

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and
- WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and
- WHEREAS,** Article VI, Section 5(j) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to cultivate and preserve the culture and traditions of the Tribes; and
- WHEREAS,** The Three Affiliated Tribes have, for many years, been devoting substantial effort in the protection and preservation of our Mandan, Hidatsa, and Arikara cultural and religious heritage, including specifically the protection of our ancestral burial sites located both within and without the State of North Dakota; and
- WHEREAS,** Our Tribes have, in more recent years, been engaged in negotiations with certain federal agencies, including the United States Army Corps of Engineers and the National Park Service, and with certain public and private institutions and North Dakota State agencies, for the purpose not only of providing for the protection and preservation of our ancestral burial sites, but also of securing from such public and private entities the release and return of the disinterred human skeletal remains and associated burial artifacts in their possession; and
- WHEREAS,** In with regard to the respective above-referenced negotiations which have, to date, been consummated, the Three Affiliated Tribes have met with absolute success in the accomplishment of our objectives; and
- WHEREAS,** In view of the archaeological and anthropological study findings that many of our Tribal ancestors previously resided and were interred within the geographic area currently lying within the State of Nebraska, the Legal

Department of the Three Affiliated Tribes has been working in conjunction with the Nebraska Indian Commission in the various stages of the amendment to and development of LB 612, titled the "Human Burial and Skeletal Remains Protection Act," which has been introduced in the Nebraska State Legislature; and

WHEREAS, It is the considered judgment of the Tribal Business Council that the pending 12/07/87 draft of LB 612 is a commendable piece of legislation reflecting the respective values of both the dominant and Indian societies in protecting and preserving human burial sites through the provision of affording equal and adequate protection of unmarked burial sites located within the State of Nebraska; and

WHEREAS, The most significant aspect inherent in LB 612 is the express provision for good faith and timely notification to the identified Indian tribe that skeletal remains and/or associated burial goods of its ancestors have been discovered within the State and for the opportunity of the affected tribe to participate in the determination as to the disposition of such remains and/or artifacts; and

WHEREAS, The Tribal Business Council has determined that the ultimate enactment of LB 612 by the Nebraska Legislature will prove to be extremely beneficial in the efforts of the Three Affiliated Tribes to introduce and secure the enactment of proposed extensive amendments to the current North Dakota burial protection and related laws in the next succeeding legislative assembly of the North Dakota Legislature; and

WHEREAS, The introduction of LB 612 in the Nebraska Legislature has presented to the State of Nebraska an opportunity to enhance its exemplary record of historically protecting and fostering the interests and general welfare of its Indian citizens;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby formally and respectfully urges that the Legislature of the State of Nebraska, in an expeditious manner, enact into law the pending 12/07/87 draft of LB 612, titled the "Human Burial and Skeletal Remains Protection Act."

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 7 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 29 day of January, 1988; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 1 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 29 day of January, 1988.


Secretary, Tribal Business Council

ATTEST:


Chairman, Tribal Business Council



STATE OF NEBRASKA

NEBRASKA INDIAN COMMISSION

KAY A. ORR
GOVERNOR

REBA WHITE SHIRT
EXECUTIVE DIRECTOR

January 21, 1988

Mr. Edward Lone Fight, Chairman
Three Affiliated Tribal Business
Council
Administration Building
P.O. Box 220
New Town, No. Dakota 58763

Dear Mr. Lone Fight:

The Nebraska Indian Commission is currently involved in an effort to pass legislation in Nebraska that would protect all unmarked burial sites and any human remains and burial goods. The pending legislation is known as LB 612, The Human Burial and Skeletal Remains Protection Act.

I have enclosed a copy of our current draft of this proposed legislation for your review (the underlined portions of this draft simply indicate that this language was not in our previous draft). At present Nebraska has no law to protect the dignity of our ancestral burials.

One of the provisions of LB 612 is that it protects the burial sites of all people who were ever in what is now called Nebraska, and the tribe's from which those people came will be notified if any of their ancestor's remains are accidentally found. Because there is a possibility that some of your ancestors are buried in Nebraska, this bill could have a positive impact in protecting the dignity of those ancestors, and their right to rest in peace.

