALL IMMEDIATELY CEASE ANY FURTHER DISTURBANCE OF SUCH SITE, REMAINS OR OBJECTS, AND SHALL IMMEDIATELY REPORT SUCH DISCOVERY TO THE CORONER OR MEDICAL EXAMINER IN THE COUNTY IN WHICH THE REMAINS WERE DISCOVERED. THE CORONER OR MEDICAL EXAMINER SHALL WITHIN NINETY-SIX HOURS DETERMINE WHETHER ANY ACTIONS ARE REQUIRED PURSUANT TO THE PROVISIONS OF ARTICLE SEVENTEEN-A OF THE COUNTY LAW. IF ANY SUCH REMAINS APPEAR TO THE CORONER OR MEDICAL EXAMINER TO BE MORE THAN FIFTY YEARS OLD, THE CORONER OR MEDICAL EXAMINER SHALL IMMEDIATELY PROVIDE NOTICE OF THE DISCOVERY OF SUCH REMAINS TO THE STATE ARCHAEOLOGIST, WHO SHALL IN TURN CONVEY EACH SUCH NOTICE TO THE OTHER MEMBERS OF THE COMMITTEE. ANY INSPECTION OR EXAMINATION SHALL BE MADE IN SITU EXCEPT AS NECESSARY TO COMPLY WITH SUCH ARTICLE SEVENTEEN-A OR TO DETERMINE THE AGE OF THE REMAINS.

(2) THE STATE ARCHAEOLOGIST, OR SUCH QUALIFIED PERSON AS MAY BE DESIGNATED BY THE STATE ARCHAEOLOGIST, SHALL, UPON RECEIVING NOTICE FROM A CORONER OR MEDICAL EXAMINER OF THE DISCOVERY OF HUMAN REMAINS, INSPECT THE SITE, REMAINS AND/OR OBJECTS WHICH ARE THE SUBJECT OF SUCH NOTICE, PREPARE A REPORT THEREON AND PROVIDE A COPY OF THE REPORT TO THE COMMITTEE. THE REPORT SHALL BE BASED UPON PHYSICAL EXAMINATION OF THE DISCOVERED BURIAL SITE, REMAINS AND/OR OBJECTS, AND SHALL CONTAIN THE STATE ARCHAEOLOGIST'S CONCLUSION AS TO WHETHER SUCH SITE, REMAINS AND/OR OBJECTS MAY BE OF NATIVE AMERICAN ORIGIN. IN PREPARING THE REPORT, THE STATE ARCHAEOLOGIST MAY SEEK AND OBTAIN ASSISTANCE FROM ANY EMPLOYEE OF THE REGENTS, FROM THE COMMITTEE, AND FROM THE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION.

(E) DETERMINATION OF AND NOTIFICATION TO LINEAL DESCENDANT OR CULTURALLY-AFFILIATED GROUP. (1) IF THE STATE ARCHAEOLOGIST, THE FORENSIC ANTHROPOLOGIST AND THE COMMITTEE AGREE THAT THE BURIAL SITE DOES NOT WHOLLY OR PARTLY CONTAIN HUMAN REMAINS OR FUNERARY OBJECTS THAT ARE OF NATIVE AMERICAN ORIGIN, IT SHALL BE THE RESPONSIBILITY OF THE STATE ARCHAEOLOGIST TO DETERMINE, AS SOON AS PRACTICABLE, WHETHER THERE IS ANY REASONABLY ASCERTAINABLE LINEAL DESCENDANT OR CULTURALLY-AFFILIATED GROUP WITH RESPECT TO SUCH SITE, REMAINS OR OBJECTS AND, IMMEDIATELY UPON MAKING SUCH DETERMINATION, TO PROVIDE NOTICE TO SUCH DESCENDANTS OR GROUP OF THE REPORTED DISCOVERY.

