

Senate Bill No. 244—Senators Ratti, Cannizzaro,
Ford; and Goicoechea

Joint Sponsor: Assemblywoman Swank

CHAPTER.....

AN ACT relating to historic preservation; requiring notice and consultation with Indian tribes with regard to native Indian human remains, funerary objects and other cultural items under certain circumstances; requiring the Museum Director of the Nevada State Museum and the Office of Historic Preservation of the State Department of Conservation and Natural Resources to adopt regulations concerning the process for repatriation of prehistoric native Indian human remains and funerary objects; revising the membership of certain related boards and commissions; increasing the penalties for the defacement of prehistoric sites, historic sites and Indian burial sites; making appropriations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the preservation of historic sites and prehistoric sites. Pursuant to these provisions a permit is generally required to investigate, explore or excavate a historic site or prehistoric site on federal or state lands or to remove any object from such a site. (NRS 381.197) For the purposes of these provisions, existing law provides that a “historic site”: (1) dates from the middle of the 18th century until 50 years before the current year; and (2) is a site, landmark or monument of historical significance that pertains to the history of the settlement of Nevada, or Indian campgrounds, shelters, petroglyphs, pictographs and burials. Existing law further provides that a “prehistoric site”: (1) dates from before the middle of the 18th century; and (2) is any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, burial ground or sites of religious or cultural importance to an Indian tribe. (NRS 381.195)

Section 6 of this bill: (1) prohibits a person from excavating a site on private lands located in this State that the person knows is a prehistoric Indian burial site unless the person first obtains a permit from the Museum Director of the Nevada State Museum; and (2) provides that a person is not required to obtain such a permit to engage in lawful activity on private lands if that activity is engaged in exclusively for purposes other than the excavation of a prehistoric Indian burial site. **Section 6** requires the Museum Director to adopt regulations governing such a permit, including, without limitation, regulations setting forth the procedures for obtaining and renewing such a permit.

Section 5.5 of this bill provides that notwithstanding any provision of chapter 381 of NRS to the contrary: (1) a person is not required to obtain a permit pursuant to **section 6** if the person has obtained a permit pursuant to federal law for the same purpose; and (2) the Administrator of the Division of Museums and History of the Department of Tourism and Cultural Affairs, the Museum Director of the Nevada State Museum or the museum director of an institution of the Division are not required to comply with certain requirements concerning notice to, consultation



with or returning items to an Indian tribe if the Administrator or a museum director, as applicable, provides such notice to or consultation with or returns items to the Indian tribe in accordance with the repatriation process required pursuant to federal law.

Sections 5 and 26 of this bill require both the Museum Director of the Nevada State Museum and the Office of Historic Preservation of the State Department of Conservation and Natural Resources to adopt regulations that set forth the process for repatriation of prehistoric native Indian human remains and funerary objects falling within the purview of each state agency.

Section 10 of this bill requires native Indian human remains or other cultural items of an Indian tribe to be returned to the closest culturally affiliated Indian tribe in accordance with the repatriation process provided in the regulations adopted pursuant to **section 5** if the human remains or other items were deemed abandoned by the institution of the Division that held the property.

Sections 16 and 22 of this bill require prehistoric native Indian human remains or funerary objects to be returned to the closest culturally affiliated Indian tribe in accordance with the repatriation process provided in the regulations adopted pursuant to **section 5** if the human remains or funerary objects were: (1) found or discovered pursuant to certain permits to investigate, explore or excavate historic or prehistoric sites; or (2) seized by law enforcement officers as taken or collected on historic or prehistoric sites without a required permit.

Section 19 of this bill requires the Museum Director to provide notice and consultation with the applicable Indian tribes with regard to certain reports made by a holder of certain permits to investigate, explore or excavate historic or prehistoric sites if work done, material collected or other pertinent data contained in the report pertains to prehistoric native Indian human remains or a funerary object.

Section 26.5 of this bill provides that notwithstanding any provision of chapter 383 of NRS to the contrary, the Office of Historic Preservation is not required to comply with certain requirements concerning notice to, consultation with or returning items to an Indian tribe if the Office provides such notice to or consultation with or returns items to the Indian tribe in accordance with the repatriation process required pursuant to federal law.

Section 33 of this bill: (1) revises the procedure that is required to take place upon the discovery of an Indian burial site on private or public land; and (2) provides that such procedure does not apply, under certain circumstances, to a permit issued pursuant to **section 6** of this bill or while a person is engaged in a lawful activity if that person is subject to certain agreements.

Sections 34 and 37 of this bill increase the penalties for: (1) the willful removal, mutilation, defacement, injury or destruction of a native Indian cairn or grave to \$2,000 for the first offense and \$4,500 for the second or subsequent offense; and (2) the knowing and willful removal, mutilation, excavation, defacement, injury or destruction of a historic or prehistoric site or the trafficking of cultural property obtained from state land without a permit to \$1,000 for a first offense and \$3,500 for a second or subsequent offense. **Section 34** further provides that the penalty for the willful removal of a native Indian cairn or grave only applies to a person who removes such a cairn or grave without any required permit.

Sections 8 and 38 of this bill expand the membership of both the Board of Museums and History and the Commission for Cultural Centers and Historic Preservation to include a member on the Board and on the Commission who is appointed by the Governor after giving consideration to any recommendation of an enrolled member of a Nevada Indian tribe which is submitted by the Nevada Indian Commission, after consultation with the Inter-Tribal Council of Nevada, Inc., or its successor organization.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 381 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. 1. *In providing notice and consultation with Indian tribes as required by this chapter, the museum director of an institution shall immediately notify, in writing, and initiate consultation with any Indian tribe:*

(a) Who is or is likely to be culturally affiliated with the applicable artifact or site;

(b) On whose aboriginal lands the applicable artifact was discovered or the site was located; or

(c) Who is reasonably known to have a direct cultural relationship to the applicable artifact or site.

