

101ST CONGRESS
1ST SESSION

H. R. 1646

To provide for the protection of Indian graves and burial grounds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1989

Mr. UDALL introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the protection of Indian graves and burial grounds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Native American Grave
4 and Burial Protection Act".

5 SEC. 2. The Congress finds that—

6 (1) numerous Federal agencies and Federal instru-
7 mentalities as well as State and private museums
8 which receive Federal funding have in their possession
9 Native American skeletal remains;

1 (2) some of these skeletal remains are readily
2 identifiable as to tribal origin and, in other instances,
3 tribal origin can be inferred with reasonable certainty;

4 (3) tribes have expressed a clear and unequivocal
5 interest in acquiring these skeletal remains for purposes
6 of reinterment or other disposition which is consistent
7 with tribal religious or cultural practices;

8 (4) it is necessary to develop an effective mecha-
9 nism to provide for the respectful return of these skele-
10 tal remains;

11 (5) numerous Federal agencies have jurisdiction
12 over Federal lands which contain Native American
13 skeletal remains, associated grave offerings, and cere-
14 monial objects;

15 (6) numerous institutions have gained control over
16 skeletal remains and associated grave offerings and
17 ceremonial objects by virtue of Federal funding of ar-
18 cheological and other projects on non-Federal lands.

19 (7) there exists confusion over who should right-
20 fully have control or ownership over skeletal remains,
21 or ownership of associated grave offerings and ceremo-
22 nial objects, which are located on or which have been
23 disinterred from Federal lands; and

1 (8) there is a need to clarify ownership interest in
2 Native American items located on tribal and Federal
3 lands.

4 SEC. 3. For the purpose of this Act—

5 (1) the term "Native American" means any indi-
6 vidual who is—

7 (A) a member of an Indian tribe, or

8 (B) a Native Hawaiian, or

9 (C) an Alaska Native;

10 (2) the term "Native Hawaiian" means any indi-
11 vidual who is—

12 ? —(A) a citizen of the United States,

13 ? —(B) a resident of the State of Hawaii, and

14 (C) a descendant of the aboriginal people
15 who, prior to 1778, occupied and exercised sover-
16 eignty in the area that now comprises the State of
17 Hawaii, as evidenced by—

18 (i) genealogical records,

19 (ii) Kupuna (elders) or Kama'aina (long-
20 term community residents) verification, or

21 (iii) birth records of the State of Hawaii,

22 (8) the term "tribe" means any tribe, band,
23 nation, or other organized group or community of
24 Native Americans which is recognized as eligible for
25 the special programs and services provided by the

1 United States to Native Americans because of their
2 status as Native Americans;

3 (4) the term "tribal land" means—

4 (A) all lands within the limits of any Indian
5 reservation under the jurisdiction of the United
6 States Government, notwithstanding the issuance
7 of any patent, and including rights-of-way running
8 through the reservation,

9 (B) all dependent Indian communities, includ-
10 ing lands conveyed to Native corporations pursu-
11 ant to the Alaska Native Claims Settlement Act,
12 within the borders of the United States whether
13 within the original or subsequently acquired terri-
14 tory thereof, and whether within or without the
15 limits of a State, and

16 * (C) any lands administered for the benefit of
17 Hawaiian natives pursuant to the Hawaiian
18 Homes Commission Act, 1920, and section 4 of
19 the Hawaii Statehood Act of March 18, 1959 (78
20 Stat. 4); *Ceded Lands*;

21 (5) the term "grave goods" means any object
22 which was found in the grave or is otherwise directly
23 associated with the skeletal remains of a Native Amer-
24 ican;

1 (6) the term "sacred ceremonial object" means
2 any specific item which is, or has been, devoted to a
3 Native American or tribal religious ceremony and
4 which is essential for the continuing observance of such
5 religious ceremony;

6 (7) the term "museum" means any museum, uni-
7 versity, government agency, or other institution receiv-
8 ing Federal funds which possesses or has control over
9 any Native skeletal remains or ceremonial objects.