(2) IF THE STATE ARCHAEOLOGIST, THE FORENSIC ANTHROPOLOGIST AND THE COMMITTEE AGREE THAT THE BURIAL SITE WHOLLY OR PARTLY CONTAINS HUMAN REMAINS OR FUNERARY OBJECTS THAT MAY BE OF NATIVE AMERICAN ORIGIN, IT SHALL BE THE RESPONSIBILITY OF THE COMMITTEE TO DETERMINE THE LINEAL DESCENDANTS OR CULTURALLY-AFFILIATED GROUPS. SUCH DETERMINATION SHALL BE MADE AS SOON AS PRACTICABLE AFTER THE COMMITTEE RECEIVES A REPORT FROM THE STATE ARCHAEOLOGIST CONCERNING THE BURIAL SITE. IMMEDIATELY UPON MAKING SUCH DETERMINATION, THE COMMITTEE SHALL PROVIDE WRITTEN NOTIFICATION TO SUCH DESCENDANTS OR GROUPS OF THE REPORTED DISCOVERY.

(3) THE COMMITTEE SHALL HAVE THE RIGHT OF POSSESSION AND STEWARDSHIP OF NATIVE AMERICAN HUMAN REMAINS AND FUNERARY OBJECTS FROM THE TIME IT RECEIVES NOTIFICATION FROM THE STATE ARCHAEOLOGIST PURSUANT TO PARAGRAPH

(D) OF THIS SECTION UNTIL THE LINEAL DESCENDANTS AND/OR CULTURALLY-AFFILIATED GROUPS RECEIVE NOTIFICATION FROM THE COMMITTEE PURSUANT TO THIS PARAGRAPH, AT WHICH TIME SUCH LINEAL DESCENDANTS AND/OR CULTURALLY-AFFILIATED GROUPS SHALL HAVE THE RIGHT OF POSSESSION AND STEWARDSHIP OF SUCH REMAINS AND OBJECTS. UPON NOTIFICATION TO SUCH LINEAL DESCENDANTS OR CULTURALLY-AFFILIATED GROUPS PURSUANT TO THIS PARAGRAPH, OWNERSHIP OF AND RESPONSIBILITY FOR THE HUMAN REMAINS AND FUNERARY OBJECTS SHALL VEST EXCLUSIVELY IN SUCH DESCENDANTS OR GROUPS, WHICH SHALL HAVE EXCLUSIVE AUTHORITY TO DETERMINE THEIR DISPOSITION.

(4) THE COMMITTEE SHALL ESTABLISH PROCEDURES FOR MAKING THE DETERMINATION AS TO WHETHER DISCOVERED HUMAN REMAINS OR FUNERARY OBJECTS MAY BE OF NATIVE AMERICAN ORIGIN WHEN THE STATE ARCHAEOLOGIST AND THE COMMITTEE CAN NOT COME TO AGREEMENT.

(5) WHERE A BURIAL SITE CONTAINS BOTH NATIVE AMERICAN AND NON-NATIVE AMERICAN HUMAN REMAINS OR FUNERARY OBJECTS, THE COMMITTEE SHALL BE RESPONSIBLE FOR THE NATIVE AMERICAN BURIALS AT THE SITE, AND THE STATE ARCHAEOLOGIST SHALL BE RESPONSIBLE FOR ALL OTHER BURIALS AT THE SITE.

(F) DISPOSITION OF REMAINS AND OBJECTS. (1) WITHIN TEN DAYS AFTER NOTIFICATION BY THE STATE ARCHAEOLOGIST TO A LINEAL DESCENDANT OR CULTURALLY-AFFILIATED GROUP, OTHER THAN AN INDIAN TRIBE OF THE DISCOVERY OF A BURIAL SITE, THE DESCENDANT OR GROUP SHALL ADVISE THE STATE ARCHAEOLOGIST AS TO THE PREFERRED DISPOSITION OF THE DISCOVERED REMAINS OR OBJECTS. THE STATE ARCHAEOLOGIST SHALL TO THE MAXIMUM EXTENT PRACTICABLE FACILITATE SUCH PREFERRED DISPOSITION, WHICH MAY CONSIST OF REINTERMENT AND PROTECTION OF THE BURIAL SITE OR DISINTERMENT AND REBURIAL OR OTHER DISPOSITION AS DETERMINED.

