

# STATE OF NEW YORK

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7256

2017-2018 Regular Sessions

## IN ASSEMBLY

April 12, 2017

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Introduced by M. of A. ENGLEBRIGHT, OTIS, JAFFEE, THIELE, ROSENTHAL, AUBRY, COOK, KEARNS, FINCH, MONTESANO, RAIA -- Multi-Sponsored by -- M. of A. BRAUNSTEIN, GOTTFRIED, LUPARDO, McDONOUGH, ROZIC -- 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:

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

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

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

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

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1 associated funerary artifacts remain undisturbed to the maximum extent  
2 practicable, and are treated with the utmost respect consistent with the  
3 wishes of lineal descendants and culturally-affiliated groups.

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

6 (c) Except as otherwise provided in paragraph (c) of section fifteen  
7 hundred seven and paragraph (m) of section fifteen hundred ten of this  
8 article, this article does not apply to a burial site as defined in  
9 paragraph (a) of section fifteen hundred eighteen of this article.

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

12 § 1518. Discovery and disposition of human remains and funerary objects.

13 (a) Definitions. As used in this section:

14 (1) "Burial site" means any location in which human remains are inter-  
15 red, which is not a cemetery subject to provisions of this chapter, the  
16 religious corporation law, the general municipal law, the county law,  
17 the town law or the village law.

18 (2) "Committee" means the Native American burial site review committee  
19 created by paragraph (c) of this section.

20 (3) "Culturally-affiliated group" means any group, including a Native  
21 American tribe, whose past or present government, or traditional culture  
22 or religion was or is affiliated with human remains or funerary objects  
23 which are the subject of this section. Such group shall include a Native  
24 American tribe whose aboriginal territory, as defined by the committee,  
25 includes the location of a burial site containing Native American human  
26 remains or funerary objects.

27 (4) "Forensic anthropologist or bioarchaeologist" means a person qual-  
28 ified in the medicolegal or osteological investigation/examination of  
29 human skeletal remains.

30 (5) "Funerary objects" means any item or items reasonably believed to  
31 have been placed with human remains at the time of burial, including but  
32 not limited to burial markers, items of personal adornment, vessels,  
33 beads, tools, implements, ceremonial objects and other artifacts.

34 (6) "Human remains" means the remains of any part of the body of a  
35 deceased person.

36 (7) "Lineal descendant" means a genealogical descendant established by  
37 oral tradition or written record.

38 (8) "Native American tribe" means any Native American tribe, nation or  
39 group.

40 (9) "State archaeologist" means the person appointed to such office  
41 pursuant to section two hundred thirty-five of the education law.

42 (b) Applicability. This section shall apply to all lands within the  
43 state, except for lands located upon any Native American reservation  
44 located wholly or partly within the state.

45 (c) Native American burial site review committee. There is hereby  
46 established a Native American burial site review committee consisting of  
47 the following: one member to be appointed by each of the Native American  
48 tribes in the state as the official representatives for the purposes of  
49 the Native American Graves Protection and Repatriation Act; the state  
50 archaeologist; a forensic anthropologist or bioarchaeologist; the chair  
51 of the human remains committee or other designee of the New York  
52 Archaeological Council; and one member with expertise in the field of  
53 historic preservation appointed by the commissioner of the office of  
54 parks, recreation and historic preservation. The committee shall elect a  
55 chairperson from among its members. The members who are not public  
56 employees shall be reimbursed by the state for their reasonable and

1 necessary expenses incurred in the performance of committee functions.  
2 It shall be the function of the committee to determine the lineal  
3 descendants and/or culturally-affiliated groups for Native American  
4 human remains and funerary objects subject to this section, and to  
5 provide notice to such descendants and/or groups as provided in this  
6 section. The state archaeologist shall prepare, and the committee shall  
7 adopt, standard procedures for determining the lineal descendants and  
8 culturally-affiliated groups for human remains as required by this  
9 section, including acceptable types of proof of such descent and affil-  
10 iation.

11 (d) Discovery of burial site; reporting requirements. (1) Any person  
12 who in the course of any ground-disturbing activity discovers a burial  
13 site, human remains or funerary objects shall immediately cease any  
14 further disturbance of such site, remains or objects, and shall imme-  
15 diately report such discovery to the coroner or medical examiner in the  
16 county in which the remains were discovered. The coroner or medical  
17 examiner shall within ninety-six hours determine whether any actions are  
18 required pursuant to the provisions of article seventeen-A of the county  
19 law. If any such remains appear to the coroner or medical examiner to be  
20 more than fifty years old, the coroner or medical examiner shall imme-  
21 diately provide notice of the discovery of such remains to the state  
22 archaeologist, who shall in turn convey each such notice to the other  
23 members of the committee. Any inspection or examination shall be made  
24 in situ except as necessary to comply with such article seventeen-A or  
25 to determine the age of the remains.

