

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 673

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Leonard Tsosie

AN ACT

RELATING TO INDIAN AFFAIRS; PROVIDING FOR THE REPATRIATION OF
REMAINS AND FUNERARY OBJECTS; ENACTING THE REPATRIATION ACT;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 6 of this act may be cited as the "Repatriation Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Repatriation Act:

A. "agency" means an agency of the state, a
subdivision of the state, an educational institution of the
state or any organization that receives state funding through a
contract with the state, a local government or a state
educational institution and includes all state, local

underscored material = new
[bracketed material] = delete

1 government and state educational institution museums;

2 B. "cultural affinity" means a relationship of
3 shared group identity that can be reasonably traced
4 historically or prehistorically between a present-day tribe and
5 an identifiable earlier group or a link that can be established
6 through common use of a geographic site;

7 C. "executive director" means the executive
8 director of the New Mexico office of Indian affairs;

9 D. "funerary object" means an object that, as part
10 of a death rite or ceremony of a culture, is reasonably
11 believed to have been placed with remains at a specific burial
12 site either at the time of death, interment or later and can be
13 identified to be related to specific remains or a specific
14 site;

15 E. "kinship relationship" means a relationship that
16 can be verified or inferred by strong evidence that indicates a
17 direct line of descent from the remains to a current tribe or
18 tribal member;

19 F. "object" means a sacred object, a funerary
20 object or an object of tribal patrimony;

21 G. "object of tribal patrimony" means an
22 inalienable item of historical, traditional, religious or
23 cultural significance to a tribe, that may be a sacred object
24 or a funerary object;

25 H. "remains" means human remains, including all or

underscored material = new
[bracketed material] = delete

1 part of a human being, including objects attached to or placed
2 on or with the individual upon death or interment of the human
3 remains and all funerary objects associated with the human
4 remains;

5 I. "sacred object" means an object used in a
6 traditional, religious or culturally significant manner by a
7 tribe or an individual of a tribe; a "sacred object" may also
8 be a funerary object;

9 J. "tribal" means of or pertaining to a tribe; and

10 K. "tribe" means an Indian nation, tribe or pueblo
11 located wholly or partially in New Mexico.

12 Section 3. [NEW MATERIAL] AGENCY INVENTORY OF REMAINS,
13 SACRED OBJECTS, FUNERARY OBJECTS AND OBJECTS OF TRIBAL
14 PATRIMONY. --

15 A. An agency that has possession or control over
16 remains, sacred objects, funerary objects or objects of tribal
17 patrimony shall within six months following the effective date
18 of the Repatriation Act complete an inventory of all remains or
19 objects under its control. The inventory shall include:

20 (1) identification of the circumstances
21 surrounding the acquisition of the remains or objects,
22 including geographical information available pertaining to the
23 original location of the remains or objects;

24 (2) the cultural affinity of all remains or
25 objects that are clearly identifiable; and

. 142764. 1

underscored material = new
[bracketed material] = delete

1 (3) a description of all remains and objects
2 that are not clearly identifiable with a tribe or have no
3 identifiable cultural affinity.

4 B. Promptly after completion of the inventory, the
5 agency shall provide copies of the inventory to:

6 (1) the New Mexico commission on Indian
7 affairs; and

8 (2) the state historic preservation officer.

9 C. Within the month following delivery of a copy of
10 the inventories from all agencies, the New Mexico office of
11 Indian affairs shall publish the complete inventory from all
12 the agencies, identifying the remains and objects, the agency
13 that has control over the remains and objects and the
14 description of the location where the remains or objects were
15 first discovered. A copy of the inventory shall be forwarded
16 to each of the tribal governments with land in New Mexico and
17 any other tribal government that requests a copy of the
18 inventory.

19 D. The inventory shall be provided by the New
20 Mexico commission on Indian affairs to any person who requests
21 a copy of the inventory.

