

Second Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 04-0616.01 Beth Braby

SENATE BILL 04-066

SENATE SPONSORSHIP

Isgar,

HOUSE SPONSORSHIP

Larson, and Williams S.

Senate Committees

Agriculture, Natural Resources & Energy

House Committees

A BILL FOR AN ACT

101 CONCERNING PROCEDURES RELATED TO THE DISCOVERY OF NATIVE
102 AMERICAN HUMAN REMAINS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Specifies that if native American human remains are discovered on privately owned lands that are within the boundaries of the Southern Ute Indian reservation, the commission of Indian affairs is required to notify the Southern Ute Indian tribe. Repeals procedures related to temporary custody of discovered native American human remains, establishes that the archaeologist who conducts the disinterment shall immediately transfer the human remains to the state archaeologist, and authorizes the state archaeologist to assume temporary custody of the human remains

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

and any associated funerary objects until such remains and funerary objects are transferred to designated spiritual representatives of the resident Ute tribes of Colorado for reburial. If, between the time of disinterment and reburial, the state archaeologist and the commission determine that the remains have a cultural affiliation with a federally recognized Indian tribe other than a resident Ute tribe of Colorado, allows the remains to be transferred to the appropriate federally recognized Indian tribe for reburial. Makes the state archaeologist responsible for the cost of disinterment. Specifies that in assuming temporary custody of the remains, the state archaeologist shall not be deemed to have asserted a legal or ownership interest in or to have taken possession or control of the remains. Requires the state archaeologist to transfer the remains and funerary objects no later than 30 days after the time of disinterment.

Clarifies that an anthropologist or archaeologist in charge of a state archaeologist-permitted investigation who discovers the human remains of a native American may contact representatives of the resident Ute tribes of Colorado or representatives of other federally recognized Indian tribes, as may be appropriate, to request study and analysis of the discovered materials, but that the remains must be first returned to the appropriate tribe, and any study conducted must be pursuant to an agreement between the appropriate tribe and the requesting anthropologist or archaeologist.

Prohibits inadvertently discovered native American human remains and funerary objects from being treated by the state of Colorado or its agencies or political subdivisions as part of a museum collection.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 24-80-1301, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **24-80-1301. Definitions.** As used in this part 13, unless the
5 context otherwise requires:

6 (2.5) "FUNERARY OBJECTS" MEANS OBJECTS THAT, AS PART OF A
7 DEATH RITE OR CEREMONY OF A CULTURE, ARE REASONABLY BELIEVED TO
8 HAVE BEEN PLACED WITH AN INDIVIDUAL'S HUMAN REMAINS EITHER AT
9 THE TIME OF DEATH OR AFTER THE TIME OF DEATH.

10 **SECTION 2.** 24-80-1302 (3) and (4), Colorado Revised Statutes,
11 are amended to read:

1 **24-80-1302. Discovery of human remains.** (3) Prior to further
2 disturbance, the state archaeologist OR HIS OR HER DESIGNEE shall cause
3 the human remains to be examined by a qualified archaeologist, WHO
4 SHALL NOT BE REQUIRED TO BE AN EMPLOYEE OF THE STATE OF
5 COLORADO, to determine whether the remains are more than one hundred
6 years old and to evaluate the integrity of their archaeological context.
7 Complete documentation of the archaeological context of the human
8 remains shall be accomplished in a timely manner.

9 (4) (a) If the on-site inquiry discloses that the human remains are
10 native American, the state archaeologist shall notify the commission.

11 (a.5) IF THE REMAINS ARE DISCOVERED ON PRIVATELY-OWNED
12 LANDS THAT ARE WITHIN THE BOUNDARIES OF THE SOUTHERN UTE INDIAN
13 RESERVATION THAT ARE SUBJECT TO STATE JURISDICTION, AS DEFINED BY
14 PUBLIC LAW 98-290, 98 STAT. 201, 202 (FOUND AT "OTHER PROVISIONS"
15 NOTE TO 25 U.S.C. SEC. 668), THE COMMISSION SHALL NOTIFY THE
16 SOUTHERN UTE INDIAN TRIBE.