2. *The written notice must include a proposed time and place for the consultation with the museum director.*

Sec. 3. *The museum director of an institution shall use the criteria for determining cultural affiliation set forth in 43 C.F.R. § 10.14 to determine which Indian tribe has the closest cultural affiliation, if any, with regard to particular artifact or site.*

Sec. 4. (Deleted by amendment.)

Sec. 5. 1. *The Museum Director of the Nevada State Museum shall adopt regulations as necessary to carry out the provisions of sections 2 to 5.5, inclusive, of this act and NRS 381.195 to 381.227, inclusive, and section 6 of this act, including, without limitation, regulations which set forth the process for repatriation of prehistoric native Indian human remains and funerary objects.*

2. *Any regulations adopted pursuant to this section must be developed in consultation with Indian tribes and incorporate the values, beliefs and traditions of the Indian tribes as determined and conveyed by the members of the Indian tribes during the consultation with the Museum Director.*

Sec. 5.5. *Notwithstanding any provision of this chapter to the contrary:*

1. *A person is not required to obtain a permit pursuant to section 6 of this act if the person has obtained a permit pursuant to federal law for the same purpose; and*



2. *The Administrator, Museum Director of the Nevada State Museum or the museum director of an institution are not required to provide notice to, consult with or return items to an Indian tribe as required pursuant to this chapter if the Administrator, Museum Director of the Nevada State Museum or the museum director, of the institution, as applicable, provides such notice to, consults with or returns items to the Indian tribe in accordance with the repatriation process required pursuant to federal law.*

Sec. 6. 1. *A person shall not excavate a site on private lands located within this State that the person knows is a prehistoric Indian burial site unless the person first obtains a permit issued by the Museum Director.*

2. *A person is not required to obtain a permit pursuant to subsection 1 to engage in a lawful activity on private lands, including, without limitation, construction, mining, mineral exploration, logging, farming, ranching or a federally authorized activity conducted in compliance with the National Historic Preservation Act, 54 U.S.C. § 300100 et seq., if that activity is engaged in exclusively for purposes other than the excavation of a prehistoric Indian burial site.*

3. *The Museum Director shall adopt regulations governing a permit issued pursuant to subsection 1. The regulations must, without limitation:*

(a) *Set forth the process for obtaining and renewing a permit required pursuant to subsection 1;*

(b) *Set forth the qualifications of an applicant for such a permit;*

(c) *Require notice to and consultation with the applicable Indian tribes throughout the permitting process in the manner provided by section 2 of this act;*

(d) *Provide for the enforcement of the provisions of this section, including, without limitation, the examination of the permit of a person claiming privileges pursuant to this section; and*

(e) *Fully protect the constitutional rights of property owners.*

4. *Any regulations adopted pursuant to this section must be developed in consultation with Indian tribes and incorporate the values, beliefs and traditions of the Indian tribes as determined and conveyed by the members of the Indian tribes during the consultation with the Museum Director.*

5. *As used in this section, "Indian burial site" has the meaning ascribed to it in NRS 383.150.*



Sec. 7. NRS 381.001 is hereby amended to read as follows:

381.001 As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the Administrator of the Division.
2. "Board" means the Board of Museums and History.
3. ***"Cultural affiliation" or "culturally affiliated" means that there is a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group which is associated with a particular artifact or site.***
4. "Department" means the Department of Tourism and Cultural Affairs.
- ~~4~~ 5. "Director" means the Director of the Department.
- ~~5~~ 6. "Division" means the Division of Museums and History of the Department.
- ~~6~~ 7. ***"Funerary object" means an object that, as a part of the death rite or ceremony of an Indian tribe is reasonably believed to have been placed with individual prehistoric native Indian human remains either at the time of death or later.***
8. ***"Historic" has the meaning ascribed to it in NRS 381.195.***
9. "Historic structures, buildings and other property of the Nevada State Prison" means the structures, buildings and other property described in paragraph (b) of subsection 1 of NRS 321.004.
- ~~7~~ 10. ***"Indian tribe" has the meaning ascribed to it in NRS 383.011.***
11. "Institution" means an institution of the Division established pursuant to NRS 381.004.
- ~~8~~ 12. "Museum director" means the executive director of an institution of the Division appointed by the Administrator pursuant to NRS 381.0062.
13. ***"Prehistoric" has the meaning ascribed to it in NRS 381.195.***

Sec. 8. NRS 381.002 is hereby amended to read as follows:

381.002 1. The Board of Museums and History, consisting of ~~eleven~~ **twelve** members appointed by the Governor, is hereby created.

2. The Governor shall appoint to the Board:

(a) Five representatives of the general public who are knowledgeable about museums.

(b) Six members representing the fields of history, prehistoric archeology, historical archeology, architectural history, and architecture with qualifications as defined by the Secretary of Interior's standards for historic preservation in the following fields:



- (1) One member who is qualified in history;
- (2) One member who is qualified in prehistoric archeology;
- (3) One member who is qualified in historic archeology;
- (4) One member who is qualified in architectural history;
- (5) One member who is qualified as an architect; and
- (6) One additional member who is qualified, as defined by the Secretary of Interior's standards for historic preservation, in any of the fields of expertise described in subparagraphs (1) to (5), inclusive.

(c) One member, after giving consideration to any recommendation of an enrolled member of a Nevada Indian tribe which is submitted by the Nevada Indian Commission, after consultation with the Inter-Tribal Council of Nevada, Inc., or its successor organization.

3. The Board shall elect a Chair and a Vice Chair from among its members at its first meeting of every even-numbered year. The terms of the Chair and Vice Chair are 2 years or until their successors are elected.

4. With respect to the functions of the Office of Historic Preservation, the Board may develop, review and approve policy for:

- (a) Matters relating to the State Historic Preservation Plan;
- (b) Nominations to the National Register of Historic Places and make a determination of eligibility for listing on the Register for each property nominated; and
- (c) Nominations to the State Register of Historic Places and make determination of eligibility for listing on the Register for each property nominated.