22 E. Following the completion of the initial
23 inventory, each agency shall, whenever the agency receives new
24 remains or objects through a loan or donation, update its
25 inventory within three months of the loan or donation. Upon

underscored material = new
[bracketed material] = delete

1 completion of the updated inventory, the agency shall provide a
2 copy of the updated portion of the inventory to the executive
3 director and to the state historic preservation officer.

4 F. The executive director shall provide inventory
5 updates to its mailing list of recipients of copies of the
6 original compiled inventory.

7 G. A tribe that determines that an item on the
8 inventory may bear a kinship relationship or a cultural
9 affinity to that tribe may contact the agency in control of the
10 item and discuss with the agency the appropriate action that
11 shall be taken to repatriate the item. Remains and objects
12 shall be returned to a tribe if the tribe requests return of
13 the remains or objects. The executive director and the state
14 historic preservation officer shall mediate any disputes that
15 arise between an agency and a tribe. A dispute that cannot be
16 resolved by mediation shall be submitted to the repatriation
17 commission for a final and binding resolution.

18 Section 4. ~~[NEW MATERIAL]~~ NOTIFICATION OF TRIBES--
19 GEOGRAPHIC AND CULTURAL AFFINITY.--The New Mexico office of
20 Indian affairs shall maintain a directory for purposes of
21 repatriation of remains or objects, funerary objects and
22 objects of tribal patrimony for use by the executive director
23 and the repatriation commission that includes voluntary
24 identification by a tribe located in New Mexico or the
25 surrounding states of geographic or otherwise identifiable

. 142764. 1

underscored material = new
[bracketed material] = delete

1 areas within New Mexico where remains and objects with cultural
2 affinity to the tribe may be located. If remains or objects
3 are found in those identified areas, the tribe shall be
4 notified unless the remains or objects found have an
5 identifiable kinship relationship or cultural affinity for
6 another specific tribe.

7 Section 5. [NEW MATERIAL] DISCOVERY OF REMAINS OR
8 OBJECTS--REPORT--DISPOSITION. --

9 A. A supervisory member of a survey, excavation,
10 construction or other similar activity on lands controlled by
11 an agency shall report promptly to the executive director and
12 the state historic preservation officer the existence or
13 evidence of remains or objects discovered in the course of the
14 activities and determined to have been interred or placed at
15 the site more than fifty years prior to the discovery. The
16 supervisory member of the activity shall take all steps
17 necessary to secure and maintain the preservation of the site
18 and the remains or objects until appropriate state authorities
19 take control of the remains or objects.

20 B. When remains or objects are discovered, the
21 executive director and the state historic preservation officer
22 shall together determine whether an obvious direct kinship
23 relationship or cultural affinity with a tribe exists or
24 whether the remains or objects should be submitted to review by
25 the repatriation commission. If a direct kinship relationship

underscored material = new
[bracketed material] = delete

1 or other cultural affinity is determined to exist, the tribe to
2 which the remains or objects have a cultural affinity shall be
3 notified and the tribe may take possession of the remains or
4 objects or the tribe may determine an alternative means of
5 caring for the remains or objects.

6 C. If a direct kinship relationship or a cultural
7 affinity to the remains or objects cannot be readily deduced,
8 the executive director shall convene the repatriation
9 commission to view the site and the remains or objects and
10 determine the tribe having the greatest potential for cultural
11 affinity to the remains or objects. If the repatriation
12 commission determines that a federally recognized tribal
13 government with no current presence in the state has a strong
14 cultural affinity to the remains or objects, contact shall be
15 made by the executive director with that tribal government to
16 determine if that tribal government desires to take possession
17 of the remains or objects.

18 D. If no tribe claims a tribal affiliation to the
19 remains or objects, or if a tribe chooses to relinquish control
20 over the remains or objects to an agency, the remains or the
21 objects shall be maintained with the appropriate dignity and
22 respect and with consideration for the appropriate cultural or
23 religious traditions applicable to the remains or objects by
24 the agency exerting control over the remains or objects. The
25 remains and objects shall be added to its inventory by the

1 agency, and the addition to the inventory shall be forwarded to
2 the executive director and the state historic preservation
3 officer.