(2) WITHIN TEN DAYS AFTER NOTIFICATION BY THE COMMITTEE TO A LINEAL DESCENDANT OR CULTURALLY-AFFILIATED GROUP OF THE DISCOVERY OF A BURIAL SITE, THE DESCENDANT OR GROUP SHALL ADVISE THE COMMITTEE IN WRITING AS TO THE PREFERRED DISPOSITION OF THE DISCOVERED REMAINS OR OBJECTS. THE COMMITTEE SHALL TO THE MAXIMUM EXTENT PRACTICABLE FACILITATE SUCH PREFERRED DISPOSITION, WHICH MAY CONSIST OF REINTERMENT AND PROTECTION OF THE BURIAL SITE OR DISINTERMENT AND REBURIAL OR OTHER DISPOSITION AS DETERMINED.

(G) DISPOSITION OF HUMAN REMAINS AND FUNERARY OBJECTS, GENERALLY. (1) EXCEPT AS NECESSARY TO CARRY OUT THE PURPOSES OF THIS SECTION, BURIAL SITES, HUMAN REMAINS AND FUNERARY OBJECTS SHALL REMAIN UNDISTURBED AFTER DISCOVERY.

(2) UNLESS EXPRESS CONTRARY DIRECTION IS GIVEN BY THE COMMITTEE, A CULTURALLY-AFFILIATED GROUP OR LINEAL DESCENDANT, THE PRESUMED DISPOSITION OF HUMAN REMAINS AND FUNERARY OBJECTS SHALL BE THAT THEY REMAIN UNDISTURBED WHERE BURIED, EXCEPT AS PROVIDED IN SUBPARAGRAPHS THREE AND FOUR OF THIS PARAGRAPH.

(3) NOTWITHSTANDING SUBPARAGRAPH TWO OF THIS PARAGRAPH, WHERE THERE IS NO PRACTICABLE MEANS OF MODIFYING THE ACTIVITY WHICH LED TO THE DISCOVERY OF A BURIAL SITE, HUMAN REMAINS OR FUNERARY OBJECTS IN ORDER TO AVOID DISTURBING SUCH SITE, REMAINS OR OBJECTS, THE REMAINS OR OBJECTS SHALL BE REMOVED AND REINTERRED IN ACCORDANCE WITH THE DIRECTIONS OF THE COMMITTEE, CULTURALLY-AFFILIATED GROUP, OR LINEAL DESCENDANT.

(4) NOTWITHSTANDING SUBPARAGRAPH TWO OF THIS PARAGRAPH, WHERE THE STATE ARCHAEOLOGIST AND THE COMMITTEE HAVE BEEN UNABLE TO IDENTIFY THE LINEAL DESCENDANT OR CULTURALLY-AFFILIATED GROUP FOR HUMAN REMAINS OR FUNERARY OBJECTS, THE STATE ARCHAEOLOGIST SHALL DETERMINE THE APPROPRIATE DISPOSITION OF SUCH REMAINS OR OBJECTS.

(H) PENALTIES. (1) ANY PERSON WHO FAILS TO REPORT THE DISCOVERY OF A BURIAL SITE, HUMAN REMAINS OR FUNERARY OBJECTS AS REQUIRED BY PARAGRAPH

(D) OF THIS SECTION SHALL BE GUILTY OF A CLASS B MISDEMEANOR, AS DEFINED IN THE PENAL LAW.

(2) ANY PERSON OTHER THAN THE STATE ARCHAEOLOGIST, OR A PERSON OR GROUP WITH A RIGHT OF POSSESSION OR STEWARDSHIP PURSUANT TO THIS SECTION, OR A DESIGNEE THEREOF, WHO INTENTIONALLY REMOVES HUMAN REMAINS OR FUNERARY OBJECTS FROM A BURIAL SITE SHALL BE GUILTY OF A CLASS A MISDEMEANOR, AS DEFINED IN THE PENAL LAW.

