

STATE OF NEW YORK

630--A

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2023-2024 Regular Sessions

IN SENATE

January 5, 2023

Introduced by Sens. COMRIE, KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the not-for-profit corporation law, the executive law, and the education law, in relation to the discovery and disposition of human remains and funerary objects

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".

§ 2. 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 subdivision one of section one hundred seventy-one of the executive law.

§ 3. Article 7 of the executive law is amended by adding a new section 171 to read as follows:

§ 171. Discovery and disposition of human remains and funerary objects. 1. Definitions. As used in this section:

(a) "Burial site" means any location in which human remains are interred, which is not a cemetery subject to provisions of the not-for-profit corporation law, the religious corporations law, the general municipal law, the county law, the town law or the village law.

(b) "Committee" means the Native American burial site review committee created by subdivision three of this section.

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

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1 (c) "Culturally-affiliated group" means any group, including a Native
2 American Nation or tribe, whose past or present government, or tradi-
3 tional culture or religion, was or is affiliated with human remains or
4 funerary objects which are the subject of this section.

5 (d) "Forensic anthropologist or bioarchaeologist" means a person qual-
6 ified in the medicolegal or osteological investigation/examination of
7 human skeletal remains.

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

12 (f) "Human remains" means the remains of any part of the body of a
13 deceased person, excluding teeth.

14 (g) "Lineal descendant" means a genealogical descendant established by
15 oral tradition, traditional Indigenous knowledge, or written record.

16 (h) "Native American Nation or tribe" means any Native American tribe,
17 nation or group.

18 (i) "State archaeologist" means the person appointed to such office
19 pursuant to section two hundred thirty-five of the education law.

20 2. Applicability. (a) This section shall apply to all lands within the
21 state other than those specified in paragraphs (b) and (c) of this
22 subdivision, except for lands located upon any Native American territory
23 or reservation located wholly or partly within the state.

24 (b) Subdivisions three, four, five, six, and seven of this section
25 shall not apply to lands located upon any Native American territory or
26 reservation located wholly or partly within the state.

27 (c) Subdivisions three, four, five, six, and seven of this section
28 shall not apply to any project that has been reviewed pursuant to
29 section 14.09 of the parks, recreation, and historic preservation law or
30 to state participation in any review conducted pursuant to section 106
31 of the National Historic Preservation Act. If any human remains are
32 discovered during the project, the applicant shall immediately notify
33 the state archaeologist.

34 3. Native American burial site review committee. (a) There is hereby
35 established a Native American burial site review committee consisting of
36 the following:

37 (i) one member to be appointed by each of the recognized Native Ameri-
38 can Nations or tribes in the state;

39 (ii) the state archaeologist;

40 (iii) a forensic anthropologist or bioarchaeologist appointed by the
41 executive director of the New York state museum;

42 (iv) the chair of the human remains committee or other designee of the
43 New York Archaeological Council; and

44 (v) one member with expertise in the field of historic preservation
45 appointed by the commissioner of the office of parks, recreation and
46 historic preservation.

47 (b) The committee shall elect a chairperson from among its members.
48 The members who are not public employees shall be reimbursed by the
49 state for their reasonable, necessary expenses incurred in the perform-
50 ance of committee functions. Three-fifths of the members of the commit-
51 tee shall constitute a quorum for the purpose of conducting the busi-
52 ness. A majority vote of all members who have been appointed or who are
53 serving ex-officio shall be necessary for action. Any vacancy shall be
54 filled in the same manner as the original appointment.

55 (c) It shall be the function of the committee to determine the lineal
56 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. Such procedures shall include dispute resolution methods to
8 resolve disagreements among the committee members.