5. With respect to the functions of the Division, the Board shall develop, review and make policy for investments, budgets, expenditures and general control of the Division's private and endowed dedicated trust funds pursuant to NRS 381.003 to 381.0037, inclusive.

6. In all other matters pertaining to the Office of Historic Preservation and the Division of Museums and History, the Board serves in an advisory capacity.

7. The Board may adopt such regulations as it deems necessary to carry out its powers and duties.

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 381.009 is hereby amended to read as follows:

381.009 1. Any property held by an institution for 3 years or more, to which no person has made claim, shall be deemed to be abandoned and , *except as otherwise provided in subsection 4,*



becomes the property of the Division if the Administrator complies with the provisions of subsection 2.

2. The Administrator shall cause to be published in at least one newspaper of general circulation in the county in which the institution is located at least once a week for 2 consecutive weeks a notice and listing of the property. The notice must contain:

(a) The name and last known address, if any, of the last known owner of the property;

(b) A description of the property; and

(c) A statement that if proof of a claim is not presented by the owner to the institution and if the owner's right to receive the property is not established to the Administrator's satisfaction within 60 days after the date of the second published notice, the property will be considered abandoned and become the property of the Division.

3. If no claim has been made to the property within 60 days after the date of the second published notice, title, including literary rights, to the property vests in the Division, free from all claims of the owner and of all persons claiming through or under the owner.

4. If property deemed to be abandoned pursuant to subsection 1 is native Indian human remains or another cultural item of an Indian tribe, the Administrator shall:

(a) Provide notice to and consult with each applicable Indian tribe in the manner provided by section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the human remains or other cultural item, in the manner provided by section 3 of this act; and

(c) Return the human remains or other cultural item to the closest culturally affiliated Indian tribe in the manner provided by the repatriation process adopted pursuant to section 5 of this act, if a request for repatriation is made.

5. To be deemed an object of cultural significance, an object must have ongoing historical, traditional or cultural importance central to an Indian tribe or culture itself, rather than property owned by a member of an Indian tribe, and which, therefore, cannot be alienated, appropriated or conveyed by any person, regardless of whether the person is a member of the Indian tribe. The object must have been considered inalienable by the Indian tribe at the time the object was separated from such group.

6. As used in this section:

(a) "Cultural item" means human remains, a funerary object, a sacred object or an object of cultural significance.



(b) “Object of cultural significance” means an object which meets the qualifications of subsection 5.

(c) “Sacred object” means a historic or prehistoric object that was or is needed by traditional religious leaders of an Indian tribe for the practice of the traditional religion of an Indian tribe.

Sec. 11. NRS 381.195 is hereby amended to read as follows:

381.195 As used in NRS 381.195 to 381.227, inclusive ~~†~~ , *and section 6 of this act:*

1. “Historic” means from the middle of the 18th century until 50 years before the current year.

2. “Historic site” means a site, landmark or monument of historical significance pertaining to the history of the settlement of Nevada, or Indian campgrounds, shelters, petroglyphs, pictographs and burials.

3. “Museum Director” means the Museum Director of the Nevada State Museum.

4. “Prehistoric” means before the middle of the 18th century.

5. “Prehistoric site” means any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, burial ground or sites of religious or cultural importance to an Indian tribe.

Secs. 12 and 13. (Deleted by amendment.)

Sec. 13.5. NRS 381.199 is hereby amended to read as follows:

381.199 1. An applicant is required to secure, from the Museum Director, or an agent designated by the Museum Director, a permit *described in NRS 381.197* for the investigation, exploration or excavation of any state or federal lands within the boundaries of the State of Nevada.

2. If the land to be investigated, explored or excavated is owned or held by the United States, the applicant is also required to secure a permit from the proper authorities in accordance with the provisions of 16 U.S.C. §§ 431 to 433, inclusive.

Sec. 14. NRS 381.201 is hereby amended to read as follows:

381.201 1. The Museum Director may designate any state board, state department, division of a state department or state institution as an agent for the purpose of issuing permits ~~†. The agency so designated may adopt regulations relating to investigations, explorations or excavations carried out pursuant to any permit issued by that agency.~~ *pursuant to NRS 381.195 to 381.227, inclusive, and section 6 of this act.*

2. If the Museum Director designates an agent pursuant to subsection 1:



(a) The agent must act in the manner in which the Museum Director is required to act pursuant to provisions of NRS 381.195 to 381.227, inclusive, and section 6 of this act, and any regulations adopted pursuant thereto; and

(b) The Museum Director must ensure that the agent acts in the manner in which the Museum Director is required to act pursuant to provisions of NRS 381.195 to 381.227, inclusive, and section 6 of this act, and any regulations adopted pursuant thereto.

Sec. 15. NRS 381.203 is hereby amended to read as follows:

381.203 1. In order to qualify as the recipient of a permit ~~†~~ *described in NRS 381.197*, the applicant must show:

(a) That the investigation, exploration or excavation is undertaken for the benefit of a reputable museum, university, college or other recognized scientific or educational institution, with a view of increasing knowledge.

(b) That the gathering is made for permanent preservation in public museums or other recognized educational or scientific institutions.

(c) That the applicant possesses sufficient knowledge and scientific training to make such an investigation, exploration or excavation.

(d) The location of the site where the applicant proposes to investigate, explore or excavate.

2. The Museum Director may prescribe reasonable regulations for carrying out such investigations, explorations or excavations.

Sec. 15.5. NRS 381.205 is hereby amended to read as follows:

381.205 Upon granting ~~the~~ a permit ~~†~~ *described in NRS 381.197*, the Museum Director shall immediately notify the Office of Historic Preservation, the sheriff in the county in which the permit is to be exercised, and personnel of the Nevada Highway Patrol controlling the state roads of the district embracing the site in which the permit is to be exercised.