10 SEC. 4. (a) Notwithstanding any other provision of law,
11 it shall be unlawful for anyone to sell, use for profit, or trans-
12 port across State lines any Native American Indian skeletal
13 remains without the express written consent of either the
14 heirs of the deceased or the governing body of the Indian
15 tribe which is culturally affiliated with such remains. Any
16 person who knowingly violates this subsection shall, upon
17 conviction, be fined not more than \$10,000 per violation.

18 (b) Any Native American Indian skeletal remains which
19 have not been excavated or discovered by the date this Act
20 becomes law shall be disposed according to the wishes of the
21 heirs of the deceased or, if they cannot be ascertained, the
22 tribe which is culturally affiliated with such items.

23 (c) Any grave goods or sacred ceremonial object found
24 on public or tribal land shall be deemed to be owned by the
25 tribe—

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1 (1) on which reservation such item was discov-
2 ered, or

3 (2) which aboriginally occupied the area from
4 which such item was discovered, or

5 (3) which can show a cultural affiliation with such
6 item.

7 (d) Nothing in this section shall prevent a tribe from
8 expressly relinquishing title to such remains, offerings, or
9 object.

10 (e) The United States district courts shall have the au-
11 thority to issue such orders as may be necessary to enforce
12 the provisions of this section.

13 SEC. 5. (a) Any Federal agency or instrumentality
14 which has possession or control of any Native American skel-
15 etal remains or any sacred ceremonial object shall, within
16 two years of the effective date of this Act, compile an inven-
17 tory of all such items in its possession or control and, to the
18 extent possible, identify such items as to tribal origin.

19 (b) Within three years of the effective date of this Act,
20 the appropriate Federal agencies or instrumentalities shall
21 notify each tribe of origin of any skeletal remains and sacred
22 ceremonial objects in their possession or control. Each tribal
23 notice shall contain a listing which identifies each item as to
24 tribal origin as well as the circumstances surrounding its ac-
25 quisition. The notice shall also contain a listing of items

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1 which are not definitely identifiable as to tribal origin but
2 which, given the totality of circumstances surrounding the
3 item's recovery, make it more likely than not that the specific
4 item originated with the tribe notified. A copy of each notice
5 shall also be sent to the Secretary of the Interior who shall
6 publish a list of all the notices in the Federal Register.

7 (c) Within one year of notification, the tribe shall decide
8 which, if any, of the remains or objects it agrees to accept
9 and shall notify the appropriate Federal agency or instrumen-
10 tality of the place, date, and manner of delivery that the tribe
11 has decided upon.

12 (d) Notwithstanding any other provision of law, upon
13 notification of acceptance by the tribe, the affected Federal
14 agency or instrumentality shall return such items to the
15 claiming tribe unless such items—

16 (1) were acquired with the consent of the tribe or
17 the legitimate Native American owners of such items,
18 or

19 (2) are indispensable for the completion of a spe-
20 cific scientific study, the outcome of which would be of
21 major benefits to the United States.

22 (e) The United States district courts shall have jurisdic-
23 tion over any action brought by an Indian tribe alleging a
24 violation of this section and shall have the authority to issue

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1 such orders as may be necessary to enforce the provisions of
2 this section.

3 SEC. 6. Upon the written request of the appropriate
4 tribal governing body, any museum which receives Federal
5 funds shall, within two years of such request, return to such
6 tribe of origin any Native American skeletal remains or
7 sacred ceremonial object in their possession or control
8 unless—

9 (1) such items were acquired with the consent of
10 the tribe or the Native American owners of such items,
11 or

12 (2) such skeletal remains are indispensable for the
13 completion of a specific scientific study, the outcome of
14 which would be of major benefits to the United States.

15 Any museum not complying with this section shall not
16 be eligible to receive any further Federal funds.

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