4 E. The expense of curation or reburial pursuant to
5 this section that results from a survey, excavation,
6 construction or other similar activity on land under the
7 control of an agency shall be charged to the activity.

8 Section 6. [NEW MATERIAL] REPATRIATION COMMISSION
9 ~~CREATED~~- - MEMBERS- - DUTIES. - -

10 A. The "repatriation commission" is created. The
11 New Mexico office of Indian affairs shall provide
12 administrative support for the repatriation commission.

13 B. There shall be nine members of the repatriation
14 commission who shall be:

15 (1) appointed by the governor for terms of two
16 years;

17 (2) chosen from a list submitted for that year
18 of appointments to the governor by the chief executive officers
19 of the tribes in New Mexico that shall include the names of
20 elders or traditional, religious or cultural leaders or
21 historic preservation officers of tribes located wholly or
22 partially in New Mexico; and

23 (3) selected so that:

24 (a) the broadest representation possible
25 of the tribes in the state is on the commission;

(b) a broad range of expertise on sacred
objects, funerary objects, objects of patrimony and funeral and

. 142764. 1

underscored material = new
[bracketed material] = delete

1 burial observances of the tribes shall be represented;

2 (c) each language group spoken by the
3 tribes in New Mexico is represented on the board, including one
4 representative each for the Pueblo of Jemez, the Jicarilla
5 Apache Nation, the Mescalero Apache Tribe, the Navajo Nation
6 and the Pueblo of Zuni;

7 (d) all geographic areas of New Mexico
8 in which tribes are located are represented; and

9 (e) a tribe shall have no more than one
10 member on the commission at any time.

11 C. A member may be appointed at the discretion of
12 the governor to succeed himself for unlimited terms if his name
13 is included on the list of potential candidates to fill the
14 vacant positions.

15 **D. The repatriation commission may convene an**
16 **executive session at a meeting of the commission to discuss**
17 **matters of sacred or traditional significance that the**
18 **commission determines to be too sensitive to discuss in a**
19 **public meeting. Decisions resulting from the executive**
20 **sessions shall be made in open meetings subsequent to the**
21 **executive session.**

22 **E. The members of the repatriation commission shall**
23 **receive per diem and mileage pursuant to the Per Diem and**
24 **Mileage Act for official meetings of the repatriation**
25 **commission. Additional perquisites or allowances shall not**
accrue to members of the repatriation commission.

Section 7. Section 10-15-1 NMSA 1978 (being Laws 1974,

. 142764. 1

underscored material = new
[bracketed material] = delete

1 Chapter 91, Section 1, as amended) is amended to read:

2 "10-15-1. FORMATION OF PUBLIC POLICY--PROCEDURES FOR OPEN
3 MEETINGS--EXCEPTIONS AND PROCEDURES FOR CLOSED MEETINGS. --

4 A. In recognition of the fact that a representative
5 government is dependent upon an informed electorate, it is
6 declared to be public policy of this state that all persons are
7 entitled to the greatest possible information regarding the
8 affairs of government and the official acts of those officers
9 and employees who represent them. The formation of public
10 policy or the conduct of business by vote shall not be
11 conducted in closed meeting. All meetings of any public body
12 except the legislature and the courts shall be public meetings,
13 and all persons so desiring shall be permitted to attend and
14 listen to the deliberations and proceedings. Reasonable
15 efforts shall be made to accommodate the use of audio and video
16 recording devices.

