

# STATE OF NEW YORK

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5928

2019-2020 Regular Sessions

## IN ASSEMBLY

February 20, 2019

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Introduced by M. of A. ENGLEBRIGHT, OTIS, JAFFEE, THIELE, L. ROSENTHAL, AUBRY, COOK, 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  
20 associated funerary artifacts remain undisturbed to the maximum extent  
21 practicable, and are treated with the utmost respect consistent with the  
22 wishes of lineal descendants and culturally-affiliated groups.

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

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§ 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 of this article.

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

§ 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 a Native American 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 a Native American 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 or bioarchaeologist" means a person qualified in the medicolegal or osteological 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) "Lineal descendant" means a genealogical descendant established by oral tradition or written record.

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

(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 Native American 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 Native American 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 or bioarchaeologist; 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

1 human remains and funerary objects subject to this section, and to  
2 provide notice to such descendants and/or groups as provided in this  
3 section. The state archaeologist shall prepare, and the committee shall  
4 adopt, standard procedures for determining the lineal descendants and  
5 culturally-affiliated groups for human remains as required by this  
6 section, including acceptable types of proof of such descent and affil-  
7 iation.

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

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

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

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

55 (3) The committee shall have stewardship of Native American human  
56 remains and funerary objects from the time it receives notification from

1 the state archaeologist pursuant to paragraph (d) of this section until  
2 the lineal descendants and/or culturally-affiliated groups receive  
3 notification from the committee pursuant to this paragraph, at which  
4 time such lineal descendants and/or culturally-affiliated groups shall  
5 have the right of possession and stewardship of such remains and  
6 objects. Upon notification to such lineal descendants or culturally-affiliated  
7 groups pursuant to this paragraph, ownership of and responsibility  
8 for the human remains and funerary objects shall vest exclusively  
9 in such descendants or groups, which shall have exclusive authority to  
10 determine their disposition.

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

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

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

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

36 (g) Disposition of human remains and funerary objects, generally. (1)  
37 Except as necessary to carry out the purposes of this section, burial  
38 sites, human remains and funerary objects shall remain undisturbed after  
39 discovery.

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

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

52 (4) Notwithstanding subparagraph two of this paragraph, where the  
53 state archaeologist and the committee have been unable to identify the  
54 lineal descendant or culturally-affiliated group for human remains or  
55 funerary objects, the state archaeologist shall determine the appropri-  
56 ate disposition of such remains or objects.

1 (h) Penalties. (1) Any person who fails to report the discovery of a  
2 burial site, human remains or funerary objects as required by paragraph  
3 (d) of this section shall be guilty of a class B misdemeanor, as defined  
4 in the penal law.

5 (2) Any person other than the state archaeologist, or a person or  
6 group with a right of possession or stewardship pursuant to this  
7 section, or a designee thereof, who intentionally removes human remains  
8 or funerary objects from a burial site shall be guilty of a class A  
9 misdemeanor, as defined in the penal law.

10 (3) Any person who defaces or destroys a burial site, human remains or  
11 funerary objects, or who possesses human remains or funerary objects  
12 with intent to sell such remains or artifacts, or who sells or attempts  
13 to sell human remains or funerary objects, shall be guilty of a class E  
14 felony, as defined in the penal law.

15 (i) Enforcement. The attorney general or any aggrieved party, includ-  
16 ing the committee and any lineal descendant or culturally-affiliated  
17 group, may bring an action in supreme court in the judicial district  
18 where the remains or objects covered by this section are located to  
19 enjoin violations or threatened violations of this section, and to  
20 recover such remains or objects, and in the case of an aggrieved party,  
21 compensatory and punitive damages for such violation.

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

23 § 235. State science service. There shall be maintained in the  
24 university a science service which shall be known as the state science  
25 service and the state geologist, paleontologist, botanist [and], ento-  
26 mologist, and archaeologist shall constitute its staff together with  
27 such other scientists as the regents may employ or who are now employed  
28 by them. This service is empowered and directed to make available its  
29 services to all the departments of the state, and the residents of the  
30 state under such rules and regulations as the regents may prescribe and  
31 is empowered to engage in such scientific research as directed by law or  
32 by the regents and shall cooperate with scientific units or agencies of  
33 other states, the federal government, educational institutions and  
34 industry in the discovery, analysis and dissemination of scientific  
35 information. The director of the state museum shall also be the direc-  
36 tor and head of the state science service and the staff of the service  
37 shall be members of the staff of the state museum.

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

40 3. Prior to the preparation or approval of the final design or plan of  
41 any project undertaken by a state agency, or prior to the funding of any  
42 project by a state agency, or prior to an action of approval or entitle-  
43 ment of any private project by a state agency, the agency's preservation  
44 officer shall perform a diligent inquiry to determine whether any aspect  
45 of the project may or will effect a disturbance of a known or suspected  
46 burial site for which a culturally-affiliated Native American tribe,  
47 group or lineal descendent can be identified. The terms "burial site",  
48 "culturally-affiliated" and "Native American tribe" shall have the same  
49 meanings as ascribed to such terms in paragraph (a) of section fifteen  
50 hundred eighteen of the not-for-profit corporation law. In such event  
51 such officer shall notify such Native American tribe and the Native  
52 American burial site review committee established by section fifteen  
53 hundred eighteen of the not-for-profit corporation law and consult with  
54 the tribe and such committee to determine how to avoid such disturbance.

55 § 7. This act shall take effect on the first of January next succeed-  
56 ing the date on which it shall have become a law.