9 4. Discovery of burial site; reporting requirements. (a) Any person
10 who in the course of any ground-disturbing activity discovers a burial
11 site, human remains or funerary objects shall immediately cease any
12 further disturbance of such site, remains or objects, and shall imme-
13 diately report such discovery to the coroner or medical examiner in the
14 county in which the remains were discovered. The coroner or medical
15 examiner shall, within ninety-six hours, determine whether any actions
16 are required pursuant to the provisions of article seventeen-A of the
17 county law. If any such remains appear to the coroner or medical examin-
18 er to be more than fifty years old, the coroner or medical examiner
19 shall immediately provide notice of the discovery of such remains to the
20 state archaeologist, who shall in turn convey each such notice to the
21 other members of the committee. If no action is required under article
22 seventeen-A of the county law, or once such actions are undertaken and
23 no further action is required, the state archaeologist and the committee
24 may commence their inspection or examination of the remains or objects.
25 Any inspection or examination shall be made in site except as necessary
26 to comply with such article seventeen-A, this section, or to determine
27 the age of the remains. The state archaeologist and the committee may
28 use ground penetrating radar or other pertinent technology or equipment
29 on any portion of the project site that has yet to be disturbed to
30 determine if any other remains exist within the project site.

31 (b) The state archaeologist, or such qualified person as may be desig-
32 nated by the state archaeologist, shall, upon receiving notice from a
33 coroner or medical examiner of the discovery of human remains, inspect
34 the site, remains and/or objects which are the subject of such notice.
35 Within ten days of receiving such notice, the state archaeologist shall
36 prepare a report thereon and provide a copy of the report to the commit-
37 tee and to the property owner. The report shall be based upon physical
38 examination of the discovered burial site, remains and/or objects, and
39 shall contain the state archaeologist's conclusion as to whether such
40 site, remains and/or objects may be of Native American origin. In the
41 event the state archaeologist determines there is a reasonable possibil-
42 ity the site contains multiple remains, an additional period of ten days
43 may be provided for assessment by the state archaeologist in consulta-
44 tion with the culturally-affiliated group to determine the parameters of
45 the site. In preparing the report, the state archaeologist may seek and
46 obtain assistance from any employee of the regents, from the committee,
47 and from the office of parks, recreation and historic preservation.

48 (c) The committee may recommend to the office of parks, recreation,
49 and historic preservation that the site should be designated as a place
50 of historic interest under section twelve-a of the Indian law.

51 5. Determination of and notification to lineal descendants or cultur-
52 ally-affiliated groups. (a) If the state archaeologist, the forensic
53 anthropologist or bioarchaeologist, and the committee agree that the
54 burial site does not wholly or partly contain human remains or funerary
55 objects that are of Native American origin, it shall be the responsibil-
56 ity of the state archaeologist to determine, as soon as practicable,

1 whether there are any reasonably ascertainable lineal descendants or
2 culturally-affiliated groups with respect to such site, remains or
3 objects and, immediately upon making such determination, to provide
4 notice to such descendants or groups of the reported discovery.

5 (b) If the state archaeologist, the forensic anthropologist or bioar-
6 chaeologist, and the committee agree that the burial site wholly or
7 partly contains human remains or funerary objects that may be of Native
8 American origin, it shall be the responsibility of the committee to
9 determine the lineal descendants or culturally-affiliated groups. Such
10 determination shall be made as soon as practicable after the committee
11 receives a report from the state archaeologist concerning the burial
12 site. Immediately upon making such determination, the committee shall
13 provide notification to such descendants or groups of the reported
14 discovery.

15 (c) The committee shall have stewardship of Native American human
16 remains and funerary objects from the time it receives notification from
17 the state archaeologist pursuant to subdivision four of this section
18 until the lineal descendants and/or culturally-affiliated groups receive
19 notification from the committee pursuant to this subdivision, at which
20 time such lineal descendants and/or culturally-affiliated groups shall
21 have the right of possession and stewardship of such remains and
22 objects. Upon notification to such lineal descendants or culturally-af-
23 iliated groups pursuant to this subdivision, ownership of and responsi-
24 bility for the human remains and funerary objects shall vest exclusively
25 in such descendants or groups, which shall have exclusive authority to
26 determine their disposition subject to the provisions of this section.

27 (d) The state archaeologist shall have stewardship of non-Native Amer-
28 ican human remains and funerary objects from the time he or she receives
29 notification from the coroner or medical examiner pursuant to subdivi-
30 sion four of this section until the lineal descendants and/or cultural-
31 ly-affiliated groups receive notification from the state archaeologist
32 pursuant to this paragraph, at which time such lineal descendants and/or
33 culturally-affiliated groups shall have the right of possession and
34 stewardship of such remains and objects. Upon notification to such
35 lineal descendants or culturally-affiliated groups pursuant to this
36 subdivision, ownership of and responsibility for the human remains and
37 funerary objects shall vest exclusively in such descendants or groups,
38 which shall have exclusive authority to determine their disposition
39 subject to the provisions of this section.

