STATE OF NEW YORK

630--A

Cal. No. 447

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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(c) "Culturally-affiliated group" means any group, including a Native American Nation or 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.

(d) "Forensic anthropologist or bioarchaeologist" means a person qualified in the medicolegal or osteological investigation/examination of human skeletal remains.

(e) "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.

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

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

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

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

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

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

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

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

(i) one member to be appointed by each of the recognized Native American Nations or tribes in the state;

(ii) the state archaeologist;

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

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

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

(b) 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, necessary expenses incurred in the performance of committee functions. Three-fifths of the members of the committee shall constitute a quorum for the purpose of conducting the business. A majority vote of all members who have been appointed or who are serving ex-officio shall be necessary for action. Any vacancy shall be filled in the same manner as the original appointment.

(c) 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. Such procedures shall include dispute resolution methods to resolve disagreements among the committee members.

4. Discovery of burial site; reporting requirements. (a) 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. If no action is required under article seventeen-A of the county law, or once such actions are undertaken and no further action is required, the state archaeologist and the committee may commence their inspection or examination of the remains or objects. Any inspection or examination shall be made in site except as necessary to comply with such article seventeen-A, this section, or to determine the age of the remains. The state archaeologist and the committee may use ground penetrating radar or other pertinent technology or equipment on any portion of the project site that has yet to be disturbed to determine if any other remains exist within the project site.

(b) 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. Within ten days of receiving such notice, the state archaeologist shall prepare a report thereon and provide a copy of the report to the committee and to the property owner. 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 the event the state archaeologist determines there is a reasonable possibility the site contains multiple remains, an additional period of ten days may be provided for assessment by the state archaeologist in consultation with the culturally-affiliated group to determine the parameters of the site. 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.

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

5. Determination of and notification to lineal descendants or culturally-affiliated groups. (a) If the state archaeologist, the forensic anthropologist or bioarchaeologist, 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 are any reasonably ascertainable lineal descendants or culturally-affiliated groups with respect to such site, remains or objects and, immediately upon making such determination, to provide notice to such descendants or groups of the reported discovery.

(b) If the state archaeologist, the forensic anthropologist or bioarchaeologist, 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 notification to such descendants or groups of the reported discovery.

(c) The committee shall have stewardship of Native American human remains and funerary objects from the time it receives notification from the state archaeologist pursuant to subdivision four of this section until the lineal descendants and/or culturally-affiliated groups receive notification from the committee pursuant to this subdivision, 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 subdivision, 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 subject to the provisions of this section.

(d) The state archaeologist shall have stewardship of non-Native American human remains and funerary objects from the time he or she receives notification from the coroner or medical examiner pursuant to subdivision four of this section until the lineal descendants and/or culturally-affiliated groups receive notification from the state archaeologist 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 subdivision, 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 subject to the provisions of this section.

(e) 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. Once stewardship of each is determined, the procedures established in paragraphs (c) and (d) of this subdivision shall apply.

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

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

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

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

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

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

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

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

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

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

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

(iii) Any excavation and removal caused by the property owner pursuant to this paragraph shall be done at the expense of the property owner and shall be performed and supervised by the state archeologist, a registered archaeologist, or a registered professional archaeologist, registered with the Register of Professional Archaeologists and who practices in the field of bioarchaeology or forensic anthropology. The culturally-affiliated group may select a cultural monitor to supervise the work. Such archaeologist shall review the established plan of action with the state archaeologist or the committee, as appropriate, and act in accordance with that plan. Only the state archaeologist or the registered archaeologist or registered professional archaeologist hired to perform the excavation pursuant to this subparagraph may have physical contact with or otherwise disturb the remains or burial site.

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

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

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

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

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

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

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

(b) Any person other than the state archaeologist, or a person or group with a right to remove or 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.

(c) Any person who knowingly defaces or destroys a burial site, human remains or funerary objects, or who causes a person to deface or destroy 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, except when authorized by law, shall be guilty of a class E felony, as defined in the penal law.

9. 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.

§ 4. 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.

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