Therefore, we need your help to pass this important legislation. Please review our current draft to LB 612. If you support our efforts, please send to the Nebraska Indian Commission a letter of support or tribal resolution indicating your support of LB 612 as stated in the 12-7-87 DRAFT.

For your convenience we have prepared a sample of a tribal resolution for you which you can complete and put on your letterhead and mail to our office.

This bill, while having the support of the Indian people of Nebraska, has become quite controversial because the Historical Society, some anthropologists and archaeologists, and others think they should have the right to put our ancestors' remains in museums and other institutions. That is why we need to receive support from Indian people outside of Nebraska who support our effort, especially Indian people who may have ancestors buried here.

Edward Lone Fight
January 21, 1988

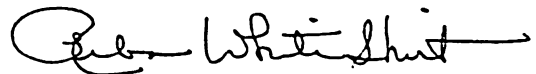
Page 2

Please indicate your support by official letter or resolution. The bill will be considered in January of 1988 so we ask that you take the time to address this issue as soon as you can.

Since we are sending this draft resolution to a number of tribes, and don't want each one to look exactly like the others, please feel free to change the resolution language in a way that suits you, or to simply send us a letter of support in your own words signed by the tribal Chairman. But, please, remember to identify the bill you are supporting by referring to the 12-7-87 DRAFT of LB 612.

Thank you for sending us a letter or resolution which we can use as supporting documentation toward the passage of the 12-7-87 DRAFT of LB 612.

Sincerely,



Reba White Shirt
Executive Director

RWS/jf

Encl.

cc: Edmund White Bear

12/07/87
D R A F T

LB 612

Amendment to § 28-1301

(a) Dead Human Bodies, Skeletal Remains, Burial Goods

Section 1. This act shall be known and may be cited as the Human Burial and Skeletal Remains Protection Act.

Section 2. The Legislature hereby finds and declares that:

(1) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries;

(2) Existing law on cemeteries reflects the value society places on preserving human burial sites, but does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state;

(3) There are scattered throughout this state an unknown number of unmarked human burial sites containing the remains of pioneers, settlers, and Indian people;

(4) There is no adequate procedure regarding the treatment and disposition of human skeletal remains from unmarked graves necessary to protect the interests of descendants or other interested persons;

(5) There are religious, educational, cultural, and scientific interests in the remains of ancestral peoples and those interests, whenever possible, should all be served;

(6) As a matter of policy and custom, society places its highest values in honoring and preserving the dignity and respect of those persons who have gone before us and, consistent with that policy and custom and absent evidence of criminal wrongdoing, the interests of scientific inquiry shall not take precedence over the beliefs and practices associated with the religious values and human dignity of ancestral people;

(7) It is the policy of the State of Nebraska that:

(a) All human burials be accorded equal treatment and respect for human dignity without reference to ethnic origins, cultural backgrounds, or religious affiliations by providing adequate protections for unmarked human burial sites and human skeletal remains located on all private and public lands within this state;

(b) A procedure for the proper care and protection of unmarked human burial sites, human skeletal remains, and associated burial goods found in this state consistent with the findings set forth in this section and the other sections of this Act be developed through the cooperative efforts of local law enforcement officials and the State Historical Society pursuant to § 82-119.

(c) Absent any evidence of prosecutable criminal wrongdoing, and insofar as it is determined by the State Historical Society to be a practical course of action, all discovered unmarked human burial sites shall be left undisturbed or the contents thereof immediately reburied at or near the discovered site.

Section 3. As used in this Act, unless the context otherwise requires:

(a) Burial goods shall mean any object or artifact

reasonably believed to have been interred with one or more human bodies in conjunction with such interment;

(b) Burial place shall mean and include all marked and unmarked human burial sites;

(c) Unmarked human burial shall mean any interment by whatever means of human skeletal remains for which there exists no grave marker;

(d) Human skeletal remains shall mean any part of the body of a deceased human in any stage of decomposition.