17 B. All meetings of a quorum of members of any
18 board, commission, administrative adjudicatory body or other
19 policymaking body of any state agency, any agency or authority
20 of any county, municipality, district or any political
21 subdivision, held for the purpose of formulating public policy,
22 including the development of personnel policy, rules,
23 regulations or ordinances, discussing public business or for
24 the purpose of taking any action within the authority of or the
25 delegated authority of any board, commission or other

. 142764. 1

underscored material = new
[bracketed material] = delete

1 policymaking body are declared to be public meetings open to
2 the public at all times, except as otherwise provided in the
3 constitution of New Mexico or the Open Meetings Act. No public
4 meeting once convened that is otherwise required to be open
5 pursuant to the Open Meetings Act shall be closed or dissolved
6 into small groups or committees for the purpose of permitting
7 the closing of the meeting.

8 C. If otherwise allowed by law or rule of the
9 public body, a member of a public body may participate in a
10 meeting of the public body by means of a conference telephone
11 or other similar communications equipment when it is otherwise
12 difficult or impossible for the member to attend the meeting in
13 person, provided that each member participating by conference
14 telephone can be identified when speaking, all participants are
15 able to hear each other at the same time and members of the
16 public attending the meeting are able to hear any member of the
17 public body who speaks during the meeting.

18 D. Any meetings at which the discussion or adoption
19 of any proposed resolution, rule, regulation or formal action
20 occurs and at which a majority or quorum of the body is in
21 attendance, and any closed meetings, shall be held only after
22 reasonable notice to the public. The affected body shall
23 determine at least annually in a public meeting what notice for
24 a public meeting is reasonable when applied to that body.
25 That notice shall include broadcast stations licensed by the

underscored material = new
[bracketed material] = delete

1 federal communications commission and newspapers of general
2 circulation that have provided a written request for such
3 notice.

4 E. A public body may recess and reconvene a meeting
5 to a day subsequent to that stated in the meeting notice if,
6 prior to recessing, the public body specifies the date, time
7 and place for continuation of the meeting and, immediately
8 following the recessed meeting, posts notice of the date, time
9 and place for the reconvened meeting on or near the door of the
10 place where the original meeting was held and in at least one
11 other location appropriate to provide public notice of the
12 continuation of the meeting. Only matters appearing on the
13 agenda of the original meeting may be discussed at the
14 reconvened meeting.

15 F. Meeting notices shall include an agenda
16 containing a list of specific items of business to be discussed
17 or transacted at the meeting or information on how the public
18 may obtain a copy of such an agenda. Except in the case of an
19 emergency, the agenda shall be available to the public at least
20 twenty-four hours prior to the meeting. Except for emergency
21 matters, a public body shall take action only on items
22 appearing on the agenda. For purposes of this subsection, an
23 "emergency" refers to unforeseen circumstances that, if not
24 addressed immediately by the public body, will likely result in
25 injury or damage to persons or property or substantial

. 142764. 1

underscored material = new
[bracketed material] = delete

1 financial loss to the public body.

2 G. The board, commission or other policymaking body
3 shall keep written minutes of all its meetings. The minutes
4 shall include at a minimum the date, time and place of the
5 meeting, the names of members in attendance and those absent,
6 the substance of the proposals considered and a record of any
7 decisions and votes taken that show how each member voted.
8 All minutes are open to public inspection. Draft minutes shall
9 be prepared within ten working days after the meeting and shall
10 be approved, amended or disapproved at the next meeting where a
11 quorum is present. Minutes shall not become official until
12 approved by the policymaking body.

13 H. The provisions of Subsections A, B and G of this
14 section do not apply to:

15 (1) meetings pertaining to issuance,
16 suspension, renewal or revocation of a license, except that a
17 hearing at which evidence is offered or rebutted shall be open.
18 All final actions on the issuance, suspension, renewal or
19 revocation of a license shall be taken at an open meeting;

20 (2) limited personnel matters; provided that
21 for purposes of the Open Meetings Act, "limited personnel
22 matters" means the discussion of hiring, promotion, demotion,
23 dismissal, assignment or resignation of or the investigation or
24 consideration of complaints or charges against any individual
25 public employee; provided further that this subsection is not