Sec. 16. NRS 381.207 is hereby amended to read as follows:

381.207 1. The holder of a permit ~~†~~ *described in NRS 381.197*, except as otherwise provided in subsections 2 and 3, who does work upon aboriginal mounds and earthworks, ancient burial grounds, prehistoric sites, deposits of fossil bones or other archeological and vertebrate paleontological features within the State shall give to the State 50 percent of all articles, implements and materials found or discovered ~~†~~ *of which the holder retained possession after completion of the process set forth in subsection 4*, to be deposited with the Nevada State Museum, for exhibition or other use within the State as determined by the Museum Director.



The Museum Director may accept less than 50 percent of such items. Upon receipt of items pursuant to this subsection, the Museum Director shall notify the Office of Historic Preservation.

2. The holder of a permit *described in NRS 381.197* who does any such work within the State under the authority and direction of the Nevada Historical Society, the Nevada State Museum Las Vegas, or an institution or political subdivision of the State shall give 50 percent of all articles, implements and materials found or discovered *of which the holder retained possession after completion of the process set forth in subsection 4*, to the Society, institution or political subdivision. The holder of the permit may retain the other 50 percent.

3. If the Nevada Historical Society, the Nevada State Museum Las Vegas, or an institution or political subdivision of the State is the holder of the permit, it may retain all articles, implements and materials found or discovered ~~H~~ *of which it retained possession after completion of the process set forth in subsection 4*.

4. *If any of the articles, implements or materials found or discovered are prehistoric native Indian human remains or funerary objects, the Museum Director shall:*

(a) Provide notice to and consult with each applicable Indian tribe in accordance with section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects in accordance with section 3 of this act; and

(c) Return any prehistoric native Indian human remains or funerary objects discovered to the closest culturally affiliated Indian tribe in accordance with the repatriation process adopted pursuant to section 5 of this act, if a request for repatriation is made.

5. Whenever the Office of Historic Preservation acquires articles, implements and materials under the provisions of this section, they must be transferred to the Museum Director for exhibition or other use within the State as determined by the Museum Director.

Sec. 17. NRS 381.209 is hereby amended to read as follows:

381.209 The Museum Director may limit a permit *described in NRS 381.197* as to time and location. ~~HA~~ *Such a* permit may not be granted:

1. For a period of more than 1 year.
2. For investigation, exploration or excavation in a larger area than the applicant can reasonably be expected to explore fully and systematically within the time limit set in the permit.



3. For the removal of any ancient monument, structure or site which can be permanently preserved under the control of the State of Nevada in situ, and remain an object of interest, if desired by the State, for a park, landmark or monument for the benefit of the public.

Sec. 18. NRS 381.211 is hereby amended to read as follows:

381.211 A permit *described in NRS 381.197* may be renewed for an additional period of time upon application by the permit holder, if the work contemplated by the permit has been diligently prosecuted.

Sec. 18.5. NRS 381.213 is hereby amended to read as follows:

381.213 Failure to begin work under the permit within 6 months after the effective date of ~~the permit~~ *a permit described in NRS 381.197*, or failure to prosecute diligently such work after it is begun, shall render the permit void without any order from the Board.

Sec. 19. NRS 381.215 is hereby amended to read as follows:

381.215 **1.** After the close of each season's work, within a reasonable time designated in ~~the~~ *a permit* ~~is~~ *described in NRS 381.197*, every permit holder shall furnish to the Museum Director a report containing a detailed account of the work done, material collected and other pertinent data.

2. *Except as otherwise provided in subsection 3, if any of the work done, material collected or other pertinent data pertains to prehistoric native Indian human remains or a funerary object, the Museum Director shall:*

(a) Provide notice to and consult with each applicable Indian tribe in accordance with section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary object in accordance with section 3 of this act; and

(c) Furnish the report described in subsection 1 to the closest culturally affiliated Indian tribe, if any.

3. *The Museum Director is not required to comply with the provisions of paragraph (a) of subsection 2 if the Museum Director has already obtained the information necessary to make the determination required pursuant to paragraph (b) of subsection 2 through the process set forth in NRS 381.195 to 381.227, inclusive.*

Sec. 19.5. NRS 381.217 is hereby amended to read as follows:

381.217 A ~~permit~~ holder *of a permit described in NRS 381.197* may collect specimens of petrified wood, subject to the limitations of NRS 206.320.



Sec. 20. (Deleted by amendment.)

Sec. 21. NRS 381.221 is hereby amended to read as follows:

381.221 The Division of State Parks of the State Department of Conservation and Natural Resources, and personnel thereof, the sheriffs in their respective counties, the Nevada Highway Patrol, and all other peace officers shall be charged with the enforcement of NRS 381.195 to 381.227, inclusive ~~†~~, *and section 6 of this act.* Those persons charged with the enforcement of NRS 381.195 to 381.227, inclusive, *and section 6 of this act* may, ~~††~~ *within their established jurisdiction:*

1. At any time, examine the permit of any person claiming privileges granted under NRS ~~381.195 to 381.227, inclusive,~~ 381.197 and may fully examine all work done under the permit †; and

2. Examine the permit of a person claiming privileges under a permit issued pursuant to section 6 of this act in the manner set forth in the regulations adopted pursuant to that section.

Sec. 22. NRS 381.223 is hereby amended to read as follows:

381.223 *1. Any object of antiquity taken, or collection made, on historic or prehistoric sites covered by NRS ~~381.195 to 381.227, inclusive,~~ 381.197 without a permit must be seized by the proper law enforcement officers, who shall notify the Museum Director of the action ~~†. The object or collection so taken must be forfeited to the State for exhibition or other use within the State as determined by the Museum Director.~~ and deposit the object or collection with the Museum Director for safekeeping.* Upon receipt of any ~~†forfeited~~ item *seized* pursuant to this section the Museum Director shall notify the Office of Historic Preservation. *Except as otherwise provided in subsection 2, any object or collection so taken must be forfeited to the State for exhibition or other use within the State as determined by the Museum Director.*

2. If an object of antiquity or collection seized pursuant to subsection 1 is prehistoric native Indian human remains or a funerary object, the Museum Director shall:

(a) Provide notice to and consult with each applicable Indian tribe in accordance with section 2 of this act;

(b) Determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary object in accordance with section 3 of this act; and

(c) Return the prehistoric native Indian human remains or funerary object to the closest culturally affiliated Indian tribe in accordance with the repatriation process adopted pursuant to section 5 of this act, if a request for repatriation is made.