(e) Descendant tribe shall mean any Indian tribe which may be reasonably identifiable as descendant from the deceased person.

Section 4.

(1) Except as provided in subsection (2) of this section, a person commits the offense of removing, abandoning, or concealing a dead human body if he or she:

(a) Shall dig up, disinter, remove, or carry away from its place of deposit or burial any dead human body, the remains thereof, or the burial goods contained therein, or shall attempt to do the same or shall assist, incite, or procure the same to be done;

(b) Throws away or abandons any dead human body, or any portion thereof, in any place other than a regular place for burial and under a proper death certificate issued under either section 71-182 or section 71-605; or

(c) Receives, conceals, purchases, sells, trans-ports, trades, gifts, or disposes of any dead human body, the remains thereof, or burial goods found therewith, knowing or having reason

to know that the same had been dug up, disinterred or removed from its place of deposit or burial or has not been reported in a proper death certificate issued under either section 71-182 or section 71-605, attempts to do the same, or aids, incites, assists, or encourages the same to be done.

(2) (a) The above-mentioned acts shall not apply to the bodies authorized to be surrendered for purposes of dissection as provided by law; nor shall they apply to nor be construed to prevent the officers of any lawfully constituted cemetery, while acting under the direction of its board of trustees, from removing any body or the remains thereof from one place of burial in said cemetery to another place in the same cemetery when disinterment and reinterment permits are secured and return made thereof as prescribed in section 71-605; nor shall they apply to nor be construed to prevent any person or persons from removing the bodies or remains thereof of their relatives or intimate friends, from one place of burial to another. However, in the case of the last-mentioned burial, if it was in any lawfully constituted cemetery, consent for such removal shall be obtained from the lawfully constituted authority thereof, and permits for disinterment and reinterment shall be secured and return made thereof as prescribed in section 71-605.

(b) The above-mentioned acts shall not apply to nor be construed to prevent the necessary archaeological excavations of human remains or burial goods by the State Historical Society or its designee in the course of the execution of its duties, to the extent that such actions are consistent with the policy and provisions of this Act.

(3) (a) It shall be the duty of any person, corporation,

agency, or authority in the state of Nebraska who discovers or has knowledge of unmarked human skeletal remains or who knowingly disturbs said remains through construction, agricultural, or other activity,

to immediately notify the State Historical Society. Upon receipt of such notification the State Historical Society shall notify the coroner of the county wherein the human skeletal remains are located.

(b) Any person, corporation, agency or authority of

the State of Nebraska or any of its political subdivisions who shall discover an unmarked human burial or human skeletal remains shall immediately cease any activity within a radius of 50 feet of such

discovery, including but not limited to construction and agricultural

activity, until such time as the State Historical Society has had

an opportunity to investigate the site and notify the Nebraska Indian Commission or any identifiable lineal or tribal descendants, and

arrangements have been made to insure a proper removal and reburial, if necessary. However, in such cases where a delay would cause a

significant financial hardship, the State Historical Society or its designee may, 72 hours after notifying the Nebraska Indian Commission

or any known lineal or tribal descendants, respectfully remove and store such remains and any associated burial goods from the site,

and the State Historical Society shall then notify the Nebraska Indian Commission or any known lineal or tribal descendants within

ten days of such removal. In the event the site is located on federal property, applicable federal time guidelines shall apply.

(c) In the event that the State Historical Society

deems it probable that the human skeletal remains are American Indian,

the State Historical Society shall forthwith notify the Nebraska

Indian Commission and/or the descendant Indian tribe that a site evaluation will be made to determine if the place where said remains were found is an Indian burial site. In the event that the site being investigated is an American Indian burial site, the evaluation and investigation shall be preceded by a timely written invitation to the Nebraska Indian Commission and/or the descendant Indian tribe to participate in the evaluation and investigation. All expenses incurred by the Nebraska Indian Commission or descendant individuals or tribes pursuant to the provisions of this Act are the responsibility of said Commission, individuals or tribes.