40 (e) Where a burial site contains both Native American and non-Native
41 American human remains or funerary objects, the committee shall be
42 responsible for the Native American burials at the site, and the state
43 archaeologist shall be responsible for all other burials at the site.
44 Once stewardship of each is determined, the procedures established in
45 paragraphs (c) and (d) of this subdivision shall apply.

46 6. Disposition of remains and objects. (a) Within ten days after
47 receiving notification from the state archaeologist to lineal descend-
48 ants or a culturally-affiliated group, other than a Native American
49 Nation or tribe, of the discovery of a burial site, the descendants or
50 group shall advise the state archaeologist in writing as to the
51 preferred disposition of the discovered remains or objects, which may
52 include a request to protect the burial site and keep the remains inter-
53 red where they were found. The state archaeologist shall consult with
54 the property owner to try to facilitate the request of the lineal
55 descendants or culturally-affiliated group.

1 (b) Within sixty days after receiving notification from the committee
2 to a lineal descendant or culturally-affiliated group of the discovery
3 of a burial site, the descendants or group shall advise the committee in
4 writing as to the preferred disposition of the discovered remains or
5 objects, which may include a request to protect the burial site and keep
6 the remains interred where they were found. The committee shall consult
7 with the property owner to try to facilitate the request of the lineal
8 descendants or culturally-affiliated group.

9 (c) No later than ten days after receiving the report from the state
10 archaeologist pursuant to subdivision four of this section, the property
11 owner shall inform the state archaeologist of their recommendation with
12 respect to the interment of the remains on their property. If a property
13 owner fails to notify the state archaeologist of their recommendation,
14 the state archaeologist or the committee, as appropriate, shall abide by
15 the decision of the lineal descendants or culturally-affiliated group.

16 7. Disposition of human remains and funerary objects, generally. (a)
17 The property owner, their agents, assignees, employees, family members,
18 friends, acquaintances, or any other individuals acting on behalf of
19 such property owner, other than the state archeologist or a registered
20 professional archaeologist pursuant to paragraph (d) of this subdivi-
21 sion, are strictly prohibited from moving, relocating, transferring,
22 selling, possessing, touching, handling, or otherwise disturbing, in any
23 manner, all human remains and funerary objects that are discovered on
24 site. Except as necessary to carry out the purposes of this section,
25 burial sites, human remains and funerary objects shall remain undis-
26 turbed after discovery and during the process established by this
27 section.

28 (b) While the disposition of the remains shall be determined by the
29 lineal descendants or culturally-affiliated group, and the property
30 owner, the preferred disposition as a matter of policy is to have the
31 remains stay interred where they are discovered.

32 (c) (i) If the lineal descendants, or culturally-affiliated group, and
33 the property owner agree that the remains shall stay interred, the
34 committee or state archaeologist, as appropriate, shall establish a plan
35 of action for the preservation and protection of the remains.

36 (ii) If the lineal descendants or culturally-affiliated group requests
37 that the remains be excavated and moved to a different location, the
38 committee or state archaeologist, as appropriate, shall establish a plan
39 of action for the respectful, dignified excavation and removal of the
40 remains.

41 (iii) If the lineal descendants or culturally-affiliated group
42 requests that the remains stay interred, but the property owner requests
43 that the remains be removed, the committee or state archaeologist, as
44 appropriate, shall establish a plan of action for the respectful, digni-
45 fied excavation and removal of the remains. The committee or state
46 archaeologist may, prior to the execution of the plan of action, consult
47 with the property owner in an attempt to realize the request of the
48 lineal descendants or culturally-affiliated group. The committee or
49 state archaeologist may use a mediator as part of this process.

50 (d) (i) If the plan of action has not been implemented within one
51 hundred eighty days of the issuance of the report by the state archaeol-
52 ogist pursuant to subdivision four of this section, the property owner
53 shall engage a registered professional archaeologist, registered with
54 the Register of Professional Archaeologists and who practices in the
55 field of bioarchaeology or forensic anthropology, to excavate and remove
56 the remains in a respectful and dignified manner. The culturally-affili-

1 ated group shall have the right to have a cultural monitor on site prior
2 to and during any excavation and removal of human remains or funerary
3 objects.