Sec. 23. NRS 381.227 is hereby amended to read as follows:

381.227 Unless a greater penalty is provided by a specific statute and except as otherwise provided in NRS 381.225, any person violating any of the provisions of NRS 381.195 to 381.227, inclusive, **and section 6 of this act** is guilty of a misdemeanor.

Sec. 24. Chapter 383 of NRS is hereby amended by adding thereto the provisions set forth as sections 25, 26 and 26.5 of this act.

Sec. 25. (Deleted by amendment.)

Sec. 26. *The Office shall adopt regulations as necessary to carry out the provisions of this section and section 26.5 of this act and NRS 383.150 to 383.440, inclusive, including, without limitation, regulations which set forth the process for repatriation of prehistoric native Indian human remains and funerary objects. The regulations must be developed in consultation with Indian tribes and incorporate the values, beliefs and traditions of the Indian tribes as determined and conveyed by the members of the Indian tribes during the consultation with the Office.*

Sec. 26.5. *Notwithstanding any provision of this chapter to the contrary, the Office is not required to provide notice to or consult with an Indian tribe as required pursuant to this chapter if the Office provides such notice to or consultation with the Indian tribe pursuant to federal law.*

Sec. 27. NRS 383.011 is hereby amended to read as follows:

383.011 As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the Administrator of the Office.
2. "Advisory Board" means the Board of Museums and History.
3. "Commission" means the Commission for Cultural Centers and Historic Preservation created by NRS 383.500.
4. ***"Cultural affiliation" has the meaning ascribed to it in NRS 381.001.***
5. "Cultural resources" means any objects, sites or information of historic, prehistoric, archeological, architectural or paleontological significance.
- ~~15~~ 6. "Department" means the State Department of Conservation and Natural Resources.
- ~~16~~ 7. "Director" means the Director of the Department.
- ~~17~~ 8. "Office" means the Office of Historic Preservation of the Department.
9. ***"Indian tribe" means any tribe, band, nation or other organized group or community of Indians which is recognized as***



eligible for the special programs and services provided by the United States to native Indians because of their status as native Indians.

10. "Prehistoric" has the meaning ascribed to it in NRS 381.195.

Sec. 28. NRS 383.021 is hereby amended to read as follows:

383.021 1. The Office of Historic Preservation is hereby created.

2. The Office shall:

(a) Encourage, plan and coordinate historic preservation and archeological activities within the State, including programs to survey, record, study and preserve or salvage cultural resources.

(b) *Carry out the provisions of section 26 of this act.*

(c) Compile and maintain an inventory of cultural resources in Nevada deemed significant by the Administrator.

~~(e)~~ (d) Designate repositories for the materials that comprise the inventory.

~~(d)~~ (e) Provide staff assistance to the Commission.

3. *An Indian tribe may be designated as a repository to receive prehistoric native Indian human remains or funerary objects pursuant to paragraph (d) of subsection 2 if agreed to by the Indian tribe.*

4. The Comstock Historic District Commission is within the Office.

Sec. 29. (Deleted by amendment.)

Sec. 30. NRS 383.121 is hereby amended to read as follows:

383.121 1. All departments, commissions, boards and other agencies of the State and its political subdivisions shall cooperate with the Office in order to salvage or preserve historic, prehistoric or paleoenvironmental evidence located on property owned or controlled by the United States, the State of Nevada or its political subdivisions. *The Office shall consult with Indian tribes in order to salvage or preserve prehistoric native Indian human remains or funerary objects located on such property.*

2. ~~When~~ *Except as otherwise provided in subsection 10, when* any agency of the State or its political subdivisions is preparing or has contracted to excavate or perform work of any kind on property owned or controlled by the United States, the State of Nevada or its political subdivisions which may endanger historic, prehistoric or paleoenvironmental evidence found on the property, or when any artifact, site or other historic or prehistoric evidence is discovered in the course of such excavation or work, the agency or the contractor hired by the agency shall notify the Office and



cooperate with the Office to the fullest extent practicable, within the appropriations available to the agency or political subdivision for that purpose, to preserve or permit study of such evidence before its destruction, displacement or removal.

3. *Upon receiving notice pursuant to subsection 2 of the potential endangerment of or the discovery of prehistoric native Indian human remains or a funerary object, the Office shall immediately notify, in writing, and initiate consultation with any Indian tribe:*

(a) *Who is or is likely to be culturally affiliated with the prehistoric native Indian human remains or funerary object;*

(b) *On whose aboriginal lands the prehistoric native Indian human remains or funerary object was discovered; or*

(c) *Who is reasonably known to have a direct cultural relationship to the prehistoric native Indian human remains or funerary object.*

4. *The written notice must include a proposed time and place for the consultation with the Office.*

5. *Except as otherwise provided in subsection 6, within 10 days after the notice is given by the Office, the Office shall, consult with the Indian tribe which has the closest cultural affiliation to the prehistoric native Indian human remains or funerary object as determined by the Office.*

6. *Failure of an Indian tribe to respond within 10 days after notice has been given to the Indian tribe pursuant to subsection 3 shall be deemed a waiver of the requirement for consultation with the Indian tribe.*

7. *After the period for consultation described in subsection 5, the Office shall, to the fullest extent practicable, within the appropriations available to the agency of the State or its political subdivision described in subsection 2, develop a resolution for the affected property that is consistent with the standard of preservation described in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation as set forth in 48 Federal Register 44716 on September 29, 1983, and any amendments thereto.*

8. The provisions of this section must be made known to all private contractors performing such excavation or work for any agency of the State or its political subdivisions.