(4) (a) Penalties: Except as provided in subparagraph (b), removal, concealment, abandonment, purchase, sale, trade, gift, willful destruction, mutilation, defacing, exposing, public display or exhibit of any human skeletal remains, dead human bodies or burial goods is a Class I misdemeanor.

(b) Any person who fails to report the disturbance of a burial site as required under Section 4 (3) (A), upon conviction thereof, shall be guilty of a Class 1 Misdemeanor.

(c) Curation or study authorized by the State Historical Society of skeletal remains or burial goods with the prior written consent of the lineal or tribal descendants, and subject to the limitations of such consent for those remains currently in the possession of or hereafter lawfully acquired by the State Historical Society, state accredited colleges and universities, museums accredited by the American Association of Museums or state accredited medical education facilities shall be exempt from the provisions of subparagraph (a).

(d) The State Historical Society, state accredited colleges and universities, and museums accredited by the American Association of Museums shall be allowed a period of one year from the effective date of this Act to reinter all human skeletal remains and burial goods in their possession on the effective date of this Act. All reburials of unidentified or unclaimed remains undertaken pursuant to this subsection shall be conducted at the expense of the affected institution. All other reburials shall be conducted pursuant to the reburial provisions of this Act. The State Historical Society, in conjunction with the Nebraska Indian Commission, shall have the authority to catalog and add to their registry a complete listing of all skeletal remains and burial goods affected by this subsection.

(e) If the skeletal remains and/or burial goods of an individual who died more than 1000 years ago are determined by the State Historical Society to be of exceptional scientific value, the State Historical Society may present a plan to the federally recognized Indian tribes in Nebraska regarding the storage, study and reinterment of those remains. Said plan shall become effective upon the approval of a majority of the governing bodies of said tribes.

(f) This Act shall not affect the rights of living individuals to donate their bodies to state accredited medical facilities for purposes of medical research or education.

Section 5. AMENDMENT TO § 82-119

Nebraska State Historical Society; powers and duties.

(1) The Nebraska State Historical Society shall be charged with the duty of marking and preserving the historical landmarks of Nebraska. It may hold property and be a party to suits and contracts.

(2) The State Historical Society shall have the following powers and duties with respect to the Human Burial and Skeletal Remains Protection Act:

(a) To create or add to its existing registry a list of unmarked human burial sites. Information as to the existence and location of such sites shall be available upon request to identifiable lineal descendants, governing bodies of descendant tribes, and professional researchers from accredited institutions.

(b) If in the professional opinion of the State Historical Society the site is particularly vulnerable to destruction or exploitation, the State Historical Society shall make a timely and diligent effort to notify the Nebraska Indian Commission and any identifiable lineal descendants or descendant tribe.

(c) To cooperate with law enforcement officials, the Nebraska Indian Commission and recognized Indian Tribes in Nebraska and any other person or persons in the excavation, handling, disposition, and study of human skeletal remains from unmarked human burials, except that any human skeletal remains or burial goods which may be identified with any descendants or tribe shall be the sole and exclusive property of the descendants or tribe with which the remains or goods may be identified and all decisions affecting the disposition and study of such remains or goods shall be governed by §28-1301. Transfer of the remains and burial goods subject to this subparagraph shall occur in a timely manner, and in no event shall be greater than 30 days after a determination of descendancy has occurred, unless prior written permission for a delay of transfer has been obtained from the descendants.

(d) To make every diligent and timely effort to determine the descendants or tribal affiliation of any and all human skeletal remains or burial goods which may be discovered within this state and to make prompt notification to such descendants or tribe. If such descendants, after notification, do not come forward and claim the skeletal remains and/or burial goods within sixty days of notification, said remains and burial goods shall be treated as unidentified remains.