(3) ANY PERSON WHO DEFACES OR DESTROYS A BURIAL SITE, HUMAN REMAINS OR FUNERARY OBJECTS, OR WHO POSSESSES HUMAN REMAINS OR FUNERARY OBJECTS WITH INTENT TO SELL SUCH REMAINS OR ARTIFACTS, OR WHO SELLS OR ATTEMPTS TO SELL HUMAN REMAINS OR FUNERARY OBJECTS, SHALL BE GUILTY OF A CLASS E FELONY, AS DEFINED IN THE PENAL LAW.

(I) ENFORCEMENT. THE ATTORNEY GENERAL OR ANY AGGRIEVED PARTY, INCLUDING THE COMMITTEE AND ANY LINEAL DESCENDANT OR CULTURALLY-AFFILIATED GROUP, MAY BRING AN ACTION IN SUPREME COURT IN THE JUDICIAL DISTRICT WHERE THE REMAINS OR OBJECTS COVERED BY THIS SECTION ARE LOCATED TO ENJOIN VIOLATIONS OR THREATENED VIOLATIONS OF THIS SECTION, AND TO RECOVER SUCH REMAINS OR OBJECTS, AND IN THE CASE OF AN AGGRIEVED PARTY, COMPENSATORY AND PUNITIVE DAMAGES FOR SUCH VIOLATION.

S 5. Section 235 of the education law is amended to read as follows:

S 235. State science service. There shall be maintained in the university a science service which shall be known as the state science service and the state geologist, paleontologist, botanist [and], entomologist, AND ARCHAEOLOGIST shall constitute its staff together with such other scientists as the regents may employ or who are now employed by them. This service is empowered and directed to make available its services to all the departments of the state, and the residents of the state under such rules and regulations as the regents may prescribe and is empowered to engage in such scientific research as directed by law or by the regents and shall cooperate with scientific units or agencies of other states, the federal government, educational institutions and industry in the discovery, analysis and dissemination of scientific information. The director of the state museum shall also be the director and head of the state science service and the staff of the service shall be members of the staff of the state museum.

S 6. Section 14.09 of the parks, recreation and historic preservation law is amended by adding a new subdivision 3 to read as follows:

3. PRIOR TO THE PREPARATION OR APPROVAL OF THE FINAL DESIGN OR PLAN OF ANY PROJECT UNDERTAKEN BY A STATE AGENCY, OR PRIOR TO THE FUNDING OF ANY PROJECT BY A STATE AGENCY, OR PRIOR TO AN ACTION OF APPROVAL OR ENTITLEMENT OF ANY PRIVATE PROJECT BY A STATE AGENCY, THE AGENCY'S PRESERVATION OFFICER SHALL PERFORM A DILIGENT INQUIRY TO DETERMINE WHETHER ANY ASPECT OF THE PROJECT MAY OR WILL EFFECT A DISTURBANCE OF A KNOWN OR SUSPECTED BURIAL SITE FOR WHICH A CULTURALLY-AFFILIATED INDIAN TRIBE, GROUP OR LINEAL DESCENDENT CAN BE IDENTIFIED. THE TERMS "BURIAL SITE", "CULTURALLY-AFFILIATED" AND "INDIAN TRIBE" SHALL HAVE THE SAME MEANINGS AS ASCRIBED TO SUCH TERMS IN PARAGRAPH (A) OF SECTION FIFTEEN HUNDRED EIGHTEEN OF THE NOT-FOR-PROFIT CORPORATION LAW. IN SUCH EVENT SUCH OFFICER SHALL NOTIFY SUCH INDIAN TRIBE AND THE NATIVE AMERICAN BURIAL SITE REVIEW COMMITTEE ESTABLISHED BY SECTION FIFTEEN HUNDRED EIGHTEEN OF THE NOT-FOR-PROFIT CORPORATION LAW AND CONSULT WITH THE TRIBE AND SUCH COMMITTEE TO DETERMINE HOW TO AVOID SUCH DISTURBANCE.

S 7. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.