9. *The provisions of subsections 3 to 7, inclusive, do not apply to an agency of the State or its political subdivisions, with respect to prehistoric native Indian human remains or funerary objects, if*



the preparation or contract to excavate or perform work described in subsection 2 is subject to an existing agreement with:

(a) The closest culturally affiliated Indian tribe that relates to the discovery of prehistoric native Indian human remains or a funerary object; or

(b) A federal agency that was executed pursuant to federal law and that relates to the discovery of prehistoric native Indian human remains or a funerary object.

10. The requirements set forth in NRS 383.150 to 383.180, inclusive, apply if an Indian burial site, as defined in NRS 383.150, is disturbed.

Sec. 31. NRS 383.150 is hereby amended to read as follows:

383.150 As used in NRS 383.150 to 383.190, inclusive, unless the context otherwise requires:

1. "Cairn" means stones or other material placed in a pile as a memorial or monument to the dead.

2. "*Funerary object*" has the meaning ascribed to it in *NRS 381.001*.

3. "Grave" means an excavation for burial of a human body.

~~3.~~ 4. "Indian burial site" means the area including and immediately surrounding the cairn or grave of a native Indian.

~~4. "Indian tribe" means a Nevada Indian tribe recognized by the Secretary of the Interior.~~

5. "*Nondestructive analysis*" means *analysis performed using scientific or technological techniques to evaluate the properties of a material, component or system without causing damage.*

6. "Professional archeologist" means a person who holds a graduate degree in archeology, anthropology or a closely related field as determined by the Administrator.

Sec. 32. NRS 383.160 is hereby amended to read as follows:

383.160 The Office shall:

1. Upon application by:

(a) An interested landowner, assist the landowner in ~~negotiating an agreement with an Indian tribe for~~ *contacting the Indian tribe which has the closest cultural affiliation to an Indian burial site and any artifacts and human remains associated with the site so that the landowner may directly consult with the Indian tribe, if any, concerning* the treatment and disposition of ~~an~~ *the* Indian burial site and any artifacts and human remains associated with the site; and

(b) Either party, mediate a dispute arising between a landowner and an Indian tribe relating to the treatment and disposition of an



Indian burial site and any artifacts and human remains associated with the site.

2. In performing its duties pursuant to NRS 383.150 to 383.190, inclusive, endeavor to:

(a) Protect Indian burial sites and any associated artifacts and human remains from *excavation*, vandalism and destruction; and

(b) ~~Provide~~ *In consultation with the closest culturally affiliated Indian tribe, provide* for the sensitive treatment and disposition of Indian burial sites and any associated artifacts and human remains consistent with the planned use of land.

3. *Determine which Indian tribe has the closest cultural affiliation to the Indian burial site and any artifacts and human remains associated with the site.*

Sec. 33. NRS 383.170 is hereby amended to read as follows:

383.170 1. *Except as otherwise provided in subsections 2 and 3:*

(a) A person who disturbs the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity such as construction, mining, logging or farming or any other person who discovers the cairn or grave of a native Indian that has not been previously reported to the Office shall immediately report the discovery and the location of the Indian burial site to the Office. ~~The~~

(b) *Upon receiving a report pursuant to paragraph (a), the Office shall immediately ~~consult with the Nevada Indian Commission and notify the appropriate~~ notify, in writing, and initiate consultation with any* Indian tribe ~~H~~ :

(1) *Who is or is likely to be culturally affiliated with the Indian burial site;*

(2) *On whose aboriginal lands the Indian burial site was discovered; or*

(3) *Who is reasonably known to have a direct cultural relationship to the Indian burial site.*

(c) *The written notice must include a proposed time and place for the consultation with the Office.*

(d) *Except as otherwise provided in paragraph (e), within 10 days after the notice is given by the Office, the landowner shall consult with the Indian tribe which has the closest cultural affiliation to the Indian burial site, as determined by the Office, concerning the treatment and disposition of the site and all artifacts and human remains associated with the site.* The Indian tribe may, with the permission of the landowner, inspect the site . ~~and~~ *Within 10 days after the inspection, if any, the Indian tribe*



may recommend an appropriate means for the treatment and disposition of the site and all artifacts and human remains associated with the site.

~~{2.}~~ *Those recommendations may include, without limitation, that any human remains or artifacts associated with the site are:*

(1) Preserved in place;

(2) Reinterred at another location that is determined in consultation with the Indian tribe which has the closest cultural affiliation to the human remains or artifacts associated with the site; or

(3) Returned to the closest culturally affiliated Indian tribe, in accordance with the repatriation process adopted pursuant to section 26 of this act, if a request for repatriation is made.

↳ *Within 10 days after receiving the recommendations, if any, for the treatment and disposition of the site and all artifacts and human remains associated with the site, the landowner may appeal the recommendations to the Office.*

(e) Failure of an Indian tribe to respond within 10 days after notice has been given to the Indian tribe pursuant to paragraph (b) shall be deemed a waiver of the requirement for consultation with the Indian tribe.

(f) If the Indian burial site is located on private land and:

~~{a)}~~ *(1) The Office fails to identify the closest culturally affiliated Indian tribe or consultation with the closest culturally affiliated Indian tribe ~~fails to make a recommendation within 48 hours after it receives notification~~ is waived pursuant to ~~subsection 1.}~~ paragraph (e); or*

~~{b)}~~ *(2) The landowner rejects the recommendation made pursuant to paragraph (d) and mediation conducted pursuant to NRS 383.160 fails to provide measures acceptable to the landowner, ↳ the landowner shall, at his or her own expense, reinter with appropriate dignity all artifacts and human remains associated with the site in a location not subject to further disturbance.*

~~{3.}~~ *(g) If the Indian burial site is located on public land and action is necessary to protect the burial site from immediate destruction, the Office may cause a professional archeologist to excavate the site and remove all artifacts and human remains associated with the site for subsequent reinterment, ~~following scientific study,~~ under the supervision of the closest culturally affiliated Indian tribe ~~+~~ ~~4.}, if any.~~*

(h) Any other excavation of an Indian burial site may be conducted only:



- ~~(a)~~ (1) By a professional archeologist;
- ~~(b)~~ (2) After written notification to the Administrator; and
- ~~(c)~~ (3) With the prior written consent of the ~~appropriate~~ **closest culturally affiliated** Indian tribe ~~if any~~, **if any**. Failure of ~~an~~ **Indian** tribe to respond to a request for permission within 60 days after its mailing by certified mail, return receipt requested, shall be deemed consent to the excavation.