. 142764. 1

underscored material = new
[bracketed material] = delete

1 to be construed as to exempt final actions on personnel from
2 being taken at open public meetings, nor does it preclude an
3 aggrieved public employee from demanding a public hearing.
4 Judicial candidates interviewed by any commission shall have
5 the right to demand an open interview;

6 (3) deliberations by a public body in
7 connection with an administrative adjudicatory proceeding.
8 For purposes of this paragraph, an "administrative adjudicatory
9 proceeding" means a proceeding brought by or against a person
10 before a public body in which individual legal rights, duties
11 or privileges are required by law to be determined by the
12 public body after an opportunity for a trial-type hearing.
13 Except as otherwise provided in this section, the actual
14 administrative adjudicatory proceeding at which evidence is
15 offered or rebutted and any final action taken as a result of
16 the proceeding shall occur in an open meeting;

17 (4) the discussion of personally identifiable
18 information about any individual student, unless the student,
19 his parent or guardian requests otherwise;

20 (5) meetings for the discussion of bargaining
21 strategy preliminary to collective bargaining negotiations
22 between the policymaking body and a bargaining unit
23 representing the employees of that policymaking body and
24 collective bargaining sessions at which the policymaking body
25 and the representatives of the collective bargaining unit are

. 142764. 1

underscored material = new
[bracketed material] = delete

1 present;

2 (6) that portion of meetings at which a
3 decision concerning purchases in an amount exceeding two
4 thousand five hundred dollars (\$2,500) that can be made only
5 from one source and that portion of meetings at which the
6 contents of competitive sealed proposals solicited pursuant to
7 the Procurement Code are discussed during the contract
8 negotiation process. The actual approval of purchase of the
9 item or final action regarding the selection of a contractor
10 shall be made in an open meeting;

11 (7) meetings subject to the attorney-client
12 privilege pertaining to threatened or pending litigation in
13 which the public body is or may become a participant;

14 (8) meetings for the discussion of the
15 purchase, acquisition or disposal of real property or water
16 rights by the public body;

17 (9) those portions of meetings of committees
18 or boards of public hospitals where strategic and long-range
19 business plans or trade secrets are discussed; [and]

20 (10) that portion of a meeting of the gaming
21 control board dealing with information made confidential
22 pursuant to the provisions of the Gaming Control Act; and

23 (11) meetings of the repatriation commission
24 for the discussion of identification of human remains, sacred
25 objects, funerary objects or objects of tribal patrimony

. 142764. 1

underscored material = new
[bracketed material] = delete

1 pursuant to the Repatriation Act.

2 I. If any meeting is closed pursuant to the
3 exclusions contained in Subsection H of this section, the
4 closure:

5 (1) if made in an open meeting, shall be
6 approved by a majority vote of a quorum of the policymaking
7 body; the authority for the closure and the subject to be
8 discussed shall be stated with reasonable specificity in the
9 motion calling for the vote on a closed meeting; the vote shall
10 be taken in an open meeting; and the vote of each individual
11 member shall be recorded in the minutes. Only those subjects
12 announced or voted upon prior to closure by the policymaking
13 body may be discussed in a closed meeting; and

14 (2) if called for when the policymaking body
15 is not in an open meeting, shall not be held until public
16 notice, appropriate under the circumstances, stating the
17 specific provision of the law authorizing the closed meeting
18 and stating with reasonable specificity the subject to be
19 discussed is given to the members and to the general public.

20 J. Following completion of any closed meeting, the
21 minutes of the open meeting that was closed or the minutes of
22 the next open meeting if the closed meeting was separately
23 scheduled shall state that the matters discussed in the closed
24 meeting were limited only to those specified in the motion for
25 closure or in the notice of the separate closed meeting. This

. 142764. 1

underscoring material = new
[bracketed material] = delete

1 statement shall be approved by the public body under Subsection
2 G of this section as part of the minutes. "

3 Section 8. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25