4 (ii) If the plan of action has been substantially implemented but not
5 completed within the one hundred eighty-day period, the committee or
6 state archaeologist may have an additional thirty days to complete the
7 excavation and removal. The state archaeologist, in consultation with
8 the committee, where appropriate, shall determine whether the plan of
9 action has been substantially implemented.

10 (iii) Any excavation and removal caused by the property owner pursuant
11 to this paragraph shall be done at the expense of the property owner and
12 shall be performed and supervised by the state archeologist, a regis-
13 tered archaeologist, or a registered professional archaeologist, regis-
14 tered with the Register of Professional Archaeologists and who practices
15 in the field of bioarchaeology or forensic anthropology. The cultural-
16 ly-affiliated group may select a cultural monitor to supervise the work.
17 Such archaeologist shall review the established plan of action with the
18 state archaeologist or the committee, as appropriate, and act in accord-
19 ance with that plan. Only the state archaeologist or the registered
20 archaeologist or registered professional archaeologist hired to perform
21 the excavation pursuant to this subparagraph may have physical contact
22 with or otherwise disturb the remains or burial site.

23 (iv) The state archaeologist shall make himself or herself available
24 to the registered archaeologist or registered professional archaeologist
25 forthwith for the purposes of discussing the established plan of action
26 for the site. If the state archaeologist fails to make himself or
27 herself available forthwith, the registered archaeologist or registered
28 professional archaeologist may proceed with the excavation and removal.

29 (v) If no plan of action has been established prior to the expiration
30 of the one hundred eighty-day period, the registered archaeologist or
31 registered professional archaeologist may proceed with the excavation
32 and removal in a professional, respectful, dignified manner.

33 (vi) Any remains or funerary objects excavated from the site as a
34 result of the implementation of the process established by this para-
35 graph shall be deposited with the New York state museum for disposition.

36 (e) If the state archaeologist and the committee have been unable to
37 identify the lineal descendants or culturally-affiliated group for human
38 remains or funerary objects, the state archaeologist shall take steward-
39 ship of the remains and determine their appropriate disposition in
40 accordance with the provisions of this section.

41 (f) Notwithstanding any conflicting provision of paragraph (d) of this
42 subdivision, for project sites that contain the remains of six or more
43 individuals, if the state archaeologist determines that additional time
44 is necessary for the excavation of such site, an additional sixty-day
45 period may be added before the remains can be excavated and removed by
46 the property owner. If the state archeologist continues to find that
47 additional time is necessary, the period before remains can be excavated
48 and removed by the property owner may be extended multiple times in
49 increments of sixty days. The state archaeologist must provide a copy
50 of each such determination to the property owner in writing. The proper-
51 ty owner may bring an action pursuant to article seventy-eight of the
52 civil practice law and rules to review the determination of the state
53 archaeologist pursuant to this paragraph.

54 8. Penalties. (a) Any person who fails to report the discovery of a
55 burial site, human remains or funerary objects as required by subdivi-

1 sion four of this section shall be guilty of a class B misdemeanor, as
2 defined in the penal law.

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

8 (c) Any person who knowingly defaces or destroys a burial site, human
9 remains or funerary objects, or who causes a person to deface or destroy
10 a burial site, human remains, or funerary objects, or who possesses
11 human remains or funerary objects with intent to sell such remains or
12 artifacts, or who sells or attempts to sell human remains or funerary
13 objects, except when authorized by law, shall be guilty of a class E
14 felony, as defined in the penal law.

15 9. Enforcement. The attorney general or any aggrieved party, including
16 the committee and any lineal descendant or culturally-affiliated group,
17 may bring an action in supreme court in the judicial district where the
18 remains or objects covered by this section are located to enjoin
19 violations or threatened violations of this section, and to recover such
20 remains or objects.

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

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

37 § 5. This act shall take effect on the ninetieth day after it shall
38 have become a law; provided, however, that if chapter 817 of the laws of
39 2022 shall not have taken effect on or before such date then section two
40 of this act shall take effect on the same date and in the same manner as
41 such chapter of the laws of 2022 takes effect.