26 (2) The state archaeologist, or such qualified person as may be desig-  
27 ated by the state archaeologist, shall, upon receiving notice from a  
28 coroner or medical examiner of the discovery of human remains, inspect  
29 the site, remains and/or objects which are the subject of such notice,  
30 prepare a report thereon and provide a copy of the report to the commit-  
31 tee. The report shall be based upon physical examination of the discov-  
32 ered burial site, remains and/or objects, and shall contain the state  
33 archaeologist's conclusion as to whether such site, remains and/or  
34 objects may be of Native American origin. In preparing the report, the  
35 state archaeologist may seek and obtain assistance from any employee of  
36 the regents, from the committee, and from the office of parks, recre-  
37 ation and historic preservation.

38 (e) Determination of and notification to lineal descendant or cultur-  
39 ally-affiliated group. (1) If the state archaeologist, the forensic  
40 anthropologist or bioarchaeologist, and the committee agree that the  
41 burial site does not wholly or partly contain human remains or funerary  
42 objects that are of Native American origin, it shall be the responsibil-  
43 ity of the state archaeologist to determine, as soon as practicable,  
44 whether there is any reasonably ascertainable lineal descendant or  
45 culturally-affiliated group with respect to such site, remains or  
46 objects and, immediately upon making such determination, to provide  
47 notice to such descendants or group of the reported discovery.

48 (2) If the state archaeologist, the forensic anthropologist or bioar-  
49 chaeologist, and the committee agree that the burial site wholly or  
50 partly contains human remains or funerary objects that may be of Native  
51 American origin, it shall be the responsibility of the committee to  
52 determine the lineal descendants or culturally-affiliated groups. Such  
53 determination shall be made as soon as practicable after the committee  
54 receives a report from the state archaeologist concerning the burial  
55 site. Immediately upon making such determination, the committee shall

1 provide written notification to such descendants or groups of the  
2 reported discovery.

3 (3) The committee shall have stewardship of Native American human  
4 remains and funerary objects from the time it receives notification from  
5 the state archaeologist pursuant to paragraph (d) of this section until  
6 the lineal descendants and/or culturally-affiliated groups receive  
7 notification from the committee pursuant to this paragraph, at which  
8 time such lineal descendants and/or culturally-affiliated groups shall  
9 have the right of possession and stewardship of such remains and  
10 objects. Upon notification to such lineal descendants or culturally-af-  
11 iliated groups pursuant to this paragraph, ownership of and responsi-  
12 bility for the human remains and funerary objects shall vest exclusively  
13 in such descendants or groups, which shall have exclusive authority to  
14 determine their disposition.

15 (4) The committee shall establish procedures for making the determi-  
16 nation as to whether discovered human remains or funerary objects may be  
17 of Native American origin when the state archaeologist and the committee  
18 can not come to agreement.

19 (5) Where a burial site contains both Native American and non-Native  
20 American human remains or funerary objects, the committee shall be  
21 responsible for the Native American burials at the site, and the state  
22 archaeologist shall be responsible for all other burials at the site.

23 (f) Disposition of remains and objects. (1) Within ten days after  
24 notification by the state archaeologist to a lineal descendant or  
25 culturally-affiliated group, other than a Native American tribe of the  
26 discovery of a burial site, the descendant or group shall advise the  
27 state archaeologist as to the preferred disposition of the discovered  
28 remains or objects. The state archaeologist shall to the maximum extent  
29 practicable facilitate such preferred disposition, which may consist of  
30 reinterment and protection of the burial site or disinterment and  
31 reburial or other disposition as determined.

32 (2) Within ten days after notification by the committee to a lineal  
33 descendant or culturally-affiliated group of the discovery of a burial  
34 site, the descendant or group shall advise the committee in writing as  
35 to the preferred disposition of the discovered remains or objects. The  
36 committee shall to the maximum extent practicable facilitate such  
37 preferred disposition, which may consist of reinterment and protection  
38 of the burial site or disinterment and reburial or other disposition as  
39 determined.

40 (g) Disposition of human remains and funerary objects, generally. (1)  
41 Except as necessary to carry out the purposes of this section, burial  
42 sites, human remains and funerary objects shall remain undisturbed after  
43 discovery.

44 (2) Unless express contrary direction is given by the committee, a  
45 culturally-affiliated group or lineal descendant, the presumed disposi-  
46 tion of human remains and funerary objects shall be that they remain  
47 undisturbed where buried, except as provided in subparagraphs three and  
48 four of this paragraph.

49 (3) Notwithstanding subparagraph two of this paragraph, where there is  
50 no practicable means of modifying the activity which led to the discov-  
51 ery of a burial site, human remains or funerary objects in order to  
52 avoid disturbing such site, remains or objects, the remains or objects  
53 shall be removed and disposition be determined in accordance with the  
54 directions of the committee, culturally-affiliated group, or lineal  
55 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.

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

§ 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.

§ 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 Native American tribe, group or lineal descendent can be identified. The terms "burial site", "culturally-affiliated" and "Native American 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 Native American tribe and the Native

1 American burial site review committee established by section fifteen  
2 hundred eighteen of the not-for-profit corporation law and consult with  
3 the tribe and such committee to determine how to avoid such disturbance.  
4 § 7. This act shall take effect on the first of January next succeed-  
5 ing the date on which it shall have become a law.