(e) (1) It shall be the duty of the Nebraska Historical Society or its designee to arrange for the disposition of non-native human remains after conducting a site evaluation upon request from any County Coroner or Sheriff pursuant to § 28-1301. The Historical Society or its designee shall consult with the site's owner and other interested persons to determine whether prudent and feasible alternatives exist to avoid, minimize or mitigate harm to the burial site. The final plan or agreement which shall be in writing, may include provisions for preservation in situ; the conducting of additional scientific and archaeological research and investigation; and, with the consent of the site's owner, the execution of a preservation restriction pursuant to the rules and regulations of the Nebraska Historical Society. If no present and feasible alternative is agreed to, the State Historical Society or its designee may excavate the site and recover the remains in accordance with generally accepted scientific and archaeological standards. The Society shall dispose of such non-native recovered remains and related materials by authorizing reinterment. Costs of such reinterment shall be the responsibility of the county wherein the remains were

buried. Those sites, determined to be Indian in origin but for which an investigation by the Nebraska Historical Society in conjunction with the Nebraska Indian Commission is unable to determine tribal affiliation, shall be treated as non-native sites.

All unclaimed or unidentified disinterred skeletal remains and burial goods shall be reinterred at the expense of the county wherein such remains or burial goods were found. Said reinterment shall take place not more than one year after the State Historical Society has been notified or becomes aware of the existence of said remains. The State Historical Society shall keep a record of all such reinterments in its Registry.

(2) Upon receipt of notice by the Nebraska Indian Commission or descendant Indian tribe that a site evaluation will be made to determine if skeletal remains are American Indian, the Nebraska Indian Commission and/or tribe may designate a representative to be present when said site evaluation is made. If the State Historical Society and Nebraska Indian Commission or tribe determine that said remains are American Indian, the owner of the land whereon the remains were discovered, the State Historical Society, the Nebraska Indian Commission or tribe, and other interested parties shall determine whether prudent and feasible alternatives exist to avoid, minimize or mitigate harm to the Indian burial site. If it is not feasible to preserve the remains in the original Indian burial site then the State Historical Society shall excavate and recover the remains under the supervision of the Nebraska Indian Commission or descendant tribe. The Nebraska Indian Commission, the descendant tribe, and the State Historical Society will then consult to determine how the remains will be disposed of.

The final plan or agreement, which shall be in writing, may include provisions for preservation in situ; or the conducting of additional scientific and archaeological research and investigation with the approval of the Nebraska Indian Commission or descendant tribe, or the immediate reinterment of the remains, or any other solution agreed upon and within the authority of the State Historical Society. If it is decided that the remains are to be reinterred, it will be the responsibility of the Nebraska Indian Commission or the descendant tribe to conduct the reinterment.

(f) To consult with Indian Tribes regarding matters of mutual concern.

(g) To promulgate policies and procedures necessary to implement the provisions of this section and the Human Burial and Skeletal Remains Protection Act.

(h) To establish, maintain and publicize a toll-free telephone number for the purpose of soliciting information relevant to the duties and interests of the State Historical Society.

25----- CIVIL ACTION -- TIME FOR COMMENCING ACTIONS
-- VENUE -- DAMAGES -- ATTORNEY FEES. (1) Apart from any criminal prosecution, any person shall have a cause of action to secure an injunction, damages or other appropriate relief against any person who is alleged to have violated the provisions of section 28-1301, RRS. Nebraska. The action shall be brought within two (2) years of the discovery of the violation by the plaintiff. The action may be filed in the district court of the county in which the subject grave or cairn, remains or artifacts are located, or within which the defendant resides.

(2) If the plaintiff prevails in an action brought pursuant to this section:

- (a) The court may award reasonable attorney fees to the plaintiff.
- (b) The court may grant injunctive or such other relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as it sees fit, including the reinterment of any human remains in accordance with subsection ____ of section _____:
- (c) The plaintiff may recover actual damages. Actual damages include special and general damages, which include damages for emotional distress;
- (d) The plaintiff may recover punitive damages upon proof that the violation was wilful. Punitive damages may be recovered without proof of actual damages.

(e) An award of punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(3) If the defendant prevails, the court may award reasonable attorney fees to the defendant.