→ All artifacts and human remains removed during such an excavation must ~~following scientific study~~ be reinterred under the supervision of the **closest culturally affiliated** Indian tribe, **if any**, except that the Indian tribe may, by explicit written consent, authorize the public display of a particular artifact ~~if the public display is respectful, as determined in consultation with the Indian tribe~~. The archeologist, **closest culturally affiliated** Indian tribe, **if any**, and landowner shall negotiate an agreement to determine who will pay the expenses related to the interment.

(i) The Office shall determine which Indian tribe has the closest cultural affiliation to an Indian burial site and all artifacts and human remains associated with the site.

(j) Prehistoric native Indian human remains or funerary objects discovered at an Indian burial site:

(1) Must not be subjected to scientific study unless the Office reasonably determines that scientific study is necessary for the limited purpose of determining which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects; and

(2) Must not be separated when the prehistoric native Indian human remains and funerary objects are reinterred.

(k) Nondestructive analysis on any other artifacts removed from an Indian burial site may be conducted only with the explicit written consent of the closest culturally affiliated Indian tribe, if any.

2. The provisions of subsection 1 do not apply, with respect to prehistoric Indian burial sites, to a permit issued pursuant to section 6 of this act.

3. The provisions of subsection 1 do not apply, with respect to prehistoric native Indian human remains or funerary objects, if the person who disturbed the cairn or grave of a native Indian through inadvertence while engaged in a lawful activity is subject to an existing agreement with:

(a) The closest culturally affiliated Indian tribe that relates to the discovery of prehistoric native Indian human remains or a funerary object; or



(b) A federal agency that was executed pursuant to federal law and that relates to the discovery of prehistoric native Indian human remains or a funerary object.

Sec. 34. NRS 383.180 is hereby amended to read as follows:

383.180 1. Except as otherwise provided in NRS 383.170, a person who willfully removes ~~†~~ *without obtaining any required permit*, mutilates, defaces, injures or destroys the cairn or grave of a native Indian is guilty of a gross misdemeanor and shall be ~~†punished†~~ :

(a) *Punished* by a fine of ~~†\$500†~~ *\$2,000* for the first offense, or by a fine of not more than ~~†\$3,000†~~ *\$4,500* for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 364 days ~~†~~ ; and

(b) *Ordered to pay for the costs to reinter with appropriate dignity all artifacts and human remains associated with the cairn or grave.*

2. A person who fails to notify the Office of the discovery and location of an Indian burial site in violation of NRS 383.170 is guilty of a gross misdemeanor and shall be punished by a fine of \$500 for the first offense, or by a fine of not more than \$1,500 for a second or subsequent offense, and may be further punished by imprisonment in the county jail for not more than 364 days.

3. A person who:

(a) Possesses any artifact or human remains taken from the cairn or grave of a native Indian on or after October 1, 1989, in a manner other than that authorized by NRS 383.170;

(b) Publicly displays or exhibits any of the human remains of a native Indian, except during a funeral ceremony; or

(c) Sells any artifact or human remains taken from the cairn or grave of a native Indian,

↪ is guilty of a category D felony and shall be punished as provided in NRS 193.130.

4. This section does not apply to:

(a) The possession or sale of an artifact:

(1) Discovered in or taken from a location other than the cairn or grave of a native Indian; or

(2) Removed from the cairn or grave of a native Indian by other than human action; or

(b) Action taken by a peace officer in the performance of his or her duties.

Sec. 35. (Deleted by amendment.)



Sec. 36. NRS 383.430 is hereby amended to read as follows:

383.430 1. Upon request by any state agency or political subdivision, the Office may enter into an agreement with that state agency or political subdivision regarding any land which the state agency or political subdivision intends to acquire from an agency of the Federal Government. The agency of the Federal Government may be a party to the agreement. *If the land includes any prehistoric native Indian human remains or funerary objects, the Indian tribe which has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects may request that the Office enter into such an agreement.*

2. An agreement made pursuant to subsection 1 must:

(a) *If the agreement involves land that includes any prehistoric native Indian human remains or funerary objects, include the Indian tribe which has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects, if any, as a party to the agreement;*

(b) Include provisions that are sufficient to ensure that the land, when acquired, will receive protection for any historic or prehistoric site at a level equivalent to the protection provided if the land had remained under federal ownership;

~~(b)~~ (c) Require the state agency or political subdivision to submit a proposal and consult with the Office before changing the use of the land or initiating a project on any portion of the land; and

~~(c)~~ (d) Require that any expenses associated with carrying out the agreement are the responsibility of the state agency or political subdivision.

3. If a state agency or political subdivision submits a proposal to change the use of the land or initiate a project on any portion of the land pursuant to paragraph ~~(b)~~ (c) of subsection 2, the state agency or political subdivision shall:

(a) Provide to the Office a written statement:

(1) Identifying any Indian tribes that may be concerned with the religious or cultural importance of the site and other interested persons for inclusion in the consultation required pursuant to paragraph ~~(b)~~ (c) of subsection 2;

(2) Identifying any historic or prehistoric sites in accordance with the requirements of the Office for recording and reporting for those sites;

(3) Evaluating any historic or prehistoric sites for inclusion in the State Register of Historic Places, including any text excavations or other research;



(4) Evaluating the effect of the change in use of the land or the project on a historic or prehistoric site that is eligible for inclusion in the State Register of Historic Places; and

(5) Evidencing the preparation and carrying out of treatment plans that comply with the requirements of the Office for those plans; and

(b) Any other information relating to the proposed change of use required by the Office.