17 (b) The remains AND ANY ASSOCIATED FUNERARY OBJECTS shall
18 be disinterred unless the landowner, the state archaeologist, and the
19 ~~chairman~~ CHAIRPERSON of the commission or his OR HER designee
20 unanimously agree to leave the remains in situ.

21 (c) Disinterment shall be conducted carefully, respectfully, and in
22 accordance with proper archaeological methods and by an archaeologist
23 who holds a permit issued under sections 24-80-405 and 24-80-406. In
24 the event the remains AND THE ASSOCIATED FUNERARY OBJECTS are left
25 in situ, they shall be covered over.

26 (d) Without the landowner's express consent for an extension of
27 time, disinterment shall be accomplished no later than ten consecutive

1 days after the state archaeologist has received notification from the
2 coroner pursuant to subsection (2) of this section.

3 (e) (I) ~~The archaeologist who conducts the disinterment will~~
4 ~~assume temporary custody of the human remains, for a period not to~~
5 ~~exceed one year from the date of disinterment, for the purpose of study~~
6 ~~and analysis. In the event that a period in excess of one year is required~~
7 ~~to complete such study and analysis, the commission shall hold a hearing~~
8 ~~and may, based upon its findings, grant an extension. During the period~~
9 ~~that the human remains are in the temporary custody of the archaeologist~~
10 ~~who conducted the disinterment, an archaeological analysis and report~~
11 ~~shall be prepared. At the same time, a physical anthropological study~~
12 ~~shall be conducted to include, but not be limited to, osteometric~~
13 ~~measurement, pathological analysis, and age, sex, and cause of death~~
14 ~~determinations. The cost of the disinterment, archaeological analysis, and~~
15 ~~physical anthropological study shall be borne by the state archaeologist~~
16 ~~except when the human remains are recovered from private lands. In the~~
17 ~~latter case, if no party can be identified who will bear the cost of such~~
18 ~~scientific study, the state archaeologist shall bear such costs. THE~~
19 ~~ARCHAEOLOGIST WHO CONDUCTS THE DISINTERMENT SHALL IMMEDIATELY~~
20 ~~TRANSFER THE NATIVE AMERICAN HUMAN REMAINS AND ANY ASSOCIATED~~
21 ~~FUNERARY OBJECTS TO THE STATE ARCHAEOLOGIST OR HIS OR HER~~
22 ~~DESIGNEE, WHO SHALL ASSUME TEMPORARY CUSTODY OF THE HUMAN~~
23 ~~REMAINS AND ANY ASSOCIATED FUNERARY OBJECTS UNTIL THE REMAINS~~
24 ~~AND FUNERARY OBJECTS ARE TRANSFERRED TO DESIGNATED SPIRITUAL~~
25 ~~REPRESENTATIVES OF THE RESIDENT UTE TRIBES OF COLORADO FOR~~
26 ~~REBURIAL ON STATE LANDS DEDICATED FOR SUCH PURPOSES. THE STATE~~
27 ~~ARCHAEOLOGIST OR HIS OR HER DESIGNEE SHALL ASSURE THAT THE~~

1 NATIVE AMERICAN HUMAN REMAINS AND ANY ASSOCIATED FUNERARY
2 OBJECTS ARE TRANSFERRED TO THE DESIGNATED SPIRITUAL
3 REPRESENTATIVES NO LATER THAN THIRTY DAYS AFTER DISINTERMENT.

4 (II) IF THE STATE ARCHAEOLOGIST AND THE COMMISSION
5 DETERMINE THAT THE REMAINS AND ASSOCIATED FUNERARY OBJECTS, IF
6 ANY, HAVE A CULTURAL AFFILIATION WITH A FEDERALLY RECOGNIZED
7 INDIAN TRIBE OTHER THAN A RESIDENT UTE TRIBE OF COLORADO
8 BETWEEN THE TIME OF DISINTERMENT AND REBURIAL, THE REMAINS AND
9 FUNERARY OBJECTS MAY, AT THE REQUEST OF THE
10 CULTURALLY-AFFILIATED TRIBE, BE TRANSFERRED TO THE APPROPRIATE
11 CULTURALLY-AFFILIATED FEDERALLY RECOGNIZED INDIAN TRIBE FOR
12 REBURIAL.

13 (III) THE COST OF THE DISINTERMENT SHALL BE BORNE BY THE
14 STATE ARCHAEOLOGIST.

15 (IV) IN ASSUMING TEMPORARY CUSTODY OVER NATIVE AMERICAN
16 HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS UNDER THE
17 PROVISIONS OF THIS PARAGRAPH (e), THE STATE ARCHAEOLOGIST SHALL
18 NOT BE DEEMED TO HAVE ASSERTED A LEGAL OR OWNERSHIP INTEREST IN
19 OR TO HAVE TAKEN POSSESSION OR CONTROL OF SAID REMAINS AND
20 ASSOCIATED FUNERARY OBJECTS AS DEFINED BY THE "NATIVE AMERICAN
21 GRAVES PROTECTION AND REPATRIATION ACT", 25 U.S.C. SEC. 3001 ET
22 SEQ., AND ITS IMPLEMENTING REGULATIONS.

23 ~~(f) Upon completion of the studies pursuant to paragraph (e) of~~
24 ~~this subsection (4), the state archaeologist shall consult with the~~
25 ~~commission regarding reinterment.~~ IF NATIVE AMERICAN HUMAN
26 REMAINS AND ANY ASSOCIATED FUNERARY OBJECTS ARE DISCOVERED IN
27 THE COURSE OF A PERMITTED ARCHAEOLOGICAL INVESTIGATION PURSUANT

1 TO SECTION 24-80-1303, THE PROCESS FOR REPATRIATION AND REBURIAL
2 OUTLINED IN PARAGRAPH (e) OF THIS SUBSECTION (4) SHALL BE
3 FOLLOWED. ONCE THE NATIVE AMERICAN HUMAN REMAINS AND
4 ASSOCIATED FUNERARY OBJECTS HAVE BEEN RETURNED TO THE RESIDENT
5 UTE TRIBES OF COLORADO OR OTHER APPROPRIATE FEDERALLY
6 RECOGNIZED INDIAN TRIBE, THE ANTHROPOLOGIST OR ARCHAEOLOGIST IN
7 CHARGE OF THE PERMITTED INVESTIGATION THAT DISCOVERED THE HUMAN
8 REMAINS AND ASSOCIATED FUNERARY OBJECTS MAY CONTACT
9 REPRESENTATIVES OF THE RESIDENT UTE TRIBES OF COLORADO OR OTHER
10 FEDERALLY RECOGNIZED INDIAN TRIBE, AS MAY BE APPROPRIATE, TO
11 REQUEST STUDY AND ANALYSIS OF THE DISCOVERED MATERIALS. ANY
12 SUCH STUDY OR ANALYSIS OF THE DISCOVERED HUMAN REMAINS OR
13 ASSOCIATED FUNERARY OBJECTS SHALL BE CONDUCTED PURSUANT TO AN
14 AGREEMENT BETWEEN THE RESIDENT UTE TRIBES OF COLORADO OR
15 APPROPRIATE FEDERALLY RECOGNIZED INDIAN TRIBE AND THE
16 ANTHROPOLOGIST OR ARCHAEOLOGIST REQUESTING THE STUDY AND
17 ANALYSIS.

18 (g) NATIVE AMERICAN HUMAN REMAINS OR FUNERARY OBJECTS
19 DISCOVERED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT SHALL NOT BE
20 TREATED BY THE STATE OF COLORADO OR ITS AGENCIES OR POLITICAL
21 SUBDIVISIONS AS PART OF A MUSEUM COLLECTION PURSUANT TO THE
22 "NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT", 25
23 U.S.C. SEC. 3001 ET SEQ., AND ITS IMPLEMENTING REGULATIONS.
24 INSTEAD, THE PRIMARY INTEREST OF THE STATE AND ITS AGENCIES AND
25 POLITICAL SUBDIVISIONS WITH RESPECT TO NATIVE AMERICAN HUMAN
26 REMAINS SHALL BE TO ENSURE THE TIMELY, SAFE, AND RESPECTFUL
27 REBURIAL OF INADVERTENTLY DISCOVERED NATIVE AMERICAN HUMAN

1 REMAINS AND ASSOCIATED FUNERARY OBJECTS BY THE RESIDENT UTE
2 TRIBES OF COLORADO OR OTHER FEDERALLY RECOGNIZED INDIAN TRIBES.

3 **SECTION 3. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.