4. The Office shall determine which Indian tribe has the closest cultural affiliation to the prehistoric native Indian human remains or funerary objects.

Sec. 37. NRS 383.435 is hereby amended to read as follows:

383.435 1. Except as otherwise provided in this section, a person who knowingly and willfully removes, mutilates, defaces, excavates, injures or destroys a historic or prehistoric site or resource on state land or who receives, traffics in or sells cultural property appropriated from state land without a valid permit, unless a greater penalty is provided by a specific statute:

(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of ~~1\$5001~~ ***\$1,000.***

(b) For a second or subsequent offense, is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 364 days or by a fine of not more than ~~1\$30001~~ ***\$3,500,*** or by both fine and imprisonment.

2. This section does not apply to any action taken:

(a) In accordance with an agreement with the Office entered into pursuant to NRS 383.430; or

(b) In accordance with the provisions of NRS 381.195 to 381.227, inclusive, ***and section 6 of this act*** by the holder of a permit issued pursuant to those sections.

3. In addition to any other penalty, a person who violates a provision of this section is liable for civil damages to the state agency or political subdivision which has jurisdiction over the state land in an amount equal to the cost or, in the discretion of the court, an amount equal to twice the cost of the restoration, stabilization and interpretation of the site plus any court costs and fees.

Sec. 38. NRS 383.500 is hereby amended to read as follows:

383.500 1. The Commission for Cultural Centers and Historic Preservation is hereby created. The Commission is advisory to the Department and consists of:

(a) The Chair of the Board of Trustees of Nevada Humanities or a member of the Board of Trustees of Nevada Humanities designated by the Chair;



(b) The Chair of the Board of the Nevada Arts Council of the Department of Tourism and Cultural Affairs or a member of the Board of the Nevada Arts Council designated by the Chair;

(c) The Chair of the Advisory Board or a member of the Advisory Board designated by the Chair;

(d) A member of the Advisory Board appointed by the Governor;

(e) *A member of the Advisory Board appointed by the Governor after giving consideration to any recommendation of an enrolled member of a Nevada Indian tribe which is submitted by the Nevada Indian Commission, after consultation with the Inter-Tribal Council of Nevada, Inc., or its successor organization;*

(f) One representative of the general public who has a working knowledge of the promotion of tourism in Nevada *and who is* appointed by the Governor; and

~~††~~ (g) The Chair of the State Council on Libraries and Literacy or a member of the State Council on Libraries and Literacy designated by the Chair.

2. The Commission shall:

(a) Elect from its membership a Chair who shall serve for a term of 2 years. A vacancy occurring in this position must be filled by election of the members of the Commission for the remainder of the unexpired term.

(b) Prescribe rules for its own management and government.

(c) Meet biannually, or at more frequent times if it deems necessary, and may, within the limitations of its budget, hold special meetings at the call of the Chair.

3. ~~Three~~ *Four* members of the Commission constitute a quorum, but a majority of the members of the Commission is necessary to consider particular business before it and to exercise the power conferred on the Commission.

4. The members of the Commission are not entitled to be paid a salary, but are entitled, while engaged in the business of the Commission, to receive the per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 38.3. 1. There is hereby appropriated from the State General Fund to the Office of Historic Preservation of the State Department of Conservation and Natural Resources the sum of \$1,390 for Fiscal Year 2018-2019 for the in-state travel costs for the member appointed to the Commission for Cultural Centers and Historic Preservation pursuant to paragraph (e) of subsection 1 of NRS 383.500, as amended by section 38 of this act.



2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 38.5. 1. There is hereby appropriated from the State General Fund to the Division of Museums and History of the Department of Tourism and Cultural Affairs the sum of \$4,301 for Fiscal Year 2017-2018 and the sum of \$288 for Fiscal Year 2018-2019 for expenses relating to the adoption of regulations required by the provisions of this act and in-state travel, per diem and compensation for the member appointed to the Board of Museums and History pursuant to paragraph (c) of subsection 2 of NRS 381.002, as amended by section 8 of this act.

2. Expenditure of \$5,256 by the Division of Museums and History of the Department of Tourism and Cultural Affairs from the Fund for the Promotion of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2017-2018 for the purpose set forth in subsection 1.

3. Expenditure of \$352 by the Division of Museums and History of the Department of Tourism and Cultural Affairs from the Fund for the Promotion of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2018-2019 for the purpose set forth in subsection 1.

4. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 21, 2018, and September 20, 2019, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 21, 2018, and September 20, 2019, respectively.

Sec. 38.7. 1. There is hereby appropriated from the State General Fund to the Nevada State Museum of the Division of



Museums and History of the Department of Tourism and Cultural Affairs the sum of \$25,517 for Fiscal Year 2017-2018 and the sum of \$40,118 for Fiscal Year 2018-2019 for the costs associated with a full-time position to carry out the provisions of NRS 381.195 to 381.227, inclusive, and the provisions of this act.

2. Expenditure of \$31,187 by the Nevada State Museum from the Fund for the Promotion of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2017-2018 for the purpose set forth in subsection 1.

3. Expenditure of \$49,033 by the Nevada State Museum from the Fund for the Promotion of Tourism created by NRS 231.250 is hereby authorized during Fiscal Year 2018-2019 for the purpose set forth in subsection 1.

4. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 21, 2018, and September 20, 2019, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 21, 2018, and September 20, 2019, respectively.

Sec. 39. 1. This section becomes effective upon passage and approval.

2. Sections 38.3, 38.5 and 38.7 of this act become effective on July 1, 2017.

3. Sections 1 to 38, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory tasks that are necessary to carry out the provisions of this act; and

(b) On July 1, 2018, for all other purposes.



